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Interview: Joe Cannataci, UN Special Rapporteur on the Right to Privacy

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Emma Alberici speaks with Joe Cannataci who maintains that online privacy is a fundamental human right at a time when our private details are vulnerable to organised crime, as well as data mining by big corporations.

Transcript

EMMA ALBERICI, PRESENTER: So at a time when our private details are vulnerable to organised crime as well as data mining by big corporations and surveillance in the name of national security, is privacy all but dead? Not according to our guest, Joe Cannataci. He's the world's first Special Rapporteur for Privacy, appointed by the UN Human Rights Council last year. He argues privacy is a fundamental human right in the digital age. Joe Cannataci is visiting Australia for Privacy Awareness Week and he joins us now.

Thanks so much for being here.

JOE CANNATACI, UN SPECIAL RAPPORTEUR, RIGHT TO PRIVACY: It's a pleasure.

EMMA ALBERICI: So, as I just mentioned, you are the first person in the world to assume this new role as the UN Special Rapporteur for Privacy. With respect, why do we need someone protecting this as a human right?

JOE CANNATACI: Well, it has been around as a human right for quite some time in many other fora, including fora such as the European fora, it is actively promoted and protected. So you have - many countries have privacy as part of the constitutional rights, and also you have international treaties such as the Council of Europe State Protection Convention, which has been in effect since 1981, and you also have the European Union, which has had its own privacy legislation not only in effect since 1997, but has just now, in April, finished revamping the whole package of laws which govern it. So it's there and it has been increasingly coming to public attention because of the fact of new technologies. Actually, we can say that privacy has long existed in society, but new technologies, especially computer technologies and even more so more recently, mobile phone technologies, and also especially the internet, have made people think much more about privacy.

EMMA ALBERICI: In this digital age where people give their private details away so freely, whether that be on social media, sharing photographs or indeed sending personal details to online stores, etc., what is this notion of privacy as the UN Special Rapporteur that you're trying to protect? What constitutes privacy?

JOE CANNATACI: Well, privacy is very much a subject which has avoided definition, but in actual fact, in many cases we can look at it as the person's - the individual's ability to control the flow of information about himself or herself and in some cases we shouldn't also forget the difference also between individual privacy and collective privacy. Very often you find communities which tend to be quite private about themselves in a way which individuals are. So, when it comes to modern society, we then have another situation where people realise - and this is perhaps one thing where we can qualify your statement - people do give away data relatively easily, but we have a lot of evidence which shows that - and especially the last surveys even of the past couple of weeks show that people actually tend to use the internet less and give away less data after certain events like the Snowden revelations or other revelations. So it's important to note that privacy and trust move together. They're not the same thing, but they move together whenever people carry out transactions over the internet, for example.

EMMA ALBERICI: Do you really think there is such a thing as - as digital privacy?

JOE CANNATACI: Yes, why not? The - many people tend to alter their behaviour, even when they know that they are online. Yes, it's true, as you said before, that people do give away the details more easily. But you can achieve digital privacy; you just have to pay a bit more attention to it. And if people like Facebook, WhatsApp, etc. give you privacy settings, you should use them, and actually, the extent to which privacy settings have improved in many programs over the past several years have increased. And if you look at the difference between a number of people who are in the market and even people who are trying to sell you the mobile phones like Apple, they have gone from a situation three years ago where they were being criticised for apparently surreptitiously being able to take data from the customers' phones to today where they present themselves as champions of privacy. So, it's clear not only that privacy is becoming more important, but some companies are looking at it to gain the competitive edge.

EMMA ALBERICI: And yet, you are still not inclined to join Twitter or Facebook, regardless of their privacy settings.

JOE CANNATACI: No, I've managed to get by for all these years without it quite merrily, so I do read some other people's feeds, but at this moment in time, so long as we can get our message out using different ways, I see no real reason to go that way.

EMMA ALBERICI: I saw you were quoted as saying that you haven't signed up to Twitter or Facebook because you believe in privacy.

JOE CANNATACI: Correct. Correct. It's - if you have - if you have a certain attitude to life and go around life quite merrily without Facebook and Twitter, just because some of the people out there, it's - and besides, I should say, you know, I'm reliably informed by my daughters that it's no longer cool to be on Facebook.

