



Mandate of the Special Rapporteur on the right to privacy

9th June 2016

Privacy, personality and flows of information – An invitation

I am writing to personally invite you to participate in a workshop conference which will be co-organised by the mandate of the Special Rapporteur for Privacy (SRP) together with Human Rights Watch, Global Freedom of Expression Columbia University, the Brennan Center for Justice at New York University Law Center, The Department of Information Policy & Governance at the University of Malta and STeP, the Security, Technology & e-Privacy Research Group at the University of Groningen in the Netherlands. This workshop is the first public event co-organised by the SRP aimed at achieving *a better understanding of privacy*. The latter is one of the first set of five Thematic Action Streams identified as priorities by the SRP mandate. This Action Stream will complement the activities and investigations which will be carried out in the four other Action Streams announced recently¹ and which will be the subject of separate public announcements over the next few weeks.

Privacy is a fundamental human right which is a stand-alone right capable of being recognised and enforced in its own right, even independently of other rights. That makes it an incredibly important right which permeates many systems of law all around the world. Some regions like Europe have even developed this into a multi-tiered system of rights². I would next like to suggest that privacy is even more important than we may have thought so far and this is because, perhaps above all else, it acts as an enabler to a number of other important rights and especially the right to free, unhindered development of personality³.

This idea of Privacy as an enabling right is turning out to be a very useful one as more and more people around the world try to understand why privacy is important to them and why privacy matters when it comes to considering how best to approach new technologies like smart phones and the Internet or new threats like ubiquitous surveillance. This is because if one agrees with the idea, for example, that privacy exists to enable people to develop themselves and their personalities freely in any direction that they may choose, then it becomes easier to realise what may be at stake if privacy is breached, diminished or lost.

¹ <https://www.privacyandpersonality.org/2016/06/privacy-and-personality-blog-3-parallel-streams-of-actions-for-the-mandate-of-the-un-special-rapporteur-for-privacy-and-the-first-set-of-priorities/>

² <https://www.privacyandpersonality.org/2016/06/getting-things-done-in-privacy-protection-part-1-blended-methodologies-and-some-lessons-from-europe-about-learning-and-defining-by-doing/>

³ <https://www.privacyandpersonality.org/2016/05/daughters-privacy-and-personality/>

One of the key ideas for the July 2016 workshop conference we are organising in New York, USA is to explore ways how to expand further and eventually develop more detailed and specific safeguards for privacy also – but not exclusively – by seeking to explore the notion **"Why Privacy?" To what extent is Privacy a means to an end or an end in itself?**

I have suggested, in past and recent⁴ writings, that in many cases (possibly not all) privacy is best understood as an enabling right rather than an end in itself, though at law in many countries it may and does function as a stand-alone right. What I mean by this is that like a number of other information-related rights, including the rights of freedom of expression (the freedom to receive and communicate information) and the freedom to access publicly-held information, privacy exists as a right to enable an individual to fulfil the over-arching fundamental right to the free unhindered development of one's personality. The latter right is recognised explicitly not only in German constitutional law but also in the law of several other countries, not only Nordic countries or European states such as Romania and Hungary but also some South American states such as Brazil and Colombia.

I have long held⁵ that it is unfortunate that there has never been a proper, structured, in-depth international debate about "*Persönlichkeitsrecht*" or similar approaches to the right to personality. There are several reasons why this lack of international debate and discussion is truly a pity, especially since I sincerely believe that it would help us arrive at a better understanding of why and how we could better protect privacy in the digital age. This is why, as one of the priority activities of my mandate as UN Special Rapporteur on Privacy I have decided to organise a series of international workshop conferences which aim at exploring this dimension of the subject, in-depth and across borders. The New York event is intended to be the first of such events in the calendar of the SRP Action Stream on ***a better understanding of privacy*** after which it is planned to be followed up by complementary events in Africa, Asia and South America. One of the reasons for this approach is that discussions on privacy very often expand to include issues like identity and trust. The evidence base provided by research suggests that people in some countries have strong biases to retain privacy. Europe is not homogenous: it would appear that citizens of some European states trust their governments less than others when it comes to matters of privacy. On the other hand, in Latin America, some research suggests, concerns about privacy were much lower. Meanwhile citizens surveyed in some countries trust their governments more than business to do the right thing when it comes to protecting their privacy. Citizens in other countries may take an opposite view and trust business over government. So while the right to privacy may be universal it does not necessarily lend itself easily to one-size-fits-all solutions and safeguards. Hence the need to understand better the local, national, regional and international contexts in which privacy operates in order to work towards a wider international consensus about which new safeguards and legal instruments could complement and reinforce the fundamental right to privacy.

A draft agenda for the conference is attached. You will see that it is intended to be a workshop conference where interactivity is maximised. It is also intended to be part of a series of events designed to permit civil society and multiple other stakeholders to interact

⁴ <https://www.privacyandpersonality.org/2016/06/getting-things-done-in-privacy-protection-part-2-another-dimension-of-privacy-communal-privacy-privacy-of-the-community-and-personality/>

⁵ <http://www2.law.ed.ac.uk/ahrc/script-ed/vol5-1/editorial.asp>

with the SRP mandate in a structured manner. **Registration for the event will be free and it is open to all stakeholders who are interested but since space is limited places will be reserved on a first-come, first served basis so please hurry up and register by writing to aelkhatib@ohchr.org quickly before the conference room fills up.**

Some materials are also attached in the hope that these will permit some background reading which would help conference participants to better understand the concepts being discussed and then later debate as to how best strategies could be adopted to operationalise the advancement of privacy through the wider explicit adoption of an overarching right of a free, unhindered development of one's personality.

