

# PRIVACY AND THE MEDIA

ANDREW  
MCSTAY



*'A thoughtful and accessible survey of the privacy landscape.'*

danah boyd, FOUNDER OF DATA & SOCIETY

*'Timely and necessary. Essential reading.'*

GUS HOSEIN, PRIVACY INTERNATIONAL

*'An excellent companion for all students of this fascinating and crucial topic.'*

MIREILLE HILDEBRANDT, VRIJE UNIVERSITEIT BRUSSEL

*'A great introduction to informational privacy for students, privacy lawyers and information rights professionals.'*

IAIN BOURNE, INFORMATION COMMISSIONER'S OFFICE

*'Clearly and accessibly written ... a great resource.'*

HELEN KENNEDY, UNIVERSITY OF SHEFFIELD

Questions of privacy are critical to the study of contemporary media and society. In an increasingly interconnected world, it's more important than ever to understand how information about ourselves is being collected, transmitted, processed and mediated.

PRIVACY AND THE MEDIA equips you to do just that, giving a comprehensive overview of both the theory and practice of the topic in the twenty-first century. This book:

- Explores the foundational topics of journalism, the Snowden leaks and encryption by companies such as Apple.
- Considers commercial applications including behavioural advertising, big data and the role of platforms such as Google and Facebook.
- Introduces the role of the body with discussions of emotion, wearable media, peer-based privacy in social media and sexting.

PRIVACY AND THE MEDIA is not a polemic on privacy as 'good' or 'bad', but a call to assess the detail and potential implications of contemporary media technologies and practices. It is essential reading for students and researchers of digital media, digital politics, and the creative and cultural industries.

**ANDREW  
MCSTAY**

is an AHRC Early Career Research Fellow at the School of Creative and Media Studies, Bangor University.

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# PRIVATE AND THE MEDICAL

IN CONTEMPORARY



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# PRIVACY AND THE MEDIA

## PRAISE FOR *PRIVACY AND THE MEDIA*

*'Privacy and the Media* is a thoughtful survey of the privacy landscape. McStay reviews the intricate tensions and seeming contradictions to offer an accessible book for anyone curious about the contemporary debates in privacy.'

danah boyd, founder of Data & Society

*'The only book that addresses the full spectrum of the innovation-privacy dynamic, ranging from advertising to intelligence to wearables. It is timely and necessary; essential reading.'*

Gus Hosein, Privacy International

*'McStay's great achievement here is to confront many of the pertinent and complex questions about media and privacy in a style that is both authoritative and easy to read. He provides an excellent overview of the perennial debates and considers the implications on privacy of an increasingly data-driven media environment. His book will prove an excellent companion for all students of this fascinating and crucial topic.'*

Mireille Hildebrandt, Vrije Universiteit Brussel

*'This pleasingly accessible book tackles all the major questions that arise in a world whose lifeblood is our personal information: liberty, choice, transparency, control. McStay argues that privacy is "not about isolation, going off-grid or being a digital hermit". Rather, it is about managing our online lives and controlling how much others know about us. This book persuades me more than ever that privacy is a branch of ethics; it is concerned with the age-old relationship between the self and the other. It will serve as a great introduction to informational privacy, not just for media studies students and privacy lawyers, but for any information rights professional needing a deeper understanding of the subject.'*

Iain Bourne, Information Commissioner's Office

*'Clearly and accessibly written, this book is a great resource for anyone interested in the broad range of ways in which privacy and contemporary media are entangled and in the big picture of privacy-media relations today. It challenges us to take privacy seriously as a media – and mediation – issue. I will definitely be assigning it for my students.'*

Helen Kennedy, University of Sheffield

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# 1

## INTRODUCTION

In this book, *Privacy and the Media*, we will consider the nature of privacy and its relationships with modern media and networked communication. The aim is to use ideas about privacy to better understand the modern media environment, but also that through close assessment of media, organisations, technologies and people's uses of media, we will develop a better understanding of privacy. This is a purposefully varied book that examines journalism, the Snowden leaks, encryption, platforms such as Google, advertising, big data and machine learning, technologies sensitive to emotions, wearable body-trackers, and social media and sexting. The diversity of privacy matters in society today leads me to argue that, among a multitude of competing interests, privacy may very well be *the* critical topic of media and society today.

