

# Adapting to digital technologies: Ethics and privacy

A contribution by  
Paul Chadwick  
ABC Director Editorial Policies

To the session 'Copyright, Defamation, Ethics and privacy: Will the digital landscape demand a new approach?'

## ***Future of Journalism Summit***

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### **Introduction**

We are asked at this forum to consider the future of journalism. In this session, we are considering whether digital technologies will demand a new approach to certain legal and ethical questions.

My answer is yes, digital technologies demand a new approach to almost everything. What might that approach be?

While it may seem counter intuitive to some, the first step in confidently extracting the best from these marvellous technologies is to look backwards for a moment. In rethinking many policy issues in this Information Age, it helps to look to the origins of the standards that have guided us so far.

Ask first: Why do we honour this or that value? What is it for? We can then ask whether the answers still seem to us valid in the remarkably changed and changing environment the technologies are helping us to create.

Once we have decided this much, we can consider how the technologies and our uses of them can continue to evolve for the common good, without an unacceptable erosion of values we have decided are still valid, still worth honouring.

Today, in relation to the value called privacy, I want to contribute to that conversation by making two main points –

- 1 Privacy remains a value worth honouring.
- 2 The major current threats to privacy do not come from traditional large media organisations. They come from two other sources, one expected and the other unexpected.

## 1 Enduring value of privacy

Privacy is basic to human dignity. It is a value acknowledged across much time and many cultures. In our times and culture, respect for privacy serves three main purposes:

- it assists the development and maintenance of individuality;
- it nourishes and protects intimacy among individuals; and
- it is one of the liberties we use to keep governmental power in check.

Privacy is an instrumental freedom that facilitates the enjoyment of other fundamental freedoms. Without respect for privacy, people can in practice find it harder to engage in prayer and rites of worship (freedom of belief), can be frustrated in their efforts to organise and act peacefully for common ends (freedom of association), and can have their contacts and pre-publication papers, drafts etc, interfered with in ways that restrict their communications with others (freedom of expression).

Much authoritarian governance – throughout history and today still – is marked by serious erosions of privacy. When freedom starts to wane, among the first people to find their privacy invaded are journalists.

In discussing privacy and its limits (for like other values it is not absolute), it is necessary to be clear about what we mean. Privacy is not a synonym for secrecy. Privacy inheres only in natural persons, and not in governments or other legal entities such as corporations.

## 2 The major current threats to privacy do not come from traditional large media organisations

Large Australian media entities have methods that are generally effective in balancing privacy with other values. People may differ on how well they work in particular cases, but there is an established approach. The literature suggests that there is a test media decision-makers can ask themselves every time circumstances arise that seem to put privacy in the balance against another value. The test can be summarised as –

Does the public interest in disclosing  
irretrievably,  
at this time,  
this information,  
outweigh  
a person's  
reasonable expectation of privacy?

Every key word of that test helps us to focus more precisely on what we are deciding, and on how we will explain our decision, whatever we may decide in the case at hand. One important aspect of accountability for the power that is being wielded is the willingness to explain publicly how a decision was made.

The word 'irretrievably' forces us to contemplate the fact that in the digital age a disclosure is a disclosure worldwide and forever. This is a factor requiring close attention in privacy cases because privacy, once breached, cannot be restored in the way other values can be repaired. For instance, reputations unjustifiably harmed can be repaired to some extent by retraction or apology. In privacy cases, corrections and apologies tend simply to make things worse by repeating that which has been disclosed.

So, if not the traditional media, who are the current major threats to privacy?

The first is a familiar figure from history: governments. Governments are currently newly armed in two ways –

- The market is developing and selling to government agencies very powerful technologies of surveillance and the enormous capacity of digital technologies to gather, store and sift big datasets from which patterns, inferences and facts can be mined and then used to influence governmental decisions that affect individuals.
- Legislatures, in the period since 11 September 2001, have equipped Executive Government with very substantial powers to invade privacy under law as part of a re-balancing of liberty and security.

I do not want to be misunderstood. The technologies have many beneficial and benign uses in public administration, as they do in commerce and in community organisations. The technologies, in the hands of government, are not automatically to be loathed or feared.

My point is that these two factors together make governments one of the leading threats to privacy, and therefore one of the most important objects for journalistic scrutiny on behalf of the public. It is particularly important that the formal safeguards built into the new anti-terrorism laws are scrutinised to see whether they are working. This is part of the public duty of journalism.

