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United States Security surveillance on the Internet

Sally Ramage and Edward Stefan Wheeler¹

The United States is monitoring us all

Many Internet users around the globe may not be aware that the Homeland Security and other agencies of the United States government regularly request details of Internet users from search engines. For example, Google owners have revealed that such requests have recently increased by a quarter to 5950 requests relating to 11000 Google accounts, from January to July 2011. Government authorities in the United States make such requests to the many hundreds of Internet Search Engines, but the Google Search Engine is one of the larger search engines. Usually, such government requests are part of criminal investigations. However, to examine these requests in perspective, the statistical fact that such requests consist of several thousands out of a billion people on the Internet, illustrate that this is not a real civil liberties problem.

Legislation

Must a search engine comply with a request for information about a search engine user? Requests from governments of countries are often legal and therefore valid. The Electronic Privacy Information Center (in Washington, D.C., United States) was set up to counteract such requests for user- information and recent litigation illustrates its commitment to user privacy. A government request for Internet user information must state under what law the request is being made. (See <http://epic.org/>, a website of the organisation, the Electronic Privacy Information Centre, (EPIC), a public interest research centre in Washington, D.C. in the United States of America). EPIC was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment² and constitutional values. It is concerned mainly with American Internet users and has published a Freedom of Information Act litigation manual for use by ‘any lawyer representing clients seeking information from a federal agency or any lawyer thinking about bringing a FOIA case against the government.’

United States wiretap activity

It has been reported that United States government surveillance of Internet users has increased and that a recent analysis of federal wiretap reports revealed an increase in wiretap activity in the United States. However, it has been common knowledge that since 2009 the National Security Agency had intercepted private e-mail messages and phone calls of Americans on a scale that went beyond the broad legal limits established by Congress....

¹ Edward Wheeler is Principal Desktop Manager for the unitary authority, Medway Council, in Kent, UK.

² *Gitlow v New York*, 268 U.S. 652 [1925] ruling was that the Fourteenth Amendment to the United States Constitution had extended the reach of certain provisions of the First Amendment—specifically the provisions protecting freedom of speech and freedom of the press—to the governments of the individual states.

Anti-capitalist protests on 14 October 2011

Sally Ramage

At 12 noon in Bristol, England on 14 October 2011, and in cities around the world, protesters assembled in a central location and attempted to live there for an indefinite period of time. The plan in Bristol, England, was for protesters to occupy College Green in Bristol by camping there for the foreseeable future.

The 'occupation' began on the 14 October as planned- in solidarity with those campaigning against corporate greed, power and corruption in Wall Street, New York, USA. They did this because they wanted to see a change in the current process of the democratic systems of government. The protest camps that created revolutions across the Arab world, the Spanish indigenous movement, and the occupation of Wall Street inspired the Bristol protest. Their action aimed to create a luminal space to develop political between all members of society. Their aim is to unite people who feel they cannot continue to acquiesce to the current systems and practices of political organisations. ...

Mandatory sentencing for knife crimes

Sally Ramage

Mandatory prison sentences for 16 and 17-year-olds who threaten others with knives are included in the new Criminal Justice Bill. Convicted teenagers would face a four-month detention and training order. Currently in England and Wales, only those convicted of murder face a mandatory life term. The new Criminal Justice Bill will also provide for a mandatory prison sentence for any adults who use a knife to threaten and endanger. It is estimated that this will catch some 200 to 400 teenagers aged 16 and 17 every year. The Justice Bill will include the extended license terms to send a very clear signal to those youth who offend in this manner.

Further changes to the sentencing regime in courts

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Defamation law

Sally Ramage

Webmasters in fear of UK libel law

The UK is known as the defamation capital of the world, and has become one of the UK's export industries. UK courts awards the highest damages in Europe and, with costs often running into the millions, the UK boasts of being the most expensive place to bring a defamation claim.

