

THE ONGOING DECLINE OF THE VALUE OF PRIVACY

1. The idea of privacy and the impossibility of defining it

1.1. An attempt to socially and culturally sketch “privacy”

In every corner of the Western world, privacy – the right to privacy – is perceived as a human commodity of supreme importance, as a value that is essential when it comes to making life worth living. Without privacy, we lose our very “integrity as individuals”.¹ An equally widespread idea is that privacy is increasingly threatened by the evolution of modern society, with its burgeoning surveillance and investigation technologies. The threat is presented in the most sombre colours: violations of privacy are associated with a society of terror; they harm our own humanity or foreshadow a new form of totalitarianism². Few are the authors who discuss the issue of privacy and manage to refrain from making at least one reference to Orwell when describing these dangers.

However, anyone who has attempted to write a universally accepted definition of the term ‘privacy’ has met with the same difficulties, i.e. the extraordinary difficulty of defining this term satisfactorily for all human beings across the world. This is due to the fact that, in the words of James Q. Whitman, privacy “is an unusually slippery concept, given the fact that the sense of what must be kept ‘private’, of what must be hidden from the eyes of others, seems to differ strangely from society to society”.³ Whitman mentions the cultural norms that govern different societies around the globe, societies which do not share a common idea of what should be kept in the intimate sphere, proof in this respect being the fact that in some societies “cheerfully defecate in full view of each others” or engage in “public sexual activities”.⁴

The difficulty of finding a universally accepted and valid definition is intrinsically linked to the different cultural interpretations of what private life really means. In addition to these socio-cultural manifestations of the idea of privacy, we are also confronted with the newly formulated view that the current information age adds an entirely new dimension

¹ See FRIED, Charles: *Privacy*. The Yale Law Journal, vol. 77, 1968. p. 475.

² See EBERLE, Edward J.: *The Right to Information Self-Determination*. Utah Law Review, 2001. p. 995 or RUBENFELD, Jed: *The Right of Privacy*. Harvard Law Review, vol. 102, 1989, p. 737.

³ See WHITMAN, James Q.: *The Two Western Cultures of Privacy. Dignity vs. Liberty*. 6 The Yale Law Journal, Vol. 113, 2004, p. 1153.

⁴ WHITMAN, 2004. p. 1154.

to the cultural and anthropological definitions of what should be kept away from prying eyes, namely the access by the public of the many private issues that people have fallen prey to due to the massive expansion of state-of-the-art technology in the last decades. As Renata Salecl puts it: “In a world obsessed with the issue of identity and individuality, intimacy is the hottest theme”⁵.

This has led to a deepening accentuation of the already existing divide between the ardent supporters of intimacy and the avid supporters of the idea of ‘sharing’, of ‘making public’ one’s private life, discussions around “private life” becoming, at least from a socio-political point of view, more loaded than ever before. While the former are of the opinion that no private information about their lives should be accessible to institutions of state, internet providers or websites, the latter share, whole-heartedly, even doggedly, vast amounts of private information through social networks such as Facebook, Twitter, Instagram or Snapchat, adhering more or less consciously to the idea of exposing their own privacy. This idea was perfectly formulated in the following quote: “You have zero privacy. Get over it”.⁶ In the same register, Israeli author Eshkol Nevo states in his novel “*Three Floors Up: A Novel*” that secrets and, therefore, privacy too, have become a thing of the past:

„A word about secrets in the modern era before I tell you [...] my secret. There are none. There are no secrets in the modern era. Everything is bared, aired, shared, Twittered and Flickered; you can Snapchat and WhatsApp and Viber and Wiki. Nothing is secret, privacy is dead, and the funeral will be broadcast on the Reality Channel”.⁷

