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**THIRD COMMITTEE OF THE GENERAL**

**ASSEMBLY**

**COMMITTEE STUDY GUIDE**

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# WELCOMING MESSAGE BY THE BOARD



## **Chair**

### **Mareva Chatzitheodorou**

Dear delegates,

Taking up the role of a diplomat and efficiently responding to current issues is undeniably no easy task. Nevertheless, hopefully, this study guide will not only provide you with the necessary data and information to start your research and get involved in the issue preparing yourselves for the upcoming debate, but also, spark your interest and get you excited for the conference, which is definitely most promising. I urge you to take facts in this guide under serious consideration and deal with the issue with all due respect to your country's policy. Should you have any questions, do not hesitate to contact us.



## **Co-Chair**

### **Eleftheria Karampelia**

Honorable delegates,

I am more than proud to welcome you to the the 3rd UNGA Committee -SOCHUM- of Fredmun 2017! I am Eleftheria Karampelia, graduate of the Law school of the National and Kapodistrian University of Athens, and I will be serving as your Co-chair, along with Ms. Mareva Chatzitheodorou. Among with the agenda items of our Committee social, humanitarian and human rights issues concerning all human beings are included. The advancement of women, the protection of children and the international drug control are only some of the fields falling under the Committee's jurisdiction. The fundamental right to privacy that is undoubtedly questioned in our era due to the rapid development of the technology and the repulsive phenomenon of human trafficking are to be discussed. Ambassadors, it is your responsibility to express your country's policy on these issues, to use your diplomatic skills, to be open to new ideas and propose innovative action plans. In other words, do your best because the whole humanity needs you! I am looking forward to being part of this procedure. See you in Cyprus!

## **INTRODUCTION TO THE COMMITTEE**

The Social, Humanitarian and Cultural Committee<sup>1</sup> (SOCHUM) or in other words the Third Committee of the General Assembly of the United Nations is tasked with a broad mandate regarding social, humanitarian and human rights issues that affect people all around the world. The committee offers the perfect opportunity for delegates to deal with current issues that affect nations and people on a social level. An important part of the work of the Committee will focus on the examination of human rights questions. The Committee also discusses questions relating to the advancement of women, the protection of children, indigenous issues, the treatment of refugees, the promotion of fundamental freedoms through the elimination of racism and racial discrimination, and the right to self-determination. The Committee also addresses important social development questions, such as issues related to youth, family, ageing, persons with disabilities, crime prevention, criminal justice, and international drug control.

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<sup>1</sup>Un.org. (2017). *UN General Assembly - Third Committee - Social, Humanitarian & Cultural*. [online] Available at: <http://www.un.org/en/ga/third/> [Accessed 1 Oct. 2017].

## **Topic B: The right to privacy in the digital era**

## INTRODUCTION TO THE TOPIC

Digital communications technologies have become part of the very fabric of our everyday life. Information technology (IT) innovations are importantly improving real-time communication and information-sharing.

At the same time, advancements in information communication technology have become an integral part of real-time communication and information-sharing. By improving access to information and facilitating global debate, they foster democratic participation. By amplifying the voices of human rights defenders and helping to expose abuses, digital communication technologies result in improved enjoyment of human rights.

Nevertheless, it has become clear that these new technologies are vulnerable to electronic surveillance and interception. Recent surveys have revealed how new technologies are being covertly developed, often to facilitate the aforementioned practices<sup>2</sup>.

In the digital era, communications technologies have also enhanced the capacity of Governments, enterprises and individuals to conduct surveillance, interception and data collection<sup>3</sup>. As noted by the Special Rapporteur on the right to freedom of expression and opinion, technological advancements mean that the State's effectiveness in conducting surveillance is no longer limited by scale or duration. Declining costs of technology and data storage have eradicated financial or practical disincentives to conducting surveillance. Member States are now capable to conduct simultaneous, and broad-scale surveillance in a more efficient manner<sup>4</sup>.

In December 2013, the United Nations General Assembly adopted Resolution 68/167, which expressed deep concern about the negative impact that surveillance and interception of communications may have on human rights<sup>5</sup>. The United Nations General Assembly once again confirmed that human rights online have to be equally preserved offline, and it called upon all member states to respect the right to privacy

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<sup>2</sup>Anon, (2017). *The perception of economic risks arising from the potential vulnerability of electronic commercial media to interception*. [online] Available at: <http://aei.pitt.edu/46896/1/Development.of.Surveillance.Vol.5-5.pdf> [Accessed 21 Sep. 2017].

<sup>3</sup>Anon, (2017). *World Trends in freedom of expression and media development*. [online] Available at: <http://unesdoc.unesco.org/images/0023/002349/234933e.pdf> [Accessed 1 Oct. 2017].

<sup>4</sup>Human Rights Council. (2014). *The right to privacy in the digital age; Report of the Office of the United Nations High Commissioner for Human Rights*. [online] Available at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37\\_en.pdf](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf) [Accessed 1 Oct. 2017].

<sup>5</sup>General Assembly. (2013). *Resolution adopted by the General Assembly on 18 December 2013 [on the report of the Third Committee (A/68/456/Add.2)]*. [online] Available at: <https://ccdcoe.org/sites/default/files/documents/UN-131218-RightToPrivacy.pdf> [Accessed 1 Oct. 2017].

concerning digital correspondence. Furthermore, the General Assembly invited all member states to review their procedures and legal framework related to communications surveillance and collection of personal data. It further acknowledged the need for members to monitor the effective implementation of their obligations under international human rights law<sup>6</sup>.

