

## PRIVACY, EXPLOITATION, AND THE DIGITAL ENCLOSURE

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### **Introduction**

The commercial development of increasingly sophisticated digital media technologies means that one of the key legal and regulatory issues in coming years will be the control and use of information gathered about consumers and citizens as they go about their wired lives. Perhaps we will enter a world in which, as former Sun Microsystems Chief Executive Officer (CEO) Scott McNealy once put it, “you have no privacy, get over it.”<sup>1</sup> But privacy is not the beginning and end of the issue. The question is no longer just what information companies will collect about us, but how this information will be put to use, the ability to transfer it, sell it, conduct marketing experiments with it and base advertising appeals upon it. Thanks to the portability and addressability of personalised interactive devices, marketers will be able to gather detailed personalised data and use it for targeted forms of advertising and manipulation. Categories of information once considered protected will, at least to the extent that users ‘leak’ information about themselves via interactive technologies, enter into the commercial calculus of the marketing machine. Consider, for example, medical information. While medical records remain confidential in most contexts, when people go online to research information about medical conditions, they may contribute that information to their personal marketing profiles, along with increasingly detailed information about their social relationships, their whereabouts, their consumption and communication practices, and so on. As our lives becomes mediated by the convenience of digital technology, information about them becomes subject to commercial capture: a logic that I describe as a form of ‘digital enclosure’ of personal information.

Information capture is only part of the story. When we participate in the interactive digital economy we become lab rats, subject to large-scale, ongoing controlled experiments conducted by a new breed of market researchers. The goal of such experiments is to discover combinations of past behaviour, location, demographics, and temperament, that make individuals more likely to be influenced by a finely-pitched marketing appeal. For this new type of marketing research no detail of an individual’s life is irrelevant: all contribute to the generation of correlation-based patterns. If the fact that someone flosses three times a day means he or she is more likely

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<sup>1</sup> S. McNeally, ‘On the Record: Scott McNeally’, *The San Francisco Chronicle*, 14 September 2003, I 1.

to purchase a particular brand of car or wine, marketers are not interested in the explanation; they just want to know the predictive value of the pattern. The more information they can get their hands on, the greater the possibility of unearthing correlation-based forms of prediction. Marketers do not need to know the names of particular individuals who fit the pattern; all they need to know is that a particular ‘anonymised’ target fits and will receive a customised appeal.

Gathered for the purpose of targeting and influencing consumers, commercial databases are also susceptible to so-called function creep. The data mine is of as much interest to law enforcement and state surveillance agencies as it is to the commercial sector. However we already have quite developed ways of thinking about state surveillance, so the focus of this article will be upon the commercial sector, not least because the rapid growth of digital media is predicated upon an emerging surveillance-based commercial model. What advertising and sponsorship were to the broadcast era, data-driven consumer relationship management is to the interactive one.

For both legal and regulatory purposes, the notion of privacy, narrowly construed, is insufficient for the task of thinking about the pressing issues surrounding information collection and use. Like labour power in the industrial era, personal privacy is something that individuals surrender in exchange for access to resources – and they do so under structured power relations that render the notion of free or autonomous consent at best problematic. If this comparison seems like a stretch, consider the example of Appirio, a company which markets an application that employers can ask their employees to install on their Facebook pages. Once installed, the application mines employees’ social networks for possible clients, customers, and job recruits. A press release by Appirio outlines the triple value of employee social networking data as a resource that allows employers,

“to increase the size of a company’s ‘virtual account team’ by leveraging relationships that employees might already have to approach strategic accounts or build customer relationships (...) The employee can see if a friend has become a lead, bought a product, attended an event (...) etc. If the employee chooses they can contact their friend through Facebook to make a connection and ultimately help contribute to their company's bottom line (and maybe even their own bonus).”<sup>2</sup>

The same data that can provide leads for potential hires and clients serves treble duty by providing data for targeted marketing appeals: “Based on a search of keywords in friend profiles, the application makes recommendations of friends who might be interested in the offer, which users can then choose to take action on.”<sup>3</sup> The application links data from

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<sup>2</sup> ‘Appirio referral management solution connects social networks with business applications to encourage, manage and measure word-of-mouth referrals,’ *Market Wire*, 2 February 2009.