The socio-cultural phenomena related to the idea of the death of private life are numerous, yet singularly based on the idea that today’s society is motivated by a strong desire to gain access to “that certain something” which, until recently, had to remain hidden from the public sphere. Not only does the unprecedented rise of social networks and the mass-production of increasingly advanced smart phones play an important role in breaking down the concept of privacy, but also, for example, the (relatively) new concept of “reality TV” shows, such as *Big Brother*, *Survivor*, *Joker*, *Love Island*, etc. The blurring of the boundaries of privacy can be observed not only in the media, but also in the workplace, for example by creating “open office spaces”, the cubicles separating co-workers in offices being entirely removed, or by increasing the idea of “teamwork”, even if this proves to be detrimental to productivity in some cases.⁸ As the German journalist David Hagendick⁹ writes rather humorously, an attitude like that of Niklas Luhman, the famous sociologist, who, when asked what precisely he needed when he began his work at Bielefeld University, answered curtly with “pencils,

⁵ SALECL, Renata: *The Exposure of Privacy in Today’s Culture*. Social Research, vol. 69, 2002, p.8.

⁶ SCOTT McNEALY Executive Manager of Sun Microsystems, quoted de RADCLIFF, Deborah: *A Cry for Privacy*. Computerworld, 1999.

⁷ NEVO, Eshkol: *Three Floors Up. A Novel*. XXX. Other Press. 2017, p. 95.

⁸ WILLIAMS, Ray: *Productivity often hindered by teamwork*. Financial Post, 2012. See <https://business.financialpost.com/executive/careers/why-teamwork-can-hinder-productivity> [accessed 1 March 2020].

⁹ HAGENDICK, David: *Der Terror der guten Laune*. Zeit Online, 2014. See <https://www.zeit.de/2014/47/karriere-ratgeber-glueck-arbeit> [accessed 1 March 2020].

writing-pads and apart from that, privacy”, would be certainly deemed unacceptable now; the utterer of such a statement would be, according to Hagendick, “coerced into taking part in harmony-producing exercising and improving his mountain-climbing skills”.¹⁰

Similar to the changes in office-design, such phenomena also occurred in a variety of aspects as far as life in general is concerned, not only one’s workplace. Preserving the architectural register, one can mention that in modern gastronomy, customers are often invited to see the kitchen (which is not separated by any walls from the actual restaurant) and thus observe how and by whom their food is being prepared. Let us not omit restaurants in which customers are served their food while lying in bed – the so-called “Bed Restaurants”¹¹; the field of leisure activities has also been radically transformed, with activities such as “naked cycling” in major European cities or the internationally ever-growing “No Pants Day”, in which people are encouraged to ride the metro while wearing no trousers, thus exposing their underwear.

The ostentatious display of what was once deemed worthy of remaining in the private space continues in art, with numerous examples: the dissected animals of Damien Hirst, the photos and video images with intestines of Monna Hatum, the idea of the face behind the skin of Alain Miller, Mark Quinn’s skin without body, or the exhibition „The Human Body”, which aroused both interest and disapproval in Romania as well, an exhibition containing over 200 exhibits, “*plastinated*” and flayed human corpses, in various positions, with tissues and internal organs exposed. Similarly, we also have modern art which consists in the etching of the names of all ex-lovers on the walls, in the case of Tracey Emin, or on the sofa, in the case of Sara Lucas. It all comes back to the same idea: nowadays, everything is visible, everything is exposed to the other’s gaze, nothing is secret, “there are no secrets” in today’s society.¹² In fiction, the feminist slogan “the personal is political”, launched by Carol Hanisch in 1971, seems to have morphed into the principle of “the personal is public”, given, for instance, the witnessing of a resounding success of Eve Ensler’s play, “*The Vagina Monologues*” (1996), in which the author, through a series of shocking and dramatic testimonies, yet also novel, disturbing, aggressive or seemingly perverse, tries to deconstruct clichés and taboos related to topics such as rape, menstruation, sexual assault, genital mutilation, incest, etc.

1.2. Legal implications of “privacy”

With regard to the legal implications of the concept of privacy or personal sphere nowadays, James Q. Whitman discusses, as I mentioned earlier, the difficult task of defining the concept not only from a more recent point of view, but also from a more generally accepted one, with direct implications for law-makers. He distinguishes between the two different, and almost opposite, concepts of privacy that appear in Western thought, namely the European concept of private life “as a form of protection of a right to *respect* and *personal dignity*”

¹⁰ HAGENDICK, 2014.