As General Assembly's resolution 68/167 recalled, international human rights law provides the universal framework, according to which any interference in individual privacy rights should be assessed<sup>7</sup>. Deep concerns have been expressed due to the fact that policies and practices, which exploit the vulnerability of digital communications technologies to electronic surveillance and interception, have been presented. Incidents of overt and covert digital surveillance have proliferated around the world, while governmental mass surveillance seems to be a dangerous habit rather than an exceptional measure<sup>8</sup>.

## **DEFINITION OF KEY TERMS**

What is the right to privacy we seek to protect? This does not constitute a simple question, since many answers may be given due to the fact that it includes social, political, cultural, humanitarian and psychological aspects.

In the following paragraphs, fundamental information on key terms that are relevant to the topic can be found. Its significance should be underlined, since argumentation of representatives of member states can be based on them.

### *Internet law*

It is a relatively new branch of law that has been developed in accordance with the development of the internet culture and the ever so increasing importance of internet for businesses. Internet Law -also known as Cyber Law- pertains to conduct the use of the Internet, as well as encompassing aspects of cybercrime, electronic commerce, freedom of expression, intellectual property rights, conflicting territorial jurisdiction, choice of law, and privacy rights<sup>9</sup>.

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<sup>6</sup>Human Rights Council. (2014). *The right to privacy in the digital age; Report of the Office of the United Nations High Commissioner for Human Rights*. [online] Available at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37\\_en.pdf](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf) [Accessed 1 Oct. 2017].

<sup>7</sup>Ibid.

<sup>8</sup>Rm.coe.int. (2017). *Cite a Website - Cite This For Me*. [online] Available at: <https://rm.coe.int/factsheet-on-mass-surveillance-corrected-and-final-rev2august2017/1680736031> [Accessed 1 Oct. 2017].

<sup>9</sup>van den Hoven, J., Blaauw, M., Pieters, W. and Warnier, M. (2017). *Privacy and Information Technology*. [online] Plato.stanford.edu. Available at: <https://plato.stanford.edu/entries/it-privacy/>

## *Media Law*

It is a legal field that relates to legal regulation of the telecommunications industry, information technology, broadcasting, advertising, the entertainment industry, censorship, internet and online services. It should be underlined that amongst others this field includes contract law and intellectual property law<sup>10</sup>.

## *Protection of personal data*

It is a concept that was present long before the development of internet. There are several directives and regulations that are relevant to this area in the context of the United Nations. Whilst some of them having a broader scope, others are more specific (e.g. Regulation on the protection of individuals regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data).

One of the most commonly used definitions is one presented in the Data Protection Act 1998, which is a United Kingdom Act of Parliament designed to protect personal data stored on computers or in an organised paper filing system. It follows the EU Data Protection Directive 1995 protection, processing and movement of data. Individuals have legal rights to control information about themselves. The definition of personal data is data relating to a living individual who can be identified

- from that data or
- from that data and other information in the possession of, or is likely to come into the possession of, the data controller

Sensitive personal data concerns the subject's race, ethnicity, politics, religion, trade union status, health, sex life or criminal record<sup>11</sup>.

## *The right to privacy*

It is a fundamental principle of various legal traditions which may restrain both government and private party action that threatens privacy of individuals. Over 150 national constitutions mention this right. **Right to privacy** has come a long way from being defined as "a right to be left alone", to the liberty of personal autonomy and a right which warrants limited access to information that are deemed personal. Right to privacy is a very broad concept. It may be supported that right to be forgotten acts as a protection mechanism of right to privacy. The right to privacy could be defined

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[Accessed 1 Oct. 2017].

<sup>10</sup>Ibid.

<sup>11</sup>Legislation.gov.uk. (2017). *Data Protection Act 1998*. [online] Available at: <http://www.legislation.gov.uk/ukpga/1998/29/contents> [Accessed 1 Oct. 2017].



as the right of a person to be free from intrusion into or publicity concerning matters of a personal nature<sup>12</sup>.

### *Public interest*

It can be defined as welfare of the general public (in contrast to the selfish interest of a person, group, or firm), in which society has a stake and which warrants recognition, promotion, and protection by the government and its agencies. Principle of proportionality is sometimes used in a specific case to determine whether private interest of an individual should prevail, or whether public interest is more important<sup>13</sup>.

### *Freedom of expression*

It includes any act of seeking, receiving and imparting information or ideas, regardless of the action performed. Freedom of speech has a narrower scope. It could be defined as a right to communicate one's opinions and ideas without fear of government retaliation or censorship. There are several common limitations such as libel, slander, public security and hate speech. Freedom of speech is of vital importance for modern societies given their effect on public opinion, while it constitutes a necessary condition for a democratic society<sup>14</sup>.

### *Direct public regulation*

Legislation directly determining what is allowed and what is prohibited; it can be reached through the general comprehension of the connection of the physical world to the digital environment or through the establishment of new legal rules. Transparency, legal certainty and granting a moral approval to the protection of privacy constitute its advantages<sup>15</sup>.

