

# CILIP Privacy Briefing 2017

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# Privacy, surveillance and the information profession: challenges, qualifications, and dilemmas?

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# **Privacy, surveillance and the information profession: challenges, qualifications, and dilemmas?**

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# Today's presentation

- Why privacy is our problem
  - Scoping our ethical space
  - Tensions inherent in our societal responsibilities
- Some examples that challenge our ethos
- Towards good practice
  - Nissenbaum's Framework of Contextual Integrity

# Defining privacy

- Privacy is the “right to be free from unwarranted intrusion and to keep certain matters from public view”
- It is a crucial aspect of personal autonomy and a vital component of individual fulfilment
- But it is also complex:
  - it can be “a claim, a right, an interest, a value, a preference, or merely a state of existence”  
(Nissenbaum, 2010, p.2)

# The qualification..

- Under the ECHR privacy is recognised as a human right based around “the respect for private and family life”
- The qualification made to this is that governments can only interfere “*in accordance with the law and is necessary in a democratic society*”

# The qualification (con't)

- *..in the interests of national security,*
- *public safety or the economic wellbeing of the country,*
- *for the prevention of disorder or crime,*
- *for the protection of health or morals,*
- *or for the protection of the rights and freedoms of others.”*

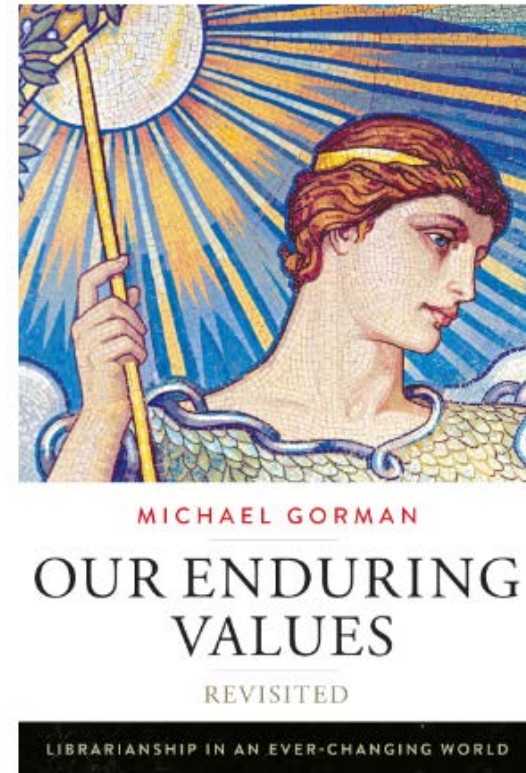
# Privacy & the information profession

- Crucial elements of privacy are in our professional space
- *Informational privacy*: information about citizens, how it is shared, how it should be protected, what rights citizens have.
- *Privacy and access*: what rights should citizens have when accessing knowledge, and what limits should be placed on such access



# Gorman's Enduring Values of Librarianship

1. Stewardship
2. Service
3. Intellectual Freedom
4. Equity of Access
5. Privacy
6. Literacy and Learning
7. Rationalism
8. Democracy



- Gorman, Michael (2000) *Our Enduring Values: Librarianship in the 21<sup>st</sup> Century*.

# Some common values in ethical codes

1. Client/patron rights and privileges
  2. Selection issues
  3. Professional practice
  4. Access issues
  5. Employer responsibility
  6. Social issues
- (Koehler and Pemberton, 2000, p.34)

# Surveillance – a modern trial?

- Balancing national security versus the right of privacy is an ongoing challenge
- As a profession we must be mindful of the “chilling effect” of laws, actions or activities, from both state and non-state actors, that can modify the actions of others
- Governments can chill rights of citizens through sloppy legislation, but professionals can also do so through sloppy practice and procedure

– Columbia Law Review. 1969. “The Chilling Effect in Constitutional Law.” *Columbia Law Review* 69 (5): 808-842. <http://www.jstor.org/stable/1121147>.