¹¹ VERTEȘ-OLTEANU, Andreea – RACOLȚA, Remus: *The Rise and Fall of Information Privacy*. Curentul Juridic, Petru Maior University, vol. 76, 2019. p. 121-132.

¹² SALECL, 2002. p. 5.

(emphasis in the original) on the one hand, and the American interpretation, that is, a form of “freedom to oppose the state”, or “the right to freedom from intrusions by the state, especially in one’s home” on the other.¹³

From a legal perspective, privacy is a composite concept, which includes “searches and seizures, public records, private records, the property rights of the famous in their fame, the rights of those who do not want to be famous and, the like.”¹⁴ Given the variety of issues within this term, any in-depth approach, both legal and conceptual, is proving extremely difficult. Privacy is vulnerable to intrusive technologies, whether the intrusion is enacted through a police raid, a printing press, a camera or the internet. Even though it seems impossible to be encompassed within a single definition, the classic “legal” characterization of privacy as the “right to be let alone” belongs to Louis Brandeis and Samuel D. Warren, the authors of a famous 1890 commentary published in the influential *Harvard Law Review*, in response to Eastman Kodak’s invention of a cheap, portable camera that changed the world. “Law,” they argued, “secures to each individual the right of determining, ordinarily, to what extent his thoughts, sentiments, and emotions shall be communicated to others.”¹⁵ The beginning of the end of private life was near.¹⁶ In their article, Warren and Brandeis explain the need for the law to adapt to the recent inventions, as well as to the practices of tabloid journalists of the time, especially the pages dedicated to “gossip”, which contributed to the increasingly aggressive invasion of people’s private lives.

“The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast in the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle.”¹⁷

Years have passed and attempts to sketch privacy have multiplied. Privacy seems like a chameleon that changes its meaning according to the context.¹⁸ If this context is given by “information”, then private life presupposes guaranteeing the confidentiality of personal information, an attempt which, in legal language, has recently acquired the title of “the right to be forgotten”.

The right to be forgotten is a direct result of the complex interpretation of the person’s right to benefit from the person’s respect to private life, enshrined in international conventions (Article 8 paragraph (1) ECHR), in the Charter of Fundamental Rights of the EU (Article 17), in constitutions (Article 26 paragraph (1) of the Romanian Constitution), etc. On a European level, the right to be forgotten is considered to be a Praetorian creation of the

¹³ WHITMAN, 2004. p. 1161.

¹⁴ SOMMER, Joseph: *Against Cyberlaw*. Berkeley Technology Law Journal, Vol. 15 (3), 2000. p.1216.

¹⁵ WARREN, Samuel D. – BRANDEIS, Louis D.: *The Right to Privacy*. Harvard Law Review, vol. 4 (5), 1890, p. 198.

¹⁶ WACKS, Raymond: *Privacy. A Very Short Introduction*. Oxford: Oxford University Press, 2010, p.53.

¹⁷ WARREN–BRANDEIS, 1890. p.193.

¹⁸ KANG, Jerry: *Information Privacy in Cyberspace Transactions*. Stanford Law Review, vol. 50, 1998. p. 1202.

Court of Justice of the European Union (CJEU), more precisely the case C 131/12 mentioned above, which later found its consecration in an act of EU secondary legislation with direct application: the General Regulation on data protection, which is enforced starting with May 25th, 2018 – the EU Regulation 2016/679 regarding the protection of natural persons related to the processing of personal data, the free movement of such data and the repealing of the Directive 95/46 / EC.