### *Indirect public regulation*

Legislation creating incentives, either positive or negative – not directly determining

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<sup>12</sup>Merriam-webster.com. (2017). *Dictionary by Merriam-Webster: America's most-trusted online dictionary*. [online] Available at: <https://www.merriam-webster.com/> [Accessed 1 Oct. 2017].

<sup>13</sup>BusinessDictionary.com. (2017). *What is public interest? definition and meaning*. [online] Available at: <http://www.businessdictionary.com/definition/public-interest.html> [Accessed 1 Oct. 2017].

<sup>14</sup>Mill, John Stuart (1859). "Introductory". On Liberty (4th ed.). London: Longman, Roberts & Green (published 1869). paragraph 5.

<sup>15</sup>Google Books. (2017). *Privacy in the Digital Environment*. [online] Available at: [https://books.google.rs/books?id=yeVRrrJw-zAC&pg=PA1&dq=right+to+privacy+tel+aviv&hl=en&ei=ToIhTaWhEI-msQOizMWZCg&sa=X&oi=book\\_result&ct=result&redir\\_esc=y#v=onepage&q=right%20to%20privacy%20tel%20aviv&f=false](https://books.google.rs/books?id=yeVRrrJw-zAC&pg=PA1&dq=right+to+privacy+tel+aviv&hl=en&ei=ToIhTaWhEI-msQOizMWZCg&sa=X&oi=book_result&ct=result&redir_esc=y#v=onepage&q=right%20to%20privacy%20tel%20aviv&f=false) [Accessed 1 Oct. 2017].

what is prohibited; it provides private regulation with legal incentives. Such regulation does indeed address most of the disadvantages of public regulation, but it creates several problems due to privatizing public discretion<sup>16</sup>.

### *Private regulation*

It is achieved by market forces through technological solutions, privacy policies and contractual arrangements, by ethical codes, education and diffusion of social norms. Private regulation maintains the freedom typical of the digital environment, but is problematic since it privatizes public discretion, delegating it to private bodies with interest that are not transparent<sup>17</sup>.

### *Consent*

It is at the core of the right to privacy. In common speech, consent occurs when one person voluntarily agrees to the proposal or desires of another. Should somebody give his/her consent, the action concerned does not constitute a “violation of privacy”.<sup>18</sup>

## **HISTORY OF THE TOPIC**

Beginning with the Bill of Rights, ratified in 1791, the Founding Fathers of the United States of America “drafted amendments that cover a very limited scope of protection of personal space”, and certainly could not imagine the advances in technology that would take place hundreds of years later<sup>19</sup>.

The right to privacy dates back farther than 1890, when Supreme Court Justice Louis Brandeis penned *The Right to Privacy*: “In the very early times, the law gave remedy only for physical interference with life and property, for trespasses *vi et armis*” [by force and arms]<sup>20</sup>. However, nowadays, privacy has become a more complex issue than simply “physical interference”.

Starting with the first Resolution concerning this issue adopted in 2013, in reaction to the Snowden revelations, the UN’s approach has evolved from a largely political response to mass surveillance to addressing more complex challenges regarding data collection and the role of the private sector. The aforementioned developments have

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<sup>16</sup>Ibid.

<sup>17</sup>Ibid.

<sup>18</sup>Garner, Bryan (2011). *Black's Law Dictionary*. West Publishing Co. p. 726.

<sup>19</sup>Brumis, A. (2017). *The Right to Privacy in a Digital Age: Reinterpreting the Concept of Personal Privacy*. [online] Inquiries Journal. Available at: <http://www.inquiriesjournal.com/articles/1450/the-right-to-privacy-in-a-digital-age-reinterpreting-the-concept-of-personal-privacy> [Accessed 1 Oct. 2017].

<sup>20</sup>Ibid.

already brought about some important changes, including the establishment of a UN Special Rapporteur on the right to privacy.

In fact, concern about the human right to privacy initially escalated in the 1970s, when information technology was introduced on a large-scale throughout the world. In particular, Sweden, the United States of America, Germany, and France were some of the first Member States to propose legislation relating to data protection<sup>21</sup>. Some of the most important international documents that came out of these national legislations are:

- the Universal Declaration of Human Rights (A/RES/217 A (III));
- International Covenant on Civil and Political Rights, 1966;
- Organization of American States. American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32), 1969, Access Policy Team;
- Individuals with regards to the Automatic Processing of Personal Data (1981), which resulted from the Council of Europe "Guidelines Governing the Protection of Privacy and Transborder Data Flows of Personal Data" (1980);
- League of Arab States, Arab Charter on Human Rights, 1994;
- Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14, 2010;
- Interference-Based Jurisdiction Over Violations of the Right to Privacy, UNICEF 2011;
- European Convention on Human Rights, Art. 8 ECHR, 2014.

## **LEGAL FRAMEWORK**

Recent years have shown that the right to privacy has been transformed from a much-neglected human rights issue to the focus of multiple UN General Assembly and Human Rights Council Resolutions.

The right to informational privacy has been recognized in international law a long time ago. Yet the combination of rapidly evolving digital technologies, expanding use of those technologies by people all over the world, and aggressive collection of personal information by many States has led to a substantial and rapid erosion of privacy rights—especially rights in one's personal information.

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<sup>21</sup>European Parliament. (2013). *National programmes for mass surveillance of personal data in EU Member States and their compatibility with EU Law*. [online] Available at: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493032/IPOL-LIBE\\_ET%282013%29493032\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493032/IPOL-LIBE_ET%282013%29493032_EN.pdf) [Accessed 1 Oct. 2017].

