

Reasonable Expectations of Privacy?

***Eleven Country Reports
on Camera Surveillance
and Workplace Privacy***

**edited by
Sjaak Nouwt
Berend R. de Vries
Corien Prins**

INFORMATION TECHNOLOGY & LAW SERIES ⑦

REASONABLE EXPECTATIONS OF PRIVACY?

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and Workplace Privacy

edited by

Sjaak Nouwt, Berend R. de Vries and Corien Prins

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T•M•C•ASSER PRESS
The Hague

The *Information Technology & Law Series* is published
for ITeR by T·M·C·ASSER PRESS
P.O. Box 16163, 2500 BD The Hague, The Netherlands
<www.asserpress.nl>

T·M·C·ASSER PRESS English language books are distributed exclusively by:

Cambridge University Press, The Edinburgh Building, Shaftesbury Road,
Cambridge CB2 2RU, UK,
or

for customers in the USA, Canada and Mexico:
Cambridge University Press, 100 Brook Hill Drive, West Nyack, NY 10994-2133, USA

<www.cambridge.org>

The *Information Technology & Law Series* is an initiative of ITeR, the National Programme for Information Technology and Law, which is a research programme set up by the Dutch government and the Netherlands Organisation for Scientific Research (NWO) in The Hague. Since 1995 ITeR has published all of its research results in its own book series. In 2002 ITeR launched the present internationally orientated and English language *Information Technology & Law Series*. This series deals with the implications of information technology for legal systems and institutions. It is not restricted to publishing ITeR's research results. Hence, authors are invited and encouraged to submit their manuscripts for inclusion. Manuscripts and related correspondence can be sent to the Series' Editorial Office, which will also gladly provide more information concerning editorial standards and procedures.

Editorial Office

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P.O. Box 93461
2509 AL The Hague, The Netherlands
Tel. +31(0)70-3440950; Fax +31(0)70-3832841
E-mail: <iter@nwo.nl>
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Single copies or Standing Order

The books in the *Information Technology & Law Series* can either be purchased as single copies or through a standing order. For ordering information see the information on top of this page or visit the publisher's web site at <www.asserpress.nl/cata/itlaw7/fra.htm>.

ISBN 10: 90-6704-198-X
ISBN 13: 978-90-6704-198-0
ISSN 1570-2782

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Cover and lay-out: Oasis Productions, Nieuwerkerk a/d IJssel, The Netherlands
Printing and binding: Koninklijke Wöhrmann BV, Zutphen, The Netherlands

ABBREVIATIONS

ADA	Americans with Disabilities Act
Alb. L. Rev.	Albany Law Review
All ER	All England Law Reports
ALR	American Law Reports
AMA	American Management Association
APEH	Hungary's central tax authority
ArbG	Arbeitsgericht
ATM	Automated Teller Machine
AuR	Arbeit und Recht
BAG	Bundesarbeitsgericht
BB	Betriebsberater
BC	British Columbia
BDSG	Bundesdatenschutzgesetz
BetrVG	Betriebsverfassungsgesetz
BGB	Bürgerliches Gesetzbuch
BGBI	Bundesgesetzblatt
BGH	Bundesgerichtshof
BGHSt	Bundesgerichtshof für Strafsachen
BT-Drs.	Bundestags-Drucksache
BverfG	Bundesverfassungsgericht
BverfGE	Amtliche Sammlung der Entscheidungen des Bundesverfassungsgerichts
CAI	Commission d'Accès à l'Information du Québec
CBP	College Bescherming Persoonsgegevens
CCTV	Closed circuit television
CEE	Central and Eastern Europe
CNR	National Research Council Italy
Comm.	Kommentar
Comp. Lab. L. & Pol'y J.	Comparative Labor Law Journal and Policy Journal
CR	Computer und Recht
Crim LR	Criminal Law Review
CRvB	Centrale Raad van Beroep
DB	Der Betrieb
DP	Data protection
DPA	Data Protection Authority
DP&FOI	Data Protection and Freedom of Information
DP-FOIA	Data Protection and Freedom of Information Act
DuD	Datenschutz und Datensicherung
EC	European Community
ECHR	European Court of Human Rights
ECHR	European Convention on Human Rights
ECJ	European Court of Justice

ECPA	Electronic Communications Privacy Act
EEOC	Equal Employment Opportunity Commission
EHRLR	European Human Rights Law Review
EHRR	European Human Rights Report
EMLR	Entertainmen and Media Law Reports
Empl. Rts. & Employ. Pol'y J.	Employee Rights and Employment Policy Journal
EPPA	Employee Polygraph Protection Act
EPS	Edmonton Police Service
ETS	European Treaty Series
EU	European Union
EuGH	Europäischer Gerichtshof
EWCA Crim	Court of Appeal, Criminal Division (England & Wales)
FIDIS	The Future of Identity in the Information Society
FISA	Foreign Intelligence Surveillance Act
FNV	Federatie Nederlandse Vakbeweging
FOIP Act	Alberta Freedom of Information and Protection of Privacy Act
FRA	Federal Railway Administration
FSA	Financial Services Authority
FTC	Federal Trade Commission
GG	Grundgesetz
HR	Hoge Raad
ICBC	Insurance Corporation of British Columbia
ID	Identity
ISDN	Integrated Services Digital Network
JAR	Jurisprudentie Arbeidsrecht
JTT	Journal de tribunaux du travail
JZ	Juristen-Zeitung
KG	Kort Geding
LDSG	Landesdatenschutzgesetz
MMPI	Minnesota Multiphasic Personality Inventory
MMR	Multimedia und Recht
MSZMP	Hungary's former Communist Party
NGO	Non-governmental Organisation
NJ	Nederlandse Jurisprudentie
NJB	Nederlands Juristen Blad
NJCM-Bulletin	Nederlands Juristen Comité voor de Mensenrechten
NJW	Neue Juristische Wochenschrift
NLRA	National Labor Relations Act
NZA	Neue Zeitschrift für Arbeitsrecht
OECD	Organization for Economic Cooperation and Development
OJ	Official Journal
OVG	Oberverwaltungsgericht

