

Forschungsinstitut für Angewandte Ethik

Forschungsberichte und Mitteilungen

Herausgegeben von Anne Siegetsleitner und Otto Neumaier

Heft 25

Universität Salzburg

Privatsphäre und Internet
Beiträge zu einem Forschungsprojekt
Teil 1

Inhalt

Vorwort	7
Anne Siegetsleitner: Respect for Persons, Consent and Privacy Rights on the Internet	9
Abstract	9
0. Introduction	9
1. Terminology	10
1.1. Privacy Per Se	10
1.2. Privacy Control and Privacy Rights	11
2. Principle of Respect for Persons	13
2.1. General Principle of Respect for Persons	13
2.2. Respect for Persons as Rational Choosers	14
2.3. Respect for Persons as Emotional Choosers	19
3. The Role of Consent	21
4. Cookies and Fair Information Practices	22
4.1. Cookies	22
4.2. Fair Information Practices	24
5. Conclusions	27
References	28

Vorwort

Mit diesem Heft der *Forschungsberichte und Mitteilungen des Forschungsinstituts für Angewandte Ethik* wird die Reihe von Beiträgen zum Forschungsprojekt “Individuelle Privatsphäre und das Internet: eine ethische Analyse als Grundlage für politische, rechtliche und technische Maßnahmen” (FWF-Projekt Nr. P13396-SOZ) eröffnet.

In diesem Projekt geht es um eine ethische Untersuchung der Bedrohung der individuellen Privatsphäre durch das Internet. Persönliche Daten sind durch dieses globale Computernetzwerk immer leichter und effizienter zugänglich. Dies hat bereits zu intensiven Auseinandersetzungen auf internationaler Ebene geführt, wobei die ethische Problematik leider oftmals zu Unrecht übergangen wird. Dem soll dieses Projekt abhelfen, indem es folgenden Fragen nachgeht: 1. Inwiefern ist durch das Internet die individuelle Privatsphäre bedroht? 2. Warum ist die Bedrohung der individuellen Privatsphäre ethisch bedenklich? 3. Was ist bei Maßnahmen zum Schutz der Privatsphäre im Internet aus ethischer Perspektive zu berücksichtigen?

Die hier veröffentlichte Arbeit beschäftigt sich mit Teilaspekten aller drei Fragebereiche, wobei eine Begründung von Rechten auf Privatheit durch Prinzipien des Respekts vor Personen, die Rolle von Einwilligung und die Problematik von Cookies und Fairer Informationspraktiken im Zentrum stehen.

Die Arbeit wurde in einer früheren Version am Symposium “Rights, Duties and Human Good. The Prospect for Practical Ethics” am 7. Jänner 2000 in Maribor, Slowenien, vorgetragen und wird hier deshalb ebenfalls auf Englisch veröffentlicht.

Da es sich um ein “Work in Progress” handelt, sind kritische Kommentare und Anregungen dazu als auch zum gesamten Forschungsprojekt herzlich willkommen.

Salzburg, im Dezember 2001

Anne Siegetsleitner

Respect for Persons, Consent and Privacy Rights on the Internet

Anne Siegetsleitner

One of the most important concerns about the Internet is privacy. The focus is on privacy rights as rights to control privacy per se. Such rights are of a certain logical structure, and some can be justified by the Principle of Respect for Persons. Regarding such privacy rights, consent has an important role to play. The moral force of consent is heavily relied on when it comes to a morally acceptable use of cookies on the World Wide Web and the principles of Fair Information Practices. As consent is a good means to sweep aside grounds for moral complaint, users should be wary where consent is used to neutralise complaint in a less than ideal world.