<sup>3</sup> *Ibid.*

the social networks of individual employees to a proprietary consumer relationship marketing database “to track leads, make follow-up offers, and report on campaign success to see how their viral campaigns stack up to other marketing programs.”<sup>4</sup>

The limitations of a privacy-based approach to an application like Appirio are multiple. In the first place, notions of privacy tend to focus on individual rights and personal choice. If an employee ‘freely’ chooses to use an application like Appirio’s, its defenders are likely to argue that it is simply a matter of individual preference. Why should regulators or other legal authorities intervene? Moreover, applications like Appirio’s can function in ways that ostensibly protect employee privacy – narrowly construed – by de-linking marketing and consumer appeals from particular employees, or by ensuring that employers don’t have direct access to information about the personal lives of employees. And yet, neither of these claims seems satisfactory. Even if employees have the ‘choice’ (at least for the moment) of putting their social networks to use, it seems like a forced one, precisely because the notion of privacy does not take into account the power relations that structure the choice. Even if employers don’t have direct access to employee Facebook data, the very notion that this information is transformed into informational capital for the use of third parties remains disturbing. It anticipates a world in which our social contacts become one more asset on the job market, in which the work we put into building and maintaining social relationships becomes instrumentalised, one more standing reserve for the data mine.

The goal of this essay is to suggest some alternative or supplementary approaches to privacy-based form of regulation in the digital era. This is not a legal argument, but it is influenced by arguments that lawyers have made about the process of digital enclosure, and it is offered as a means of raising issues that current privacy regimes often fail to take into account. First, this essay argues that any attempt to locate privacy rights at the level of individual consumption choices reflects the power relations that structure the choices. At the societal and regulatory level, we need to do more than to argue that individuals have the right to choose whether or not to submit to the forms of monitoring required by access to commercial applications; we need to interrogate *why* they might be choosing to ‘accept’ levels of monitoring that they are uncomfortable with. We also need to come up with a theory for explaining why they might have reason to be concerned about monitoring – not just its potential abuses, but also its explicit use for the purpose of targeted forms of marketing and manipulation. Thus, the following sections explore first the ways in which power relations might structure access to information resources in the information age and, second, how to describe the forms of exploitation that result.

## **I. The Changing Information Landscape**

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<sup>4</sup> *Ibid.*

Perhaps as a result of post-Cold War complacency, public concerns over surveillance and monitoring have been at least partially eclipsed by consumers' enthusiastic embrace of the convenience of customisation and interactivity provided by online media in particular. The acceptance of the changing information landscape has led former United Kingdom Information commissioner Richard Thomas to note that we may "sleepwalk into a surveillance society."<sup>5</sup> New technologies and applications including 'smart' phones and social networking sites generate a widening and deepening range of information about consumers. Digital technology makes it possible not only to document the details of the networked citizen's daily lives, but to store, sort, and manage this information.

A term that is widely used in discussions of new media, 'user-generated content', broadly construed, goes far beyond its common association with the proliferation of Weblogs, personal Web pages, and other forms of amateur media production. It also includes the tremendous amounts of data that consumers generate about themselves when they interact with a new generation of networked digital devices. Media and cultural studies, long engaged in the study of media audiences, have tended to focus on new manifestations of audience productivity rather than how these audiences are themselves *put to work* by these proliferating forms of audience monitoring. Scholars and commentators have described the new forms of consumer monitoring in dramatic terms as, "the end of privacy" and the "destruction of privacy."<sup>6</sup> Other scholars have noted, however, that the end of privacy is not an accurate description of an era in which details of personal information are being captured and privatised at an unprecedented level.<sup>7</sup>

Industries that rely on this information have tended to downplay privacy concerns, suggesting that the market is the best way to decide whether consumers are willing to surrender control over their personal information. Such an argument, however, makes two presuppositions that aren't supported by the research: first, that consumers are aware of the extent to which they are surrendering control over personal information and second, that the market has provided them with a meaningful set of choices for control over the collection and use of their personal information. Public awareness of the extent and character of, for example, online monitoring, lags behind industry practice. Consider a recent survey of residents in the relatively tech-savvy United States' (U.S.) state of California which found, "that a gulf exists between consumers' understanding of online rules and

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<sup>5</sup> D. Lyon, *Surveillance Studies: An Overview*, Kingston: Polity Press 2007, p. 1.

<sup>6</sup> R. Whitaker, *The End of Privacy: How Total Surveillance Is Becoming Reality*, New York: New Press 1999; J. Rosen, *The Unwanted Gaze: The Destruction of Privacy in America*, New York: Random House 2000.

