



# THE RIGHT TO PRIVACY, INFORMATIONAL PRIVACY AND THE RIGHT TO INFORMATION IN THE CYBERSPACE

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## Abstract:

The fact that it is possible to collect, store, distribute, reproduce, publish and make personal data available to a wide range of people in cyber space, developed a feeling of insecurity and lack of safety and protection. The aim of the paper is to make users of social networks and internet in general aware not to overestimate their power of having control over the information they have published via social networks, and to be aware of their technical ignorance and the possibilities of privacy settings of user profiles.

Privacy on the Internet consists of the right to personal information concerning their preservation, use, safety and displaying this personal information in the cyber space, as well as identification of information relating to particular website visitors. Information privacy includes information security, meaning that information society exists when each individual can decide how to dispose their personal data. When we talk about the right to privacy, we need to emphasise that the right to be informed must not affect the right to privacy.

## Keywords:

privacy, e-privacy, information privacy, right to be informed, Internet.

## 1. INTRODUCTION

The development of modern technology has endangered personal privacy in the virtual space. The fact that it is possible to collect, store, distribute, reproduce, publish and make personal data available to a wide range of people in cyber space, developed a feeling of insecurity and lack of safety and protection. A decade ago, while computer systems were just in a phase of development, all these data were transferred from the virtual space in a variety of digital media, making the "digital dossiers". The development of information technologies enabled the connection between different databases, which further increased the risk of endangering the privacy of their users.

With the usage of the Internet, transmission of digital data and information has become even easier. Initially, the "primitive" internet allowed users anonymity - the information was forwarded via IP address, so both the sender and the recipient could keep their anonymity. Today's "progressive" model of internet communication is entirely different and even more dangerous for the privacy of its users.

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## 2. THE PRIVACY OF SOCIAL NETWORK USERS

Social networks have created detail and comprehensive database of personal details from the lives of its users [1], and this database is daily complemented with increasing number of information that is public and accessible to all stakeholders of virtual interaction in cyber space. As soon as certain personal information is published on the Internet, it becomes public and available to anyone to read and further use, and the owner of the information loses control over their intimacy and published information. The users of social networks and internet in general usually overestimate their power of having control over the information they have published via social networks, because they are unaware of their technical ignorance and the possibilities of user profiles privacy settings.

Modern states have faced the problem how to balance the rights to privacy of individuals and the right of the public to be informed. Controversially, both rights form the foundations of a modern democratic society in which the state has the right to protect itself by restricting the right to privacy of an individual.

There are four main reasons for a possibility of violating the right to privacy on social networks [2]:

1. the imperfection of social network users, relating mainly to the imperfections of a man as a human being and their need to share their own privacy with other people and the lack of awareness that the privacy does not exist in cyber space, so once something gets published it goes public that very moment;
2. flaws in the software that social networks use, resulting in the lack of privacy protection mechanisms on social networks, thus making users' privacy unprotected from all direct malicious attacks, such as the theft of personal data, creation of fake profiles, etc.;
3. inadvertent disclosure of personal data: personal data on social networks can be reached by the method of exclusion (e.g. based on the year of graduation, we can conclude how old the user is, even though it is not written in the profile);
4. conflict of interest - most social networks gain financial benefits from variety of ads placed by an advertising agencies, which creates conflict of interest regarding collected personal data that advertising agencies can access; the users want their data inaccessible to people that are not marked as "friends" on the social network, while advertising

agencies want to come into possession of a large number of personal information in order to better and more easily sell their products or services.

Privacy can be defined as "a state of carefully limited access to personal data" [3]. Any behaviour different from those described above can result in privacy rights abuse and the collection of sensitive personal information about someone without their consent and knowledge that the personal information could be manipulated.

In electronic communications, privacy can be understood as "freedom from systematic observation, recording of activities and personal data, or the right of individuals to self-determine when, how and to what extent information about their communications can and should be available to others" [4]. In this sense, user's privacy can be violated in several ways: a decline in the zone of privacy (access, collection and processing), data abuse (making certain action on the basis of available information) and the interception and leveraging the information (profiling) [5].

## 3. PRIVACY OR INFORMATIONAL PRIVACY

The right to privacy is one of the fundamental human rights. It is recognized both on international and constitutional level, and it is incorporated both in public law and civil law provisions, obligatory to everyone (lat. *erga omnes*), protecting individuals from harassment by state/government authorities and from other individuals. As an opposite to the publicly available information, privacy involves secrecy and lack of harassment. It is referred to the private life of the individual, in which it is justified to expect peace and serenity, and non-interference with the intimacy. The right to privacy allows the individual to selectively show to other people as much as they want [6].

Privacy in electronic communications includes the collecting, processing and dissemination of information about users to third parties, whereby individuals who record and publish their activities and personal data, determine when, how and to what extent the information should and can be made available to others [7]. Some authors [8] define privacy as a complex concept, which consists of personal autonomy, democratic participation, managing its own identity and social coordination. The central point of this multidimensional structure of privacy right consists of the urge to retain personal data private and to prevent other people to interfere.

The term "privacy" is often used in everyday communication, as well as in different philosophical, political and legal discussions, but there is still no unique definition



or generally accepted meaning of the term. The concept of privacy has a well-known historical root in the works of Aristotle. He was the first one to try to define privacy as everything that is related to the family and individual, standing as opposite to political activities as "public property" [9]. Privacy is often defined as interest that has a strong moral value or as a moral or legal right of the individual that must be protected by society or law [10].

