

Legal Regulation & Education: Doing the Right Thing?

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Who Killed Privacy?

In 1999, Scott McNealy, then CEO of Sun Microsystems, famously said:

“You have zero privacy anyway. Get over it.”

Events and developments since 1999 have hardly improved the prospects for privacy: the growth of social networking, technological developments like smartphones, geo-location, business ideas such as behavioural tracking and, most recently, the revelations from Edward Snowden about the near universal surveillance systems of the NSA, GCHQ and others. If privacy was in trouble in 1999, the argument that it is at least close to death in 2014 is much stronger.

That brings the question: if privacy is dead, who killed it? Is it the activities of government agencies like the NSA and GCHQ, or of businesses like Google and Facebook? This paper will examine this question, and through the answers attempt to find a way forward: if privacy is in fact dead, a route towards its resurrection.

It will look most directly at the role of the commercial operators on the internet, suggesting that their role is both deeper and more significant either than is often believed or than the role of governments and government agencies on their own. It will look at three different ways in which commercial entities have contributed to the decline of privacy:

- 1) Systematic – how commercial entities have undermined privacy both in technological and business model senses, developing technologies to invade privacy and business models that depend on systematic and essentially covert gathering of personal data. It will also look at the role that businesses have played in lobbying to reduce the effectiveness of legal privacy protection
- 2) Cooperative – how businesses have been working with governments, sometimes willingly, sometimes unwillingly, sometimes knowingly and sometimes unknowingly.
- 3) Normative – how businesses have been attempting to undermine the idea that privacy is something to value and something of importance. Mark Zuckerberg's suggestion that 'privacy is no longer a social norm' is reflected not just words but actions, encouraging people to 'share' information of all kinds rather than consider the privacy impact.

The paper will look at specific examples in each of these cases, drawing on practical examples: specifically the 'Do Not Track' initiative and the reform of the data protection regime in the EU.

The paper will then look at the positions taken by business in the post-Snowden environment, and consider whether the more 'pro-privacy' stance demonstrated by businesses at least in words has any more substantial meaning. It will look at whether the three roles noted above – systematic, cooperative and normative – can be reversed to produce a positive impact for privacy, effectively being a part of the 'resurrection' of privacy:

1) Systematic – could businesses play a part by building more robust technology and more privacy-friendly business models?

2) Resistant – could businesses not just be more transparent in their dealings with governments but act as a barrier and protection for their users in their dealings with governments.

3) Normative – could businesses play a part in changing the message so that it becomes clearer that privacy is a social norm.

The paper will conclude with a look at the key roles of others in the process: engineers, civil society, politicians and others and attempt to assess the prospects for a resurrection of privacy.