



The Crime of Privacy Right Violation in the Digital Environment: Readings on Concept and Legal Protection Mechanisms

جريمة انتهاك حق الخصوصية في البيئة الرقمية:

قراءات حول المفهوم وآليات الحماية القانونية

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الملخص:

لم يعد من الممكن العودة إلى الخصوصية التي عرفناها في الماضي (Margo Seltz). يلخص بيان هذا الباحث إلى أي مدى تنتهك الوسائط الرقمية حقًا أساسيًا من حقوق الإنسان وهو الحق في الخصوصية وكذلك حماية البيانات الشخصية التي تنشرها وتداولها في المساحات الافتراضية. لذلك مع التنقل في كل شبكة ، سيكون من الممكن تتبع تصفحنا ومعرفة أسمائنا وعاداتنا وهواياتنا. التطورات التكنولوجية التي صاحبت ثورة الاتصالات أعادت مفهوم الحق في الخصوصية الذي يكافح الخبراء والباحثون للسيطرة عليه ، بالإضافة إلى تطوير النصوص القانونية واعتماد الآليات التقنية لحماية المواطنين من مختلف أشكال التعدي على البيانات واستغلالها.

الكلمات الدالة:

خصوصية: الحق في الخصوصية : وسائل الإعلام الرقمية: حماية البيانات الشخصية : التعدي على بياناتهم الرقمية واستغلالها.

Abstract:

It is not longer possible to return back to the privacy that we have known in the past(Margo Seltz). This researcher's statement summarizes the extent to which digital media transgress a basic human right which is, the right to privacy as well as the protection of personal data that it published and circulating in virtual spaces. So with each network's navigation, it will be possible to trace our surfing and to know ...our names, habits and hobbies.

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The technological developments that accompanied the communications revolution brought back the concept of the right to privacy, which experts and researchers have been struggling to control, in addition to the development of legal texts and the adoption of technical mechanisms to protect citizens from the various forms of infringement and exploitation of data..

Keywords:

Privacy; the right to privacy; digital media; the protection of personal data; infringement and exploitation of their data digital.

The research:

Covers the following issues:

- 1 The theoretical description of the right to privacy concept and the stages of the concept's evolution.
- 2 The forms of privacy infringement in the digital space.
- 3 Legal mechanisms adopted in Western and Arab states to protect the right to privacy .

INTRODUCTION

Our need to keep the distance equals our need to social integration and communication. Man realization of the right to privacy led to the creation of barriers hindering anyone from transgressing the distance. However, these rights aren't respected by everyone since there are still many people who are always willing and even endeavoring to transgress work and family privacy in different ways and it is absolutely the case for the virtual space .

Privacy transgression through the virtual space is easier due to technical and technological advancements. Hence, interest on privacy protection in the digital environment raised in the technological, legal and intellectual domains. Arthur Miller believes that the computer has the potential to become the nervous center of a control system that transforms society into a transparent world, because of its constant hunger for information, the common belief that it never makes errors and its strong storage capacity as well. Consequently, any watcher would have access to our financial deals, meetings, mental states...

1. The Theoretical Description of the Concept of Privacy:

The right to privacy is classified among digital rights and liberties. This latter is a continuity of the human rights which are acknowledged and



protected by the law as well as the international treaties. Hence, both of the UN and Human Rights Council claim that the rights that are protected in the real world must be protected in the virtual world as well.¹This concept includes the right to liberty of expression, privacy and liberation from control on internet, to name but a few. Besides, interest in the right to privacy raised in the late sixties through the studies that excogitated electronic data particularity as an independent concept. These studies are attributed to American researchers such as Alan Westen the author of Privacy and Freedom and Miller. They both established a concept and a definition to data privacy. According to Westen, data privacy is the individuals' rights to limit the time, the way as well as the extent to which people can get access to their information. However, Miller was more profound since he defined it as the individuals' ability to control their own personal information cycles. ²

Privacy is a description for the protection of personal data which are shared by digital media and include information related to work, address and all the data that we use in our interaction on the internet when using the computer, mobile phone, tablet...etc ³

The concept development knew three basic phases: the first phase is the material phase and it means the acknowledgment of privacy as a right to protect individuals from the different sorts of material aggression on their lives and possessions, while the second phase is the phase in which abstract privacy was acknowledged. This covers the protection of values and the abstract components of individuals. Finally, privacy became a public right, which guarantees the protection from any form of aggression; hence, a new privacy concept was established and related to the influence of technology on private life. In other words, it conceptualizes the individual's right of the personal data protection and control under the digital era challenges. ⁴

Privacy concept differs from a society to another as it is based on cultural, traditional, social and religious backgrounds. Furthermore, it even differs from an individual to another according to personal convictions. So, it is a flexible concept which is susceptible to development based on societies and communication tools development.