There are thousands of journal papers that address privacy, and many books that touch upon it, but there are far fewer books written in an accessible manner dedicated to privacy and media itself. Those on privacy and media come from the law subject area and, while important, miss many dimensions and theoretical perspectives of interest to the media studies subject area. This book will act as a corrective to this, providing readers with a solid understanding of the importance of privacy, how we can understand it and how it figures within contemporary media culture. My intention in writing this book has been to depict the assorted relationships between privacy and media and it is by this breadth it should be judged. Specialist scholars in any of the individual topics dealt may feel that I have not provided enough detail or sophistication. This is inevitable in a book such as this and to that reader I suggest a swim in unusual waters and immersion in the more unfamiliar topics within this book.

If we recollect that media studies is typically interested in the history and effects of media content and technology, the need for such a book becomes clear. Indeed, perhaps the most significant change in the last twenty-five years or so to media technologies is how corporations and other organisations now make extensive use of data about us. This invites all sorts of questions germane to media studies, not least about how content is formed, economics, history, influence, organisations, policies, power, technologies, and how people use media in specific situations and contexts. This latter point is important in that unlike other disciplines that examine technologies, media studies is very interested in how media facilitates

and integrates into everyday life, and how emergent communications technologies *mediate* it. To this end, this book employs an expansive understanding of media based on the idea that while very much connected to devices and content, what is increasingly important to understand is how information about ourselves and the lives of others is collected, transmitted, processed and, indeed, mediated.

Although this book provides the reader with a rich (but not exhaustive) overview of the relationships between privacy and media, it is up to the reader to put this understanding to work. Readers will be encouraged throughout to test theories, take up challenges and understand how privacy functions in practice. My task is to provide the reader with a wide range of case studies and perspectives, to convince you of the centrality of privacy to critical questions about media today, and to suggest ways in which modern use of media technologies is forcing us to re-evaluate basic assumptions about what privacy is. Your task is the more significant one: to put ideas to work. To help with this, I will make suggestions at the end of each chapter about potential projects and areas for investigation.

We should recognise before we proceed that the narrative of privacy and media is not as simple as good versus bad, or freedom versus state/corporate control. This book: a) does not seek to preach about what the reader should or should not do; and b) recognises that many companies and organisations that make use of large amounts of data about us have a lot to add to society. On readers, I make two requests: that those with a pre-existing passion for privacy matters avoid knee-jerk reactions and assess the detail of technologies and practices; and that readers with less interest in privacy (perhaps you are begrudgingly reading this for a class you have to take?) think carefully about the development of new technologies and what they portend. As will be assessed in Chapter 2, you might have ‘nothing to hide’, but those who want our information will continue to push for more insights. How much is too much for you?

We will come to definitions of privacy, but let us open with the recognition that privacy is not about hiding or shielding information away from others. It is better seen in terms of awareness of what is happening to us, consent, respect and control. This should apply both online and offline but, in reality, it does not. If we saw that the couple on the next coffee table were listening to our conversation too intently we would be irritated and would secure our communication so they could not hear. Yet, online, the information we communicate to friends and the companies we choose to do business with is intercepted, collected, analysed and stored. Can you imagine if people started doing this in cafes? Weird!

Although privacy is certainly not ‘dead’ it has become more difficult to achieve. There are quite a few reasons for this that this book will explore in relation to contemporary media. On social media for example, we cannot always separate out different groups. This runs the risk of ‘context collision’ whereby a close friend may see the same Facebook content as a boss who has felt compelled to ‘friend’ their employees. We also see an increasing convergence between what is private

and what is public. Communication via written letters and telephone used to be private. Today our Gmail is read so that advertising can be better targeted, and mobile-phone data is logged for government agencies to inspect. This includes length of call, where we called/texted from, where our phones are, journeys we take, where we live, how long we go away for, where we go, who our contacts are and details about internet usage (such as file type, or size of any attachments sent or received with emails). Another characteristic of life with modern media is that we do not know who or what invisible trackers are watching. As Chapter 7 explores, the reader may be surprised at the number of ‘third parties’ making use of what we visit, say and do online. Away from laptops, tablets and phones, whereas only a few years ago it seemed ridiculous that our televisions would watch us back, this is no longer as assured as it once was.<sup>1</sup> There is an asymmetrical irony here in that as our behaviour and habits are increasingly transparent for watchers to see, we have very little idea of who is watching us, what is collected and how and why this information is used.