# **PRIVACY AND LIBRARY AND INFORMATION SERVICES**

# Privacy and LIS

- Our commitment to patron privacy is significantly challenged by some of our own activities:
  - Internet filtering: direct challenge to the information seeking of our users
  - Use of 3<sup>rd</sup> parties in service delivery: are we open about who, why, and what they will do with user data?
  - Learner analytics: are we in effect *spying* on our users' activities?

# Progress vs rights?

- The following DP statement was sent to members of a Scottish public library

██████████ **Data Protection Statement** ██████████



I understand and agree that the information collected on this form (including but not limited to my personal data) can be used by ██████████ and third parties approved by ██████████ to enable ██████████ to deliver, improve and develop its services.

To have your details removed from our database please reply to:

[unsubscribelibrary@██████████](mailto:unsubscribelibrary@██████████)

# What are the issues?

- Not agreeing to the new statement meant membership would have to be revoked
  - Public libraries are a legal right
- Blanket 3<sup>rd</sup> party exemptions
  - Why should the public have to trust we will not use 3<sup>rd</sup> parties they would not approve of?
- Such changes to practice play on our trusted, societal, role, and arguably corrupt it

# An extreme example?

- Oral Roberts University’s “Whole Person Education” allows students to have Fitbit devices recording their physical activity and loaded into the university’s learning management system (Jones and Salo, forthcoming)
- Jones, Kyle M. L. and Salo, Dorothea, Learning Analytics and the Academic Library: Professional Ethics Commitments at a Crossroads (April 20, 2017). *College & Research Libraries*, Forthcoming. Available at SSRN: <https://ssrn.com/abstract=2955779>



# The reality...

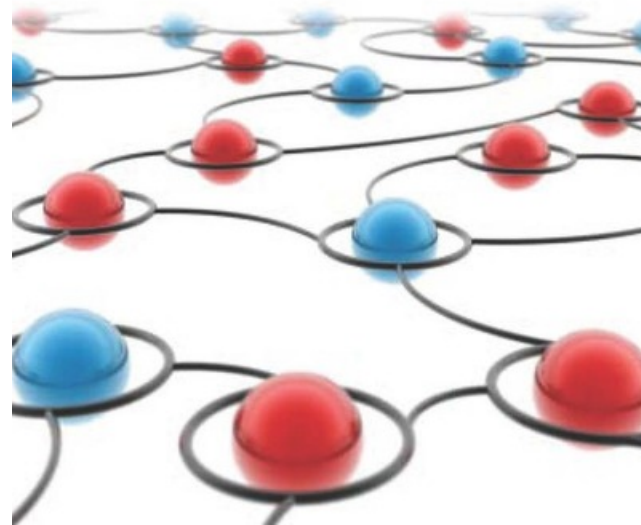
- In the examples cited, we may be required to undertake these activities to be a modern, vibrant profession
- Nevertheless, where has the profession seriously debated them?
  - Our patrons rely on us to protect their interests
  - Their interests are not solely about innovating and/or improving our efficiency, or the bottom line

One approach...

# PRIVACY IN CONTEXT

Technology, Policy, and the Integrity of Social Life

HELEN NISSENBAUM



Nissenbaum, Helen. (2010) *Privacy in Context: Technology, Policy, and the Integrity of Social Life*. Stanford University Press.

# Nissenbaum's approach

- *“there is, indeed, great complexity and variability in the privacy constraints people expect to hold over the flow of information, but these expectations are systematically related to characteristics of the background social situation”* (p.129)
- Proposes her “Framework of contextual integrity” (FCI) for analysis of *potentially* privacy-invading services and practices

# *Framework of contextual integrity*

- Considers:
  - Contexts
  - Informational norms
  - Actors
  - Attributes
  - Transmission principles
- Crucially, novel systems and practices can sometimes challenge traditional norms enough to justify changing them

# The real dilemma?

- *“...what bothers people, what we see as dangerous, threatening, disturbing, and annoying, what makes us indignant, resistant, unsettled, and outraged in our experience of contemporary systems and practices of information gathering, aggregation, analysis, and dissemination is not that they diminish our control and pierce our secrecy, but that they transgress context-relative informational norms.” (p.186)*

# Contexts

- “Contexts are structured social settings characterized by canonical activities, roles, relationships, power structures, norms (or rules), and internal values (goals, ends, purposes)” (p.132)
- “contextual roles, activities, practices, and norms make sense largely in relation to contextual teleology, including goals, purposes, and ends” (p.134).