I am at your disposal for any consultation or information and, in addition to the UN e-mail address above, I may be contacted directly on my mobile phone +356 99 42 6133, e-mail jcannataci@sec.research.um.edu.mt or through the Office of the United Nations High Commissioner for Human Rights (Ms. Alia El Khatib, aelkhatib@ohchr.org telephone: +41 22 928 9355).



Joseph A. Cannataci
Special Rapporteur on the right to privacy

Privacy, personality and flows of information – Workshop Conference

Venue: Lester Pollack room in NYU's Furman Hall, New York, USA

Date: all day on July 19 and 20, 2016

Draft Outline Agenda

The following is one of the possible formats that we are contemplating:

The theme would be "*Privacy, Personality and flows of information in the digital age*". The New York event would be the first of two such events every year for the next three years with the conference moving from continent to continent to engage with stakeholders everywhere across the globe. Next venues being explored are China, Argentina, South Africa, Germany, Russia, India.

The format should be that of an open conference with full plenary sessions, no break-up sessions required, with minimal (break-even) admission fees hopefully mitigated through any form of sponsorship obtained.

The number of attendees should be constrained only by the size of the venue - the first one in New York would be a pilot with a maximum of 75 participants to maximise interactivity and dialogue.

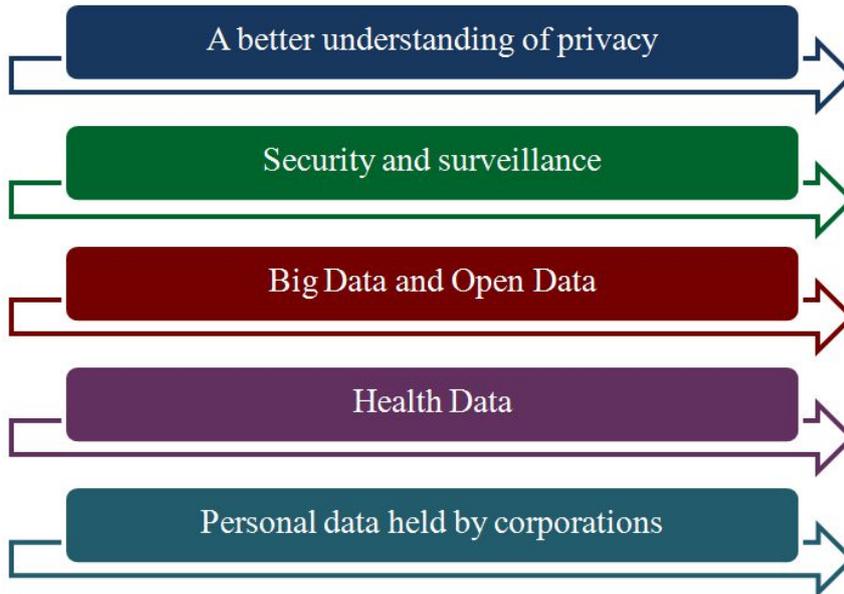
The organisation of the time could be something on the following lines: Three half days on the general subject of personality and privacy-one intersecting with other rights such as freedom of expression combined with a half day or slightly more on strategies for success. The latter section would focus on using the other parts of the discussion to inform the development of strategies and tactics for further creation of awareness, safeguards and remedies.

The speakers would be sent a prep document advising them what to look for in their domestic constitutional and indigenous laws and traditions regarding personality and privacy as well as the impact of mobile technologies in practice and this from an anthropological, sociological as well as a legal point of view. We have reduced the number of speakers since we wish to allow more room for discussion.

Day 1 – Tuesday 19 July 2016 - Morning

The New York Event in context

The first hour (or two depending on the interaction and dialogue generated) will be used to set the New York event in context and especially in outlining its complementary role in other ongoing concurrent Thematic Action Streams, the first set of which is illustrated below:



It is expected that by the date of the New York workshop conference on 19-20 July 2016, further announcements would also have been made on at least two of the Thematic Action Streams indicated above.

Traditions of Personality and Privacy - From Europe to the Americas

An introduction to the notion of personality and privacy in European law and practice –

Christian Hawellek and Joe Cannataci

Personality and Privacy in the United States (speaker TBC)

Day 1 – Tuesday 19 July 2016 – Afternoon

Traditions of Personality and Privacy – some examples from outside Europe and USA

Personality and Privacy in Colombia

Personality and Privacy in Brasil – *Danilo Doneda & Mario Viola (TBC)*

Personality and Privacy in Canada

Personality and Privacy in Australia – David Watts

Personality and Privacy in selected Arab-speaking states – *Wafa Ben Hassine*

Personality and Privacy at the intersection with Freedom of Expression – Frank La Rue (TBC)

Day 2- Wednesday 20 July 2016 – Morning

Strategies for success – Ways and means to improve privacy protection – Part 1

Parallel Paths for Thematic Action Streams: An overview and consultation about proposed strategies in key thematic areas

1. Towards a better understanding of Privacy
2. Security & Surveillance
3. Big Data & Open Data
4. Health Data
5. Corporate use of personal data

Summing up Panel

Day 2 – Wednesday 20 July 2016 – Afternoon

Strategies for success – Ways and means to improve privacy protection - Part 2

Using the concept of Personality and Privacy as a strategy to increase international consensus about shared core values and thus prepare the way for concrete safeguards to be introduced in various forms of policy documents and legal instruments.

Intersection with freedom of expression and issues dealing with reputation and defamation