The second major current threat may surprise. It is the public, newly equipped with power that most people are not used to having. What I mean is that the technologies are making universal the power to gather and disclose - quickly, widely and enduringly - privacy-invasive material. One simple example is mobile phones equipped with cameras and capable of swiftly disseminating what they record. Widespread and long-lasting disclosure can now be initiated not just by the relative few who run big newspapers and broadcasting organisations, but by anyone with comparatively simple and cheap equipment and connection to the internet.

Now that the power of mass disclosure is spreading widely throughout the public, ethical approaches to the use of that power need to be nourished. We can welcome the democratising of the power that accompanies greater access to information and communication without blinding ourselves to the potential harms it may cause if misused. We need to think more about how those harms may be ameliorated.

I believe the traditional large media organisations have a role to play in spreading its hard-earned knowledge, including measured awareness of the privacy-invasive implications of the technologies, and of ways to minimise them.

The power of mass disclosure will not return to the few hands in traditional media. Lamentation for a passing era is futile. Looking forward to what kind of society we want to shape through technological change creates a challenge for media professionals whose three-centuries ascendancy is fragmenting. Lament, resent or contribute? As a start, contribute through inquisitively seeking to connect experts with generalists, and by seeing that journalists are themselves a category of expert with something to offer the generalists, as well as much to learn about new techniques.

Far from being less necessary, the skills of journalism are more than ever needed to serve Australian society, but in new ways. One way is for media professionals to pass on to the broader community the experience journalists have honed over many decades in balancing values that sometimes come into conflict when mass disclosure is being contemplated. For example: individual privacy or reputation versus an informed public; due process versus immediacy of disclosure; operational prudence (military or police) versus a swiftly and properly informed self-governing community.

It is possible to identify and honour enduring values while also gaining the benefits of technological change. Compromises in particular circumstances are often necessary. Early steps to workable solutions are: aversion to absolutism; suspicion of the simplistic; conscious regard for the stakes when basic values clash; and a concerted effort to become better at making necessary choices and explaining them.

Law to keep governmental power in check, and meaningful self-regulation by the rest – this is usually the best first option where the technologies of information and communications are concerned. We should have the self-confidence to proceed that way as digital technologies continue to transform journalism and much else.

*Paul Chadwick, journalist and lawyer, is the inaugural ABC Director Editorial Policies. He was the first Victorian Privacy Commissioner (2001-06). In 1997 he received the Walkley Award for most outstanding contribution to journalism.*

For further details see –

"Privacy and Media - subtle compatibility - five categories of fame", speech presented at the 26th International Conference on Privacy and Personal Data Protection, Wroclaw, Poland, 15 September 2004,

[http://www.privacy.vic.gov.au/dir100/priweb.nsf/download/4A48ADA084D66E3FCA256F4A0000C910/\\$FILE/Poland\\_%20privacy\\_media\\_fame\\_Paul\\_Chadwick\\_%20September%202004.pdf](http://www.privacy.vic.gov.au/dir100/priweb.nsf/download/4A48ADA084D66E3FCA256F4A0000C910/$FILE/Poland_%20privacy_media_fame_Paul_Chadwick_%20September%202004.pdf) or available under <http://www.privacy.vic.gov.au> > Publications > Speeches.

"Fame, Media, Privacy: two modest proposals for a better balance", speech presented at the Australian Press Council Public Forum, Ballarat, 5 May 2005,

[http://www.privacy.vic.gov.au/dir100/priweb.nsf/download/70B6907916C4FA0DCA25702000216426/\\$FILE/Press%20Council%205.5.05.pdf](http://www.privacy.vic.gov.au/dir100/priweb.nsf/download/70B6907916C4FA0DCA25702000216426/$FILE/Press%20Council%205.5.05.pdf) or available under <http://www.privacy.vic.gov.au> > Publications > Speeches.

"The Value of Privacy", a Law Week 2006 address at the State Library of Victoria, 23 May 2006,

[http://www.privacy.vic.gov.au/dir100/priweb.nsf/download/F59DF2830D7A5F5FCA257180001BB230/\\$FILE/The%20Value%20of%20Privacy%2023%20May%2006.pdf](http://www.privacy.vic.gov.au/dir100/priweb.nsf/download/F59DF2830D7A5F5FCA257180001BB230/$FILE/The%20Value%20of%20Privacy%2023%20May%2006.pdf) or available under <http://www.privacy.vic.gov.au> > Publications > Speeches.

"New Transparency", address to Melbourne Press Club, September 2007,

[http://www.abc.net.au/corp/pubs/documents/melbourne\\_press\\_club\\_060907.pdf](http://www.abc.net.au/corp/pubs/documents/melbourne_press_club_060907.pdf)