The Privacy Paradox: can privacy law cope with emerging technology?

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This handout contains some of the cases and materials referred to in the lecture, and suggestions for further reading.

Part 1 – privacy scepticism

A recent dystopian novel about the problems of protecting privacy in the modern world is Dave Eggers *The Circle* (2013)

For the potential breadth of the concept of privacy, see: in the US, *Roe v Wade* 410 US 113 (abortion); in the UK, *R (Jackson) v Attorney General* [2005] UKHL 56 (hunting).

For the traditional reluctance to recognise a right to privacy in English law, see: *Kaye v Robertson* [1991] FSR 62; *Malone v Commissioner of Police* [1979] Ch 344; *Wainwright v Secretary of State for the Home Department* [2004] 2 AC 406.

The Target incident is described in *Big Data: A Revolution that will transform how we live, work and think* (Mayer-Schonberger and Cukier, 2013), and in a New York Times magazine article by Charles Duhigg (16th February 2012).

The Internet of Things (Greengard, 2015) is a useful introduction to its subject.

The use of technology that monitors emotion is the subject of Andrew McStay's forthcoming book *Empathic Media: The Surveillance of Emotional Life*.

Part 2 – the development of privacy law

The key legal texts are the Data Protection Act 1998; Directive 95/46/EC; the Human Rights Act 1998; the European Convention on Human Rights (article 8); the Charter of Fundamental Rights of the European Union (articles 7 and 8); and the forthcoming General Data Protection Regulation (GDPR)

The HMRC data loss incident is described in detail in *Butterworths Data Security Law and Practice* (Room, 2009)

The key cases in the development of the tort of the misuse of private information are *Campbell v MGN* [2004] UKHL 22, and *Google Inc v Vidal-Hall and others* [2015] EWCA Civ 311.

The *Vidal-Hall* case, and *Gulati v MGN Ltd* [2015] EWHC 1482 together mark a significant change in the approach to compensation in relation to privacy and data protection.

The most striking recent CJEU decisions in the field of privacy and data protection are *Google Spain SL and Google Inc v Agencia Espanola de Proteccion de Datos & Mario Costeja Gonzalez* [2014] 1 QB 1022 (on the "right to be forgotten"), and *Schrems v. Data Protection Commissioner (Case C-362/14)* (on the "safe harbour" agreement).

A near-final text of the forthcoming GDPR is at:
http://statewatch.org/news/2015/dec/eu-council-dp-reg-draft-final-compromise-15039-15.pdf

For continuing discussion of the GDPR, see generally the following blogs: http://panopticonblog.com and https://inforrm.wordpress.com

Part 3 - the future of privacy

For a wide-ranging discussion of the issues raised in this part of the lecture, see *The Future of Privacy* (Ustaran, 2013)

In relation to the impact of technological change on professionals and other knowledge workers, see *The Future of the Professions* (Susskind & Susskind, 2015). A somewhat different perspective is provided by *You are not a Gadget* (Lanier, 2011), and *Deep Work* (Newport, 2016).