

INTRUSIONS

Privacy tradeoffs in a free society

By Alan F. Westin

Most definitions of privacy agree on a core concept: privacy is the claim of an individual to determine what information about himself or herself should be known to others. This involves when such information will be communicated or obtained and what uses others will make of it. Many definitions would add a claim to privacy by social groups and associations, as well as a limited (largely temporary) right of privacy for government bodies.

At the political level, every society sets a distinctive balance between the private sphere and the public order, on the basis of the political philosophy of the state. In authoritarian societies, where public life is celebrated as the highest good and the fulfillment of the individual's purpose on earth, privacy is rejected as hedonistic and immoral. It is also seen as dangerous to the regime. Authoritarian societies create procedures to watch and listen secretly to elite groups, and totalitarian governments keep extensive records on individuals, families, and all associational activities.

In contrast, democracies respect individualism and regard the private sector as a valuable force for social progress and morality. The public order—government—is seen as a useful and necessary mechanism for providing services and protection. But constitutional governments are expressly barred by bills of rights and other guarantees

*Alan F. Westin is professor emeritus of public law, Columbia University, and author of *Privacy and Freedom* (1967).*



©1999 PhotoDisc, Inc.

of civil liberty from interfering with the citizen's private beliefs, associations, and acts, except in extraordinary situations and then only through controlled procedures.

At the sociocultural level, the real opportunities people have to claim freedom from the observation of others are shaped by environmental factors, such as crowded cities, and class factors of wealth and race. In this sense, privacy is frequently determined by the individual's power and social status. The rich can withdraw from society when they wish; the lower classes cannot. Ironically, though, the rich, the famous, and the politically powerful are also the people whose efforts at privacy most often come under assault by rivals, the authorities and the media. And, in an age of virtually universal record-keeping

and credentials review, even the wealthy and powerful become enmeshed in the all-pervasive data-collection processes of an information-driven society.

Privacy is closely related to social legitimacy. When a society considers a given mode of personal behavior to be socially acceptable—hairstyle, dress, sexual preference, political or religious belief, having an abortion—it labels such conduct as a private rather than a public matter. This generally means that such matters should not be inquired into for the purpose of denying someone access to the desirable benefits, rights, and opportunities controlled by government or private organizations.

When society considers some conduct socially dangerous, it says this is not a matter of "private choice" but of "public morality or order." Thus, debates over privacy are neverending, for they are tied to changes in the norms of society as to what kinds of personal conduct are regarded as beneficial, neutral, or harmful to the public good. It is also true that demands to "regain" or "preserve" privacy are sometimes campaigns for major sociopolitical or institutional change, wrapped in the mantle of individual privacy rights.

Finally, on the individual level, people assert claims of privacy on a daily basis as they seek an "intra-psychic" balance between their need for it and their need for disclosure and communication. This balance is generally a function of family life, education and psychological makeup, and it reflects each individual's particular

needs and desires, shifting dynamically in terms of life-cycle progress and situational events.

In all the four basic states of privacy—solitude, intimacy, anonymity, and reserve—the individual's needs are constantly changing. At one moment, a person may want to be completely alone, in “down time.” At another moment, individuals may want (or even desperately need) the companionship or sustaining presence of an intimate friend. Or, the individual may want to “open up” problems or situations to a complete stranger—the one-time acquaintance who will listen to the individual's problems, perhaps offer a sympathetic ear, but who will not be encountered again and will not exercise judgmental authority over the individual.

Such changing needs and choices about self-revelation, in both personal and consumer life, are what make privacy such a complex condition, and such an important matter of individual choice. The importance of that right to choose—when to go public and when not—makes the claim to privacy a fundamental part of civil liberty in a democratic society.

At the same time, privacy is not and cannot be an absolute value or right. Every organized society, especially technologically-advanced ones, must provide for the disclosure of information necessary to the rational and responsible conduct of public affairs, and to support fair dealing in business affairs. Democratic societies must also engage in surveillance of properly-identified anti-social activity to control illegal or violent acts. Managing this tension among privacy, disclosure, and surveillance in a way that preserves civility and democracy, and copes successfully with changing social values, technologies, and economic conditions, is the central challenge of contemporary privacy protection.

Privacy claims and interests must also compete with several powerful trends in societies. These include curiosity about what others (both neighbors and celebrities) say, do, and think, and a voyeuristic impulse to penetrate the secrets of others and watch them in private acts, from the classic “Peeping Tom” to the modern paparazzi and confessional spectacles of daytime television. There is also that aspect of egalitarianism that pushes away claims of reserve as unacceptably elitist or secretive and demands the public's (often, in reality, the media's) “right to know.” Each society has to set a balance between privacy claims and these encroaching social tendencies.