EMMA ALBERICI: (Laughs)

JOE CANNATACI: So why should I want to go and do that? You know, people are looking at other products.

EMMA ALBERICI: In response to the threat from - let me take a step back. The Australian Government recently passed national security laws that mandate the collection and storage of call records, IP addresses, billing information and other metadata that's to be stored for two years. Now that data is able to be accessed without a warrant by certain designated agencies. What's your view on the effectiveness of such a policy when it comes to catching terrorists?

JOE CANNATACI: Well, I think you can divide the answer roughly into three. First of all, it's interesting that the Australian Government has chosen to go that way within basically less than two years that the European Court of Justice has actually declared invalid the European Data Retention Directive of 2006. Secondly, it's also worth noticing that the original proposals in Australia changed because of the public consultations, though not all of the recommendations made by Australia's Information Commissioner were taken on board. When it comes to the

effectiveness, that's actually something which has been questioned also in Europe and I prefer to let the facts speak for themselves. After seven, eight years of Data Retention Directive being in force, all the European states together couldn't trace more than 90 or 90 cases where they actually could use the data and come up with a successful prosecution. We should understand in many of these cases, data retention is not used to prevent terrorism, except on some forms of pattern recognition, but rather to try and investigate what has happened and hopefully prosecute using the evidence that has been retained through data retention records.

EMMA ALBERICI: So you're saying the end doesn't justify the means?

JOE CANNATACI: Well, we haven't got the evidence so far that the end justifies the means.

EMMA ALBERICI: You recently drew parallels between the UK surveillance regime and George Orwell's 1984. But arguably, the technological possibilities offered up in the digital age far surpass anything Orwell could've imagined, don't you think?

JOE CANNATACI: Well yes. On the other hand, I suspect Orwell would've been quite proud of himself had he come along. I was there not to be quoted out of context, right, and since the - what struck me is this: that Winston in 1984, when he wanted to get away from the cameras or the screens, as he would call them, would go out into the countryside, yet today, there are many areas of the English countryside where you have a number of cameras, so you can't even get away in the way that Winston Smith did. So that was the context in which I made that comment. There are in most other cases - certainly the UK is not necessarily in as bad as a position. But I did in my report to the United Nations on 9th March of this year, I did point out specifically that the UK's proposed legislation on Investigatory Powers Bill, as it's called, actually goes quite against not only the spirit, but also the letter of the latest pronouncements by the European courts on the subject. The European courts on the subject have been quite clear that mass surveillance and bulk - access to bulk processing of data is not a subject which is to be something which is acceptable in a democratic society.

EMMA ALBERICI: So what's to be done in the event that you believe a state, a country has engaged in overreach on the area of mass surveillance? What can you do? What - are there existing laws or what laws ought to exist to I guess bolster oversight?

JOE CANNATACI: Well, firstly, we are seeing a number of countries bolstering oversight, right. Even the UK itself, while I did criticise some of the provisions that they are proposing, it has, since the summer of last year, when I actually had openly criticised the UK position as being a bit of a bad joke, they've actually taken heed and they're actually proposing to improve the oversight mechanisms in the United Kingdom. So that's a good point. The - what's open to me from the United Nations point of view is very often these are the politics of persuasion. Right, so what I have to try and do is persuade people that what they're doing is, you know, dumb, dumber or hopefully something in the right direction. And we are seeing some improvement. That being said, what is happening, unfortunately, in my view in a number of countries, we have, understandably, concern about terrorism without at the same time necessarily taking proportionate means. That is a word which unfortunately we don't hear too often, which is proportionality. It's still - you are still far more likely to be hit by a car and you are still far more likely to be hit by lightning rather than being the subject of a terrorist attack. And we should also pay attention to the fact that in many of the past terrorist attacks we've seen, whether it's in the Boston bombings in the United States or in indeed in France or in Belgium, many of the attackers were already known to the - to the authorities.

EMMA ALBERICI: I'm so sorry to cut you off, but we are out of time.

JOE CANNATACI: That's alright.

EMMA ALBERICI: We are going to have to get you back and have a more in-depth discussion.

JOE CANNATACI: Thank you very much.

EMMA ALBERICI: Thank you for coming and joining us tonight.

JOE CANNATACI: Thank you very much. Thank you.

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