

Right to privacy on the Internet

Problem to be solved

Privacy is essential for the protection of human autonomy and dignity, serving as a basis on which other human rights are built.

Digital technologies have favorably transformed the way we live, yet a significant part of these technologies contain surveillance components, which can lead to abuses by the State or private parties by tracking our preferences, interactions and movements, such as facilitating fraud, persecution of dissident journalists or activists, and even manipulation of elections, undermining our privacy, dignity, freedoms of expression, press and association, and our democracy.

Given the above, to ensure that the development of technology is positive for the population, it is necessary to enshrine the right to privacy in the new fundamental letter, which includes the right to encrypt communications by electronic means, so that laws respect and protect privacy as a human right.

Ideal situation

Ideally, the state should guarantee the privacy of its citizens, allowing them to choose how and with whom to share their personal data, such as their location, communications, biometric data, political, social or religious preferences, unless it is strictly necessary to protect other fundamental rights.

What the new constitution should provide for

The new constitution must take into account the human right to privacy. The law should not require or permit arbitrary interference with the privacy and correspondence of individuals, unless it is for the purpose of judicial investigation. This includes the right to confidentiality of people's private communications, which today includes the right to encryption.

On what grounds do you or your organization support this proposal?

Privacy is about deciding whether to disclose personal data in a consensual manner and with expectations about the context and scope of disclosure.

A substantial part of social and political life today takes place on the Internet, where we express our opinions, meet people, and manifest against injustices. Entire social movements start on the Internet.

Increased surveillance thanks to the internet makes it much easier for sensitive information to become known. The ability to identify, link data and extract large amounts of aggregated information erodes the individual's ability to manage disclosure, context and scope. For the State or others without informed and explicit

consent to know who holds a certain opinion, belief or taste, what information they are accessing, or their location, creates a situation of vulnerability in which the individual may be discriminated or harassed. No one should be forced to assume these risks just for the sake of accessing to communication tools.

Protecting our data on the Internet is important for the same reasons that we protect our privacy offline. We use keys and curtains, lock our windows, and entrust our privacy only to those we deem appropriate because of the perceived potential dangers of not doing so. Unfortunately, today's mass surveillance means that action at the individual level is not enough, so we need public policies that guarantee our rights.

Encryption of communications aims to ensure that they can only be received by the people the sender wants them to receive, and allows people to express themselves freely without fear of being disturbed by third parties.

During 2018 the UN adopted a resolution reaffirming the protection of human rights and fundamental freedoms on the internet in the same way as offline, noting the importance of privacy.

Modern data privacy laws already exist in California, Canada, Brazil, India and the European Union, which to a greater or lesser extent include the right to know what information has been collected, exclusion in the accumulation and sale of data, erasure of personal data and the right to encryption of communications.

Proposed articles

It is proposed to add paragraphs such as the following in the article on fundamental rights:

It is the duty of the State to protect the right to privacy of all inhabitants, both at home and in public and virtual spaces, thus preserving the dignity, privacy and autonomy of individuals and collectives, as well as the freedoms of conscience, expression and association. Such protection must contemplate both State abuses and those of private organizations and individuals.

The State is the guarantor of freedom of expression and association, as well as of the privacy of its citizens, so that they may exercise them without fear. Therefore, it shall ensure the right of all citizens to encrypt their communications and that these are not intercepted by third parties in order to reveal their content.

Only if it is for the purpose of protecting other fundamental rights will it be possible to access the intrusion into the privacy of individuals, always by individualized court order in the cases specified by law.

Bibliography

Surveillance

- ¿Por qué me vigilan si no soy nadie?
- La vigilancia es un problema colectivo, como el cambio climático
- Malte Spitz: Su compañía telefónica está vigilando (subtitulado)

Privacy

- “Nadie será objeto de injerencias arbitrarias en su vida privada, su familia, su domicilio o su correspondencia, ni de ataques a su honra o a su reputación. Toda persona tiene derecho a la protección de la ley contra tales injerencias o ataques.” Declaración Universal de Derechos Humanos
- “Afirma que los mismos derechos que tienen fuera de línea las personas también deben protegerse en línea, en particular la libertad de expresión, lo que es aplicable independientemente de las fronteras y por conducto de cualquier medio de su propia elección, de conformidad con el artículo 19 de la Declaración Universal de Derechos Humanos y del Pacto Internacional de Derechos Civiles y Políticos . . . Reconociendo que la privacidad en línea es importante para el ejercicio del derecho a la libertad de expresión y a manifestar opiniones sin intromisión, así como del derecho a la libertad de reunión pacífica y de asociación” Resolución Naciones Unidas: Promoción, protección y disfrute de los derechos humanos en Internet
- Resolución Naciones Unidas: El derecho a la privacidad en la era digital
- La importancia del derecho al cifrado para la protección y ejercicio de los derechos humanos
- Alemania planea incorporar el “derecho a la encriptación” (en inglés)
- Internet Society: What is Privacy?
- Privacy International: Learn

Data privacy laws

- CCPA California
- Privacy laws in Canada
- LGPD Brasil
- India Data Protection Bill
- GPRD Unión Europea

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