<sup>7</sup> See, for example, D. Schiller, *Digital Capitalism: Networking the Global Market System*. Cambridge, MA: MIT Press 1999; J. Boyle, 'The second enclosure movement and the construction of the public domain,' *Law and Contemporary Problems* 2003, 66(33) pp. 147-178; and V. Mosco, *The Pay-Per Society*, Toronto: Ablex 1989.

common business practices.”<sup>8</sup> The majority of respondents falsely believed that online privacy policies prohibited third-party information sharing and provided them with the rights to delete personal information upon request, sue for damages, and to access and correct data.<sup>9</sup> In reality, the mere existence of a privacy policy provides no such rights, and so-called privacy policies often stipulate consent to the very practices consumers thought they prohibited. A similar poll conducted by the Annenberg Public Policy Center in the U.S. found, “wide ignorance of business practices and the use of personal information.”<sup>10</sup>

As consumers learn more about monitoring practices, the research indicates they become *more*, not less, concerned about privacy. Thus, for example, the 2007 report on Community Attitudes to Privacy commissioned by the Australian Office of the Privacy Commissioner revealed that more than half of the respondents were *more* concerned about providing information over the internet than they were two years ago, and a similar number indicated that they were concerned about where information about them was being collected.<sup>11</sup> An astonishing 90 percent of Australians were concerned about businesses sending their personal information overseas, which is precisely what popular social networking sites like Facebook stipulate as one of their terms of use.<sup>12</sup> A recent U.S. survey revealed that 85 percent of respondents opposed the dominant online advertising model: tracking online behaviour for the purposes of target marketing.<sup>13</sup> At the same time, the commercial sector has little incentive to conduct or fund research that may suggest public support for limitations on the power it is arrogating to itself. As Oscar Gandy noted in the U.S. context, privately funded research has helped shape policy in ways that downplay public concerns and preferences.<sup>14</sup>

The existing state of affairs then, seems to present a paradox. On the one hand surveys continue to reveal the public’s high level of concern over privacy; whereas on the other, members of this same public seem

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<sup>8</sup> C. Hoofnagle & J. King, ‘Research Report: What Californians Understand About Privacy Online.’ Samuelson Law, Technology and Public Policy Clinic at the University of California, Berkeley 2008: [http://www.law.berkeley.edu/samuelsonclinic/files/online\\_report\\_final.pdf](http://www.law.berkeley.edu/samuelsonclinic/files/online_report_final.pdf). (accessed on 10 January, 2009)

<sup>9</sup> *Ibid.*

<sup>10</sup> J. Turow, D. Mulligan & C. Hoofnagle. ‘Research Report: Consumers Fundamentally Misunderstand the Online Advertising Marketplace’, *The Samuelson Law, Technology, and Public Policy Clinic*, University of California at Berkeley 2007: [http://www.law.berkeley.edu/clinics/samuelson/annenberg\\_samuelson\\_advertising-11.pdf](http://www.law.berkeley.edu/clinics/samuelson/annenberg_samuelson_advertising-11.pdf) (accessed on 10 July, 2009)

<sup>11</sup> Roy Morgan Research, ‘Community Attitudes Towards Privacy’, prepared for the Australian Office of the Privacy Commissioner 2007: <http://www.privacy.gov.au/business/research/> (accessed on 20 December, 2008)

<sup>12</sup> *Ibid.*

<sup>13</sup> Turow, Mulligan & Hoofnagle 2007, *supra* note 10.

<sup>14</sup> O. Gandy, ‘Public Opinion Surveys and the Formation of Public Policy’, *Journal of Social Issues* 2003, Vol. 59, No. 2, pp. 283-299; p. 296.

increasingly willing to submit to commercial forms of monitoring on a proliferating range of platforms and applications even as they engage in deliberate forms of public self-disclosure from blogging, to public journaling, Tweeting, and updating their personal profiles for a growing group of Facebook ‘friends’. From a commercial perspective the apparent inconsistency is a productive one, since the emerging mass-customised economy relies on detailed portraits of consumer tastes and behaviour to target advertising appeals. As one business professor put it, “It’s a total paradox (...). The amount of personal information put out there is perfect for marketers. It’s an absolute treasure box.”<sup>15</sup>

The fact that consumers submit to monitoring while expressing concern over privacy is no more inexplicable than the fact that people work while criticising exploitative workplace conditions. The choice faced by the public is to submit to monitoring or go without – that is to drop out of a burgeoning online community, to forego the revolutionary power that Time Magazine promised us when it named those who go online “Person of the Year”. Consumers are entering a world in which access to the goods and services they seek *requires* willing submission to increasingly detailed forms of data collection and online monitoring. They are faced with a choice that is structured not by their own preferences but by the economic imperatives of the private corporations that have recently come to dominate the internet. To call this situation paradoxical is to confuse imperatives of advertisers with the choices of consumers. The latter aren’t choosing to submit to monitoring because they like it; they are exchanging their personal information for access to commercial services. When pressed, marketers defend this logic of exchange in three ways: consumers are freely accepting the terms of exchange when they agree to end-user license agreements, targeted ads are preferable to ‘spam’, and finally (when pressed), they argue that submission to monitoring is one of the *duties* of consumers in a commercially supported online economy (there’s no such thing as a free lunch, even online). As one marketer put it recently in a discussion of target marketing on National Public Radio’s ‘On the Media’: “People need to understand that all the seemingly free information they get, all the seemingly free email accounts, each of those comes because of advertising supporting those sites (...) that’s kind of the backbone of the value proposition in American media.”<sup>16</sup>