On closer examination, however, we will notice that the right to be forgotten is not necessarily a completely new or original creation of the CJEU. In Europe, the right to be forgotten has long been recognized – or at least since the European courts began to recognize a right of “informational self-determination”. The term “informational self-determination” was used for the first time in the context of a decision of the German Constitutional Court regarding personal data collected during the 1983 census, the German term being “*informationelle Selbstbestimmung*”. The objective right of data protection seems to be based on the idea of informational self-determination which, in turn, finds its roots in the idea of free agency. Ultimately, the philosophy of data protection presupposes the following: any person should have the right not to be the object of a processing of his data unless such processing is done on legal grounds and unless the processing itself is subject to adequate guarantees. On the occasion of this decision¹⁹, the Federal Constitutional Court of Germany ruled the following: “In the context of modern data processing, the general right of personality (...) of the Basic Law encompasses the protection of the individual against unlimited collection, storage, use and sharing of personal data. The fundamental right guarantees the authority conferred on the individual to, in principle, decide themselves on the disclosure and use of their personal data. Limitations of this right to “informational self-determination” are only permissible if there is an overriding public interest”.

The right to informational self-determination is a huge achievement as far as the recognition of the rights of users is concerned. It was included in Article 12 letter (b) of the Data Protection Directive by the rule that allows the person in question (the data subject) to request from the operator „the rectification, deletion or blocking of data whose processing does not comply with the provisions of this Directive, in particular due to the incomplete or inaccurate nature of the data”. The right to be forgotten effectively ‘translated’ the right to informational self-determination into the digital world, thereby acknowledging the fact that search engines perform data controls and therefore must be considered “operators” in conformity with Article 2 (d) of Directive 95/CE and thus become subject to the provisions of the Directive. The right to self-determination confers power on individuals against data processing operators, such as advertisers, insurers, supermarkets, data brokers, etc., guaranteeing the authority of the individual, the subject of the data, to decide for himself/herself whether his/her data can be disclosed or processed. The German court has invested this right with constitutional force.

In British legal tradition, the quintessence of the right to be forgotten rests with property rights: “if the information is my private property, I am the one who decides how much of it can be disclosed to the public.” This right has been deemed as a right that pertains to

¹⁹ BVerfGE 65, 1 vom 15.12.1983 (Volkszählungs-Urteil) in RIEDEL, E.: *New Bearings in German Data Protection–Census Act 1983 Partially Unconstitutional*. 5 Human Rights Law Journal, 1984, p. 94. [own translation].

human dignity and serves as the foundation of the right to privacy, respectively. The recent GDPR, where Article 88, regarding the processing of data in the context of employment, makes express reference to the fact that these norms “include appropriate and specific measures to safeguard human dignity, the legitimate interests and fundamental rights of those concerned”.²⁰ In France, we also find the intellectual roots of the right to be forgotten in “*le droit à l’oubli*”, a law that allows the convicted person and who has passed his sentence and has been rehabilitated to oppose the publication of the data on conviction and incarceration²¹. Moreover, for the whole of Europe after 1989, the possibility of “being forgotten” is perceived as an additional measure in the consolidation of democracy and pluralism, the gathering of personal information is still being perceived as a powerful tool in the hands of totalitarian regimes.

2. Privacy of lack thereof?

2.1. Communism and Privacy

Was there a private life in communism?

What form of privacy is acceptable in an Orwellian world, where no home is secure (since it not a “fortress”)? When the archives of the *Securitate* were de-secreted after the Revolution, applicants who wanted to consult their *Securitate* file have (re)discovered their most intimate conversations and, perhaps, even more emotionally shocking, pictures taken secretly, some of them even taken at small family parties? The socialist press was under the “obligation” to attach to every “public process” a political pamphlet which, among other things, publicly exposed the dissident’s most intimate secrets. The public found out about the divorce of the convicted person (a true comrade would never divorce), about his affair with a colleague (a true comrade would not have any illicit love affairs) or about an angora sweater received as a gift sentenced from an American tourist, most certainly a CIA agent (a true comrade would never receive presents from capitalists and certainly would not wear angora sweater). The very public exposure transformed these trivialities into dishonourable vices. By making public what was private, a sort of evaluation, a trial and a denigration of the „deviant” was being performed.

