

## Internet Rights – the crucial role of online rights



*The internet has become a critical part of almost everything we do. Dr Paul Bernal argues that if we don't protect human rights online, we can't protect them in the 'real' world. 'Online rights' should not simply protect the right to privacy but must cover all civil rights, including freedom of expression.*

The internet, which has been held up – often appropriately – as offering huge hope and opportunities for liberation and human rights, now seems to offer even more for surveillance, oppression and control. The most direct reason for this is the amount of time we spend and the wide variety of activities that we do online – the internet has become a critical part of almost everything we do. We don't just use the net as a source of information and a means of communication with our friends, relatives and colleagues, we use it for our social lives, our political lives, our work lives, to search for jobs and to search for love. We explore things that are interesting to us – and things that are important to us, including all those things we do to protect our own human rights. If we don't protect human rights online, we can't protect them in the 'real' world.

### Less than zero privacy

An examination of a user's web browsing, the search terms they use, who they're 'friends' with on Facebook, whose tweets they retweet, what music they listen to, what places they look at on Google Maps and so on can tell you an immense amount about them. In 1999, Scott McNealy, then CEO of Sun Microsystems, said 'you have zero privacy anyway, get over it.' These days, it might be more accurate to say that we have less than zero privacy: it is possible for surveillance to reveal more about someone than that person even knows themselves.

The impact of this is immense – and it covers not just privacy but *all* the traditional civil rights. It impacts upon freedom of expression – both through the chilling effect of knowing that you are observed and from the direct use of surveillance to find out who people are speaking to and what they are speaking about and using that information to stop them. Websites can be *and are* found and shut down: the same kind of technology introduced to deal with things like pornography and copyright infringement can be used to block sites for all kinds of reasons. It impacts upon freedom of assembly and of association – not just where we meet and who we meet with online, but in the 'real' world, because real world meetings are generally arranged and coordinated online. Again, this is not just theoretical but real – from pre-revolutionary Tunisia and Egypt to the UK authorities' **monitoring of social media in order to 'head off' badger cull protests**.

Surveillance of the net can also have an impact on freedom of religion and of thought – because the same profiling systems developed by corporations to work out what kind of music you listen to or products you'd like to buy can be used to determine your religious belief or political views. It can also affect your right to a fair trial – as the recent revelations of GCHQ and the police intercepting communications between **lawyers and clients, journalists and sources**, even **prisoners and their MPs** have shown. As almost every activity, no matter how sensitive or confidential, these days has an



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online element, surveillance can interfere with it – and then the technology can directly use that surveillance.

## Attacks from many directions

The authorities watch us for one set of reasons, corporations for another – but both can interfere with our freedom and the two interact many ways. Authorities can co-opt corporate surveillance and control, can hack into data and systems, can subcontract services and system development – and corporates can and do lobby governments to ensure that laws are ‘business-friendly’ which, in practice often means that they are also ‘surveillance-friendly’. In many ways corporate activities can often have more impact on people in their daily lives than anything that the authorities can do – our job prospects, our credit ratings, the cost of our insurance and indeed of other products, as well as the information we see and so forth matters. The so-called ‘**Facebook Experiment**’ that took place earlier this year demonstrated that by manipulating the messages seen by Facebook users, Facebook were able to manipulate the users’ emotions – making them happier or sadder. That in itself should be something to concern us.

All of this is one of the main reasons that the ‘counter-terror’ industry has migrated to a great extent to the internet. Governments, intelligence services, police forces and others are doing their best to convince us that we should let them use surveillance more and more. The **spectre of the ‘dark’ or ‘deep’ web** has been raised in speech after speech, and the **prominence of extremism** in the social media pushed harder and harder – all to soften us up, to make us accept more and more surveillance and more and more censorship.

## Resisting – and saving human rights

We should resist that push, and resist it strongly. If we do not fight hard for a free, privacy-friendly, human-friendly internet, we will find it impossible to keep our whole world human friendly. Human rights in the ‘real’ world cannot be protected if we don’t protect human rights in the online world. Authoritarians all around the world know this – we need to remember it too.

That means fighting for privacy in particular, for privacy underpins all those other rights. It means fighting against censorship – and against censorship infrastructures built for seemingly good reasons. It means fighting against ‘real names’ policies – for without the freedom to protect your identity, to protect the link between your online activities and your real person, you cannot be free online. It means fighting against corporate restrictions of internet freedom as much as it does fighting against the activities of the authorities, because the two are seemingly inextricably linked.

## The role of a written constitution

A written constitution would give an opportunity to set down the crucial principles – not in precise, technological terms, but in ways that can and will adapt as technology changes. A right to roam the internet with privacy. A right to monitor those who monitor us. A right to create, assert and protect an online identity. A right to delete personal data. These are rights that I have written about in my book *Internet Privacy Rights, Rights to Protect Autonomy* – but we need more. Ensuring that the right to freedom of expression covers a right not to be censored, a right for your online presence to be found if you want to be found – placing obligations of fairness and neutrality on search engines, for example, and on those implementing filters to make those filters transparent, proportionate, accountable, optional and reversible.

The **November 2014 adoption of a resolution on privacy in the digital age by the UN General Assembly** could be seen as a starting point, but needs to be taken a lot further and the fight needs to be taken a lot more seriously, particularly in the face of the concerted efforts of some governments in

the opposite direction – the UK's at the head of the list. If online rights are included in a written constitution governments could find it harder to use the invidious, insidious and perfidious tactics they have to infringe upon our internet freedom. It would be no guarantee – far from it – and the constitutional rights must emerge from what we *understand* to be our rights – but it could be one weapon in a critical fight. If we want to protect human rights, we have to fight that fight for internet freedom. There isn't any choice in the matter.

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This article gives the views of the author, and not the position of ConstitutionUK, nor of the London School of Economics.

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