European Group on
Ethics in Science and
New Technologies
to the European Commission

OPINION NO. 28 OF THE EUROPEAN GROUP ON
ETHICS IN SCIENCE AND NEW TECHNOLOGIES

Ethics of Security and Surveillance Technologies

Brussels, 20 May 2014

Julian Kinderlerer
President, EGE

European Group on
Ethics in Science and
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to the European Commission

The EGE is an independent, pluralist and multidisciplinary body advising the European Commission on ethics in science and new technologies in connection with Community legislation or policies.

The EGE members serve in a personal capacity and are asked to offer independent advice to the Commission

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In January 2011 President Barroso appointed a new European Group on Ethics for 5 years with a new mandate.
There are 15 members, theoretically 5 scientists/clinicians, 5 lawyers and 5 philosophers/ethicists/theologians.

The mandate of the group is to advise the Commission, Council and Parliament on ethical questions relating to science and new technologies, either at the request of the Commission or on its own initiative.

In the past, most opinions were within the context of bioethics (not necessarily medical) but during this mandate we have looked at information and communication technologies, energy, and security and surveillance

"On 21 March 2011 President José Manuel Barroso requested the EGE to draft an Opinion on the ethical implications of information and communication technologies and to produce, subsequently and separately, an Opinion on the ethical implications of security technologies, with due attention given to the development of security technologies and to surveillance technologies"

José Manuel Barroso
President of the European Commission

Brussels,
PRES – Ares (2011) 21 MARS 2011

.....“I would also like to ask the EGE to issue an Opinion on the ethical implications of security technologies. The EGE Opinion may offer a reference point to the Commission to promote a responsible use of security technologies and policies in FP7 and facilitate the societal acceptance of such an important policy area, including the ethics review process both at the European Union and Member States levels. The Opinion should take into consideration different possible applications of security, such as Internet profiling, body scans, the use of different bio-identification tools such as fingerprinting, chips inserted into humans, iris photos, biometrics and other ICT surveillance methods.”

Yours sincerely,

José Manuel BARROSO

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CONTEXT

As the group prepared the report, the revelations of Edward Snowden emphasised how important a reorganisation and reinterpretation of our approach to security and surveillance is. Indeed the predicament of data flows and surveillance activities thrown into sharp relief by these revelations form part of the evolving backdrop against which this Opinion is set

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CONTEXT

Surveillance and the concept of national security are well known to citizens of former police states,

I remember picking up the phone in South Africa in 1966 and hearing nothing, no dialling tone, then…

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CONTEXT

National security is the responsibility of the Member States, but the Lisbon Treaty, and particularly the Charter of Fundamental Rights embedded in it provides for action by the Union where necessary to protect the rights of individual citizens.

Surveillance by organisations other than member states (including those sponsored by the States) is also outside the competence of the Union

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CONTEXT

security can be defined as “protecting people and the values of freedom and democracy, so that everyone can enjoy their daily lives without fear”

“Surveillance” is first attested in 1768, in an Article (in the economic journal Ephémérides du citoyen) pertaining to the role of the police on marketplaces, drawing together individuals and the state, public and private interests, law and law enforcement.

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CONTEXT

It is not only surveillance by national authorities, but also that by organisations (including multi-national companies) that do so for through state sponsorship or for commercial gain

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The EGE's role was to look at this topic in the light of new developments in science and technology

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More than 2 billion people worldwide use the internet (one billion in 2008) – that is 1 in 3!

"Over the past three decades it has grown from an experimental research network and now underpins a range of new economic activities as well as activities and infrastructures that support our economies, from financial markets and health services to energy and transport."

OECD Policy Brief June 2008

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The number of mobile phones, which are themselves computers, in use were over 5 billion in 2010 (for a world population of approximately 7 billion); many countries have more mobile phones in use than people!