According to Article 12 of the Universal Declaration of Human Rights, “*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks*”.<sup>22</sup> In other words, the “right to privacy” is the right of a person to be free from intrusion into or publicity concerning matters of a personal nature<sup>23</sup>. Individuals, as citizens and as consumers should have this fundamental right protected, thus meaning that there should be legislation, which will protect each person and his/her information from abuse. Data protection is about safeguarding the fundamental right to privacy, which is enshrined in international and regional laws and conventions, as stated above.

Interfering with an individual’s right to privacy is only allowed under international human rights law, if it is neither arbitrary nor unlawful. Interfering with an individual’s right to privacy, which would be permitted according to national law, is “unlawful”, if the said national law is in conflict with the clauses of the International Covenant on Civil and Political Rights<sup>24</sup>. This concept is intended to make sure that even interference allowed by law should correspond to provisions and objectives of the Covenant and should be reasonable in certain situations.

The International Covenant on Civil and Political Rights, which has been ratified by 167 States, provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. It further states that “Everyone has the right to the protection of the law against such interference or attacks.”<sup>25</sup>

Paragraph 2 of article 17 of the International Covenant on Civil and Political Rights explicitly states that everyone has the right to the protection of the law against unlawful or arbitrary interference with their privacy. “*Accessibility*” requires not only that the law is published, but that it is sufficiently precise to enable the affected person to regulate his or her conduct, with foresight of the consequences that a given action may entail. The State must ensure that any interference with the right to privacy, family, home or correspondence is authorized by laws that (a) are publicly accessible; (b) contain provisions that ensure that collection of, access to and use of

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<sup>22</sup>Un.org. (2017). *Universal Declaration of Human Rights*. [online] Available at: <http://www.un.org/en/universal-declaration-human-rights/> [Accessed 1 Oct. 2017].

<sup>23</sup>Merriam-webster.com. (2017). *Legal Definition of RIGHT OF PRIVACY*. [online] Available at: <https://www.merriam-webster.com/legal/right%20of%20privacy> [Accessed 1 Oct. 2017].

<sup>24</sup>The Centre for Internet and Society. (2017). *Privacy & Media Law*. [online] Available at: <https://cis-india.org/internet-governance/blog/privacy/privacy-media-law> [Accessed 1 Oct. 2017].

<sup>25</sup>Ohchr.org. (2017). *OHCHR | Press Conference on the right to privacy in the digital ageUN High Commissioner for Human Rights Navi Pillay*. [online] Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14874> [Accessed 1 Oct. 2017].

*communications data are tailored to specific legitimate aims; (c) are sufficiently precise, specifying in detail the precise circumstances in which any such interference may be permitted, the procedures for authorizing, the categories of persons who may be placed under surveillance, the limits on the duration of surveillance, and procedures for the use and storage of the data collected; and (d) provide for effective safeguards against abuse”.*<sup>26</sup>

In addition, the European Convention on Human Rights (ECHR), whose many articles -especially those referring to the Human Rights- have obtained a customary nature, is widely accepted not only as a regional source of law, but also as an international one. Despite the fact that it was drafted in 1950, when technology had not entered the everyday life as intensively as now, the fundamental right of personal privacy could not be overlooked. Thus, according to article 8 paragraph 1 of the Convention “everyone has the right to respect for his private and family life, his home and his correspondence”.<sup>27</sup> It is extremely difficult for freedoms of this paragraph to be limited and enumerated, as each of them precludes many aspects of the protected human activities.<sup>28</sup> What they have in common is that they do not be of a static nature and are interpreted by the European Court of Human Rights as widely as possible, in order to cover the needs of modern society.<sup>29</sup>

The cornerstone of this article is its binary nature. More specifically, the State has two obligations to fulfill. On the one hand, it has to abstain from any act that would violate the rights mentioned above. On the other hand, it has to undertake positive measures, in order to ensure that the protection of these freedoms is guaranteed and will be respected by individuals, as well. The latter was highlighted in the case of X and Y v. Netherlands that was brought before the European Court of Human Rights.<sup>30</sup>

The legal standards that are used to determine personal privacy violations are considered “old” for the current technology today. “*Applying old rules to new media does not make sense as a policy matter. It would prevent society from reaping the full rewards of new communications technologies*” (Shemtob, 2011, pg. 417). At the same time, courts are expectantly struggling when there is a need to apply old laws to new technology. “*Courts and lawmakers have struggled to determine whether and to what degree personal information disclosed on social media is private under*

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<sup>26</sup>Ohchr.org. (2017). *OHCHR | International Covenant on Civil and Political Rights*. [online] Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> [Accessed 1 Oct. 2017].

<sup>27</sup>Anon, (2017). *European Convention on Human Rights*. [online] Available at: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) [Accessed 1 Oct. 2017].

<sup>28</sup>M. Karavias in L. A. Sisilianos, “European Convention on Human Rights”, *Nomiki Vivliothiki*, 2013, p. 362

<sup>29</sup>M. Karavias in L. A. Sisilianos, “European Convention on Human Rights”, *Nomiki Vivliothiki*, 2013, p. 312

<sup>30</sup>ECHR, X and Y v. Netherlands, 26/03/1985, par. 23

*traditional tort remedies and online agreements*” (Hartzog, 2013, pg. 50). As modern times are characterized by constant evolutions, it is more than profound that that old laws should be reevaluated by new ones always depending on the case.