0. Introduction

One of the most important concerns about the Internet is privacy. These days, privacy on the Internet has even become a topic of public concern. There is good reason for this. The Internet is a global information-infrastructure used by millions of people. Concerns often heard are: if privacy is not respected on the Internet democracy will diminish, e-commerce will not thrive or wives will be embarrassed about their husbands' online behaviour. These are more or less important issues for an ethical investigation of Internet privacy, but not the ones I will dig into in this paper. Perhaps it is a philosophical reflex to go for the more subtle things. In what follows, I will discuss justifications of privacy rights on the Internet based on respect for persons, the role of consent and their consideration in one of the mechanisms and one of the privacy tools used on the World Wide Web. The main question I want to address is: How can privacy rights on the Internet be justified by reference to a principle of respect for persons?

1. Terminology

Following many public and academic debates, philosophers are rapidly realizing that the term ‘privacy’ used in statements like “The Internet is a threat to privacy” is ambiguous. To avoid misunderstandings based on this ambiguity, I will define semi-technical privacy terms and avoid the use of the simple term ‘privacy’.

1.1. Privacy Per Se

Basically, the term ‘privacy’ may refer to a condition. I shall refer to such conditions with the term ‘privacy per se’.

Definition: x is at time t versus y with regard to u in a condition of privacy per se if and only if u is an aspect of x at t and y does not have access to u at t.

An aspect of someone is everything that belongs to her (extended) self. Whenever I do not have access to your browsing habits, your e-mail etc. you are in a condition of privacy per se versus me with regard to these aspects.

There are different kinds of accesses. First, access can be sensory or informational. If I do not have sensory perception of you (e.g. I do not see you) you are in a condition of sensory privacy per se versus me. But, second, someone can also gain access to someone else by learning information about her. I will understand having information about someone else as informational access. Accordingly, if someone does not know (i.e. has not learned the information) that you are reading this paper just now, you are in a condition of informational privacy per se versus her with regard to your reading this paper just now. When I can learn which Web sites you visit or I can read your e-mail, you may lose your privacy per se with regard to your browsing habits and your e-mail

versus me. ‘Privacy per se’ expresses a very fundamental concept, descriptive and neutral. (For similar accounts see, for example, Allen (1988), Beauchamp/Childress (1994), Benn (1988), Gavison (1980) and Schoeman (1984))

1.2. Privacy Control and Privacy Rights

In many cases people are not so much concerned about losing their privacy per se. What is really at stake is keeping control over privacy per se, referred to by the term ‘privacy control’ and rights to this kind of control. For the purpose of this paper, it should suffice to characterize such rights as follows:

- (a) It is forbidden that the right addressee takes access. (This is the immunity norm.)
- (b) It is up to the right holder to see or not to see to it that the right addressee does not have access (e.g. by using encryption).
- (c) It is up to the right holder to see or not to see to it that the right addressee has access (e.g. by decrypting an e-mail before the right addressee’s eyes).

Furthermore, with such a right, the right holder has normative control over the immunity norm. Normative control is a conjunction of two other constituting norms:

- (d) It is up to the right holder to permit or not to permit that the right addressee takes access (e.g. by giving consent to decryption).
- (e) It is up to the right holder to forbid or not to forbid that the right addressee does not have access (e.g. by denying consent to decryption).

As I argue elsewhere (Siegetsleitner (2001)), this kind of privacy right can be analysed, using Stig Kanger's analysis of rights, as a complex notion consisting of sixteen norms (see Kanger/Kanger (1966)).

As far as informational access is concerned, these rights are sometimes formulated more loosely as rights to control when, how, and to what extent one's personal information is known to others, or how Alan Westin put it in 1967: the ability "of individuals [...] to determine for themselves when, how, and to what extent information about them is communicated to others" (Westin (1967), p. 7).

Such moral or legal privacy rights are of major interest in debates about privacy on the Internet. If people complain that their privacy is violated, they usually mean that their privacy rights are violated. In German many privacy problems are referred to by the term 'Datenschutz' which means data protection. This term was invented in the early 70ies when data protection laws were passed that should prevent the improper use of personal information available on huge public data banks (Mayer-Schönberger (1997), pp. 224f).