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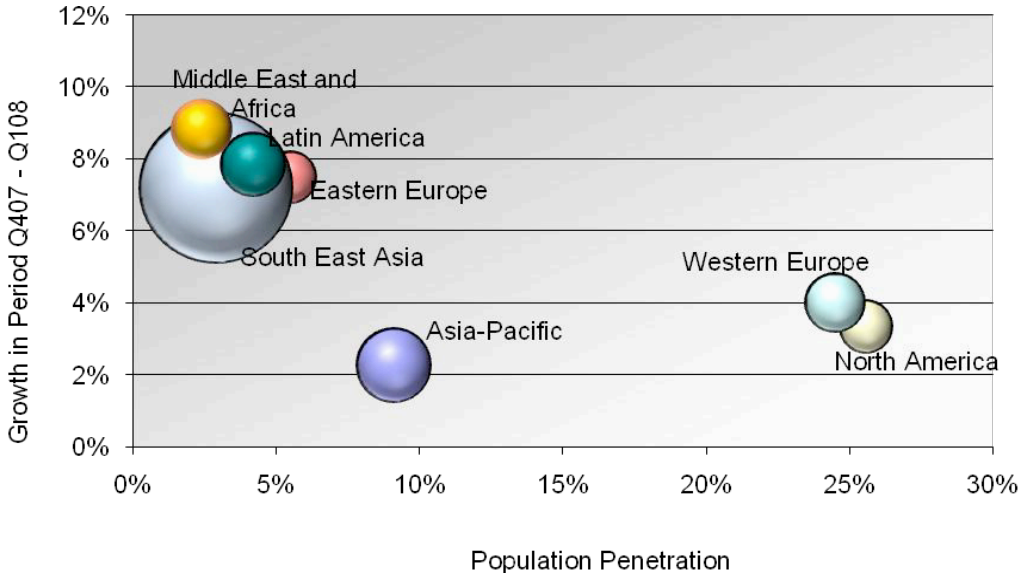
The penetration (% of population using computers) and quarterly growth of computers in 2008



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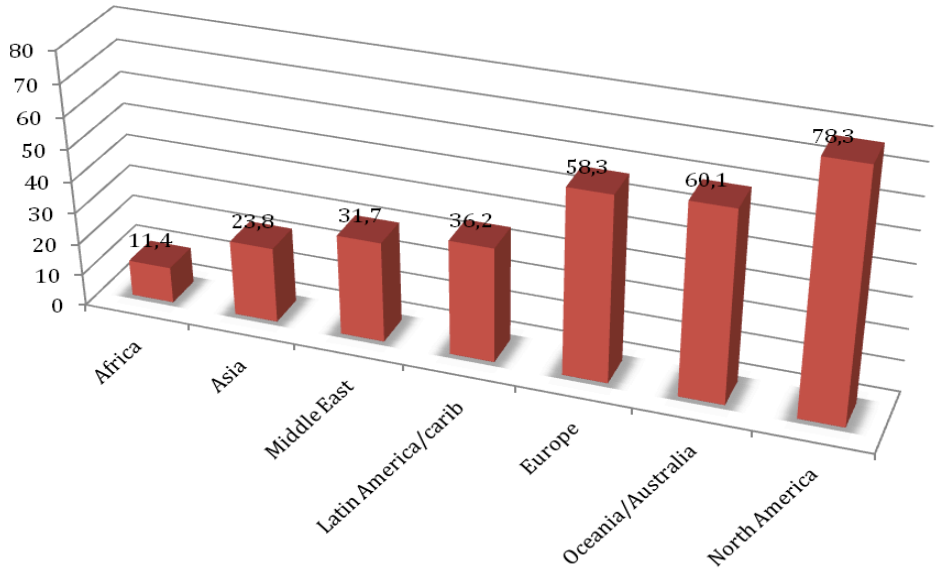
The penetration (% of population using computers(2011)



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Surveillance

CCTV systems capable of identifying and tracking a person's face from half a mile away are turning Britain into a Big Brother society, the UK's first surveillance commissioner has warned.

New high-definition cameras are being rolled out across UK cities without public consultation into the intrusion they pose, Andrew Rennison told The Independent.

The INDEPENDENT

4th October 2012

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UK

The anti-surveillance campaign group Big Brother Watch recently found that at least 51,600 CCTV cameras are being used by 428 local authorities – and that 100,000 are in use in schools, with as many as 200 using them inside toilets and changing rooms. More than a million cameras have also been installed on private land.

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‘What does anyone mean when they speak of security? Why are we suddenly a nation and a people who strive for security above all else? In fact, security is essentially elusive, impossible. We all die. We all get sick. We all get old. People leave us. People surprise us. People change us. Nothing is secure. And this is the good news. But only if you are not seeking security as the point of your life.’

John T Hamilton, Security, Politics, Humanity and the Philology of Care, Princeton UP, 2013, p. 28

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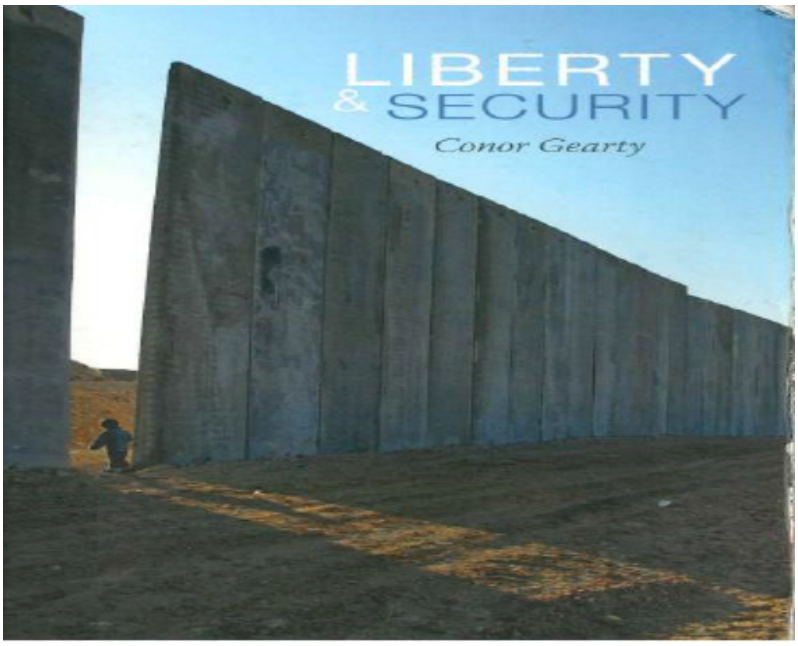