Law should be redefined, as society evolves and technology advances. As Brandeis stated over a century ago: *“That individuals shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the new demands of society,”* (Brandeis, 1890).

As far as the protection of personal data through legislation is concerned, General Data Protection Regulation<sup>31</sup> in Europe ensures that new privacy rights are being established, such as the right to be forgotten online. According to the Regulation people have the right to request that companies erase their personal data in certain circumstances, for example when it is no longer needed for the initial purposes for which it was collected or when its owner withdraws their agreement.

Nevertheless, privacy concerns are not to be addressed by simple solutions. In the 21st century, as computer technology advances, substantial privacy issues will continue to exist and arise every single day. Personal information often leak to the public via internet, thus individuals’ privacy is being violated. The challenge of protecting personal information is compounded by the increasing reliance upon technology and more specific digital data<sup>32</sup>. For instance, like every other document or record, medical records are becoming from largely paper-based systems to electronic health records. Ultimately, a person’s electronic health records usually include all of his/her medical information from "cradle to grave." This fact further stresses out the importance of protecting personal data.

To sum up, even with the adoption of national and international legal provisions, violations of privacy nowadays remain a major concern in every state. In some cases, national law neglects technological advancements and as a result, there are significant legal gaps in the field of protection. In some other countries, law enforcement and specific agencies have been given significant exemptions<sup>33</sup>. However, it is more than evident that there is a pressing need for vigilance in ensuring the compliance of any

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<sup>31</sup>EU GDPR Portal. (2017). *Home Page of EU GDPR*. [online] Available at: <http://www.eugdpr.org/> [Accessed 1 Oct. 2017].

<sup>32</sup>Privacyrights.org. (2017). *Privacy Today: A Review of Current Issues | Privacy Rights Clearinghouse*. [online] Available at: <https://www.privacyrights.org/blog/privacy-today-review-current-issues#medicalrecords> [Accessed 1 Oct. 2017].

<sup>33</sup>Boatright, J.R., 2012. *Values and ethics for the 21st Century*, Bilbao: BBVA.

surveillance policy or practice with international human rights law, including the right to privacy, through the development of effective safeguards against abuses.



## **DISCUSSION OF THE TOPIC**

Due to the creation of the Internet and social media, the concept of personal privacy is different than it was a century ago, or even forty years ago.

It has been noted that the right to privacy is constantly evolving due to social and technological developments. To better handle these changes and define the contours of the right, there is a need to explore the underlying theoretical justifications of privacy. The more solid theoretical perception there is, the more answers will arise to questions raised in this Study Guide.

When discussing privacy, it should be pointed out that the technological developments have created a new field, both on the legal and non-legal side. While technological advancements have absolutely altered the rules of the game, legal systems, unfortunately lag behind. Is it possible to efficiently protect privacy in the digital era? All these questions lead to the obvious debate about the scope of the right of privacy<sup>34</sup>.

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<sup>34</sup>Web.mit.edu. (2017). [online] Available at: <http://web.mit.edu/drb/Public/PhotoThesis/> [Accessed 1 Oct. 2017].

Since the global surveillance disclosures of 2013, the inalienable human right to privacy has been a subject of international debate. There is now a question as to whether the right to privacy can co-exist with the current capabilities of government agencies to access and virtually analyse every detail of an individual's life. A major question is whether or not the right to privacy needs to be forfeited as part of the social contract, in order to bolster defense against supposed terrorist threats<sup>35</sup>.

In general, the right to privacy is most often protected by statutory law, with Health Information Portability and Accountability Act (HIPAA) protecting an individual's health information, and Federal Trade Commission (FTC) "enforcing the right to privacy in various privacy policies and privacy statements". Similarly, the Privacy Act of 1974 "prevents unauthorized disclosure of personal information held by the federal government"<sup>36</sup>.

As with any basic the right to privacy is not absolute. It would appear that there is no dispute that it would be acceptable to have certain violations of privacy, in order to maintain a proper balance between the right to privacy and other important interests. However, where do we cross the line?

The right to privacy is essential, in order to keep one's physical and mental health, by creating a space where he or she does not have to confront others, act in accordance with accepted norms of fulfill social roles, a space where one can be himself/herself<sup>37</sup>. However, extending the scope of the right to privacy has already raised issues on international level.

Privacy is both an important and controversial topic in our ever-evolving, technologically driven, digital world<sup>38</sup>. As far as public relations professionals are concerned, it can have a profound impact on public relations practice. Thanks to the Internet and social media personal privacy has been revolutionized and public figures,

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<sup>35</sup>prezi.com. (2017). *Right to Privacy and Freedom of Press: A Closer Look*. [online] Available at: <https://prezi.com/6lllep6godu/right-to-privacy-and-freedom-of-press-a-closer-look/> [Accessed 1 Oct. 2017].

<sup>36</sup>Brumis, A. (2017). *The Right to Privacy in a Digital Age: Reinterpreting the Concept of Personal Privacy*. [online] Inquiries Journal. Available at: <http://www.inquiriesjournal.com/articles/1450/the-right-to-privacy-in-a-digital-age-reinterpreting-the-concept-of-personal-privacy> [Accessed 1 Oct. 2017].