Traditionally governments are seen as potential violators. Many aspects of life connected with privacy have long been (legally) recognized under other descriptive headings such as the recognition of private property, freedom of conscience or search of private premises (Shoeman (1984), p. 202). But lately, threats are coming more from privately owned companies and individual citizens (maybe your friends, family members, business partners, insurance company ...). Therefore, privacy rights are no longer seen and debated as political rights only but also as norms for the guidance in interpersonal relationships.

In this paper I will concentrate on the justification of privacy rights on the Principle of Respect for Persons.

2. Principle of Respect for Persons

2.1. *General Principle of Respect for Persons*

To be respected as a person, in our time and place is held to be the right of every person, regardless of nationality, gender, race, power or the like. The General Principle of Respect for Persons (GP) is:

(GP) Every person has a moral right versus every other person to be respected as a person.

Many people in our culture tend to respond favourably to this idea, vague and difficult to justify though it may be. In this paper, I am not interested in the justification of this principle but in its implications to privacy rights on the Internet.

Many philosophers in the Kantian tradition take, to respect someone as a person, to mean to treat her as a being that matters for herself and not to use her as a mere means to one's own ends. Stanley Benn, on whose ideas I will draw in this section, starts with this formulation as well but takes his own turn. A justification of privacy rights on (GP) in Benn's and my account depends on the stand of what it means to be a person and what is part of a person's extended self. Which parts of a person's surroundings are regarded as extensions of the self – as aspects of the person – and thus as qualifying for the same level of presumptive privacy as the person himself does, varies from society to society (Shoeman (1984), p. 206). Besides the conceptual ambiguity, this is another reason why privacy rights on the Internet are a complex issue. In addition, I take not respecting a person as morally wrong regardless of whether harm is done to a person because of the lack of respect or as a consequence of this lack. Respect for persons is morally relevant in its own right.

2.2. *Respect for Persons as Rational Choosers*

Standing in the liberal tradition, Benn sees persons as rational choosers. As rational choosers they are capable of determining for themselves, on the basis of reasons, what course of action or path of life they should follow. A rational chooser meets several requirements:

- (1) It must be possible to identify a single person corresponding over time to a single physically acting subject.
- (2) She must recognize canons for evidence and inferences warranting changes in her beliefs.
- (3) She must have the capacity for making decisions when confronted by options, and for acting on them.
- (4) Changes of belief must be capable of making appropriate differences to decisions and policies.
- (5) She must be capable of deciding in the light of preferences.
- (6) She must be able of formulating a project or a policy so that a decision can be taken now for the sake of a preferred future state.

(Benn (1976), p. 116)

Rationality in this sense is a capacity of a subject. The condition of being a rational chooser is called by Benn 'autarchy'. He considers autarchy as normal, both in a statistical sense and in the sense that human beings who fail to qualify are held to be in some measure defective as persons (Benn (1976), pp. 112–113). In comparison to autarchy as a characteristic of a normal chooser, autonomy is a particular personality ideal which by no means all choosers instantiate (Benn (1976), p. 123). Besides these subjective capacities,

a rational choice is determined by a choice situation. The standard choice situation is characterized by four components:

- (1) The agent has a range of powers and capacities, a determinate set of resources at his disposal which are the conditions enabling her to act.
- (2) She is confronted by a set of opportunity costs: If she goes for x she must forgo y.
- (3) She has a set of beliefs about (1) and (2), for example, about the extent of the resources and their usefulness as means to her ends.
- (4) There are certain activities which she believes are worth engaging in and certain states of affairs to be approved and admired or disapproved and deplored; these form an ordered set of ends and principles, a set of preferences which, in combination with (3), generate her intentions and practical decisions.

(Benn (1988), pp. 152–153)

Benn refers to (1) and (2), which are states of the world independent of the agent's beliefs, as the 'objective choice conditions'. Conditions (3) and (4) he calls 'subjective choice conditions' because they are states of the agent's beliefs about both herself and the world at large (Benn (1988), p. 153).