## II. The Spread of a Digital Enclosure

Perhaps the best example of what I am describing as the process of digital enclosure is an un-realised plan by Google to provide free internet access to the city of San Francisco. In return for access, Google announced its plans to use the information it gathered about users’ locations within the city to

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<sup>15</sup> Richard Waters, ‘It’s a Total Paradox...An Absolute Treasure Box’, *Financial Times* 24 September 2007, p. 11.

<sup>16</sup> B. Garfield, ‘Best Selling Transcript of On the Media’, *National Public Radio*: Washington, District of Columbia (D.C.) 17 July 2009: <http://www.onthemedial.org/transcripts/2009/07/17/03> (accessed on 22 July 2009).

bombard them with time-and-location-specific ads, or what it calls, ‘contextual advertising’. As one press account put it, “users linking up with wi-fi transmitters placed around cities can be located to within a couple of blocks, allowing Google to serve tightly focused ads on its web pages from small businesses in the immediate area.”<sup>17</sup> If, in other words, you happened to be working on your laptop in a city park during lunch time, you might find an ad on your computer screen for a lunch discount at the sandwich shop across the street. Given the fact that Google can also keep track of the search requests entered into its search engines and the e-mail messages sent over its popular Gmail service, it’s not hard to imagine just how ‘contextual’ the advertising it doles out might eventually become. Say you happen to be searching for information about a particular author while working in a neighbourhood café – perhaps you might find an ad for discounts on that author’s work in the bookstore around the corner. Writing a friend about a trip you’re planning to take to Las Vegas the following weekend? Maybe the ad will be for gambling guidebooks instead.

Google’s plans for San Francisco represent the physical version of what I am describing as a ‘digital enclosure’ – the creation of an interactive realm wherein every action, interaction, and transaction generates information about itself.<sup>18</sup> Although the term implies a physical space, the same characteristics can apply to virtual spaces. The internet, for example, provides the paradigmatic example of a virtual digital enclosure – one in which every virtual ‘move’ has the potential to leave a digital trace or record of itself. When we surf the Internet, browsers can gather information about the paths we take – the sites we’ve visited and the clickstreams that take us from one site to the next. When we purchase items online, we leave detailed records of our transactions – even our search requests are logged and preserved in the database memories of search engines. Google’s plans for downtown San Francisco were, in other words, merely the implementation of this Internet model in physical space: an attempt to make the city ‘interactive’ by enveloping it within the electromagnetic embrace of wi-fi.

The term ‘enclosure’ invokes not just the notion of a space – virtual or otherwise – that is rendered interactive, but also the *process* of enclosure, whereby places and activities become encompassed by the monitoring embrace of an interactive (virtual) space. Accompanying this movement is a

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<sup>17</sup> ‘Peek-a-boo Google Sees You’, *CNNmoney.com*, 7 April 2006:

[http://money.cnn.com/2006/04/06/technology/googsf\\_reut/index.htm?section=money\\_topstories](http://money.cnn.com/2006/04/06/technology/googsf_reut/index.htm?section=money_topstories) (accessed on 28 October 2006).

<sup>18</sup> My use of this term is influenced by James Boyle’s article on the fate of intellectual property in the digital era. Whereas Boyle emphasises the ways in which information that was actually or potentially in the public domain becomes private property, I am interested in both the privatisation of personal and public information and the apparatuses used to capture this information – apparatuses that comprise a digital enclosure wherein behaviours are monitored and recorded. For more on Boyle’s discussion of the digital enclosure, see: J. Boyle, ‘The Second Enclosure Movement and the Construction of the Public Domain’, *Law and Contemporary Problems* 66, Winter/Spring 2003, pp. 33-74.

not-so-subtle shift in social relations: entry into the digital enclosure carries with it, in most cases, the condition of surveillance or monitoring. We can go into a bookstore and make a cash purchase without generating information about the transaction. But when we go online, we generate increasingly detailed forms of transactional information that become secondary information commodities: data that may eventually be sold to third parties or used by marketers for targeted advertising campaigns. When we turn on our wireless connection in the San Francisco of the future, we will find ourselves in a digital enclosure for which the terms of entry include submission to constant, location-based monitoring.