In the past, privacy has been a fringe interest for the media studies subject area but today it is increasingly moving into centre-stage. This is because the contemporary media environment (and its panoply of screens and devices) is utterly predicated on watching, sharing, tracking and gathering data about interests, behaviour, location, communication, purchasing, our bodies and even emotions. Clearly screens and watching go together, but data and the mediation of behaviour has certainly become more pronounced since the inception of the World Wide Web in the early 1990s.

## PRIVACY PERCEPTION: NOT ABOUT HIDING OR SHIELDING

A question that is often asked in relation to people’s use of online media is whether they *really* care about their data practices. After all, who actually reads terms and conditions and, if things are really that bad, why do people use these services? No one is putting a gun to our heads and forcing us to use Google, Facebook and other data intensive services. Colleagues and I studied this by looking at UK and European reports about the public’s feelings about privacy, security and surveillance across 2013–15. We found that reports from the online advertising industry, market-research companies, non-governmental organisations and academia all pointed to high levels of concern about *control* over personal information (Bakir et al., 2015). This was unambiguous as surveys from all stakeholders continuously pointed to high levels of concern (80 per cent and into the 90s). Surveys from the US echo these findings where people are clearly uneasy about the lack of control over information about them. For example, a Pew Internet Survey (2014b) about perceptions of privacy, security, the US government and advertising found that 91 per cent of adults

in the survey ‘agree’ or ‘strongly agree’ that consumers have lost control over how personal information is collected and used by companies.

Similarly, of the social media users sampled by Pew, the survey found that 80 per cent of social networking site users say that they are at least somewhat concerned about third parties such as advertisers or businesses accessing some of the information they share on those sites without their knowledge. However, while sceptical about supposed benefits of personal data sharing, the majority are willing to make trade-offs in certain circumstances when their sharing of information provides access to free services. This is indicated by the finding that 55 per cent ‘agree’ or ‘strongly agree’ with the statement: ‘I am willing to share some information about myself with companies in order to use online services for free.’ This concern about control over data yet willingness to share information provides us with an early lesson: privacy is not about isolation, going off-grid or being a digital hermit. Instead it has more to do with awareness, ability to manage digital life, meaningful consent and different privacy requirements depending on the situation we are in. This is echoed in another study by Pew that addresses the use of office surveillance cameras, smart thermostats, health data, retail loyalty cards, automobile insurance and social media. They found that the phrase that best captures Americans’ views on the choice between privacy versus disclosure of personal information is ‘it depends’ (Pew Research Center, 2016). Key factors include how trustworthy they believe the company or organisation to be and what happens to their data after collection, particularly if the information is to be shared with third parties, and how long the data are retained. Again, a sense of control is key.

## CHAPTERS

This book is broken down into three parts. I begin by addressing privacy in terms of journalism, surveillance and the politics of encryption (Chapters 2–5), and then progress to consider the commercial dimensions of privacy and media (Chapters 6–9). However, too often discussion of privacy tends to focus on abstract ideas of data, information and unseen technological practices. To this end, the last part considers the role of the body (Chapters 10–13).

Despite the seeming simplicity of the word, privacy is a slippery idea. Our first reactions are ‘being alone’, ‘being secluded’ or ‘isolated’. A closer examination of everyday privacy practices reveals that these simplistic definitions fail to take into account a basic observation: privacy does not just involve being alone, but how we connect and interact with others, and how we control and manage access to ourselves and those we are close to. After all, there is nothing intrinsically wrong with either sharing or collecting information about people. Health is a good example, particularly for countries that have centralised health authorities paid for out of the public purse. Information sharing can help detect preventable illnesses, save lives, reduce hospitalisation, improve treatment healthcare and grant better

opportunity for front-line practitioner care. Our first job is thus to engage in some ground clearance for how best to understand privacy, to dispel those misgivings about ‘if you haven’t done anything wrong, then you have nothing to hide’ and develop a working understanding of what privacy is. In Chapter 2 we will do this by going on a brief philosophical and theoretical journey. Seen another way, this chapter details the *history of privacy*. Examination of philosophy helps with this in a number of ways. First, important theorising of being private and public comes from ancient Greece, Plato and Aristotle; second, contemporary understanding of privacy is virtually synonymous with a philosophical school known as liberalism; and third, philosophical ideas and writing on autonomy, consent and rights directly feeds into laws on privacy. To generalise: this means law-abiding citizens and groups who do no harm to others should be able to go about their business without being bothered by others. This becomes a little more difficult when we consider how we should keep societies secure from internal and external threats. Again, this modern tension about security and liberty has roots in philosophy and the writing of Thomas Hobbes.