There are many sorts of individuals' privacy transgression in the digital space. That is to say, with each network's navigation, it's possible to trace our surfing and to know our names, habits and hobbies. In addition, our privacy may be transgressed each time we subscribe to get an electronic account or design a page or participate in an electronic surveys or chat.



Consequently, our localization and email address can be detected and data just flow each time we press a button.⁵

The easiness to violate individuals' privacy in the digital space is reflected on the researchers' determination that privacy would have an end. Among them, Scott McNeally(1992) "You have zero privacy anyway...Get over it!"He simply declared that we no longer have privacy, and we have to accept this fact. Meanwhile, Margo Seltz states that: we can no longer return to the privacy we knew in the past...even the in which we used to see privacy died. ⁶

Below are some illustrations of semi rights that derive from the right to digital life privacy protection:

- The Right to Digital Anonymity:

Each individual has the right to have access to the internet without being obliged to deliver his real identity in condition that he does not disturb the public order as well as the rights and liberties of others. This is related to the right to use of electronic encryption to make data which are meant to be sent incomprehensible by the others. ⁷

- The Right to Digital Oblivion:

It refers to the commitment of the people in charge of data processing in commercial and public bodies' websites for instance not to register personal data for a period which exceeds the purpose for which the data were collected. It also refers to the right to modify or even remove personal data from the internet (websites and social networks) provided that the removal or modifications do not inflict damage to any legal or natural person.

- The Right to Digital Identity:

Each individual has the right to have access to the net as a digital person and this right is related to the necessity to criminalize digital identity impersonation :(email spoofing, Face book account spoofing and IP address spoofing). ⁸

The acknowledgment of these rights cannot guarantee the individuals protection. Besides, many people are not aware of their rights and hence they have to read all the legal regulations related to the creation of websites, email accounts or any account in order to avoid the acceptance of personal data use without any prior knowledge.

2.The forms of privacy infringement in the digital space.



In the one hand, experts agree that the internet service providers, the websites that individuals browse as well as security and intelligence organs are all able to breach personal data ⁹. The service provider in his part can monitor the user's localization, the websites a user browses and the different researches and chats by what is called "internet protocol ": Sniffer, packet and proxies which are softwares to analyze all kinds of surfing.

In the other hand, websites can trace surfing by inserting small documents known as «cookies» or by the use of the computer hard disk .In addition, social networks websites are not at one hundred percent protected; there are still gaps enabling anyone to have access to the users' personal lives despite of the efforts deployed by these websites in order reinforce user's privacy protection.¹⁰

Privacy Breach takes many Forms:

Monitoring:

The daily monitoring and recording of someone's communications and internet surfing, which lead to the discovery and even the delivery of secrets.

Breach:

It includes aggression to the right of privacy by computers and communication devices breaking, recording, recovery and content modification of data and information¹¹

.3.Legal mechanisms adopted in Western and Arab states to protect the right to privacy .

The right to privacy has received much international interest .The interest is reflected on the human rights charters and conventions which recognize their commitment to respect individuals' privacy. According to the Twelfth Article of the Universal Declaration of Human Rights: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks. ¹²

The Article 19 from the same declaration states that: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. ¹³

In the same regard, the Article 17 of The International Covenant on Civil and Political Rights acknowledges that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence,



nor to unlawful attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks. 14

Also, the European Convention on Human Rights (ECHR) 1950 states in Article No. 8 that: Interception of communications may constitute a dangerous interference with an individual's exercise of the right to privacy¹⁵ In addition, The Proclamation of Teheran 1968¹⁶ –in its 18th paragraph– states that: while recent scientific discoveries and technological advances have opened vast prospects for economic, social and cultural progress, such developments may nevertheless endanger the rights and freedoms of individuals and will require continuing attention.¹⁷ The importance of this paragraph is embodied in mentioning the risks of technological development on human rights and liberties including the right to privacy.

The Resolution (68/167) of the General Assembly of the UN on the right to privacy in the digital age is so important as it focused in 2013 on two basic points.¹⁸

The first point emphasized the individuals' right to privacy under the rapid pace of the technological advancement as what was stated and provided by the international conventions and provisions concerning the right to privacy in accordance with Article 12 of the World Declaration of Human Rights as well as the Article 7 of The International Covenant on Civil and Political Rights.

It also affirms in its third executive paragraph that the same rights that people have offline must also be protected online¹⁹. This includes the right to privacy, while the second point deals with the nonexistence of consensus among states about the arbitrary interference in the individuals' privacy, which led to the issuing of this resolution without vote.