Digital enclosures literalise the physical metaphor of what legal scholar James Boyle has described as a “second enclosure” movement devoted to the “enclosure of the intangible commons of the mind.”<sup>19</sup> In more concrete terms, this process of enclosure refers to a variety of strategies for privatising, controlling, and commodifying information and intellectual property. The movement Boyle describes, driven by attempts to profit from the commodification of information, is omnivorous and Borg-like in its drive toward total assimilation: “In the new vision of intellectual property (...) property should be extended everywhere – more is better. This can be seen in the expansion of patentable and copyrightable subject matter, lengthening of the copyright term, and legal protection given to ‘digital barbed wire’ (encryption) even if it is used to protect against fair use”.<sup>20</sup> The expanded role of information in the era of ‘digital capitalism’ has led to what Dan Schiller refers to as “elite programs of political-economic reconstruction” devoted to “enclosing the immensity of global communication and information provision (...) the paradigm for which was set via enclosure of common lands in England during the epochal transition to agrarian capitalism hundreds of years ago”.<sup>21</sup>

The model of England’s land enclosure movement is pivotal to critical accounts of capitalism because it illustrates the transformation of violent expropriation into freely agreed-upon contractual arrangements. Marx describes the forcible separation of workers from the means of production as ‘primitive’ accumulation, and argues that it is a necessary precondition for the institution of wage labour insofar as it creates a working class ‘freed’ up to sell control over its labour power:

“(...) the theft of the common lands, the usurpation of feudal and clan property and its transformation into modern private property (...) all these things were just so many idyllic methods of primitive accumulation. They conquered the field for capitalist agriculture,

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<sup>19</sup> J. Boyle, “The Second Enclosure Movement and the Construction of the Public Domain,” *Law and Contemporary Problems*, 66, Winter/Spring 2003, pp. 33-74, p. 37.

<sup>20</sup> *Idem*, p. 40.

<sup>21</sup> D. Schiller, *Digital Capitalism: Networking the Global Market System*, Cambridge, MA: MIT Press 1999, p. 43.

incorporated the soil into capital, and created for the urban industries the necessary supplies of free and rightless proletarians.”<sup>22</sup>

Freedom, in this context, is to be understood in a distinctly negative sense writes Marx: “The free workers are therefore free from, unencumbered by, any means of production of their own”.<sup>23</sup> This form of freedom from the means of securing their own sustenance underlies a second form of so-called freedom: that of ‘freely’ agreeing to enter into a labour contract under terms advantageous to employers and exploitative to workers (that is to say terms that workers wouldn’t voluntarily agree to absent the coercion imposed by the expropriation of the commons). Free acquiescence to the surrender of control over one’s own productive activity is secured by depriving workers of other options for sustenance – this is the version of freedom that underlies capitalist exchange relations. It is a form of freedom that is, in turn, reliant upon a spatial reconfiguration: workers must be *separated* from the land so that their access to it can be contractually regulated. The spatial correlative of the emergence of a ‘free’ working class in the capitalist era is the formation of clearly bounded, privately owned, and operated enclosures to which worker access is strictly monitored and regulated.

The enclosure movement leads to the formation of distinct classes: those who own the means of production and those who must sell their labour power for access to these means. A similar division of groups can be discerned in the emerging digital enclosure between those who control privatised interactive spaces (virtual or otherwise), and those who submit to forms of monitoring in order to gain access to goods, services, and conveniences. If you want the benefits of mobile telephone communication, not only do you enter into a financial arrangement with a service provider, you also, perhaps unwittingly, surrender to the forms of surveillance associated with mobile phone use. This means not only providing information about who you call and when, but your movements throughout the course of the day, the types of music you like (based on the ring tones you download), and a range of practices that correspond to the increasing functionality of mobile phones.

The difference between the movement of digital enclosure and that of land enclosure should also be emphasised. Whereas land enclosure took an existing resource and privatised it, digital enclosures create new private resources that become increasingly important to social and economic life in the digital era. While capitalism transformed one set of social relations (those of feudalism – at least in Western Europe) into a new set of economic relations, digital capitalism reproduces existing economic relationships

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<sup>22</sup> K. Marx, *Capital, Volume I*, New York: International Publishers, 1992 p. 895.

<sup>23</sup> D. Kanzanjian, ‘Mercantile Exchanges, Mercantilist Enclosures: Racial Capitalism in the Black Mariner Narratives of Venture Smith and John Jea’, *The New Centennial Review* (3(1)), 2003 pp. 147-178, p. 170.

through the generation of new privately controlled productive platforms and resources.

