

# Internet, Human Rights and privacy

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# Human Rights in the Digital Age

Human rights: strong on paper – in practice a matter of (legal) implementation and enforcement.

→ **Thesis:** The impact of human rights depends on the solution of a series of dilemmas specific to the digital age.



# Human Rights in the Digital Age

- Freedom of speech
- Right to privacy
- Freedom of information
- Right to freedom of association
- Rule of law and equality before the law

# Dilemmata



## Elevated Risk

NAME	CONFIDENCE	YOUR RISK	AVG. RISK	COMPARED TO AVERAGE
Prostate Cancer ♂	★★★★★	34.6%	17.8%	1.94x 
Venous Thromboembolism	★★★★★	17.9%	12.3%	1.45x 
Lung Cancer	★★★★★	11.6%	8.5%	1.37x 
Age-related Macular Degeneration	★★★★★	8.4%	6.5%	1.29x 
Melanoma	★★★★★	4.0%	2.9%	1.38x 
Crohn's Disease	★★★★★	1.6%	0.5%	2.99x 
Ulcerative Colitis	★★★★★	1.1%	0.8%	1.42x 
Esophageal Squamous Cell Carcinoma (ESCC)	★★★★★	0.43%	0.36%	1.21x 
Stomach Cancer (Gastric Cardia Adenocarcinoma)	★★★★★	0.28%	0.23%	1.22x 

Graphic: [http://media0.faz.net/polopoly\\_fs/1.2651288!/image/1561498010.jpg\\_gen/derivatives/default/1561498010.jpg](http://media0.faz.net/polopoly_fs/1.2651288!/image/1561498010.jpg_gen/derivatives/default/1561498010.jpg)

# Life assistants

“Beyond speed and personalization, the evolution of search will lead us to search occurring when you’re not even using the search engine – autonomous search, Schmidt said.” (Techcrunch 2010)

# Data craving





# Dilemma 1: data regime undermines foundation of data protection

- Data protection rests on the idea of individual autonomy
- But can we still say no to social networks, search engines etc?
- If not, what does that mean for democracy?

Nearby Tasks

Home Depot  
 Water Filter, Recycle Bin, & Garage Composting Bin

Milwaukee



MOSTLY CLOUDY

7mph

10%

23°



# Freedom of speech & freedom of association on private premises

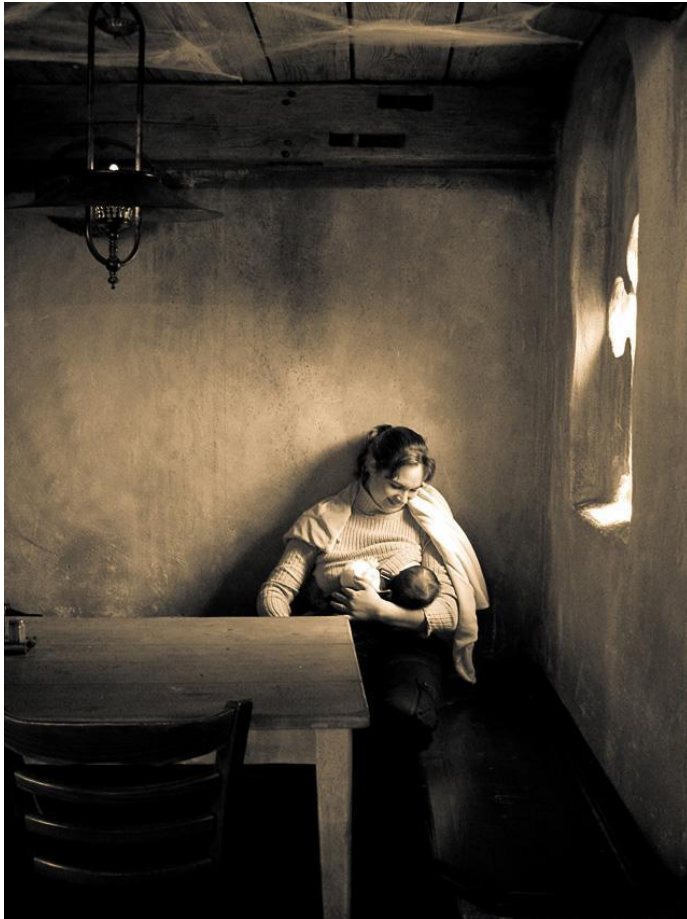


Photo: Raphael Goetter  
Photo: Raphael Goetter.  
CC BY 2.0.