<sup>37</sup>Google Books. (2017). *Privacy in the Digital Environment*. [online] Available at: [https://books.google.rs/books?id=yeVRrrJw-zAC&pg=PA1&dq=right+to+privacy+tel+aviv&hl=en&ei=ToIhTaWhEI-msQOizMWZCg&sa=X&oi=book\\_result&ct=result&redir\\_esc=y#v=onepage&q=right%20to%20privacy%20tel%20aviv&f=false](https://books.google.rs/books?id=yeVRrrJw-zAC&pg=PA1&dq=right+to+privacy+tel+aviv&hl=en&ei=ToIhTaWhEI-msQOizMWZCg&sa=X&oi=book_result&ct=result&redir_esc=y#v=onepage&q=right%20to%20privacy%20tel%20aviv&f=false) [Accessed 1 Oct. 2017].

<sup>38</sup>Brumis, A. (2017). *The Right to Privacy in a Digital Age: Reinterpreting the Concept of Personal Privacy*. [online] Inquiries Journal. Available at: <http://www.inquiriesjournal.com/articles/1450/the-right-to-privacy-in-a-digital-age-reinterpreting-the-concept-of-personal-privacy> [Accessed 1 Oct. 2017].



as well as private figures are becoming increasingly difficult to discern<sup>39</sup>. Nevertheless, until legal framework is modified, privacy violations in Internet are hard to be determined<sup>40</sup>.

Furthermore, it should be pointed out that the right of privacy may conflict with freedom of speech resulting in preventing one's expression of himself/herself, if it means violating privacy of someone else. Compromising freedom of speech also leads to the freedom of research being compromised, since the right to privacy certainly places limitation on the ability to gather information, use, and adapt it<sup>41</sup>.

Last but not least, public's right to know what is said/done by others, whose actions affect it, is also highly compromised by the right to privacy. This is based on the perspective that an individual may form an opinion on matters that surround him, only if he is given a wide variety of information, which necessarily include information based on other individuals<sup>42</sup>. Thus, in some cases, invading one's private domain is considered to be part of the price he has to pay for being a part of society. Absolute protection of the right to privacy ignores the fact that individuals living in a society are co-dependent, a situation which justifies disclosure of private information in the public interest – while the public is substantially benefited by such disclosure<sup>43</sup>.



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<sup>39</sup>Ibid.

<sup>40</sup>Ibid.

<sup>41</sup>Rainie, L., Anderson, J. and Albright, J. (2017). *The Future of Free Speech, Trolls, Anonymity and Fake News Online*. [online] Pew Research Center: Internet, Science & Tech. Available at: <http://www.pewinternet.org/2017/03/29/the-future-of-free-speech-trolls-anonymity-and-fake-news-online/> [Accessed 1 Oct. 2017].

<sup>42</sup>Institute of Medicine (US) Committee on Regional Health Data Networks; Donaldson MS, Lohr KN, editors (1994) - *Health Data in the Information Age: Use, Disclosure, and Privacy*

<sup>43</sup>Scholarship.law.gwu.edu. (2017). *Cite a Website - Cite This For Me*. [online] Available at: [http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2094&context=faculty\\_publications](http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2094&context=faculty_publications) [Accessed 1 Oct. 2017].

## BLOC POSITIONS

Almost all countries recognize the right of privacy explicitly in their Constitution. At a minimum, these provisions include rights of inviolability of the home and secrecy of communications. Most recently-written Constitutions, such as South Africa's and Hungary's include specific rights to access and control one's personal information<sup>44</sup>.

The regulatory model adopted by Europe, Australia, China, New Zealand, Central and Eastern Europe and Canada is that of a *public official* who enforces a comprehensive data protection law<sup>45</sup>. This official, known variously as a Commissioner, Ombudsman or Registrar, monitors compliance with the law and conducts investigations into alleged breaches<sup>46</sup>. It is also the model favored by Europe to ensure compliance with its new data protection regime. However, the powers of the commissions vary greatly and many report a serious lack of resources to adequately enforce the laws<sup>47</sup>.

### *United States of America*

Some countries, such as the United States have opted for specific *sectoral laws* governing instead of general rules regarding this subject. In order to achieve this, a range of legal mechanisms is needed. The disadvantage of this model is that it requires constant synchronization of the legislative documents with the development of technology.

In limiting individual privacy and enhancing the capability of the police and intelligence services the United States have regularly risen to the top. Their campaign has had two legal strategies. *The first made it mandatory for all digital telephone switches, cellular and satellite phones and all developing communication technologies to build in surveillance capabilities; the second sought to limit the dissemination of software that provides encryption, a technique which allows people to scramble their communications and files to prevent others from reading them*<sup>48</sup>.

Another way of reaching full Data protection should certainly be self-regulation, in which companies and industry bodies establish codes of practice. However, the outcomes of these attempts have not been the expected ones, with little or no evidence that the aims of the codes are regularly fulfilled. This is currently the policy promoted by the governments of United States, Singapore and Australia<sup>49</sup>.

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<sup>44</sup>Gilc.org. (2017). *Privacy and Human Rights - Overview*. [online] Available at: <http://gilc.org/privacy/survey/intro.html> [Accessed 1 Oct. 2017].