PACE	Police and Criminal Evidence Act 1984
PC	Personal computer
PIA	Privacy Impact Assessment
PIN	Personal Identity Number
PIPA	Personal Information Protection Act
PIPEDA	Protection of Personal Information and Electronic Documents Act
PN	PrivacyNetwork
PRG	Praktijkgids
PRIME	Privacy and Identity Management for Europe
PRTC	Puerto Rico Telephone Company
QB	Queen's Bench Division
Rb.	Rechtbank
RCMP	Royal Canadian Mounted Police
RDV	Recht der Datenverarbeitung
RGBI	Reichsgesetzblatt
Rn.	Randnummer
RR	Rechtsprechungsreport
Stb.	Staatsblad
StGB	Strafgesetzbuch
TDDSG	Teledienstendatenschutzgesetz
TDG	Teledienstegesetz
TDSV	Telekommunikations-Datenschutz Verordnung
TILT	Tilburg Institute for Law, Technology, and Society
TKG	Telekommunikationsgesetz
TVG	Tarifvertragsgesetz
UK	United Kingdom
UKHL	House of Lords (United Kingdom)
US	United States of America
U.S. Const. amend IV	United States Constitution Fourth Amendment
U.S.C.	United States Code
VGH	Verwaltungsgerichtshof
WOR	Wet op de ondernemingsraden
WBP	Wet Bescherming Persoonsgegevens
WiGBI	Gesetzblatt der Verwaltung des Vereinigten Wirtschaftsgebietes
WPR	Wet persoonsregistraties

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Chapter 1

INTRODUCTION

Sjaak Nouwt, Berend R. de Vries¹

1.1 THE RESEARCH PROJECT

Reasonable expectations of privacy and the reality of data protection is the title of a research project being carried out by TILT: Tilburg Institute for Law, Technology, and Society, formerly known as Tilburg University's Center for Law, Public Administration and Informatization in the Netherlands. The Netherlands Organisation for Scientific Research (NWO) is funding the project as part of the National Programme for Information Technology and Law (ITeR). The project started on 1 January 2002 and will be completed on 1 December 2004. The research project is aimed at developing an international research network of privacy experts and to carry out research on the practice, meaning, and legal performance of privacy, privacy protection and the processing of personal data in an international perspective.

Privacy, regulations to protect privacy, and data protection have already been legal and social issues in many Western countries for a number of decades. Many countries have drafted regulations thereon, but they are continuously amending them. Privacy and personal data are, in general, protected in government regulation and self-regulation. Regulating privacy and the technological developments that influence privacy and data protection are some of the current issues. There is no absolute or uniform concept of privacy or privacy protection although several aspects of privacy can be defined. These are determined by fundamental rights such as 'the right to be left alone' (Warren and Brandeis) and 'the right of individuals, groups, and institutions to determine when, how and to what extent information will be given to others' (Westin). As a result of the current privacy and data protection research projects carried out by our institute, we draw the conclusion that the balancing of different social values and legal, social, political, and ethical arguments can influence the possible opinions on privacy and data protection.

The main question in this research project is what is privacy and data protection and how is it being applied in everyday life in different countries? By answering

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this question, we hope to be able to outline the similarities and differences of opinions in several countries. We will also be taking a look at the similarities and differences in the regulatory framework of privacy and data protection. Privacy experts from all over the world will participate in this project so our research will not be limited to the European legal framework perspective only.

In the context of this research project, we have taken several initiatives to develop an international network of privacy experts. First, we invited several well-known privacy experts to participate in our research project and, at present, academic experts, lawyers, and data protection commissioners are participating in the privacy network. Second, we developed the PrivacyNetwork² web site, which provides information about this research project and other research projects in which our institute is involved. As a third step, a case law database was developed. The database offers access to judgments and documents from data protection authorities from different countries, which can be viewed in their original language but with an English summary. The objective of the case law database is that it can be used as a source of international privacy case law for future research. Network participants continuously provide cases so the information shown is up to date. Fourth, we developed the PrivacyNetwork electronic newsletter which is sent to our subscribers every month. The newsletter focuses on new case law that has been added to the database and contains other information on privacy and data protection issues. Fifth, we organised several workshops, starting on 11 September 2002 at the International Conference of Privacy Commissioners in Cardiff (UK). During this workshop it was agreed to start collecting case law and to focus on two topics: camera surveillance and workplace privacy. In accordance with this agreement, most of the case law stored in our database since the workshop deals with camera surveillance and workplace privacy. This is also the main reason why this book deals with these two topics. At a second workshop on 17 February 2003 in Amsterdam, we organised several presentations on camera surveillance. On 21 April 2004, we organised an international privacy colloquium in Tilburg, the Netherlands which coincided with a visit from Colin Bennett who is one of the participants in our research project.

The work within the current international network of privacy experts has been intensified, resulting in several new research groups in which our institute also participates. These research groups are organised within the context of the PRIME project (Privacy and Identity Management for Europe) and the FIDIS project (The Future of Identity in the Information Society). Finally, as part of our project Tilburg law students are offered an internship at the office of one of the network participants during which they have the opportunity to collect more privacy and data protection case law abroad. This case law is then stored in our database. By collecting, disseminating, and analysing case law on privacy and data protection, this will enable us to investigate the concept of 'reasonable expectations of privacy' in different countries. The concept concerns individuals' subjective expectations of pri-

² <<http://www.privacynetwork.info>>.