Disappearing Phone Booths, Part III: Privacy Harms

May 24, 2012

I recently gave a speech entitled "Disappearing Phone Booths" – this is the third in a four-part series recapping the speech. Part I addressed the threat to privacy posed by new innovations *[1]*. Part II described how a confluence of circumstances has conjured a perfect storm that is rapidly eroding our right to privacy *[2]. Part IV will explain* what's at stake if privacy continues down its collision course with obsolescence *[3]. A full version of the speech can be found* here *[4].*

The million-dollar question is: Why should we care about privacy? Or as some would put it, what's the harm?

There are a number of different types of harms that CDT often thinks about. Here, I want to focus on four of them.

1. Data breach

One harm, and this is a harm that often catches Congressional attention, is the increased risk of security breaches and with those, identity theft, that data collection and storage creates. Sony, in April 2011, experienced a massive security breach [5], one in which approximately 100 million records were leaked. Many of these records consisted of credit card data from 2007 that the company no longer used and no longer needed. This begged an important question: Why was Sony even keeping such data in the first place? Sony would have been in far less trouble had it practiced data minimization [6] – had it only kept the data it actually needed. But in a world in which many believe that more data may some day mean more dollars, few companies seem keen on the whole data minimization idea.

2. Innovation

There is some irony in this, because one of the other privacy harms we often talk about is the real risk to innovation. While few consumers fully grasp the extent of this large and growing data trade, numerous [7] independent [8] studies [9] have shown that practices such as deep packet inspection, online behavioral advertising, and the merger of online and offline consumer data into user profiles all undermine consumer trust. I saw one study recently [10] that found that adoption of mobile shopping is slower than would have been anticipated, largely because of consumer concerns about the privacy and security of their information.

Trust is the difference between innovation that delights us and innovation that deeply discomforts us.

In short, trust underpins and fuels innovation. If consumers are unable to trust this increasingly complex network of innovative services, innovation suffers. *Privacy is about securing user rights.* But it is also about building trust in the marketplace in hopes of protecting and accelerating the innovation we see today.

Innovation and privacy are not necessarily incompatible paths – they can be intertwined paths as well.

3. Government access

Still other times, when we talk about harms, we talk about access to information by the government. As I discussed earlier, data stored by third parties is data the government can dip its fingers into pretty easily: the hotels at which we stay, the websites we browse, the emails we send, the places we shop. As Justice Sotomayor said in her concurrence in *US v Jones* [11]:

The government's unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse. The net result is that GPS monitoring - by making available at a relatively low cost such a substantial quantum of intimate information about any person whom the Government in its unfettered discretion, chooses to track - may "alter the relationship between citizen and government in a way that inimical to democratic society."

It's a warning that I think is relevant far beyond the limited case of GPS tracking.

4. Privacy allows us enjoy our rights to liberty

And this brings me to a point about liberty. And here, I want to read from President Obama's forward to the White House privacy report [12]:

Americans have always cherished our privacy. From the birth of our republic, we assured ourselves protection against unlawful intrusion into our homes and our personal papers. At the same time, we set up a postal system to enable citizens all over the new nation to engage in commerce and political discourse. Soon after, Congress made it a crime to invade the privacy of the mails.

He continues: "Citizens who feel protected from misuse of their personal information feel free to engage in commerce, to participate in the political process, or to seek needed health care."

This," Obama adds, "is why the Supreme Court has protected anonymous political speech, the same right exercised by the pamphleteers of the early Republic and today's bloggers."

Privacy enables us to exercise liberty and to enjoy our rights to liberty. It empowers us to feel that we can speak freely, associate freely, and access information freely. And to me, the threat to that liberty is the most disconcerting harm of all.

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