Privacy can be divided into spatial, communication and information privacy [11]. Spatial privacy refers to maintaining privacy in someone's home and other space in which people lead their own lives separately from the others. This type of privacy includes the respect of the right to have one's own space, both within home and family and in the workplace. Communication privacy refers to privacy of correspondence and other forms of communication with other people.

Information privacy is closely related to information technology development and refers to collecting personal data about internet users, managing these data and their further use. In a narrow sense, information privacy refers to a need of an individual, a group or an institution to independently decide when, how and what information about themselves they wish to cede to others [12]. In a broad sense, information privacy includes information security, meaning that information society exists when everyone can decide how to dispose their personal data, regarding their needs and community requirements [13]. Information privacy consolidates legal values of protecting the rights of an individual in society that have developed information technology and the concept of personal data, referred to as "e-privacy" [14].

The right to information privacy includes the right to be informed, the right to adequate use of personal data, the right to control these data, the right to correct published data and the right to use legal remedies and appeals [15]. The right to privacy, as an individual right, can be defined as a control, editing, managing and deletion of information about an individual, when the owner of the personal information decides so [16].

Despite the daily development of information technologies and new forms of potential abuse, Internet users expect that each information system has the capacity to reject attacks that can endanger system data. Also, the problem is that users voluntarily and on their own initiative publish a large number of their personal information in cyber space, without considering whether this information could be misused. The most common methods of disrespecting the right to privacy on the Internet is unauthorized access, collection and processing of personal

data, misuse of the collected data, interception of sent information, etc. However, according to a European Commission report on EU citizens' experience and perceptions of cyber security issues in 2012 [17], most respondents expressed that they have changed their behaviour when using the Internet by not giving their personal data or not opening e-mails that come from the unknown people and whose contents seem suspicious. Half of the respondents said that they had changed their password several times in the past year for security reasons, especially to increase security of personal data and financial transactions carried out via the Internet. One-third of the respondents said that they had at least once received an email that could be considered as an internet fraud, that they had been victims of identity theft attempt, hacking attempts or cyber violence or sexual harassment.

#### 4. THE RIGHT TO PRIVACY AND THE RIGHT TO BE INFORMED

The use of information and communication technologies spread to all areas of people's lives, their work, entertainment and many other private and business activities, so almost everything in society has become "online", starting from signing the contracts to committing criminal acts. Internet and other related technologies transformed the society in three specific areas: privacy, freedom of expression and free flow of information. Social changes in modern society in the field of information and communication technologies that started in 1970s reflected perception of a new phenomenon - information society. Information became an important element of freedom and the right to spread information, which to a large extent depended on the legitimacy and possibility of managing the collected data [18]. In the modern information society, technological progress allows processing, storage, accessibility and transfer of information in any form, regardless of distance, time and quantity. Even though there is no generally accepted definition of the term "information society", in the related literature there are three constitutional elements of the information society: information and knowledge; proliferation of information and communication technologies; access and use of information and communication technologies [19]. The information is the data that is used and has a certain effect or meaning to the recipient. For information to be useful, among other things, it must be accurate, correct, complete, simple, reliable and timely. Information or information flow is important both from social as well as the psychological and legal aspects. The right to public



information and the right to privacy are basic human rights guaranteed by both international and national legislation, primarily as constitutional rights.

When we talk about the right to privacy, we need to emphasise that the right to be informed must not affect the right to privacy. Legal regulation of these two rights should lead to their balance and adjustment. In some cases, there is a legitimate public interest to have access to certain information and legitimate interest of individual to be "left alone". In such cases, it is necessary to estimate what principle should be given priority, but in a way that the second principle affirms to the maximum possible extent.

## 5. CONCLUSION

The right to privacy as a fundamental human right has a special significance in the corpus of human rights. The international normative framework of the right to privacy consists of more international instruments: The Universal Declaration of Human Rights (1948) [20], International Covenant on Civil and Political Rights (1966) [21], European Convention on Human Rights - Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950) [22], Convention on the Rights of the Child (1989) [23], Resolution of the Parliamentary Assembly of the Council of Europe [24], Charter of Fundamental Rights of the European Union [25], EU Directive 95/46/EC [26], Directive of the European Parliament and Council Directive 97/66/EC [27], Directive on Privacy and Electronic Communications [28].

In the legislation of the Republic of Serbia, different dimensions of the right to privacy are guaranteed by: Constitution of the Republic of Serbia [29], Law on Personal Data Protection [30], Law on Free Access to Information of Public Importance [31], Law on Electronic Communications [32], Law on Public Information and Media [33], and provisions of the Criminal Code of the Republic of Serbia [34]. All these documents together form the overall regulatory framework for constitution and understanding of the right to privacy, but differ in application, interpretation and sanctioning. Protection of privacy rights at the international and national levels refers to the private sphere of life, family life, inviolability of the home and correspondence, honour and reputation of individuals.

In Serbia, the right to be informed is proclaimed in the Constitution of the Republic of Serbia and in the Law on Public Information and Media [35]. The two acts set limitations for the rights to privacy, freedom of expression

and the right to be informed in order to prevent disproportionate restriction. The Serbian Constitution guarantees the right to be informed (article 51), which means that everyone has the right to be accurately, completely and timely informed about all issues of public importance and that everyone, in accordance with the law, has the right to access information held by the state authorities and organizations entrusted with public authorisation.

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