A specification of the General Principle of Respect for Persons is the Principle of Respect for Persons as Rational Choosers (RP):

(RP) Every person has a moral right versus every other person to be respected as a rational chooser.

To respect something generally means to recognize and to respond appropriately to it. Therefore one can fall short of showing respect

for a person as a rational chooser at least in two ways:

- (1) Her capacity to choose rationally (based on her own values and preferences) is not recognized and taken into consideration at all (i.e. it is ignored or disregarded).
- (2) Her capacity to choose rationally is recognized but not responded to appropriately.

Consider the following example as an elucidation of the first way. My friend Sophia is sitting in her living room engrossed in “Coming Home” by Rosamunde Pilcher. I take the book out of her hand in order to prevent her wasting time by reading love stories only because she could be doing something which in my opinion is worthwhile, like philosophy. In this case I do not respect her as a person because I disregard her own judgement of the value of reading love stories and its significance to her and substitute my own judgement (see Benn (1988), p. 107). I just ignore that she has made her own choice based on her own values and preferences. That respect for persons as rational choosers asks for respecting their preferences and choices when morally feasible is at least held by most liberals.

A different way of failed respect – which should be distinguished from the first way as I have done above – is to recognize the capacity to choose rationally but not to respond to it appropriately. To take the characteristics into consideration only as something to affect the success of our own projects is commonly seen as an inappropriate response. This would be the case if (1) I know that my friend Sophia prefers reading love stories to reading philosophical papers, (2) I feel desperately in need for a philosophical conversation, and because of (1) and (2) I pretend “After Virtue” to be a love story in order to get her read it. In this case I do not take her preferences into consideration appropriately although I do not disregard them. Still another way of failed respect for persons is to create a situation in which a person can not choose rationally at all.

If someone has decided not to provide personal information on the Internet (for example by browsing anonymously, encrypting e-mail, using e-cash or anonymous remailers) others are, prima facie, not allowed to learn this information. This does not amount to saying that there are no sound moral reasons for preventing this privacy control protecting use of the Internet. The counter-arguments relying on requirements of law enforcement and the prevention of child abuse are too well known. All this wants to show is that there is a reason for letting them act as they choose, though this reason might not be conclusive.

Is taking access only wrong when someone has decided to have a private conversation on the Internet or making some other private use of it? Both Benn and I feel that there is more to the connection of privacy rights and respect for persons as rational choosers. Many forms of access – like observation – without given consent are wrong even if the observed ones will enjoy performing before an enlarged audience. The reason for this is that being observed changes a persons self-perception. Persons are subjects with sensibilities and capable of reciprocal relations with the observer (Benn (1988), p. 273). To ignore this effect on the observed one, the uninvited intruder does not take into account that the observed one is a person. Most people will consider it disrespectful being followed and observed while making a shopping tour (even if they would choose this alternative if asked for consent). The point is that the intruder does not acknowledge that consent has to be sought due to the difference it makes to the observed one as a person.

If this is sound, it would justify complaints about being profiled and having ones online behaviour registered without consent irrespective to the question how the information is used. It is just disrespectful that someone ignores that being a person requires to ask for consent. The likely comment that it does not do harm does not even address the point. If the information is used to meet the interests of the users e. g. in useful advertising, fast connection, reaching people of interest and the like, users might excuse the registration but it will still be disrespectful, and without being

disrespectful in the first place, excuse would be pointless.

Moreover, on the Internet someone's communication behaviour or the content of her communication may be easily observed without her knowledge. Being ignorant of the observation, the users self-perception will not change. Does this mean that from the view point of respect for persons secret access will be perfectly fine? Not at all, Benn says. Here he argues that secret observation undermines a person's capacity to make rational choices in the first place. Rational agents try to build beliefs on evidence. Although Benn does not mention it, they obviously do not only try to build beliefs but they try to build true beliefs on evidence. If someone deceives another person about the fact that she observes her, she does not respect her as a person. She thwarts her attempt to build true beliefs on evidence. One cannot be said to respect a person if one knowingly and deliberately alters the conditions for her actions, concealing the fact from her (Benn (1988), p. 276). Therefore, Benn goes on: "[...] for anyone to watch without her knowledge is to show disrespect not only for the privacy she has chosen, but for her as a chooser" (Benn (1988), p. 277).