In 2014, a report was issued about the right to privacy in the digital era, and it's worth mentioning that it is regarded as a legal reference. At the level of national legislations, the states which realized the importance of this question started to issue legislations to protect individuals' lives starting from the seventies. These states –especially the European ones– worked on updating their legislations coinciding with the advancements of new technologies.

In this respect, it should be noted that the first legislative treatment in the field of data protection occurred in Germany in 1970, but it wasn't adequate to become an integrated law because of many reasons. For instance, it was not a national act as it had been issued in Hess. However, it was followed



by enacting the first national integrated act in Sweden 1973 and in the United States by 1974 then in France by 1978.20.

In the United States for instance, data and individual's privacy protection had been legislated in 1970 in indirect texts and then an act of privacy was issued by 1974 and modified in 1796. Later, many acts were issued such as the acts organizing bank and assurance cards, work relations and the Act of Financial Data Protection in 1978. However, it's clear that the plan of the American legislator was to enact general laws and not laws which are precisely related to electronic data processing.²¹ unlike the French legislator, who enacted a law for the protection of privacy and freedoms in facing data electronic processing. The French legislator also issued the Act No. 17 in 1978, which deals with the automatic data processing. The act states that: the system of information automation shall serve all citizens and not threaten privacy. The French Penal Code also states that the individuals 'data shall not be accessed by data recipients without permission of data subjects, especially that the access may inflict the individuals' private life inviolability .

The French legislator also legislated many legislations to solve legal problems resulted of the use of electronic data processing. One of the most prominent acts is the Act of 1980, which is related to the criminal status record, and it includes many principles as illustrated below:

- ☐ Electronic processing shall be to serve the citizen .
- ☐ Personal and public liberties, person's personality, rights and private life shall be protected from any aggression.
- ☐ Personal data processing can occur either by selecting or recording or modifying or classifying or deleting data, and what is meant by self-data is the data that enable any direct or indirect identification of the natural person identity.

The act states identifies four crimes:

1. The crime of electronic data processing without authorization from the competent committee.
- 2.. Illicit record of personal data.
3. The crime of personal data disclosure.
4. The crime of deviation from the purpose of electronic personal data processing.²²



The Algerian legislator enhanced the principle of private life and privacy protection and it is regarded as a constitutionally protected right (1996) in accordance with Act No. 39 and Act No. 40.

In the one hand, Act No. 39 states that the citizen's privacy, private life and honor inviolability shall not be violated, and the law shall protect them through correspondence and private communications confidentiality in all its forms. In the other hand, Act No. 40 states that the state guarantees the inviolability of the home .

Article 303 bis from penal code modified by article 06-23 dated 20/12/2012 states the following:23

- Whoever deliberates violation of the privacy of persons with any technology shall be punished by imprisonment from six months to three years:
- Taking pictures, recording calls or private or confidential conversations without the owner permission or consent.
- Taking pictures, recording or transferring them in a private place without the owner permission or consent.

In line with fighting cyber crime, the Algerian legislator created legal texts in accordance with Act15/04 which includes the amendment of the penal law and the act 394 bis states the following :

Whoever enters or remains by fraud in all or part of a system for automatic data processing, or attempts to do so, shall be punished with imprisonment from three months to one year and pay a fine from 50,000 to 100,000DZD.24

In this regard, Article 394 bis 2 states that anyone who intentionally or fraudulently commits the following shall be punished:

Designing, searching, collecting, providing, publishing, or trading in data stored, processed, or correspondent through an information system in which the crimes stated in this section can be committed.

Possessing, disclosing, publishing, or using -for any purpose- all the data obtained from one of the crimes stated in this section.

The Algerian legislator attempted to keep pace with technological developments in drafting laws with the purpose of protecting the right of the individual to preserve his privacy.



Both of the theoretical and legal presentation remains insufficient to provide total protection, as the question requires the activation of the technical mechanisms with a permanent commitment to caution and prudence on the part of the citizen in addition to reservation about publishing data and pictures except when necessary and to report any violation or breach to the competent authorities.

CONCLUSION

The right to protect privacy has received intellectual, legal and legislative attention at the international and domestic levels, and this is a proof that it is one of the rights related to the personality of the human being and preserving his dignity .

There is a consensus in most legal situations that it is an independent right in itself and hence all legal and technical mechanisms should be provided to protect it, especially that it is in danger due to the rapid technological developments that have made our social life full of the love of interfering on the other and tracking the details of his life to satisfy curiosity, which is neither legal nor moral. So, our private lives are at stake and our secrets are delivered, which entails legal strictness in dealing with various violations and awareness of the dangers of dealing with digital media without reservation.

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