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Introduction: Privacy and Surveillance Policy in a Comparative Perspective

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Introduction

While the history of European and international regulation of surveillance can be dated back to the early 1970s, in recent years we have witnessed the field achieve a central position both in terms of European policy circles, as well as in academic research. Four interrelated factors have functioned as conduits for the development of a distinct policy field with specially designated regulatory mechanisms, policy communities of experts, decision-makers and advocates, and not at least discourses that constitute both the regulative and cognitive policy frames.

First, the evolution, and convergence, of new Information- and communication technologies (ICTs) from the 1960s and onwards, has provided governments, private industry and individuals with unprecedented possibilities to retrieve, gather, process and distribute personal data and information thereby causing a constant monitoring of us as individuals (Zuboff, 1988). While the advent of the Internet has become the essential symbol of this account, one should take into consideration that there is more to it than just the graphic interface of the World Wide Web. Second, the past twenty to thirty years of trade integration in the world, or so-called 'globalisation', has necessitated transnational regulation in a number of areas including issues regarding the privacy of personal information. This process has resulted not only in the convergence of privacy regulations (such as within Europe, and between Europe and other states), but has been the vehicle for trade conflicts between different privacy regulation cultures (such as in the trade disputes between the US and the EU) (Bennett and Raab, 1997; Long and Quek, 2002; Kobrin, 2004). Third, privacy, understood as both an individual and a social value, has increasingly become incorporated in the list of international human rights established by organizations such as, for example, the UN, OECD, and the ECJ. The promotion of privacy as a universal human right has affected both international and international regulation in a number of areas such as bioethics, security, data protection and copyright protection. Finally, the 9/11 events, and the envisaged threats of global terrorism have resulted in massive investments in security technologies and measures around the world of which the vast majority (by default) impose some kind of privacy intrusion (Argomaniz, 2009). Consequently, there is a constant debate on how to balance alleged demands for further security measures in society with privacy considerations (Posner and Vermeule, 2007). This development has led several voices to talk about the emergence of a 'surveillance society' which means not only pervasive monitoring, but also a situation where surveillance becomes socially accepted, and citizens willingly treated as surveillance subjects (Lyon, 2001).

This development in policy-making has evoked an interest in interdisciplinary studies of surveillance and privacy; in the particular the social effects of constant surveillance. The study of the regulation of surveillance is in this context an important sub-field composed of academics from, in particular, law studies, criminology, sociology and political science.

The aim of this special section is to provide space for comparative European studies of the regulation of privacy and surveillance, otherwise lacking within existing literature in the field. Many of the current national case-studies describing the present legal situation might be of value to a more practitioner-oriented audience (e.g. those business communities who take an interest in the regulation of cross-national e-business, or the security industry), but are of little, if any, interest to students of public policy. The ambition of generating comparative studies also entails the need to bring the surveillance regulation academic discussion out of its isolated disciplinary niche-position (some have even called it a 'ghetto') where it has resided for many years now, and integrate it within a broader academic public policy and regulation debate.

The works presented in this special section are to a large extent the joint product of working group four (Public policy and regulation of surveillance) under the European Cost Action IS0807: *Living in Surveillance Societies* (LISS). The articles constituting this

special section evidence the utility of a comparative analytical approach within the study of privacy and surveillance regulation, focusing on issues including: privacy impact assessments; governance of the Internet and blocking procedures; and, surveillance by intelligence agencies.

In their article 'Mediating Surveillance: The developing Landscape of European Online Copyright Enforcement', Jon Bright and José R. Agustina show how the attempt to regulate online life can be characterised as the 'mediation' of surveillance. As Bright and Agustina critique, surveillance has been understood as 'a two actor relationship' ignoring the role and influence of actors who mediate surveillance. Bright and Agustina develop the concept of mediation in surveillance through a case study of the UK, France, Spain and Italy. Their comparative research shows a wide range of actors involved in the control of the Internet, and diverse national contexts and regulation.

The topic of regulation and control of the Internet is further explored within the contribution by Katalin Parti and Luisa Marin's contribution, titled 'Ensuring Freedoms and Protecting Rights in the Governance of the Internet: A Comparative Analysis on Blocking Measures and Internet Providers' Removal of Illegal Internet Content'. By a comparative study of Germany and Hungary, they analyse the strengths and shortcomings in measures for 'cleansing' the Internet of illegal and harmful content such as child pornography. Two central findings become apparent in both the contribution by Parti and Marin and that by Bright and Agustina: 1) the involvement of non-state actors, and, 2) the interdependence between private actors who execute the blocking of online content and the state that provides regulatory and financial support.

The challenge of regulation and surveillance is elaborated through the comparative study by David Wright, Rachel Finn and Rowena Rodrigues, 'A Comparative Analysis of PIA in Six Countries'. Privacy impact assessments (PIA) are one of the new features in the proposed European Data Protection Regulation (European Commission, 2012), intended to balance the need for surveillance against the intrusion of privacy and other potential costs resulting from that surveillance. By comparing existing PIA policies in six Anglo-American countries (Australia, Canada, Ireland, New Zealand, the UK and US) they are equipped to critically assess PIA methodology and policies, and are able to identify best practice elements that can be used to improve Article 33 in the proposed Data Protection Regulation.

The theme of weighing such conflicting interests - i.e. surveillance versus privacy – joins all the articles in this special section. Wright, Finn and Rodrigues analyse, in a European context, a new methodology for balancing, while Bright and Agustina as well as Parti and Marin focus upon a new area of regulation. A broader historical perspective is brought to the special section through the article by Aleš Završnik, 'Blurring the Line between Law Enforcement and Intelligence: Sharpening the Gaze of Surveillance?'. Comparing the US and Slovenia, Završnik traces the 'erosion of boundaries between police and intelligence agencies' up to the present and its consequences for the privacy-surveillance nexus. All contributors to this special section include within their comparative analysis a series of recommendations towards how policy makers and other relevant actors can balance conflicting interests in the highly charged politics of surveillance and privacy.

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