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Privacy

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## Abstract

Many Americans believe that privacy is a right, not a privilege. There is a consensus among most Americans that some privacy must be sacrificed in order to protect the security of the United States. We will examine privacy, determine if it is a right or privilege, how privacy is perceived in other countries, and how the idea of privacy interacts with the concept of national security.

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## Privacy defined

The meaning of the word privacy has come to mean many things to many people. The most common definition here in the United States is taken from the Fourth Amendment, which excludes the government from entering a premises without a search warrant. The idea is that a citizen in the United States has the expectation to hide from the view of others whatever he has inside his home. The meaning was further defined in 1890 by S. Warren and L. Brandeis to mean "the right to be alone" (S. D. Warren and L. D. Brandeis, 1890).

### *Privacy as a right*

The word privacy is not explicitly found in the Constitution of the United States. However, as Harry Browne, the Director of Public Policy for the American Liberty Foundation, observed, "[t]he Constitution was created to spell out the limited rights or powers given to the federal government" (Browne, 2003). The idea of a right, according to a dictionary definition, includes defining actions that are good, just, or proper ("right," 2010). A right can be further defined to mean actions that society defines as appropriate to interactions of people with some type of entity, such as government agencies.

### *Privacy as a privilege*

Former Sun Microsystems CEO Scott McNealy once stated "[y]ou have zero privacy anyway. ... Get over it." (Sprenger, 1999). In a modern society, privacy is more a privilege than a right. We can ask that companies not track our travels on the Internet, and that cities not tape our movements on its sidewalks, but we have no standing to prevent people (or entities) from violating our privacy. "As important as morality is, however, there is no legal right to it. ... Privacy is the same kind of thing. It is a value,

the development of which is sheltered by a legal right to property in personal information” (“Privacy: A Right or Something Else?,” 2002).

### Privacy and United States Law

Regardless of how one personally feels about privacy, it is how privacy is interpreted and enforced by the law that sets the standards for a society. Even though there is no implicit mention of the word privacy in the Constitution of the United States, the law supports the idea of a person being entitled to privacy.

As noted by University of Missouri-Kansas City law professor Doug Linder (Linder, 2009):

The most frequently quoted statement by a Supreme Court justice on the subject of privacy comes in Justice Brandeis's dissent in *Olmstead v. U. S.* (1928):

"The makers of our Constitution understood the need to secure conditions favorable to the pursuit of happiness, and the protections guaranteed by this are much broader in scope, and include the right to life and an inviolate personality -- the right to be left alone -- the most comprehensive of rights and the right most valued by civilized men. The principle underlying the Fourth and Fifth Amendments is protection against invasions of the sanctities of a man's home and privacies of life. This is a recognition of the significance of man's spiritual nature, his feelings, and his intellect."

The law will continue to recognize that privacy is a right, even when it is more likely a privilege and something highly valued in a society. Law in the United States is set by the law makers in the legislative and judicial branches of government. A citizen has the legal remedy of appeal when judgments made by the courts appear unjust. The legal system is the forum in which people of a society can challenge the definitions of privacy.

### Privacy and Governments Other Than the United States

Article 8 of the European Convention on Human Rights (ECHR) states “Everyone has the right for his private and family life, his home and his correspondence” (“Human Rights Act: What the articles say,” 2000). The Article also states there will be no interference with the article except in matters of national security, public safety, and other matters that address morality. The Article 10, which protects the freedom of expression, appears to be in conflict with Article 8. It is contradictory because Article 10 addresses what we in the United States refer to as the freedom of speech, which includes the ability of news outlets to report on matters one may consider private.

In 2004, the U.K. High Court (similar to the U.S. Supreme Court) found in favor of Naomi Campbell in her privacy case against “The Daily Mirror” (Rozenberg, 2004). Campbell accused “The Daily Mirror” of violating her right to privacy by publishing an article detailing her drug rehabilitation treatment, specifically, photographs showing Campbell an Narcotics Anonymous (NA) meeting (Lindsay, 2004). What is significant about this case is the fact that even though activity is in the public domain, citizens are still entitled to a certain level of privacy.

#### Privacy and National Security

“They who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety” (“Benjamin Franklin,” 2010). The spirit of this quote means that citizens should not compromise when it comes to personal liberties. Privacy is a personal liberty that many U.S. citizens cherish, and is protected in various ways under the law. Since September 11, 2001, the laws protecting privacy are being modified to accommodate the government's goal of protecting national security.

In London, England, there is an increased interest in using sophisticated CCTV technology to protect venues of the 2012 Olympic games (“Word on the street ... they’re listening - Times Online,” 2006). The use of CCTV is not unusual in London, but this new technology will allow CCTV cameras to focus on what could be aggressive activity more quickly than a human by using microphones to analyze audio levels in an area. “The Association of Chief Police Officers has warned that a full public debate over the microphones’ impact on privacy will be needed before they can be introduced” (“Word on the street ... they’re listening - Times Online,” 2006). However, this debate may be more of a formality than a requirement, because matters of national security are an exception under the the ECHR.

In the United States, The USA Patriot Act was passed on October 26, 2001 (*USA Patriot Act, H.R. 3162, 107th Congress, 2001*). This bill wasn't passed without controversy. The most controversial part of the bill was the use of the Foreign Intelligence Surveillance Act (FISA), which “[a]uthorizes the government to carry out electronic surveillance -- against any person, even Americans -- in the United States upon obtaining a judicial order based upon probable cause that the target is a foreign power or an agent of a foreign power” (“USA Patriot Act,” n.d.). Previously, law enforcement needed a wiretap order to actually monitor phone calls made by persons of interest. FISA removes the restrictions that were in place to protect conversations, even electronic conversations such as email.

### Conclusion

Privacy, regardless of how someone may view it, is a value protected by law. Governments make laws to protect privacy. The laws make exceptions to privacy in the

interests of national security. In the new age where ICT is becoming more prevalent, the idea of privacy is changing. Even in previously public venues, there is a debate over what activities are considered private. In the end, the ultimate authority on defining privacy will be the judicial branches of governments, informed on what technology is capable of doing, and people's expectations of privacy.

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