Secret observation is making a fool of someone by falsifying her beliefs about what she is about. Secret access thwarts a rational persons attempt to build true beliefs on evidence.

If Benn and I are right, taking access to a person is, on the basis of the Principle for Persons as Rational Choosers, *prima facie* a violation of a privacy right.

2.3. *Respect for Persons as Emotional Choosers*

Respect for persons as emotional choosers is an idea by Julie C. Inness. Although I do not share Inness' account of privacy (privacy as providing control over intimate decisions) she does make a good point, namely that in the foundation of privacy rights by principles of respect for persons, we should not ignore that the trait of being a rational chooser is not exhaustive for persons. Persons are not only rational choosers but choosers with the potential for love, care, and liking. I shall call them, like Inness 'emotional choosers' (Inness (1992), p. 105).

Another specification of the General Principle of Respect for Persons is the Principle of Respect for Persons as Emotional Choosers (EP):

(EP) Every person has a moral right versus every other person to be respected as an emotional chooser.

Choosers are emotional insofar that their decisions are concerned with intimate relationships where love, care and liking are at stake. If one has a right to be respected as a person one has also a right to be respected as an emotional being. The special content of a choice for privacy *per se* where these intimate relationships are concerned, adds something to the importance of the choice and, I think, therefore to the weight of the immunity norm. It gives special importance to the duty not to read another's diary, not to place a tape recorder in another's bedroom or to grab a woman's breast (Inness (1992), p. 108).

Sometimes the private sphere is meant to be exhausted by zones of intimacy, traditionally associated with the home. I, however, do not endorse this view, and the Internet puts this connection even more into question. Much of the conversation formerly concentrated on at home or in private snail mail is now done on the Internet. To take into account the importance of this information exchange as an expression of emotional choice will give a special weight to

privacy rights with regard to these conversations. In general, however, ways of falling short of showing respect for persons as emotional choosers are quite the same as the ones in case of rational choosers.

As far as I can see, the Principle of Respect for Persons justifies privacy rights of the kind I have presented in part 1 of this paper. It justifies both the immunity norm and the control norms of the right holder.

From all this it does not follow that we are never allowed to learn personal information created by the Internet or provided on the Internet. Respect for persons may give this permission and it is part of privacy rights that the right holder may give this permission. One way of exercising this right is to give consent to access.

3. The Role of Consent

Regarding such privacy rights, consent has an important role to play. Consent makes a special act or a practice morally acceptable which was morally denied prior to this consent.

Persons can decide for themselves what they want to do and what should happen to them. They may give consent to a certain treatment or deny it. The Principle of Respect for Persons asks for respecting this decision that was up to the person. If someone has given consent, someone else may get her personal information which was morally denied prior to this consent. By consenting she has given a moral legitimation or authorization because consent is an act in which one person alters the normative relations in which others stand with regard to what they may do (Kleinig (1992), p. 207). By giving consent she has not waived her privacy right but regarding the privacy norms (d) and (e) exercised it.

As in general, there are different kinds of consent when it comes to questions of privacy on the Internet. Someone might consent explicitly to take access to her e-mail. She can tell someone that she may read it, or sign a contract where she allows access to her personal information as many people probably do by signing an employment contract. Or someone can consent implicitly, for example by sending e-mail to someone. By doing this, they have performed an activity, which includes the reading of the message by the addressee. In the case of implicit or implied consent the consent is inferred from other actions and the inference can lack sufficient warrant. But if the consent is valid, the person who has given consent can not complain afterwards. If someone would like the whole world to know about her Internet habits and everything people can learn about her by tracing her, the Principle of Respect for Persons tells us that it is fine if they snoop around in her otherwise by privacy immunities protected world.