Libel laws in England and Wales have caused plenty of controversy and the UK is known as the defamation capital of the world. Indeed, defamation is one of the UK's growing export industries. UK jurisdiction awards the highest damages in Europe and, with costs often running into the millions, has the dubious accolade of being

the most expensive place to bring a defamation claim. The UK's libel laws cause many websites globally to respond to threats of litigation if material is not taken off the website.

Free speech on the Internet

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Design IP Law

Sally Ramage

No criminal sanctions

There are currently no criminal sanctions whatsoever under the UK unregistered and registered design right, the unregistered or registered Community design. In 2010, a petition to criminalise the infringement of design rights was delivered to the UK government. It was submitted on 3 June 2010 by the organisation called *Anti-Copying in Design (ACID)* whose research revealed that in the UK, the four most copied industries within are the furniture, textiles, interior accessories and giftware industries. Accordingly, anyone dealing in pirated goods that are protected by one of the design rights rather than by copyright or trade marks are at no risk of criminal proceedings being brought against them. The government's response was negative but it triggered an investigation which is still being conducted by the *Intellectual Property Office (IPO)*.

An industrial design right is an intellectual property right that protects the visual design of objects that are not purely utilitarian. An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and color in three dimensional forms containing aesthetic value. An industrial design can be a two- or three-dimensional pattern used to produce a product, industrial commodity or handicraft. UK law provides additional national registered design right and an unregistered design right. *The unregistered right, which exists automatically if the requirements are met, can last for up to 15 years. The English registered design right can last up to 25 years subject to the payment of maintenance fees.* The past 35 years have seen the UK registration of just 9.500 designs. The firms most likely to register designs are office equipment and computer manufacturing firms. Electronics, machinery, some chemical and chemical products firms register designs (for the protection of their packaging rather than the chemical itself which are protected by patents). Medical equipment, rubber and plastic products, research and development firms also register designs. Of these registrations a quarter are relinquished after five years. The Court of Appeal decisions in *Proctor v Gamble* said that designs had a narrow scope of protection.....

Surveillance and Crime: Key approaches to Criminology

Roy Coleman and Michael McCahill

SAGE Publications Ltd (2011)

ISBN 978-1-84787-353-8 (paperback)

BOOK REVIEW BY SALLY RAMAGE

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This short book of 213 pages includes eight chapters, a glossary, a bibliography and an index.

Chapter 1 introduces surveillance as social issues and the kinds of problems this gives rise to.

Chapter 2 gives an overview of the main theoretical perspectives on surveillance and their differing conceptual orientations.

Chapter 3, titled, the historical foundations of surveillance, gives an overview of the historical foundations and processes that have shaped both the practices of surveillance and the meanings attributed to crime.

Chapter 4, titled, new policing and new surveillance, is a critical examination of the emerging risk paradigm in the plural policing literature.

Chapter 5, titled, globalisation, surveillance and the war on terror, is an historical overview of the relationship between terrorism and surveillance; the integration of discrete surveillance systems and surveillance methods introduced to prevent terrorism.

Chapter 6, titled, surveillance, power and social impacts, is an introduction and overview of the social impacts of surveillance.

Chapter 7, titled, contesting and resisting surveillance, explores the scope and meaning of resistance and contestation in relation to surveillance.

Chapter 8, the final chapter, is titled, deconstructing surveillance, crime and power.

Police Surveillance

Let us examine surveillance in the UK and what it means with regard to court cases where people's liberties are at risk. We must remember that a significant case about covert surveillance went to Brussels after the case *R v Khan* [1997] AC 558. Khan had arrived from Pakistan at Manchester airport on the same flight as his cousin Nawab. When stopped and searched, no drugs were found on Khan who made no admissions on interview and was released without charge. Later Khan was in Sheffield, at the home of a man named Bashforth. Police installed a listening device outside. Neither Khan nor Bashforth were aware of its presence. The police obtained a tape recording of a conversation. In the course of the conversation, Khan made statements which amounted to an admission that he was a party to the importation of drugs by Nawab. Nawab had admitted importing drugs and had been found guilty in court. This case raised issues of whether the evidence was admissible and if admissible, whether it should have been excluded by the judge in the exercise of his discretion under common law or S.78 PACE 1984. However, the judge admitted the intercept evidence and Khan was re-arrested and pleaded guilty to being knowingly concerned in the fraudulent evasion of the prohibition on the importation of heroin. The Court of Appeal dismissed his appeal. Khan took his case to the European Court of Human Rights³⁴. The ECtHR held that the deployment of a covert surveillance device in the absence of a statutory regime constituted a violation of Article 8(2) but the use of the evidence covertly obtained did not constitute a

