

Digital privacy, freedom of expression, and the right to a private life and correspondence

A brief look at how the European Court of Human Rights has interpreted these rights

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European Convention on Human Rights

- International treaty between 47 Member States
- Creates protections for individuals against State interference
- European Court of Human Rights upholds the treaty
- States must not allow companies to violate an individual's rights

Digital privacy as a human right

- Online activities in the scope of digital privacy
 - Communicating with others
 - Sharing or accessing information
 - Publishing or expressing an opinion
 - Surveillance of online activity
- Activities are traced and collated into profiles by State agencies or private companies

Article 8: Right to private life and correspondence

Article 8 ECHR: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 10: Freedom of expression

Article 10 ECHR: Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

State surveillance and the Convention

- *Big Brother Watch v. UK* (2018) – court ruled violations of Articles 8 (program oversight) and 10 (journalistic sources), but the program itself caused no violation
- *Centrum för Rättvisa v. Sweden* (2018) – court rule no violation of Article 8 rights, as Sweden's actions reasonable to protect national security
- Both cases due to be reconsidered, regarding whether a mass surveillance State program is, in principle, a violation of human rights

Schrems v. Facebook

- Max Schrems and NYOB challenge social media companies through the General Data Protection Regulation
- Preliminary ruling (2019):
 - Transfer of Facebook data to the US using EU-US Privacy Shield interferes with Article 8 privacy rights
 - The US does not provide acceptable legal protection for this data against use by intelligence agencies
 - Transfer of data fails to meet criteria of Article 8(2)

What can be done to gain control?

- Cryptoparty can recommend tools and tactics
 - Communication – using encryption for email and instant messengers
 - Accessing information – choices of browser, search engine, cookie prevention, careful social media usage
 - Challenge State surveillance – obscure connections via TOR



Thank you!