We might describe this difference in terms of the difference between what Marxists call formal and real subsumption. In the case of formal subsumption, existing production activities become captured by capitalist social relations. Initially, not much changes in the actual character of the work process (farming, for example); rather, the social relations in which it is embedded change. Farmers continue to till the field, no longer as serfs, but, as salaried labourers. Real subsumption takes place when the actual work processes are transformed in accordance with capitalist imperatives: minimising the cost of variable capital (labour), through the development of technology, the re-engineering of labour practices, the rationalisation of the workplace and so on.

The development of the technological infrastructures of the digital enclosure represents the subsumption of a broad range of social practices to commercial imperatives. Social life, for example, in the early 20<sup>th</sup> century, relied in part on advertising-free forms of communication. Face-to-face interaction was dependent, in some instances, upon fee-for-service forms of transportation, whereas mediated communication relied upon fee-for-service technologies such as the telephone and letter writing. By contrast, when important aspects of social life migrate into the digital enclosure, they are not just subsumed to commercial logic, they are transformed in important ways by it. Consider, for example, how much more 'efficient' communication becomes when we can rely on speedy forms of asynchronous communication like email, or how we can rapidly contact hundreds of online friends and share information with a single 'update'. With reference to applications like Appirio, it is worth considering the ways in which these forms of communication become increasingly important for employees in wired workplaces. Email can transform the rhythms of workplace communication, and social networking assembles productive resources for marketing and job recruiting. We are moving into a world in which a whole range of resources for new forms of communication, interaction, consumption, and production are constructed on commercially owned and operated platforms. An ever broader range of activities are subject to digital enclosure, not least because many of them are enabled by the enclosure and would be unimaginable without them.

What I have described as the process of digital enclosure might be considered a 'movement' to the extent that the reach of the interactive embrace continues to expand and reconfigure itself. At present, many traditional forms of transaction and interaction can still take place offline: we don't *have* to buy our books online. But when the local bookstore closes down because it can't keep up with Amazon.com, we may have to. For many services, however, we do find ourselves reliant upon monitored transactions: interactive digital video recorders, for example, come with submission to

monitoring as a built-in condition of use. Cable companies may not be using the data they get from their set-top boxes, but they could. Internet access requires going through a service provider that can collect and store information about patterns of internet use and online activity. Access to online social networks like Facebook and MySpace entail submission to commercial forms of monitoring. Buying music online is a monitored transaction in a way that a cash purchase in a record store need not be. There is a pattern here: the use of interactive technologies lend themselves to the generation of cybernetic information, feedback about the transactions themselves. This feedback becomes the property of private companies that can store, aggregate, sort and, in many cases, sell the information in the form of a database or cybernetic commodity to others.<sup>24</sup>

The convenience of the continually-connected society is more than seductive; it provides real benefits. Communicating and purchasing are streamlined and simplified, but we have very little access to the forms of information collection and circulation that are taking place ‘behind the scenes’. Companies are able to track our movements, our transactions, and our communications without our permission or, in many cases, knowledge. The unprecedented convenience is enabled by the operation of a network of complex and costly information technology whose increasing functionality is inversely proportional to the typical user’s knowledge about how the system works. Those who live in a wired world know, for example, that shopping has become virtually ‘friction-free’ – that they can window shop, compare prices and order products without leaving the privacy of home. But they likely have only the vaguest idea about what happens to the information they provide about themselves in the process – their address, product preferences, credit card number, clothing sizes, and so on. Mobile phone users know that they can remain in constant contact with friends and family, but they might be surprised to know that in some locations, for example, their mobile phones are being used to track traffic patterns, or that the ‘pings’ sent out by their phone, even when they are not using it, allow their path to be traced throughout the course of the day. Interactivity is not necessarily a two-way street – more often than not it amounts to the offer of convenience in exchange for willing or unwitting submission to increasingly detailed forms of information gathering. In the end, we need to ask why this might matter. The next section explores the ways in which we might think of the capture and use of personal information as resulting in socially undesirable forms of inequality and exploitation.