⁴ *Khan v UK* [2001] 31 EHRR 45

violation of Article 6, the right to a fair trial. This ECtHR decision was again asserted in *Lewis v UK*⁵ (In those days there was no legal framework regulating the installation and use by the police of covert listening devices). In the light of *R v Sang*⁶, the argument that the evidence of the taped conversation was inadmissible could only be sustained if two wholly new principles were formulated. Khan enjoyed a right of privacy in respect of the taped conversation. There is no such right of privacy in English law, and even if there were, evidence obtained improperly or even unlawfully remained admissible, subject to the judge's power to exclude it at his discretion. If the circumstances in which the evidence was obtained amounted to an apparent invasion of rights of privacy under article 8, that was accordingly something to which the court must have regard. As early as 1891, the US Court articulated this concept in *Union Pacific Railway Co. v Botsford*⁷. In holding that a court could not compel a plaintiff in a civil action to submit to a surgical examination, the Court declared the sanctity of the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.

Privacy elsewhere

As to interception of communication with regard to the home, the US courts have always treated this as a breach of privacy. As early as 1886, in *Boyd v. United States*⁸, the US Court strictly protected the sanctity of a man's home. The maxim that the US home is a US person's castle appeared as early as 1499. The first recorded case in which this notion was mentioned was *Semayne's Case*⁹. In the eighteenth century, William Blackstone declared that the law has "so particular and tender a regard to the immunity of a man's house that it stiles it his castle, and will never suffer it to be violated with impunity."¹⁰ However, today's Information Age often involves exchanging information with third parties, such as phone companies, internet service providers, cable companies, retailers, and so on. And so, clinging to the ancient notion of privacy as related in the previous paragraph would mean the practical extinction of privacy in today's world. In contrast to the notion of privacy as secrecy, privacy can be understood as an expectation in a certain degree of accessibility of information.

Biometric Technologies

Biometric technologies are changing society and the European Commission's Report of February 2007 into the impact of such technologies, concluded that the burgeoning information society brings with it the need for us to be able to securely identify ourselves quickly and remotely and therefore we need the inevitable implementation of biometric technologies to increase national security, and as a tool to help prevent fraud¹¹.

Everyday surveillance

At page 145 of *Surveillance and Crime* is a quote from John Gilliom (2006) who said that a tour of the field suggests that there have been many studies addressed to the watchers of people, ie. The police, the myriad of CCTV operators, etc but not many studies have examined those who are the subjects of surveillance. There are many groups resisting surveillance and chapter 7 of this book addresses this topic. To conservatives in society, everything from groups such as *Stateguard; Liberty; Privacy International*; to actual, physical revolutions, and even to hairstyles, has been described as 'resistance'.

The many protest movements around the world, and currently the movement *Occupy Wall Street* are seen as resistance movements. At 12 noon in Bristol, England on 14 October 2011, and in cities around the world, protesters assembled in a central location and attempted to live there for an indefinite period of time. The plan in Bristol, England, was for protesters to occupy College Green in Bristol by camping there for the foreseeable future. The 'occupation' began on the 14 October as planned- in solidarity with those campaigning against corporate greed, power and corruption in Wall Street, New York, USA. They did this because they wanted to see a change in the current process of the democratic systems of government. The protest camps that created

⁵ (2004) 39 EHRR 9

⁶ [1980] AC 402

⁷ *141 U. S. 250*. The single question presented by this record was whether, in a civil action for an injury to the person, the court, on application of the defendant, and in advance of the trial, may order the plaintiff, without his or her consent, to submit to a surgical examination as to the extent of the injury sued for.