Photo: <http://www.businessinsider.com/facebook-fbrape-ad-boycott-2013-5>

# Dilemma 2: Enhancing *and* transforming freedom of speech/ association

- Internet potentially strengthens freedom of speech and freedom of association
- **But** terms and conditions of private corporations rights enable & govern exercising these rights
- Social networks are subject to pressure from governments and users



## ARTICLE 15.8: CROSS-BORDER INFORMATION FLOWS

Recognizing the importance of the free flow of information in facilitating trade, and acknowledging the importance of protecting personal information, the Parties shall endeavor to *refrain from imposing or maintaining unnecessary barriers to electronic information flows across borders.*

**Source:** Free Trade Agreement between the US and South Korea (KORUS)

# Dilemma 3: Free flow of information versus informational autonomy

Economic interests are tied with freedom of expression and information – privacy as a possible trade barrier.





# GCHQ and its allies

## GCHQ & German Federal Intelligence Service (BND):

*“British intelligence agencies were helping their German counterparts change or bypass laws that restricted their ability to use their advanced surveillance technology.”*

## GCHQ & French General Directorate for External Security (DGSE):

*“DGSE are a highly motivated, technically competent partner, who have shown great willingness to engage on IP [internet protocol] issues, and to work with GCHQ on a “cooperate and share” basis.”*



## Dilemma 4: National laws vs. international internet traffic

National security laws **cannot protect** internet traffic which is international by definition: In the internet we are all foreigners.



Public Access Centre  
Myanmar Info-Tech





## Dilemma 5: Unlimited data currency

Business model of Internet service providers ensures integration: using search engines, joining social networks etc. to an unprecedented extent – but at the expense of data protection



# Dilemmata: Summary

- Incongruence between Internet as global common good and competing legitimate interests.
- Strong human rights enhance the value of the Internet but hamper the goals of individuals, companies, agencies, police forces.

#MARCOCIVILJÁ  
#LIBERDADEDEEXPRESSION  
#INTERNETILIVRE

### 3. Recent initiatives addressing HR dilemmata





#MARCOCIVILJÁ  
#LIBERDADE DE EXPRESSÃO

## Brazilian Marco Civil

- **Idea:** establish a comprehensive regulatory framework; specifying principles, guarantees, rights and obligations for use of Internet in Brazil
- **But:** data retention logs, no strong net neutrality etc

## European General Data Protection Regulation

- **Idea:** update and unify data protection laws within the European Union – setting an de facto international standard
- **Provisions:** right to erasure; increase transparency (e.g. icons); increase privacy by design
- **Implementation:** draft presented in 2012 – still under negotiation
- **But:** companies' interests, trade provisions





#MARCOCIVILJÁ  
#LIBERDADEDEEXPRESSION

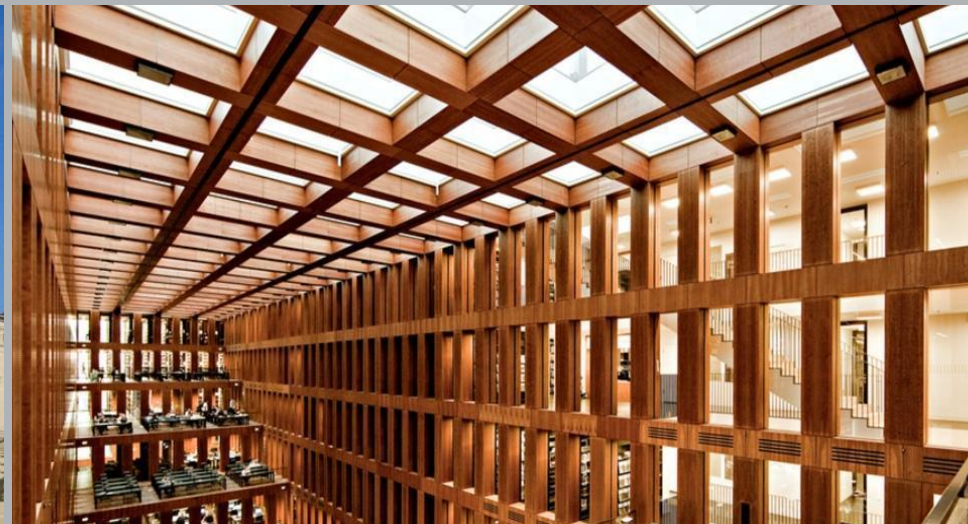
## Right in Confidentiality and Integrity of Information Technology Systems (German basic law)

- **Approach:** establish safeguards that protect information systems like your home (cf. Article 12 UDHR)
- **Cause:** state-run intrusion of information systems
- **Implementation:** established by German constitutional court in 2008 – minor role in jurisdiction so far

# Summary: What needs to be done

- Addressing global private ordering vs national rule of law
  - Transnational harmonization of data protection
- International standards/principles regulating secret services
- Increased transparency/participation in int. trade negotiations





# Thank you!

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