With this framework as a guide, we turn to the general picture that surveys present about consumer privacy in America, both off and online, and also to the deeper understandings of the driving factors and social dynamics regarding privacy that some surveys contribute.

Privacy has become in our time a prime social value. According to a 1990 Harris poll, 79% of the public believe that if the Framers of the Declaration of Independence were re-writing that document today, they would add privacy to the trinity of life, liberty, and the pursuit of happiness. Majorities this year in a survey of America Online members ranked privacy just behind freedom of speech and ahead of freedom of religion and the right to vote as the most important American right.

Even as they assert its importance, Americans register deep concern about the state of privacy. In 1998, 87% in a *Privacy & American Business* Harris survey expressed concern about threats to their personal privacy. Ninety-four percent in a 1999 IBM/Harris survey said they were worried about “possible misuse” of their personal information.

One area in which Americans feel particularly vulnerable is that of consumer privacy. In the IBM study, 80% said that “consumers have lost all control over how personal information about them is collected and used by companies.” The most concern is expressed over how financial and medical information is being handled. While 59% felt that “existing laws and organizational practices in the United States provide a reasonable level of consumer privacy protection today,” strong majorities favored enacting new laws to strengthen privacy rules for use of financial and medical information.

Because of their high levels of concern, many American consumers have become privacy activists. In the IBM study, 78% said they had refused to give information to a business or company because they thought it was not really needed or was too personal; 58% had asked a company to remove their name from marketing lists; and 54% said they had decided not to buy something from a company because they weren't sure how the company would use their personal information.

Such offline privacy worries are both echoed and magnified when the public goes online. Ninety-two percent of net users say they are concerned about threats to their personal privacy when using the internet, and 72% say they are “very concerned.”

To contend with these perceived threats, net users look for and act upon privacy policies. Eighty-five percent of net users in 1999 said it was absolutely essential or very important for websites to display privacy notices and explain how they will use the personal information they collect. And, in ranges from 55 to 64%, net users said they had refused to give personal information to financial, retail, health, or insurance websites, or refused to purchase goods or services at these sites because of privacy concerns.

Most recently, majorities have come to favor privacy legislation for the internet. In 1999-2000, public and net user majorities in the 60 to 75% ranges in various surveys believed that laws are now needed to protect internet privacy, beyond existing ones for children or the regulation of spam.

We know from the conceptual framework presented earlier that people differ in how they want to set their privacy boundaries; that privacy competes with other high social values so that people engage in balancing choices; and that there is a politics of privacy at work in setting new rules or laws. What do the surveys tell us on these key questions, and particularly about privacy in the unique setting of the internet?

Harris-Westin surveys from 1978 to the present have found the driving factors behind privacy attitudes, both in general and in specific consumer areas, to be a combination of two orientations: the individual's level of distrust in institutions, and fears of technology abuse.

Using the Harris-Westin data we have created a four-item Distrust Index, measuring distrust in government, voting and business, and fears that technology is almost out of control. The higher the distrust score, the more a respondent will express concern about threats to privacy, believe that consumers have lost all control over uses of their information by business, reject the relevance and propriety of information sought in particular situations, call for legislation to forbid various information practices, and so forth.

Since a barrage of national surveys over the past two decades confirms that a majority of the American public has medium to high institutional distrust, and fears about technology-misuse run deep in the population in all demographic groups, the Distrust Index suggests that the public's strong privacy

concerns will carry forward rather than fade in the early 21st century.

“The driving factors behind privacy attitudes are a combination of the individual's level of distrust in institutions, and fears of technology abuse.”

Probably the most important analysis of these burgeoning concerns looks at how the public divides on consumer privacy issues. Harris-Westin surveys show a continuing division of the public into three segments:

Privacy Fundamentalists (about 25% of the public) see privacy as holding especially high value. They reject the claims of many organizations to need or be entitled to get personal information for their business or governmental programs, think more individuals should simply refuse to give out information they are asked for, and favor enactment of strong federal and state laws to secure privacy rights and control organizational discretion. Privacy Fundamentalists score at the high end of the Distrust Index.

Privacy Pragmatists (about 55%) weigh the value to them and society of various business or government programs calling for personal information, examine the relevance and social propriety of the information sought, look to see whether fair information practices are being widely enough observed, and then decide whether they will agree or disagree with specific information activities—

with their trust in the particular industry or company involved a critical factor in their decision. The Pragmatists favor voluntary standards over legislation and government enforcement, but they will back legislation when they think not enough is being done—or meaningfully done—by voluntary means. Privacy Pragmatists generally score in the middle, and sometimes at the high end, in levels of distrust.