I chose as an example from the press of the day an article about the appearance of the so-called “speculator”, a “negative character”, an enemy of the people, the article bearing the title: “He is worth of public opprobrium”:

“Usually, newspapers publishes people who honour the community. This time we deviated from the rule and would like to introduce to you Baciú Viorel, domiciled in Tg.-Mureş, str. Braşovului no. 1, who is mentioned not for any

²⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), published in the Official Journal of the European Union, L 119 of 4.05.2016.

²¹ TADDEO, M. – FLORIDI, L.: *The Debate on the Moral Responsibility of Online Service Providers*. Science and Engineering Ethics, vol. 22, 2016. p. 1592.

worthy deed or civic duty, but, on the contrary, to express public reproach for what he has done. Baci Viorel bought and stored oil and sugar in his pantry. So far, he has collected no less than 34 bottles of oil and 26 kg of sugar, as demonstrated by the photograph of his pantry. People like Baci disrupt the good course of commercial activity. Although sufficient quantities of sugar and oil have been put on sale, due to some people shopping far beyond their needs, shops are emptied daily, and, when various goods are delivered, long queues are formed, thereby causing thousands of people to waste their precious time when shopping. To put an end to this situation, it is necessary to fight commodity storage with all our determination, to brand those who, with a demonstrable selfishness, stockpile goods, without purpose, thereby preventing the normal, fluid sale in shops”.²²

In addition to the medial “branding”, there would also be a legal remedy of this reprehensible conduct that disturbs the good course of the commercial activity: Decree no. 306 of October 9, 1981.

“To ensure the ordered supply of the population with foodstuffs, respecting the rules of ethics and socialist equity and taking into account the demands expressed by a large number of citizens to apply firm measures to all those who, by theft, destruction or degradation of agricultural products from the public assets, or by stockpiling of some food products above their consumption needs, thereby creating disturbances in the supply chain and affecting the general interests of the buyers, the State Council of the Socialist Republic Romania decrees:

Article 1. The purchase from state commercial units and cooperatives, for storage purposes, in quantities that exceed the needs of family consumption for a period of one month, of goods such as oil, sugar, flour, corn, rice, coffee, and other foodstuffs whose stockpiling affects the interests of other buyers and the efficient supply of the population, constitutes a crime of speculation and is punished according to the provisions of the Criminal Code with imprisonment from 6 months to 5 years.

The provisions of the preceding paragraph shall not apply to the purchasing of legumes, potatoes or fruits for the purpose of regular storage for the winter period.

(...)

Nicolae Ceaușescu, President of the Socialist Republic of Romania”

The true comrade – A man without qualities

The “good guys” (i.e. “comrades”) that appeared in the press were not presented in the privacy of their homes. The personality of the interviewee was deemed completely unimportant. Things that could have individualized him were omitted or censored. The

²² Steaua Roșie, 9 august 1975. A se vedea https://adevarul.ro/locale/iasi/din-ziarele-epocii-aur-supus-rusinii-publice-camara-34-sticle-ulei-26-kilograme-zahar-1_54ca2f76448e03c0fd12c15c/index.html [accessed 1 March 2020].

positive characters – the Miner, the Agronomist, the Pilot, the Worker, even the Mother – were chosen to exemplify the entire package of moral virtues standardized by the communist party. They were not photographed at home, since they had to be “transparent”, correct and predictable, without any flaws: no divorce, no sex (marriages and children were accepted, but in an asexual sort of way) and, categorically, no suspicious angora sweaters. The message was a clear one: “Big Brother is watching you”, and the only way to protect one’s privacy was to be “well-behaved”, good, ordinary, transparent, a comrade who does not hide anything from the community (i.e. the state). Otherwise, the individual did not appear in the press; individualism did appear in the press, but only in a negative context, while achievements were presented as always being the result of a collective effort. Even if some achievement did belong to individuals, the conditions and circumstances were always ensured by the party or the community.

2.2. The Digital Age. Technology enslaving privacy

The right to privacy presupposes a part of the individual freedom of the human being, which the community has no right to violate. The right to privacy has also been described as the right not to be exposed to prying eyes. Nowadays, the right to privacy is confronted with the opposite effect: the more the right to privacy is sketched, the more we want to see what is supposed to remain hidden.