In the remainder, I will examine the mechanism of cookies and the privacy tool of Fair Information Practices – both used on the

Web, by now the most popular part of the Internet – for their suitability to provide a meaningful exercise of the users’ privacy rights as far as respect for persons is concerned. Both will mainly rely on the moral force of consent.

4. Cookies and Fair Information Practices

4.1. Cookies

One mechanism used on the World Wide Web which raises questions of privacy rights are cookies. Usually the site a Web user visits does not keep in mind that she has already been there. But the situation changes if the user receives some cookies. A cookie is a small piece of information written to the hard drive of a Web user when she visits a Web site that offers cookies. The information is then stored on the user’s hard drive and, in certain circumstances, returned to the Web site. By this mechanism a Web site recognizes the user and can maintain information during one session or across sessions, e.g. which books she bought last visit (e.g. ones by Rosamunde Pilcher or by Alasdair MacIntyre). No doubt, this can be useful for browsing and e-commerce. Users may like to use it if they visit a Web site frequently and would have to fill out a long form with name, address, and other information on each visit. But, as the saying already goes, not all cookies are sweet. At the same time, cookies enable secret collection of information and can be used to create logs of user interests and preferences.

Another application is used in advertising. Marketing consultants such as *DoubleClick Inc.*, a big server of banner advertisements on Web sites, utilize cookies to increase the efficiency of the placing of advertisements. If a Web user has a history of selecting high-technology sites she might get banner advertisements for an expensive multi-media projector. Advertisers and Web masters use cookies to develop detailed profiles of users and their browsing ha-

bits and they had constantly insisted that concerns about violations of privacy rights are merely theoretical and that they have never identified individual users.

As many others *DoubleClick Inc.* pledged not to link its records of peoples’ Web surfing behaviour, created through the use of tracking cookies, with personal names and addresses. Nevertheless, in November 1999 *DoubleClick Inc.* announced a change in policy. They had purchased *Abacus Direct Corp.*, a direct-marketing service company that maintains a database of names, addresses and retail purchasing habits of 90% of American households. That deal did give them access to names and addresses they could use to make the linkage. Likely, they would have matched up non-Web identity and purchasing data with Web movements in order to develop improved demographic profiles for marketing purposes, but they could also create dossiers on people. In the light of a storm of criticism *DoubleClick Inc.* announced that they were suspending plans regarding such data linkages, until US-government and industry will develop privacy standards (Weinstein (2000)).

With most browsers, users are alerted to when they are being offered a cookie. Some browsers include an option for users to reject cookies if they so choose. But there are still problems: The formatting of the information may tell the user little about what is actually being stored. In addition, it is not always clear where the cookie is coming from. In the case of banner advertisers like *DoubleClick Inc.*, they are placing cookies on any number of Web sites, and the user may not always be alerted that the cookie is coming from an advertiser rather than the Web site itself.

What is the problem here? The problem is that for a consent to be valid it is necessary that people know what their decision is about. This minimally requires that the relevant information for a solid decision has to be disclosed in a way users can understand.

The knowledge requirement is just one requirement of a valid consent. Another one may be ignored if users cannot visit a site if they reject the cookie. This may be problematic because valid consent requires that it was voluntary. Voluntariness means inde-

pendence from other's manipulative and coercive influences (Beauchamp/Childress (1994), p. 165). Although I admit that it is not always clear where voluntariness ends. Offers can be manipulative in varying degrees. Besides other things it will depend on the product you are denied when rejecting the cookie.

In addition to the voluntariness and the knowledge requirements there is the competence requirement: Someone suffering certain kinds of mental impairment or lack of cognitive development may not be capable of giving valid consent (Kleinig (1992), p. 210). Above all, this could be problematic when children are asked for consent.