### **III. Digital Exploitation**

According to the standard market account, the logic at work in the commercial online economy is analogous to that of free exchange. Sites like Facebook and Gmail provide users with a service, and in exchange they extract some form of payment. Just as there is a ‘cost’ associated with free-

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<sup>24</sup> Vincent Mosco develops the notion of the ‘cybernetic commodity’ in: V. Mosco, *The Pay-Per Society: Computers and Communication in the Information Age*, Toronto: Ablex, 1989.

to-air TV, namely submission to marketing appeals, so too there is a cost associated with the offerings of commercial internet services: submission to monitoring and targeted advertising. If, on this account, the logic of 'free' exchange underlies e-commerce – if we willingly submit to the conditions set by commercial Web sites – then the common-sense notion of exploitation is no longer in play; exploitation entails coercion. The contribution of critical political economy is to discern the ways in which relations of power and hence forms of coercion structure the terms of 'free' exchange. Such a critique is crucial to any analysis of exploitation within the context of the willing exchange of privacy for services or the choice to submit to extensive forms of commercial monitoring.

The standard Marxist critique of exploitation combines humanist concerns regarding estrangement or alienation with an economic critique. The extraction of surplus value is based on the labour commodity – whose value in use differs from its value in exchange. Viewed within the context of market relations workers are not underpaid for labour *qua* commodity (this is central to Marx's account of exploitation in Volume I of *Capital*). In the wage labour exchange, labour receives its accurate market price: the (historically determined) cost of its replacement. However, because its value in use exceeds its exchange value – because labour 'produces' value – its economic worth to those who own and control it is greater than its market price. Absent coercion, it would be preferable to control such power than to sell it. This account lines up with the Marxist account of alienation outlined by Nancy Holmstrom – one which describes the loss of control over creative activity and collective productive life as a loss of freedom.<sup>25</sup> At the heart of both accounts is the ability to retain control over one's creative activity. As Marx puts it in the 1844 Manuscripts,

“Man makes his life activity itself an object of his will and consciousness (...) Only because of that is his activity free activity. Estranged labour reverses the relationship so that man, just because he is a conscious being, makes his life activity, his *essential being*, a mere means for his *existence*.”<sup>26</sup>

Exploitation does not merely deprive the individual of the full value realised from his or her creative activity, but crucially of the freedom to make this activity an object of will and consciousness. Estrangement occurs when our own activity appears as something turned back against us as, 'an alien power'.<sup>27</sup>

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<sup>25</sup> N. Holmstrom, 'Exploitation', in eds. K. Nielsen & R. Ware *Exploitation: Key Concepts in Critical Theory*, Atlantic Highlands: Humanities Press International 1997, pp. 81-102.

<sup>26</sup> K. Marx, *The Economic & Philosophic Manuscripts of 1844*:

<http://www.marxists.org/archive/marx/works/1844/manuscripts/preface.htm> (accessed on 20 July 2009).

<sup>27</sup> *Ibid.*

First exploitation entails some form of coercion – even if this lurks only in the background conditions that structure ‘free’ exchange. Second, exploitation occurs when there is loss of control over our creative activity – a loss that results in the re-appearance of our own activity over and against us as an alien force.

Online social networking apparently fits neatly into the category of those freely given activities exercised under neither the compulsion of necessity nor the threat of force. It is worth noting however, that such activities takes place against the background of forms of estrangement associated with industrial capitalism – the very alienation for which new media has the antidote, at least according to the marketing hype. Thus, the offer of a modicum of control over productive resources as well as the promise to resuscitate extended forms of community and to challenge centralised control over collective representations all gain their appeal against the background of the depredations of industrial capitalism. The exchange that characterises interactive websites and applications might be understood as a ‘second-order’ result of capitalist appropriation. The promise is that, thanks to interactive technology, workers can regain some of the control over their own activity that is surrendered in the wage-labour contract. Their free participation is redoubled as a form of productive labour captured by capital.

Drawing on a reworked definition of exploitation, we might revisit the example of Appirio’s workplace application, which combines elements of both coercion and estrangement. When an employer asks employees for access to their social networks, just as when an employer asks employees to provide unpaid overtime labour; their ‘free’ response is conditioned by workplace power relations. Societies that recognise the power imbalance between employers and employees need to consider the importance of creating regulations that protect workers from the exploitation of their social networks (and other forms of appropriation of user-generated labour and content) just as they create rules that protect workers from unpaid overtime.