# Informational norms

- “..concerned with the flow of personal information—transmission, communication, transfer, distribution, and dissemination—from one party to another, or others” (p.140).
- “breaches of context-relative informational norms” is the key component in breaching privacy (p.140).

# Actors

- “Informational norms have three placeholders for actors: senders of information, recipients of information, and information subjects” (p.141).
- “it is relevant to know whether the actors are government or private, and in what capacity they act, among an innumerable number of possibilities” (p.143).



# Attributes (Information types)

- “Informational norms render certain attributes appropriate or inappropriate in certain contexts, under certain conditions” (p.143).
- e.g. who should have access to borrowing histories? Who should access a student’s grades in a school or university? Who should access health records?

# Transmission principles

- “a constraint on the flow (distribution, dissemination, transmission) of information from party to party in a context” (p.145)
- “The transmission principle parameter in informational norms expresses terms and conditions under which such transfers ought (or ought not) to occur.”

# Nissenbaum case study: CASSIE

- Computer Access Software Solution
- Managed access to PCs in libraries
- Also allowed viewing of patron browsing
- Using the FCI, CASSIE presented a significant *prima facie* violation of contextual integrity
- The tension is “between patrons’ freedom and autonomy, on the one hand, and institutional efficiency, on the other” (p.183).

# CASSIE: the questions to ask?

- Public library purpose
  - Does the ability to watch what patrons are browsing impact on purpose?
  - Yes, if purpose is to provide access to knowledge, the “chilling effect” of being aware of surveillance may restrict what patrons do
- Types of data held
  - Previously libraries would store borrowing records, but not what patrons had looked for

# FCI and moving patron data to cloud



- Library purpose
  - Is purpose challenged if patrons are aware 3<sup>rd</sup> parties (unknown) have access to their data
- Citizens' rights
  - Should a legal right be as arbitrary as to be able to be removed based on an organisational efficiency decision?
  - A legal right becomes citizen placing blind faith in service that 3<sup>rd</sup> parties they deal with will not abuse their data?

# FCI and learner analytics

- Purpose
  - Educational role could justify learner analytics if it enhances outcomes of students?
  - But, could knowledge of potential surveillance cause “chilling effect” on students?
- Attributes
  - Should my lecturers be able to know how often I visit library? How long I spend there?
  - Even anonymization of such data poses challenges

*It's innovation! Keep up, or shut up!*

- If we *are* in an era where new norms and values are developing as a result of societal and technical challenges, we must ponder these as a professional community
- Technology must not drive our core professional values
  - The profession will lose, but more importantly, society will lose



<https://patcegan.files.wordpress.com/2014/03/fork-in-the-road.jpg>



# P is privacy....and purpose..

- Tools like *Privacy Impact Assessments* and Nissenbaum's *Framework*, help us consider challenges to privacy more fully
- We may not like the answers, but that only means the question had to be asked
- The *purpose* of our services, their *mission*, should be the key driver in all decisions

# Conclusions

- We should be able to collectively stand behind our professional ethos, and not merely see it as a set of desirables
- This entails dealing honestly with where that ethos presents challenges to our practice ( and vice versa)
- Privacy is a complex, multi-faceted right, and we must understand that complexity and how it should be protected

# Thank you!

## Slides available on:

<https://www.slideshare.net/dmcmenemy>

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@d\_mcmenemy (Twitter)

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