<sup>45</sup>Ibid.

<sup>46</sup>Ibid.

<sup>47</sup>Ibid.

<sup>48</sup>Banisar and Davies, *The Code War, Index on Censorship*, January 1998.

<sup>49</sup>Gilc.org. (2017). *Privacy and Human Rights - Overview*. [online] Available at: <http://gilc.org/privacy/survey/intro.html> [Accessed 1 Oct. 2017].

## European Union

Historically, the EU has played a crucial role in driving the development and introduction of national data protection law in a number of legal systems, where such legislation was not previously in place. A 1995 EU Directive on the protection of individuals regarding the processing of personal data and the free movement of such data was a vital instrument in this respect<sup>50</sup>.

Data protection is a fundamental right enshrined in Article 8 of the EU Charter of Fundamental Rights, which is distinct from respect for private and family life contained in Article 7 of the Charter. This feature sets the EU Charter apart from other major human rights documents which, for the most part, treat the protection of personal data, as an extension of the right to privacy<sup>51</sup>.

The right to be forgotten is a concept discussed and put into practice in the European Union (EU) and Argentina since 2006<sup>52</sup>. The issue has arisen from desires of individuals to "determine the development of their life in an autonomous way, without being perpetually or periodically stigmatized as a consequence of a specific action performed in the past."<sup>53</sup>

There has been controversy about the practicality of establishing a right to be forgotten to the status of an international human right in respect to access to information, due in part to the vagueness of current rulings attempting to implement such a right. In Article 12 of the Directive 95/46/EC the EU gave a legal base to internet protection for individuals. In 2012, the European Commission disclosed a draft European Data Protection Regulation to supersede the directive, which includes specific protection in the right to be forgotten in Article 17.

There are concerns about its impact on the right to freedom of expression, its interaction with the right to privacy, and whether creating a right to be forgotten would decrease the quality of the Internet through censorship and as rewriting of

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<sup>50</sup>Anon, (2017). *Directive 95/46/EC of the European Parliament and of the Council of On the Protection of Individuals with regard to the processing of personal data and on the free movement of such data* [online] Available at: [http://ec.europa.eu/justice/policies/privacy/docs/95-46-ce/dir1995-46\\_part1\\_en.pdf](http://ec.europa.eu/justice/policies/privacy/docs/95-46-ce/dir1995-46_part1_en.pdf) [Accessed 1 Oct. 2017].

<sup>51</sup>Fra.europa.eu. (2017). *Information society, privacy and data protection | European Union Agency for Fundamental Rights*. [online] Available at: <http://fra.europa.eu/en/theme/information-society-privacy-and-data-protection> [Accessed 1 Oct. 2017].

<sup>52</sup>Sreeharsha, V. (2017). *Google and Yahoo Win Appeal in Argentine Case*. [online] Nytimes.com. Available at: <http://www.nytimes.com/2010/08/20/technology/internet/20google.html> [Accessed 1 Oct. 2017].

<sup>53</sup>Mantelero, A. (2017). *The EU Proposal for a General Data Protection Regulation and the Roots of the 'Right to Be Forgotten'*. [online] Papers.ssrn.com. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2473151](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2473151) [Accessed 1 Oct. 2017].

history, and opposing concerns about problems such as references to petty crimes committed many years ago indefinitely remaining an unduly prominent part of a person's Internet footprint<sup>54</sup>.



### **ACTIONS THAT HAVE BEEN ALREADY TAKEN**

Since the adoption of Resolution 20/8, which focuses on freedom of expression, the UN has passed a number Resolutions reaffirming that human rights should be protected online with a broader scope<sup>55</sup>. For example, Resolutions 21/16 and 24/5 on the rights to freedom of peaceful assembly and association reminds “States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline.”<sup>56</sup>

HRC Resolution 22/6 on protecting human rights defenders recognizes “new forms of communication, including the dissemination of information online and offline, can serve as important tools for human rights defenders.”<sup>57</sup> Resolution 23/2 on the role of freedom of opinion and expression in women’s empowerment

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<sup>54</sup>Mayes, T. (2017). *We have no right to be forgotten online* | Tessa Mayes. [online] the Guardian. Available at: <https://www.theguardian.com/commentisfree/libertycentral/2011/mar/18/forgotten-online-european-union-law-internet> [Accessed 1 Oct. 2017].

<sup>55</sup>Access Now. (2017). *"Digital rights and the UN": recent and upcoming UN resolutions - Access Now*. [online] Available at: <https://www.accessnow.org/digital-rights-and-the-un-recent-and-upcoming-un-resolutions/> [Accessed 1 Oct. 2017].

<sup>56</sup> Human Rights Council. (2014). *A/HRC/26/29 - Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*. [online] Available at: [http://www.ohchr.org/Documents/Issues/FAssociation/A-HRC-26-29\\_en.pdf](http://www.ohchr.org/Documents/Issues/FAssociation/A-HRC-26-29_en.pdf) [Accessed 1 Oct. 2017].

<sup>57</sup>Ohchr.org. (2017). *(A/68/53) Report of the Human Rights Council*. [online] Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/A\\_68\\_53\\_ENG.DOC](http://www.ohchr.org/Documents/HRBodies/HRCouncil/A_68_53_ENG.DOC) [Accessed 1 Oct. 2017].

calls upon all States to “promote, respect and ensure women’s exercise of freedom of opinion and expression, both online and offline, including as members of non-governmental organizations and other associations.”<sup>58</sup> HRC resolutions on the safety of journalists and civil society space also consider the internet-related dimensions of these issues<sup>59</sup>.