The answers to the question of “what are the main threats to privacy?” are manifold: the vulnerability of the online environment, biometrics, video surveillance, blogs, social networks, the curiosity about the lives of celebrities as a constant source for tabloids (and, in the present day, their websites) and, in a nutshell, the “celebrity as permission to violate one’s privacy”.²³

In an attempt to classify these threats into categories, several taxonomies can be established, depending on the different criteria one applies.²⁴ A first useful distinction can be made between technologies that facilitate the collection of raw data and those that allow the owner of the acquired information to process and assemble them in original ways. When we consider the criterion of the social context, we can focus on the people whose data are collected (citizens, patients, employees, consumers, etc.) or on the different types of observers (secret services, tax authorities, insurance companies, websites) trading websites, brands, parents, fans, former spouses, etc.).

At a grassroots level, these data collectors and data observers can be broadly classified as governmental or private (including a gray area here, since private companies can access government databases, and likewise, governments can purchase data collected in a private manner). Initially, the primary form of data collection belonged to the state, which led to a possible definition of privacy as the right to refuse the government’s access to relevant information. In this day, however, state intervention is only one segment of a widespread phenomenon, given the fact that this „all-seeing eye” no longer has to belong to the

²³ WACKS, 2010. p.x.

²⁴ FROMKIN, Michael A.: *The Death of Privacy?* Stanford Law Review, vol. 52, 2000. p. 1468.

government; the private sector having invented many new ways of data processing or mining data collected by others.

More and more companies, especially those that also include online services, are spending huge amounts of money developing new features that track, store and provide others with the words, movements on a web page, clicks or even unexpressed thoughts of their customers. These services, while being intrusive and concomitantly aggressive towards the privacy of the internet user, have proven to be surprisingly appealing to customers, who have voluntarily embraced them in an era of galloping levels of self-disclosure. Millions of people now have state-of-the-art tracking devices that are constantly connected to the internet. These users are “victims” of a quasi-Pavlovian conditioning to constantly use these gadgets in order to access either useful or entertainment services and thus share even more personal information. All smart phone users become, consciously or not, the subjects of a virtual surveillance company.

This surveillance society is not much different from the one anticipated by Gary Shteyngart, a fiction writer who described a dystopian near future in his novel *Super Sad True Love Story*, in which:

“(...) the lives of the (mostly young) New Yorkers focus on their “äppärät”; handheld devices recognizable as the offspring of today’s smartphones, but smaller and sleeker, which buzz with information and constantly stream information out to the world. Not only does this make every person the potential host of a live-streaming television show about his or her life, but also it makes every social interaction an opportunity for awkward self-revelation by telling each person who walks into a bar, for example, who does (and does not) want to sleep with him, and how highly he ranks in the crowd in categories like ‘hotness’ and ‘personality’”.²⁵

With regard to the surveillance company and the main invasive technologies of the present, we will briefly present only four of the potentially intrusive innovations of the 21st century: “one device”, the cloud, the social networks and Big Data.

What Steve Jobs termed “one device”, i.e. the small computer that can be carried in your pocket and used, among others, and as a phone, is equipped with a high speed internet connection and includes a camera (or more), a microphone, a GPS chip and a digital compass.²⁶ The one device knows the location of the owner, as well as with whom he/she is, what he/she does, what he/she says and what he/she looks at. Additionally, it stores all the data it thus collected. The next innovation is the cloud, meaning the provision of computing services, servers, storage, databases, networks, software, analysis, information and more, over the Internet, in order to provide flexible resources and economies of scale. Cloud storage is the storage of files on servers around the world, allowing users to access data without storing them on their own computer or other internal memory device. This means that millions of users are currently storing their emails, accounting records, contracts, official

²⁵ OHM, Paul: *The Fourth Amendment in a World Without Privacy*. Mississippi Law Journal, vol. 81 (5), 2012. p.1309.