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Hence, what are the issues?

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The EU citizen

Is it possible to assure that the Charter of fundamental rights is implemented fully?

The Lisbon treaty will have a significant impact on fundamental rights within the European Union –the Charter of Fundamental Rights is central to the treaty obligations. “The Charter demonstrates that Europe in its diversity is based on a set of shared values that are intimately linked to the identity of the European Union”

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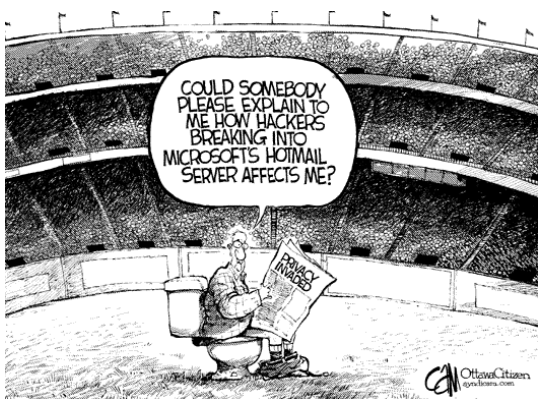
The EU citizen

- **Respect of freedom** which secures, inter alia, the right to uncensored communication and agency in the digital era;
- **Respect for democracy, citizenship** and **participation** which includes, inter alia, protection against unjustified exclusion and protection against unlawful discrimination;
- **Respect of privacy** which secures, inter alia, the personal private sphere against unjustified interventions;



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Ethical Principles

- Dignity
- Privacy
  - Nothing to hide?
  - Consent
- Autonomy
- intellectual privacy

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Privacy

Scholars distinguish between **physical** (related to physical protection), **psychological** (related to personal autonomy), **economic** (related to property), **informational** (related to personal information), and **decisional** (related to decisional power) privacy. In fact, “privacy” means different things in different contexts.

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Stockholm Programme (lapses at the end of this year)

- Promoting citizenship and fundamental rights (giving primacy to the protection of fundamental rights and freedoms.
- A Europe of law and justice
- A Europe that protects
- Access to Europe in a globalised world
- A Europe of responsibility, solidarity and partnership (in migration and asylum matters)

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BUT

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The EU needs to be more secure

1. Disrupting international crime networks threatening our society
2. Preventing terrorism and addressing radicalisation and recruitment
3. Raising levels of security for citizens and businesses in cyberspace
4. Strengthening security through border management
5. Increasing Europe's resilience towards crises and disasters

EU 2010 Communication (COM(2010)673)

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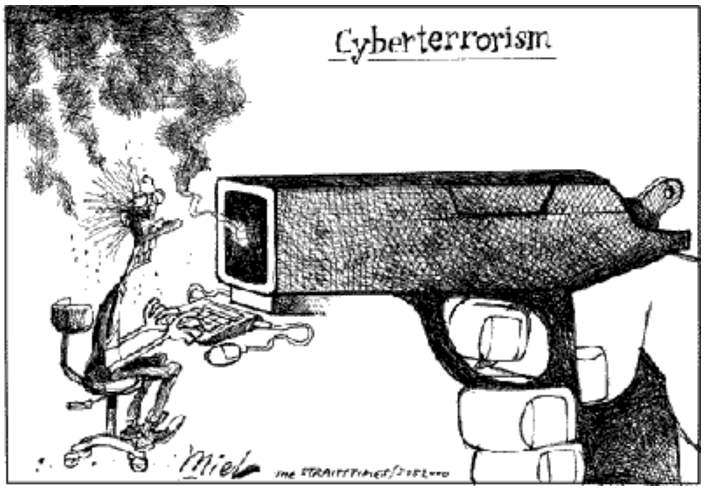

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"Effectiveness of security measures rather than an avoidance of fear should be the basis for engendering public trust. Trust is crucial to almost any type of situation in which either uncertainty exists or undesirable outcomes are possible. As observed by Baroness Onora O'Neil in her 2002 Reith Lectures on trust "Confucius told his discipline Tzu-kung that three things are needed for government: weapons, food and trust. If a ruler can't hold on to all three, he should give up the weapons first and the food next. Trust should be guarded until the end: without trusts we cannot stand".