Journalism is one of the most important media fields concerned with privacy. As Chapter 3 outlines, in the US, for example, there have long been concerns about the prurient encroachment of journalism into everyday life. Journalism and privacy have a long, difficult and paradoxical relationship. This chapter complicates the premise that privacy is innately a good thing because much of what journalists investigate are cover-ups of information people would prefer others do not know, abuses of power, financial wrongdoings and secret deals. At the level of principle, journalism exists to make situations publicly known, visible and *transparent*. However, journalism is also dependent on privacy to protect sources so no authorities or courts should be able to require a journalist to reveal the identity of an anonymous source. This involves a paradox in that transparency cannot be encouraged without privacy guarantees. Journalism is also a special case because the earliest writing on privacy and media studies is on the rise of photojournalism in the 1880s. This writing is both prescient and applicable to modern interests such as social media, celebrity injunctions and new ways of seeing by means of drones.

Chapter 4 continues discussion about the journalistic imperative to both make information public yet keep sources private by assessing the Edward Snowden leaks of 2013. These revealed the mass surveillance of citizens’ telecommunications usage by US and UK intelligence agencies. The scale of surveillant activities surprised everyone, including the world’s leading security experts, privacy researchers and computer scientists. This chapter provides a brief history of this series of leaks and events, and progresses to consider the relationship between transparency and privacy. Transparency and openness of knowledge is generally held as a good thing, but what happens when this collides with democratic laws and rights to privacy? This chapter examines these matters by

recourse to the work of Jeremy Bentham, an eighteenth-century philosopher, who believed that absolute transparency is positive for societal net benefit and general happiness. It progresses to highlight the work of more recent media scholars, such as Clare Birchall, who have examined secrecy, transparency and media culture in depth.

Chapter 5 continues an interest in governmental surveillance by addressing encryption. Today, this is the practice of encoding data with a set of digital keys and decoding it at the other end with another set of digital keys. Many of our favourite apps and devices now use encryption by default. Paying particular attention to Apple, this chapter is interested in the debates taking place around the world regarding companies that encrypt communications and governments who demand access to the content of online communication. Centrally, this chapter uses encryption to explore the principle of privacy-by-design, or how social values such as privacy can be embedded or baked into media technologies.

Chapter 6 considers the role and nature of ‘platforms’ in modern media culture. These are software foundations upon which services and applications can be constructed. The names of these are probably recognisable as they include Airbnb, Amazon, Apple, eBay, Etsy, Facebook, Google, PayPal, Uber and Wikipedia. What is notable about many of these organisations is that much of everyday life is carried out upon them. Often this applies to both people and businesses as platforms such as Amazon become stages upon which others’ businesses are conducted. I argue that these are new forms of social institutions that are transforming the world. What conjoins each of these platforms is a deep reliance on personal data both to function, but also for its revenue. Platforms also show us that individualistic accounts of privacy are problematic because of power, scale and the one-sided relationship we have with data-intensive institutions.

Chapter 7 assesses behavioural advertising – a practice that is the principal revenue for many of our favourite services, apps and arguably the web itself. This comprises advertising that is aimed at us by means of things we look at online, what we buy, who we communicate with, what we say and, in general, how we behave. You might be surprised to find out that online advertising is, by some margin, more popular with advertisers than any other medium – including television, newspapers, magazines and billboards. Thus, when we think about what advertising is, the first thing that should come to mind is not images from television or content seen on street billboards, but sponsored Google links and advertisements on the sides of our favourite webpages. If we recollect that the contemporary media economy is based on tracking potential consumers and getting to know us better, this invites questions about privacy. This chapter unpacks the mechanics of behavioural advertising, but proceeds to examine its privacy dimensions in relation to the notion of consent. This is a pivotal point of digital ethics and law that guides the use of data about people. The legal premise is that before companies can use personal data, people should be informed so to make a reasoned decision