

Editorial

On January 7, 2009 the French magazine *Le Tigre* published a ‘Google Portrait’ of Marc L., a young architect from Bordeaux.¹ This portrait reflected the naked story of his life, based on all the traces he left on the internet. Marc L., who was a frequent user of the internet, had placed his social network online for anyone to see, but had never expected *Le Tigre* to actually print and publish it.

Since the young architect felt that his privacy had been invaded, he started proceedings against *Le Tigre* for breach of his right to privacy. Ultimately, it turned out that his claim was inadmissible. However, at his request the editors of *Le Tigre* decided to change the digital version of the article, by camouflaging the most personal details. Their intention in writing the article in the first place was not to harm the man; on the contrary, it was to illustrate the danger of putting personal information on the Web.

The case of *Le Tigre* gained worldwide attention. It is just one example of the fact that many people are not consciously aware of the dangers that lie in putting their information on the internet, thereby handing over their privacy rights.

This issue of Amsterdam Law Forum contributes to the political and legal discussion on privacy and technological developments. We present a diversity of articles, in which the contributing authors discuss important topics including the notion of privacy, the tension between state control and the protection of privacy, and the consequences for privacy as a result of technological developments.

Bart Schermer, for example, describes how new technologies will bring us closer to a new technological society – a so-called ‘Ubiquitous Network Society’. He describes the developments in IT and the possible risks new surveillance applications create. A similar argument is made by Bart Jacobs, who notes we are gradually moving towards a ‘surveillance society’ – and he argues we may sleepwalk into a ‘totalitarian society’.

The developments in technology mean that the debate on privacy must change direction: to be more specific, the notion of privacy needs to be placed in a setting where technological developments play an important role. For example, Corien Prins argues that the privacy debate should not be limited to a discussion on how to protect individual data: “Instead, the privacy debate should be a discussion on the impact on people’s *identity*.” Another interesting perspective is from Benjamin Goold, who argues that the debate should be placed in a political context. He suggests that this would

¹ Published on 7 January 2009, <http://www.le-tigre.net/Marc-L.html> (accessed on 28 August 2009).

not only free us from complex discussions of individual autonomy and dignity, but also ensure that the relationship between individual and state remains in the heart of any debate about privacy. He argues that privacy should be seen in a context where “privacy not only helps to protect individual autonomy, but also ensures that we are free to use that autonomy in the exercise of other fundamental rights.” From a more economic orientated perspective, Mark Andrejevic focuses the debate about privacy on the commercialisation of online applications and describes the power relations and the forms of exploitation that result from it. His article contributes to the current discussion on privacy in online social networking and calls for a shift in focus from consumer choice to economic power. Another interesting opinion is by Huub Dijkstra, who considers the debate about privacy in the context of migration policy. In his article the author describes how technology has made borders ‘technological’ and how this affects privacy rights of migrants. From a US perspective, Anita Allen elaborates on the extent to which surveillance regimes neglect the value of privacy, and takes the surveillance by the New York City Police Department as one prime example. Her argumentation connects Roussevian thought to questions on terrorism.

The privacy debate is also examined in the context of behavioural economics. Casper Thomas and Henriëtte Prast discuss findings regarding behavioural economics in the context of their implications for social policy aimed at affecting individual behaviour, while Simon Rooze has reviewed *Nudge*, a book that also draws heavily on behavioural economics and can be associated with the term ‘libertarian paternalism’. Last, Laurens van Baardewijk has written on the Dutch health care system, and provides an overview of the positives and negatives of the Dutch Electronic Health Record. He defines what constitutes the Dutch Electronic Health Record and argues that privacy and security are in fact not an issue.

Overall, the authors critically examine the underlying problems of the debate on privacy and call for a redefinition of what constitutes privacy in view of the ongoing technological developments. As a result of the diverse aspects of privacy, the authors have placed the issue in a broad perspective – legal, philosophical and political – and made it a topic to which readers, and thus society as a whole, can relate. We hope that this issue will lead the way to a new discussion on privacy, not only led by civil libertarians and privacy advocates, but a discussion that engages every member of the public.

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