To meet the requirements of the Principle of Respect for Persons in using cookies in the most unproblematic way there must be a cookie alert that is informative, and users have to be given free choice about accepting it or not. Probably there will be several occasions where users will accept it. It is still up to them.

4.2. Fair Information Practices

A policy tool that has been created to enable individuals to exercise their privacy rights is the Fair Information Practices (FIP). The principles were first developed a quarter of a century ago when the *U. S. Department of Health, Education and Welfare* (HEW) studied the best way to take advantage of the growing power of computers without trampling on personal privacy. Since then the principles formed the basis of privacy-related laws in the U. S. The FIP have also been codified into the national data protection laws of many industrialized countries. In 1980 the *Organization of Economic Cooperation and Development* (OECD) expanded on these principles by adopting a set of eight Fair Information Principles. The OECD principles were adopted by 24 countries including the U. S. Further evolution of the OECD's Guidelines went into effect in 1998, the *Europeans Union's Directive on Protection of Personal Data*. In 1998 the four principles were deemed by the *Federal*

Trade Commission (FTC) as de facto standards for privacy protection on the Internet (Givens (1999)).

These set of principles do not only provide a framework for privacy laws and the usage of cookies but also for an organization's privacy policy and the privacy policy of a Web site:

- (1) Openness (notice): Users should be informed that personal information is collected, which personal information is collected, how it is collected, for which purposes and by whom the information collected will be used.
- (2) Choice: Users should have options as to whether, how and by whom any personal information may be used. Specifically, choice relates to secondary uses of information – i.e., uses beyond those necessary to comply the purpose the information was primarily provided for.
- (3) Access and Correction: Users should have the ability to inspect personal information that is collected. They should be able to correct wrong personal information.
- (4) Security: Service and content providers should have reasonable physical, technical and administrative safeguards to protect personal information against unauthorized access, collection, use or disclosure. They should protect it during transmission and during subsequent storage.

The openness principle suits the knowledge requirement for an informed decision about providing personal information well. The choice principle partly meets the voluntariness requirement for valid consent insofar as users can not be said to choose where there are no options. Nevertheless, it fails to address the question of how free the decision is and does not set limits to manipulation. The access principle also opens the opportunity to get relevant information but the correction principle does not so much help users to

exercise their privacy rights but to prevent harm being done to them due to wrong information. The security principle, however, should help to prevent violations of privacy rights because only the user can see to it that someone else has access to her information.

In Europe, these principles are enacted in Privacy Laws. Not so in the United States where most online shops are situated. They still rely on industry self-regulation and some dot.com sites post their privacy policy. But, a privacy policy is not enough, even it is a good one. They have to adhere to it. Until now there are no investigations whether they do. On the contrary, there are indications that at least some do not.

In June 2000 *Toysmart.com Inc.*, an Internet toy retailer which had ceased operations a month before, placed an advertisement in the *Wall Street Journal*, offering its customers lists and databases for sale. This was done despite of the fact that *Toysmart.com*'s privacy policy, posted on the company's Web site, stated that "personal information [...] such as name, address, billing information and shopping practices is never shared with a third party." *Toysmart.com* had been a TRUSTe affiliate, a company that provides privacy certification to online businesses to ease consumers' fears about misuse of personal information. The detailed customer tracking on who is buying, what they have bought, what they have considered buying, and how often they visit the site makes the information very precise. TRUSTe was afraid that the move to sell customer lists as part of bankruptcy proceedings of Internet companies might become common as the industry gets more competitive (Reuters (2000)).

To summarize. It is still extremely difficult for users to exercise their privacy rights on the World Wide Web even to the extent where they are backed up by the Fair Information Practices.

5. Conclusions

How can privacy rights be justified by reference to a principle of respect for persons? After having presented my account of privacy rights, I have argued for two different ways of justifying such rights by reference to a principle of respect for persons. One concentrated on the capacity of persons for rational choice, the other one on the capacity for emotional choice.