One possible rejoinder to this argument is to claim that employees gain pleasure from social networking activities in ways that make it different from overtime labour. Perhaps, but it is not hard to imagine the ways in which social networking will become increasingly indistinguishable from labour once it is turned to the purpose of recruiting clients, customers, and employees – that is, once it is instrumentalised and submitted to the imperatives of employers. Moreover, it is worth emphasising the distinct forms of estrangement that characterise the digital economy: the ways in which our own activities are turned, as it were, against us in the form of marketing manipulation. As one recent account in the *New York Times* observes, we are headed toward a world in which our mediated environments become custom-tailored to our own activities in ways that are increasingly opaque: “The result is a sea change in the way consumers encounter the Web. Not only will people see customised advertising, they will see different

versions of websites from other consumers and even receive different discount offers while shopping” – based on both their online and offline activity.<sup>28</sup> To put this slightly differently, a customisable interactive digital environment turns our own online activities back against us to forward goals that we have neither been consulted on nor had input into crafting. Consumers are turned into feedback devices for marketing to themselves. As law professor Paul M. Schwartz put it, “We’re like data-input clerks now for the industry.”<sup>29</sup> It is a suggestive comparison, insofar as it highlights the link between the way online activity is presented to us (and how we may experience it) as a form of autonomous activity – and the way it functions in a largely opaque (at least to consumers) commercial economy as a form of labour: data entry about ourselves. This vision of the interactive future is one in which we actively submit to forms of monitoring and experimentation expressly calculated to make us more susceptible to the machinations and imperatives of those who control the commercial infrastructure.

### Conclusion

Much of the celebratory hype over the way in which the internet creates a new generation of audience-producers blurs the important line between *access* to the means of online content production and *ownership or control* over these resources. Consumers may own computers and software, but not the networks and vast server farms that make possible the creation and maintenance of online social networks as well as the forms of content sharing that characterise the emerging online economy. Thus, any comparison of industrial-era production to information-age creativity needs to take into account not just the fact that productive resources are in the hands of consumers, but also that the means of communication and distribution are *not*. A narrow focus on user-generated content helps to obscure the fact that the privatisation of network infrastructures and the commercialisation of online applications lies at the core of emerging online business models. When we explore what people do on social networking sites, for example, and the forms of community such sites enable, we must also keep in mind what is done with the products of this activity, who controls its use and re-use, who profits from its transformation into commercial commodities and marketing campaigns, as well as who is targeted by these campaigns and to what end. Contrary to conventional wisdom, social networking sites don’t publicise community, they *privatise* it. The same might be said of the whole range of digital platforms onto which increasingly broad swaths of our social, economic, and cultural lives are migrating. We are entering an era characterised by the marriage of unparalleled commercialisation with unprecedented monitoring.

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<sup>28</sup> S. Clifford, ‘Ads Follow Web Users, and Get Much More Personal’, *The New York Times* 31 July 2009: <http://www.nytimes.com/2009/07/31/business/media/31privacy.html?hp> (accessed on 31 July 2009).

<sup>29</sup> *Ibid.*

This is not to discount the real forms of satisfaction and communion facilitated by digital communication technologies – rather it is to situate these within the larger economic context wherein value-generating activity is exchanged according to terms structured by those who own and operate the means of their production. The fact that third parties may benefit from the collection and use of our personal information does not in itself constitute exploitation. However, the capture and use of such information for commercial purposes – its reconstitution in forms of suasion, manipulation, and control turned back upon those who created it – recapitulates the logic of separation and estrangement critiqued by Marxist forms of political economy.<sup>30</sup> In the broadest sense, the promise of access to sites of online creativity and sociability takes place against a background already structured by the separation of the great majority of individuals from control over productive resources and the resulting forms of estrangement.

In the end, theoretical and regulatory approaches to online information gathering that treat commercial websites as consumer services paradoxically recapitulate the distinction between production and consumption they profess to undermine. If, indeed, such sites are productive ones, if they erode the distinction between consumer and producer, audience and author, user, and creator, then they become amenable to critiques of the conditions that structure access to the means of productive resources. The lens of consumer choice is a flawed one because it ignores the productive aspect of such sites and thus overlooks both the value-generating work done by consumers and the logic of enclosure whereby this value is captured. It also reflects the forms of coercion that may contribute to willing submission to detailed forms of monitoring. Finally it fails to take into account the prospect of digital estrangement: the way in which the emerging online economy turns us into active participants in marketing to ourselves in ways that we neither recognise nor control. From a regulatory perspective, narrowly defined conceptions of personal privacy fail to address the issues of coercion and exploitation – both the ways in which access to commercially provided information resources are becoming increasingly necessary to our productive lives, and the ways in which the use of these resources can be captured and turned against us. Since the regulation of the collection and use of personal information is doubtless going to become an increasingly pressing issue in the years to come, we need not just to update our regulatory regimes, but the very ways in which we frame the issue not as one of consumer choice but of economic power.

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<sup>30</sup> For a lucid account of the relationship between ‘separation’ and enclosure, see: M. De Angelis, ‘Marx and primitive accumulation: The continuous character of capital’s enclosures’, *The Commoner* 2 September, 2002: <http://www.commoner.org.uk/02deangelis.pdf> (accessed on 10 July 2009).