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Nothing to hide…..

"If you have nothing to hide, you have nothing to fear"

The nothing-to-hide argument pervades discussions about privacy. The data-security expert Bruce Schneier calls it the "most common retort against privacy advocates." The legal scholar Geoffrey Stone refers to it as an "all-too-common refrain."

Why "Nothing to Hide" misrepresents online privacy | TechRepublic 11/07/2013

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Nothing to hide…..

By joining pieces of information we might not take pains to guard, the government can glean information about us that we might indeed wish to conceal.

For example, suppose you bought a book about cancer. This purchase isn't very revealing on its own, for it indicates just an interest in the disease.

Suppose you bought a wig. The purchase of a wig, by itself, could be for a number of reasons. But combine those two pieces of information, and now the inference can be made that you have cancer and are undergoing chemotherapy.

That might be a fact you wouldn't mind sharing, but you'd certainly want to have the choice.

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Nothing to hide…..

"As Aleksandr Solzhenitsyn declared, "Everyone is guilty of something or has something to conceal. All one has to do is look hard enough to find what it is." Likewise, in Friedrich Dürrenmatt's novella "Traps," which involves a seemingly innocent man put on trial by a group of retired lawyers in a mock-trial game, the man inquires what his crime shall be. "An altogether minor matter," replies the prosecutor. "A crime can always be found.

Privacy Matters Even if You Have 'Nothing to Hide' - The Chronicle Review - The Chronicle of Higher Education 2014/11/06, 11:53

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Surveillance can be harmful because "it can chill the exercise of civil liberties, and because it gives the watcher power over the watched…. Such intellectual surveillance is especially dangerous because it can cause people not to experiment with new, controversial or deviant ideas. To protect our intellectual freedom to think without state oversight or interference, we need … "intellectual privacy."

(Neill Richards)

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Ethical Principles

- Individual responsibility
- Justice - non-discrimination
- Efficacy and proportionality and balancing

"In a free society, public officials should never engage in surveillance in order to punish their political enemies; to restrict freedom of speech or religion; to suppress legitimate criticism and dissent; to help their preferred companies or industries; to provide domestic companies with an unfair competitive advantage; or to benefit or burden members of groups defined in terms of religion, ethnicity, race, and gender."

US president's Review Group on Intelligence and Communications Technologies, 2013.

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- “We understand that governments have a duty to protect their citizens. But this summer’s revelations highlighted the urgent need to reform government surveillance practices worldwide. The balance in many countries has tipped too far in favour of the state and away from the rights of the individual — rights that are enshrined in our Constitution.
- This undermines the freedoms we all cherish. It’s time for a change”

https://www.reformgovernmentsurveillance.com for information on the open letter to the US Government calling for ‘Global Government Surveillance Reform’

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Recommendations

The EGE recognises that an entirely legitimate manifestation of state power in a democratic society is to have agencies that according to strict legal limitations are permitted to use surveillance as a means of safeguarding the security of its citizens.

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Recommendations

Infringement by a public authority of a person's right to privacy must be **justified** and should be subject to judicial oversight. Surveillance must be **necessary** and **proportionate**

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Recommendations

Accountability is a necessary pre-requisite for public surveillance thus, it should be clear that surveillance is being undertaken for appropriate reasons and in conformance with publicly available codes of practice.

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Recommendations

Technologies with the potential to intrude into the privacy of individuals *and* to which they cannot consent (or cannot opt out), require specific justification. The EGE calls for a *case by case justification* for these measures.

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Recommendations

The shared European values enshrined in the EU Charter of Fundamental Rights represent the normative framework on which a common ethical understanding of national security could be built.

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Recommendations

Regarding surveillance technologies, the burden of proof should lie with states and/or companies, who have to demonstrate *publicly and transparently*, before introducing surveillance options,

- that they are **necessary**
- that they are **effective**
- that they respect **proportionality** (e.g. purpose limitation)
- that there are no better **alternatives** that could replace these surveillance technologies

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Recommendations

The EGE affirms that the purpose limitation principle as regards personal data be the standard for both public and private organisations.

The EGE is of the view that the protection of data enshrined in EU law is robust but requires proper enforcement at the national level.

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Recommendations

The European Commission and Member States should ensure that an effective and comprehensive whistle-blower protection mechanism is established in the public and private sectors.

Public and private organisations should adopt privacy-by and privacy-in design principles for development of security and surveillance technologies. The European values of dignity, freedom and justice must be taken into account before, during and after the process of design, development and delivery of such technologies.