UN General Assembly in its 68th session has passed at least five Resolutions that, to varying extents, reinforce human rights online.

Perhaps most prominent among the internet-related resolutions was the 2013 Resolution on the right to privacy in the digital age (68/167), an initiative of Brazil and Germany, which aimed to address the issue of mass surveillance in the wake of Snowden revelations<sup>60</sup>. The Resolution asserted that “unlawful or arbitrary surveillance and/or interception of communications, as well as unlawful or arbitrary collection of personal data, are highly intrusive acts, that violate the rights to privacy and to freedom of expression and may contradict the tenets of a democratic society”<sup>61</sup>.

Another Resolution passed at UNGA late last year, related to women human rights defenders (68/181)<sup>62</sup>. The Resolution managed to voice growing concern on critical elements of violence against women online, including “technology-related violations, discrimination and violence against women, such as online harassment, violation of privacy, censorship and the hacking of e-mail accounts<sup>63</sup>. The Resolution called upon governments to prevent violations and abuses against human rights defenders, including through practical steps to prevent threats, harassment and violence against women human rights defenders, including online abuses<sup>64</sup>.

UNGA also adopted Resolution 68/163 on the safety of journalists and the issue of impunity, which acknowledges online aspects of journalism. The Resolution closely echoed the HRC Resolution on the same issue, elevating it in stature within the UN system<sup>65</sup>. The aforementioned Resolutions were all passed by the General

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<sup>58</sup>Ibid.

<sup>59</sup>Ibid.

<sup>60</sup>Access Now. (2017). *"Digital rights and the UN": recent and upcoming UN resolutions - Access Now*. [online] Available at: <https://www.accessnow.org/digital-rights-and-the-un-recent-and-upcoming-un-resolutions/> [Accessed 1 Oct. 2017].

<sup>61</sup>Ibid.

<sup>62</sup>ISHR. (2017). *UN adopts landmark resolution on Protecting Women Human Rights Defenders*. [online] Available at: <http://www.ishr.ch/news/un-adopts-landmark-resolution-protecting-women-human-rights-defenders> [Accessed 1 Oct. 2017].

<sup>63</sup>Ibid.

<sup>64</sup>Ibid.

<sup>65</sup>Article19.org. (2017). *UN HRC: Resolution on Safety of Journalists Breaks New Ground... · Article 19*. [online] Available at: <https://www.article19.org/resources.php/resource/38504/en/un-hrc:->

Assembly's Third Committee, as it is the relevant UNGA committee for human rights. UNGA's First Committee, which deals with disarmament issues, has passed an annual resolution for the past few years dealing with "developments in the field of information and telecommunications in the context of international security", or cybersecurity. Resolution (68/243) for the first time noted the importance of respect for human rights and fundamental freedoms in the use of information and communications technologies<sup>66</sup>.

The increasingly common references to internet rights in international fora signals that the application of human rights standards online is an emerging norm, if not already accepted by all parties. Just like offline rights, internet rights are universal, indivisible, interdependent, and interrelated. Therefore, governments should not favor freedom of expression over privacy, for example, in the name of political convenience<sup>67</sup>.

### **QUESTIONS TO BE ADDRESSED**

- How does the right to privacy affect other basic rights? (e.g. freedom of speech)
- Which actions have been taken by the UN concerning this matter?
- How can the UN promote the right to privacy?
- With whom can the UN General Assembly (UNGA) work, in order to achieve the goal set out in the previous question?
- How can prevention of the violation of the right to privacy be achieved?
- Under which circumstances may the right of privacy be violated?
- Which are the essential measures to fill legal gaps in the field of the protection of the right to privacy?

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resolution-on-safety-of-journalists-breaks-new-ground [Accessed 1 Oct. 2017].

<sup>66</sup>Un.org. (2017). *Developments in the field of information and telecommunications in the context of international security* – UNODA. [online] Available at: <https://www.un.org/disarmament/topics/informationsecurity/> [Accessed 1 Oct. 2017].

<sup>67</sup>Access Now. (2017). *"Digital rights and the UN": recent and upcoming UN resolutions - Access Now*. [online] Available at: <https://www.accessnow.org/digital-rights-and-the-un-recent-and-upcoming-un-resolutions/> [Accessed 1 Oct. 2017].



## CONCLUSION

Taking all the aforementioned into serious consideration, there is a number of important practical challenges to the promotion and protection of the right to privacy in the digital age<sup>68</sup>. Consequently, efficient actions are mandatory, in order to achieve the desired compliance of privacy policies including surveillance practices with the principles of international human rights law. One of such steps would surely be the review of national laws by Member States, including policies and practices to ensure full conformity with international human rights law. By taking these preliminary steps, states should be able to notice and correct any existing irregularities. Building upon the initial exploration of some of the issues included in the present Study Guide, there is a need for further discussion and in-depth study of matters relating to the effective implementation of law, procedural safeguards, effective oversight, and remedies.

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<sup>68</sup>Ohchr.org. (2014). *Cite a Website - Cite This For Me*. [online] Available at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-37\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-37_en.doc) [Accessed 1 Oct. 2017].

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