

Spring 2023

Privacy Discussion Forum: Introduction

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Online ISSN: 2643-7759

Recommended Citation

Russell L. Weaver, *Privacy Discussion Forum: Introduction*, 17 FIU L. Rev. 263 (2023).

DOI: <https://dx.doi.org/10.25148/lawrev.17.2.4>

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PRIVACY DISCUSSION FORUM: INTRODUCTION

Russell L. Weaver*

On June 20–21, 2022, the Privacy Discussion Forum was held at the University of Stockholm in Sweden. The purpose of this forum was to bring together prominent scholars to discuss cutting-edge privacy issues. The forum focused on such issues as media intrusions on individual autonomy, as well as governmental and private uses of information (not only collection issues, but also distribution and use issues). The papers being published in this issue are “discussion papers” which provided the basis for the forum discussions.

Dr. Johanna Chamberlain and Professor Jane Reichel’s contribution is entitled *Supervision of Artificial Intelligence in the EU and the Protection of Privacy*.¹ In their article, they discuss the rapid development of artificial intelligence (AI) and the implications of that technology for individual rights, particularly privacy rights. While they note that the European Union (EU) is taking action to protect society against AI, they describe the EU’s current efforts as a “broad and incoherently regulated supervisory regime,” and they worry that the EU’s regulatory regime “cannot be expected to legitimately balance the interests of privacy, data protection, and the right to information.”²

Professor Michael M. Epstein’s article, *Fiduciary Duty as a Shield for Social Media User Privacy and Platform Policing of Political Misinformation and Disinformation*, recognizes the importance of the right to communicate anonymously, noting that anonymous communication has many beneficial uses.³ It has been “used against the Nazis in World War II, by revolutionaries against repressive colonial governments, and by critics of government overreach throughout the world.”⁴ However, as more and more speech has moved online, there is tension between the right to communicate anonymously and societal efforts to root out disinformation, and increasing

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¹ Jane Reichel & Johanna Chamberlain, *Supervision of Artificial Intelligence in the EU and the Protection of Privacy*, 17 FIU L. REV. 267 (2023).

² *Id.* at 283 (citation omitted).

³ Michael M. Epstein, *Fiduciary Duty as a Shield for Social Media User Privacy and Platform Policing of Political Misinformation and Disinformation*, 17 FIU L. REV. 287 (2023).

⁴ *Id.* at 288 (citation omitted).

demands to get rid of anonymity. Professor Epstein advocates for the creation of social media fiduciaries. Individuals would register with these fiduciaries who would be required to protect their identities unless they are found to have disseminated misinformation or disinformation. The social media companies would use content neutral metrics to police posts on their platforms.

Professor Michael M. Losavio's contribution is entitled *The Need for Curtains of the Soul: Privacy Versus Transparency in an Instrumented World of Algorithmic Artificial Intelligence*.⁵ He notes the tension between personal privacy and pervasive data collection efforts. Given that data collection and data analysis have become so widespread and pervasive, he contends that society needs to adopt "a robust set of technical and legislative implementations on collection, storage, transmission, and use of all such collections of data, public and private."⁶ While he notes the potential conflict between free speech and efforts to protect privacy, he contends that "the importance of protecting that core of people's lives means we must find a legal/technical curtain to protect those lives from the utter destruction of their privacy and right to personal autonomy."⁷

Professor Iris Nguyễn Duy's contribution is entitled *The Development of Digital Mass Surveillance in Norway: The Emergence of a Surveillance State?*⁸ She argues that the internet has become a treasure trove of data information that presents a threat to both privacy and democracy as internet data and traffic is subject to surveillance. She expresses concern about private actors, who mine and sell our data, as well as about governmental actors who are supposed to protect individuals against privacy intrusions, and then analyzes legislative responses. She is concerned that, taken as a whole, these enactments:

organize and sanction the systematic monitoring of cross-border data and traffic, the recording of IP-addresses and connection times, as well as the monitoring of all publicly available information (not to mention the use of new technology by the police to search and analyze the police database, the legality of registration of DNA-profiles in the Police Identity Register).⁹

⁵ Michael M. Losavio, *The Need for Curtains of the Soul: Privacy Versus Transparency in an Instrumented World of Algorithmic Artificial Intelligence*, 17 FIU L. REV. 309 (2023).

⁶ *Id.*

⁷ *Id.* at 310.

⁸ Iris Nguyễn Duy, *The Development of Digital Mass Surveillance in Norway: The Emergence of a Surveillance State?*, 17 FIU L. REV. 325 (2023).

⁹ *Id.* at 376 (citation omitted).

As a result, the enactments establish the structure for a nearly total surveillance of the Norwegian population through the internet, leading to an “all-encompassing mass surveillance” of the Norwegian population.

Professor Tobias Oechtering, Ph.D. student Sara Saeidian, and Professor Cecilia Magnusson Sjöberg’s article is entitled *Calculated Privacy: Tech Meets Law & Law Meets Tech*.¹⁰ This article examines the impact of technology on privacy, and how the law is responding to those impacts, using mathematical concepts in an effort to “bridge the gap and provide some timeless design guidelines for technology that system designers can strive to implement and legal advisors can request be implemented.”¹¹ In particular, the article focuses on the data minimization principle, which they seek to apply using a statistical approach, which basically requests a sufficient statistic that cannot be transformed further with non-reversible transformations without losing its utility. This approach requires that a deviation from that request be carefully justified. Thus, the conclusion is that privacy risk assessments call for a formal and mathematical privacy analysis, and there should be rigorous quantification regarding how much information is leaked by disclosing some data.

Finally, my article, *America’s Fraught Relationship with Privacy*, traces the development of privacy rights in the United States.¹² That article notes that, while Justice Louis D. Brandeis’ 1899 article on the right of privacy¹³ prompted societies around the world to recognize the importance of privacy rights, the U.S. has generally lagged behind European societies in the protection of those rights. Many European countries have established data privacy commissions, and the European Union has adopted the General Data Protection Regulation in an effort to secure privacy rights. In the U.S., there have been privacy developments in many different areas of the law, including under the Fourth Amendment to the U.S. Constitution and in regard to individual privacy rights, but the U.S. clearly lags behind its European counterparts. This article traces the development of privacy interests in this country.

¹⁰ Tobias Oechtering, Sara Saeidian & Cecilia Magnusson Sjöberg, *Calculated Privacy: Tech Meets Law & Law Meets Tech*, 17 FIU L. REV. 383 (2023).

¹¹ *Id.* at 397.

¹² Russell L. Weaver, *America’s Fraught Relationship with Privacy*, 17 FIU L. REV. 399 (2023).

¹³ Samuel Warren & Louis Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).