⁸ 389 U.S. 347 (1967) Petitioner was convicted under an indictment charging him with transmitting wagering information by telephone across state lines in violation of 18 U.S.C. 1084.

⁹ 77 Eng. Rep. 194, 195 (K.B. 1604)

¹⁰ William Blackstone, *Commentaries on the Laws of England* 223 (1769).

¹¹ "Privacy & prejudice: whose ID is it anyway?" *New Scientist*, pg 20, 17 September 2005.

revolutions across the Arab world, the Spanish indigenous movement, and the occupation of Wall Street inspired the Bristol protest. Their action aimed to create a liminal space to develop political discussion between all members of society. Their aim is to unite people who feel they cannot continue to acquiesce to the current systems and practices of political organisations. They are closely monitored by police in case criminal public order offences emerge (eg affray¹², under section 3 Public Order Act 1986).

Non-resistors of surveillance

The non-resistors may include many who are not aware of their surveillance. Many Internet users around the globe may not be aware that the *United States Homeland Security* and other agencies of the United States government regularly request details of Internet users from search engines. For example, Google owners have recently revealed that such requests have increased by a quarter to 5950 requests relating to 11000 Google accounts, from January to July 2011. Usually, such government requests are part of criminal investigations. However, to examine these requests in perspective, the statistical fact that such requests consist of several thousands out of a billion people on the Internet, illustrate that this is not a real civil liberties issue. Many others have learned techniques that keep them out of view of government surveillance. Yet others engage in surveillance of the authorities with the use of cameras or mobile phones, as was the case that revealed that a police officer was responsible for the death of an innocent man, Ian Tomlinson, caught up in the G-20 London protest on his way home (see page 136).

Other non-resistors may be whole groups of innocent citizens monitored without their consent or fooled into agreement to monitor traffic when in fact CCTV was monitoring their behaviours and movements, as was revealed in 2010. (See Paul Lewis, "Police under fire over Muslim CCTV surveillance scheme", *Guardian*, 18 June 2010. The West Midlands Police Authority and Birmingham City Council apologised to residents for illegally installing 169 CCTV cameras, lying that this was to prevent anti-social behaviour and vehicle crime, when in fact, these cameras were to watch these residents' every movement without the need for warrants and without the need to comply with statutes such as the Regulation of Investigatory Powers Act 2000 (c.23) (RIPA), regulating the powers of public bodies to carry out surveillance and investigation, and covering the interception of communications. The residents had reluctantly agreed initially, but continuously continued to complain about their misgivings as to 169 CCTV cameras around these Muslim homes. The initiative, Project Champion, planned to monitor the Muslim neighbourhoods of Washwood Heath and Sparkbrook in Birmingham, West Midlands, using a network of 169 *automatic number plate recognition cameras*. The cameras included dozens of covert cameras secretly installed in the street so that residents can be tracked entering or leaving the area, equivalent to being on house arrest for all these residents who had committed no crime, and police had no court order to have these people under house arrest without their knowledge or consent by misleading the people into agreeing to a vehicle monitoring exercise.

Conclusion

The concluding part of the book echoes the arguments of Loic Wacquant (2009) - that surveillance is never neutral and that criminality is too serious a matter to be left to non-impartial judgments of police and other authorities, calling for further debate on the efficacy of surveillance in respect of social justice, and also on the criminalisation of protest movements.

This book, *Surveillance and Crime*, just published, is an important addition to the UK criminology library. It must be bought and digested before launching into the laws governing surveillance for a full understanding of events.

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¹² Note that spoken words alone do not constitute a s.3 threat, even if made in an aggressive tone of voice. (*R v Robinson* [1993] Crim LR 581).nor is concealing a weapon a threat. There must be threatening circumstances such as brandishing a weapon. The carrying of petrol bombs by gangs are, however a s.3 offence. (*I v DPP, M v DPP, H v DPP* [2001] 2 AER 583).The defendant must have intended to use or threaten violence or have been aware that his conduct may be violent or threatened violence (Section 3 (2) of the Public Order Act 1986).