The *Privacy Unconcerned* (about 20%) don't know what the “privacy fuss” is all about. They support the benefits of most organizational programs over warnings about privacy abuse, have little problem supplying their personal information to government authorities or businesses, and see no need for creating another government bureaucracy to protect someone's privacy. Not surprisingly, the Privacy Unconcerned score at the low end of the Distrust Index.

In the politics of privacy, the battle is for the hearts and minds of the Privacy Pragmatists. If most of them feel their personal information is being used fairly and properly by businesses, especially online, they join the Privacy Unconcerned to make up a 75% level of support for the existing rules and practices. But if most of the Privacy Pragmatists feel that information practices are intrusive or their information is being misused, they join the Privacy Fundamentalists to make up a majority seeking legislative or regulatory measures, or consumer boycotts.

Most consumers are shrewd privacy balancers. In several Harris-Westin surveys, we see that a majority of the public—in the 54 to 66% range—is interested in learning about new products and services, and they support the compiling of activity profiles by businesses they patronize so that relevant offers can be communicated to them—if the information is relevant and if fair information practices are followed.

When respondents get lists of types of information that businesses could ask for to make risk-assessments, a majority applies pretty sophisticated notions of relevance in making its decisions. For example, strong majorities accept the relevance of payment histories, bankruptcy status, litigation pending, and similar matters when credit grantors are asked to make loans or issue credit cards.

Further, the majority of Americans looks to see whether what have come to be known as fair information practices standards—such as giving notice, offering choices, and providing security—are being embraced and observed. If they are, a majority supports the uses of consumer information for such purposes as risk-assessment and personalized marketing.

Again and again, surveys document that strong majority concern or even initial disapproval will shift to strong majority approval when the survey presents key fair information practices and asks, if these were observed or written into law, whether the information practices would then be acceptable to respondents.

The movement of majorities from initial concern to approval—if safeguards are adopted—shows that privacy is not seen by most Americans as an absolute, in the sense of expecting businesses that provide services to consumers or government social programs to operate without access to relevant and socially-appropriate personal information. Rather, the judgment process tested in the surveys demonstrates that, to most Americans, the key issue is almost always a matter of defining, adopting, and observing reasonable safeguards to avoid or limit present or potential abuses.

One function of survey research is to test whether advocates for various public

policies speak for majorities of the public, either in general or in specific situations. Given the levels of high public concern about privacy threats, it is clear that consumer privacy groups are in sync with public majorities at the general level of privacy concern, and in calling for government action in some specific areas.

When it comes to issues of individual choice among consumers, however, surveys show that privacy advocates may speak only for the Privacy Fundamentalists, and not even for all of them.

For example, when some websites in 1998-99 advertised offers of various gifts and free services in return for online users providing personal information, most of the established privacy advocates denounced this as a “Faustian bargain” and a dangerous surrender of privacy. A 1999 *Privacy & American Business* Opinion Research Corporation survey tested this situation. We asked:

Some websites offer net users a valuable benefit—such as free email, a free website, special discounts on products, or even a free PC—if the person will agree to provide some personal information in return. If the website informs individuals fully about what will be done with this personal information, do you think it is fair or not fair for each of the following things to be required, in return for the benefit?

Eighty-seven percent of net users found it fair to collect information about “consumer interests and preferences [and use this only] for statistical analysis of interests and buying trends among net users.” Seventy-nine percent said it was fair for persons receiving the benefits to agree that “banner-type ads for products and services can appear on the PC they are given, or at the website they visit to receive the free service.” Fifty-

nine percent said it was fair for persons getting the benefit to agree that their “email address can be provided to reputable companies, so they can send offers of products or services that reflect that person’s particular interests.”

Our survey also posed the question of whether such programs threaten good privacy practices on the net:

Some people believe it is wrong for companies on the net to ask individuals to give personal information or watch ads in return for a benefit, on the ground that this leads people to give up their privacy. Others say it is right to let each individual decide whether they want to provide information for uses that are fully explained, in return for benefits. Which view do you agree with most—that participation in these programs violates privacy or that this is a matter for individual privacy choices?

Eighty-six percent believed participation in information-for-benefits programs is a matter for individual privacy choice, and 12% thought participating in these programs violates privacy. In this particular case, privacy advocates spoke for just 12% of the net-user public, and the informed-individual-choice position drew overwhelming net-user support.

A profound confrontation is under way on the internet, with literally billions of dollars and the future of e-commerce at stake. On the one side is the dominant business model: “We must know you to serve you.” On the other side is the majority consumer model: “I’ll decide what you know about me.” How to set the ground rules for websites collecting vital and fair consumer information for e-commerce while empowering net users to choose what they provide, and under what conditions, will be the work of this decade. Surveys can do a great deal to inform this process. ●