²⁶ STRANDBURG, Katherine J.: *Home, Home on the Web and Other Fourth Amendment Implications of Technosocial Change*. Maryland Law Review, vol. 70, 2011. p. 624.

correspondence, spreadsheets (via GoogleDocs, for example) to third parties, probably exposing their data to a new form of supervision.

Social media apps, with Facebook being the most poignant example, closely followed by Instagram, Twitter or Snapchat, are developed based on people's innate desire to connect with others. Allowing people to see what others are doing can be used to boost confidence or simply for entertainment. Here, the unveiling of the self, the act of self-disclosure to others, reaches its highest levels: "From expressing deep personal feelings and opinions to documenting mundane details of daily life, this type of public self-disclosure shared with multiple, diverse, and often ill-defined audiences blurs boundaries between publicness and privacy".²⁷ People tend to reveal more and more of their thoughts, feelings or personal experiences, even things they once would have chosen to hide, to audiences larger than ever before.

Big Data refers to large quantities of data produced rapidly by a significant number of different sources. Data can be created by humans or generated by machines, such as sensors that collect climate information, satellite images, digital images and video clips, transaction records, GPS signals, etc. Concomitantly, certain risks with regard to the protection of data associated with the use of Big Data emerge, such as for instance discrimination, lack of anonymity, large-scale data leaks, data brokerage, etc. With its profound impact on privacy (see the Facebook-Cambridge Analytica scandal), Big Data seems to promise interesting legal consequences.

In *The Transparent Society*, David Brin claims that the time for privacy legislation has passed long before the world even took notice: "[I]t is already far too late to prevent the invasion of cameras and databases... No matter how many laws are passed, it will prove quite impossible to legislate away the new surveillance tools and databases. They are here to stay." Instead, perhaps anticipating smart dust, he suggests that the chief effect of privacy laws will be "to 'make the bugs smaller.'"²⁸ Alternatively, probably anticipating the "smart dust" (see next paragraph), he suggests that the main effect of privacy legislation will be to "make the bugs smaller."²⁹

Getting back to reality from fiction, we will use only two recent experiments to try to emphasize the free fall of private life: smart dust and *deepfake*. The smart dust particle or dust wire is a wireless sensor with remote detection, computing power, communication and energy, all in one single package. The purpose of the Berkeley University project is to demonstrate that this complete sensor/communication system can be integrated into a package of maximum 1 mm³. "The smart dust will sense the environment and will allow us to enhance the way we live our life"³⁰. What is *deepfake*? In short, a truncated or fake clip. With the help of artificial intelligence, the program learns to reproduce the mimicry

²⁷ BAZAROVA, Natalya – CHOI, Yoon Hyung: *Self-Disclosure in Social Media. Extending the Functional Approach to Disclosure Motivations and Characteristics on Social Network Sites*. Journal of Communication, Vol. 64 (4), 2014. p.637.

²⁸ BRIN, David: *The Transparent Society*, Perseus Books, 1998.

²⁹ BRIN, 1998. p.13

³⁰ PISTER, Kris – KAHN, Joe: *Smart Dust. Autonomous Sensing And Communication In A Cubic Millimeter*. 2001. A se vedea <http://robotics.eecs.berkeley.edu/~pister/SmartDust/>, [accessed 1 March 2020].

and voice of the subject. Out of this, clips where the subject seems to say things he didn't actually say can be produced.

As we are witnessing the rapid decline of privacy, we should endeavour to rethink this concept, by using instruments which are different from the traditional ones. Even in the past, privacy was not the given standard, it had to be gained: "To gain privacy, one has to do something. One court resident, for example, moves his chair to the front rather than the court side of his apartment to show he doesn't want to be disturbed".³¹ Technological changes have not yet developed so radically and rapidly that the legal approach to privacy could become irrelevant. Within the European Union, the General Data Protection Regulation signals only a promising first step in the right direction.

³¹ HOLLINGSWORTH, William: *The Organization Man*. Simon and Schuster, 1956, p. 352.