On the background of respect for persons valid consent sweeps aside the grounds for moral (or even legal) complaint. The immunity norm of a privacy right is waived by it although it still is an exercise of the right. Therefore, getting consent can be useful for service and content providers and other people interested in personal information to learn this information and use it without negative moral residue. Ideally, this is perfectly fine. But we should be wary where consent is used to neutralise complaint in a less than ideal world.

References

- Allen, A. L.: *Uneasy Access. Privacy for Women in a Free Society*. Totowa 1988.
- Beauchamp, T. L. and J. F. Childress: *Principles of Biomedical Ethics*. Forth Edition, New York, Oxford 1994.
- Benn, S. I. : “‘Freedom, Autonomy and the Concept of a Person’”, in, *Proceedings of the Aristotelian Society*. 1976: pp. 109–130.
- Benn, S. I. : *A Theory of Freedom*, Cambridge 1988.
- Gavison, R. : ‘Privacy and the Limits of Law’, In: *Yale Law Journal* 89, 1980: pp. 421–472.
- Givens, B.: *The Emperor’s New Clothes: Privacy on the Internet in 1999*, <http://www.privacyrights.org/emperor.htm>
- Inness, J. C.: *Privacy, Intimacy, and Isolation*, New York, Oxford 1992.
- Kanger, S. and H. Kanger: ‘Rights and Parliamentarism’, In: *Theoria* 32, 1966: pp. 85–115.
- Kleinig, J.: ‘Consent’, In: Becker, L. C. and C. B. Becker (eds.): In: *Encyclopedia of Ethics* 1, New York, London 1992: pp. 206–211.
- Mayer-Schönberger, V.: ‘Generational Development of Data Protection in Europe’, In: Agre, Ph. E. and M. Rotenberg (eds.): *Technology and Privacy: The New Landscape*, Cambridge/Mass. 1997: pp. 219–242.
- Reuters: *FTC sues Toysmart.com over privacy*. July 10th 2001, <http://www.zdnet.com/zdnn/stories/nws/0,4586,2601246,00.html>
- Schoeman, F.: ‘Privacy: Philosophical Dimensions’, In: *American Philosophical Quarterly* 21 (39) 1984: pp. 199–213.
- Siegetsleitner, A.: *E-Mail im Internet und Privatheitsrechte*. Freiburg, München: Alber, 2001 (Alber-Reihe Thesen; Bd. 16).
- Weinstein, L.: ‘DoubleClick Backs Down – For the Moment ...’, In: *Privacy Forum Digest* 9 (10) 2000, <http://www.vortex.com/privacy/priv.09.10>.
- Westin, A.: *Privacy and Freedom*, New York 1967.

Impressum

Die *Forschungsberichte und Mitteilungen des Forschungsinstituts für Angewandte Ethik* (bis 1999 *Forschungsberichte und Mitteilungen des Forschungsinstituts Philosophie/Technik/Wirtschaft*) erscheinen in loser Folge. Sie enthalten sowohl Informationen über das Forschungsinstitut als auch Berichte über Forschungsarbeiten und Forschungsprojekte, die an diesem Forschungsinstitut durchgeführt oder von ihm angeregt werden. Bei diesen Forschungsberichten handelt es sich um Nachdrucke und Vorabdrucke von Arbeiten, die andernorts erscheinen oder erschienen sind, sowie auch um “Works in Progress”. Aus diesem Grund sind Kommentare, Verbesserungsvorschläge und andere Anregungen zu allen Heften der Reihe herzlich willkommen.

Forschungsinstitut für Angewandte Ethik
Universität Salzburg
Franziskanergasse 1
A-5020 Salzburg

Tel.: ++43/662/8044-4050
Fax: ++43/662/8044-4056
E-Mail: anne.siegetsleitner@sbg.ac.at

Aktuelle Ankündigungen und weitere Informationen über das FAE finden Sie auf der Web-Site des Instituts:
<http://www.sbg.ac.at/fae>