Ethics and Law of Privacy in the Digital Age & the Current Issue of Crypto-Crippling

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What about the Privacy Act?

• Public Sector provisions of 1988 have been gutted
• Private Sector provisions of 2000 were written by the private sector, for the private sector

Amendments 1989-2018 have bloated the Act to 78,000 words

Ethics and Law of Privacy in the Digital Age Current Technological Challenges

• Drones
• Autonomous Vehicles
• Visual Surveillance
• ‘Facial Recognition’
• Biometrics Generally
• Genetic Data
• Big Data
• Open Data
• Analytics
• AI/ML, Neural Nets
• ...

• Data Expropriation
• Data Exploitation
• Transparency
• Automated Decisions
• Automated Actions
• Unfair Discrimination
• Accountability
• Recourse
• ...

Exemptions and Exemptions in the Privacy Act as at December 2016

- s18 – Exempted Entities
  - Privacy Commissioner
  - Australian Federal Police
  - Australian Security Intelligence Organisation
  - Australian Signals Directorate
  - Australia Post
  - ...
What about the Privacy Act?

- Public Sector provisions of 1988 have been gutted
- Private Sector provisions of 2000 were written by the private sector, for the private sector
- OAIC / PC'er protects them, not us
- OAIC crippled by bureaucracy, under-resourcing
- 'Open Data' mission is to remove safeguards
- A new Data Commissioner whose function is to trump the Info and Privacy Commissioner(s)
- ABS MADIP Program consolidates personal data

Open data: Government to establish a 'National Data Commissioner'

Unveils $65 million push to make more government data available

Rohan Pearce (Computerworld)
01 May, 2018 10:50

Multi-Agency Data Integration Project (MADIP)

The Multi-Agency Data Integration Project (MADIP) is a partnership among Australian Government agencies to combine information on healthcare, education, government payments, personal income tax, and the Census to create a comprehensive picture of Australia over time.
What about a Privacy Tort?

LRCs recommended
Labor Govt floated
Murdoch vetoed

APF Policy Statement

Clarke R. 'Media Paranoia Distorting Facts on Privacy Tort' Crikey, 1 August 2011

Greater Threats, so Better Safeguards are Needed

- **Data Privacy**
  Vast quantities of data 'born digital' or digitised;
  Data silos broken down; Wide availability of pseudo-anonymised (actually re-identifiable) data

- **Communications Privacy**
  Most messages are now sent electronically, and intercepted and accessed, even ephemera recorded

- **Behavioural Privacy**
  Electronic surveillance, plus visual surveillance by means of chip-cards, biometrics, CCTV, ANPR, ...

- **Experiential Privacy**
  Once-anonymous reading, buying, borrowing, viewing, watching is now all in identified form

Can Ethics Help?

- Ethics offers intellectually stimulating discussion
- Ethics supports *ex post facto* analysis, e.g. of systematic misbehaviour by the big banks
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- Ethics offers intellectually stimulating discussion
- Ethics supports *ex post facto* analysis, e.g. of systematic misbehaviour by the big banks
- Ethics embodies every complexity and contradiction that smart people can dream up
- Ethics enables prevarication
- Ethics provides endless excuses for inaction

Can Ethics Help? NO

But pragmatic, instrumentalist techniques can e.g. Technology Assessment, Privacy Impact Assessment

Assessment Categories

**Organisational Focus**
- Business Case Formation
- Security Impact, aka Threat Risk Assessment (TRA)

**Technology Focus**
- Technology Assessment (TA)

**Social Impact Focus**
- Rights IA
- Ethical IA
- Surveillance IA
- Privacy Impact Assessment
- Data Privacy IA

**Compliance Focus**
- Regulatory Compliance
  - Org’l Self-Regulation
  - Industry Self-Regulation
  - Co-Regulation
  - Formal Regulation
- Privacy Law Compliance
  - All Statutes, Delegated Legislation, Common Law
- Data Protection Law Compliance
  - An EU Directive, a Statute

Enhancement of Legal Protections?

- Parliaments are merely bear-pits
- Political priorities are driven by (a) funders and (b) opinion polls and focus groups
- Public servants serve their own needs, not people's
- Privacy is perceived as an impediment to business, government, and the sacred cow, 'national security'

Organisational Protections?

- Isn't privacy a strategic factor for organisations? Unfortunately, they don't perceive it to be so
- 'Privacy doesn't matter, until it does'
- Companies blunder from one misconceived design to the next media disaster and data breach
- Meaningless media releases are seen as the means to minimise financial and reputational harm

Technological Protections?

- Individual technology-developers are diverse
- Some have developed privacy-friendly tools (PETs)

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Facebook stock suffers largest one-day drop in history, shedding $119 billion

The company’s shares plunged almost 19 percent, Investors were spooked by Facebook's forecast showing that its number of active users is growing less quickly than expected, while the company also took a hit from Europe's new privacy laws.

The share collapse merely returned Facebook shares to a level last seen in early May, a sign of just how bullish investor expectations had been running. At that time, the stock was still recovering from an earlier battering over a major privacy scandal.

"The implementation of GDPR gave a large number of Facebook users control over their privacy, and it should have been patently obvious to investors (and to us) that allowing users control would result in slightly lower engagement," he noted, alluding to Europe's General Data Protection Regulation privacy rules.

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CBS News, 26 Jul 2018
PITs and PETs

- **PITs** – Privacy-Invasive Technologies
- **PETs** – Privacy-Enhancing Technologies

A long line of work since 1995
- **Counter-PITs**, incl. crypto-protections for data in storage, in transit; authentication, ...
- **Savage PETs** for Persistent Anonymity incl. crypto-protections
- **Gentle PETs** for Protected Pseudonymity, and hence accountability as well as freedom

[http://www.rogerclarke.com/DV/PITsPETs.html](http://www.rogerclarke.com/DV/PITsPETs.html)

Technological Protections?

- Individual Technology-Developers are diverse
- Some have developed privacy-friendly tools (PETs)

- Very few PETs have achieved widespread adoption (Exceptions: SSL/TLS = https, anti-virus tools)
- The Business Verdict: PETs are ' Mostly Harmless'
- Corporations embed Privacy-Invasive Technologies

How does all this apply to Cryptography?

- **Telcos must assist LEAs even in minor matters**: "pecuniary penalties" (fines, no matter how small) "protecting the public revenue" (any investigation)
- **Telcos and ISPs must provide data to agencies**
  Telecommunications Act ss. 311-316
- From 2018, Telcos must now divulge details of architecture, infrastructure designs, technologies, and submit to instructions about them from LEAs
  Amendments in Telecomms and Other Legislation Amendment Act 2017
- An emergent Bill is to (magically) enable access to cryptographically protected data and messages "an [unexplained] obligation to assist agencies with decryption"


APF's Meta-Principles for Privacy Protection

- Evaluation
- Consultation
- Transparency
- Justification
- Proportionality
- Mitigation
- Safeguards
- Audit

Privacy Impact Assessments as a Control Mechanism for Australian National Security Initiatives


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