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The INTERNATIONAL INSTITUTE of COMMUNICATIONS is an independent, non-profit, dynamically-engaged forum for industry, government and academia to analyse and debate trends in communications and their impact on society.

Mission: to provide a global framework for dialogue and to promote access to communications for all peoples of the world.

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by Stephen McClelland

# Privacy: Pact or Faultline?

Social networking threatens to get more and more intrusive

Those who pass for grey hairs in the internet community were no doubt shaking their heads resignedly in February as the Facebook "saga" unfolded – and then appeared to be resolved. They warned – they say – that on the frontiers of the net, the faultline triggering an explosive reaction in privacy and rights issues was inevitably always going to be in the social networking area. An apparently simple change in service terms and conditions developed very quickly into a potentially damaging spat involving future possibilities spanning privacy and even copyright concerns.

This much may have been foreseeable, but social networking itself will have to cope with the problems produced. It's a pressing and large scale problem. Facebook is now a big "country" with more users – around 175 million people worldwide – than most nation states have citizens. Aggregate the other mega social networking names and the number of people potentially affected is very large indeed. Suddenly, it seems, concerns like these are everyone's business, and for those involved, rapidly becoming a mini-industry. Social networking – an industry that barely existed four years ago – is now capable of striking to the heart of major issues and affecting the rights of tens of millions of people.

## Getting sensitive

But it's a sensitive time, and these are big issues. "Data protection and privacy issues affect us personally, they affect law enforcement, they affect business and their marketing issues and obviously security issues come up across the piece," points out Ann LaFrance, European partner of Squire, Sanders and Dempsey in London.

In short, there is probably no other topic in the entire spectrum of media and telecom that now has such an all embracing feel to it, although it seems to be the service providers – however they are defined – who are affected most directly.

One UK regulatory official suggests that an emerging threat is not merely the capturing of otherwise innocuous data points but the ability of large DP systems to simply aggregate of millions of data points which are in turn used to evaluate, assess and predict individual behaviours.

At the same time, user education and even involvement seems to be lagging the data universe's capability. Around three quarters of people according to a recent survey admitted they did not even read/understand the privacy policy of services they wanted to engage in, but judging by the massive surge of complaints that national Data Protection offices are receiving, many are still worried.

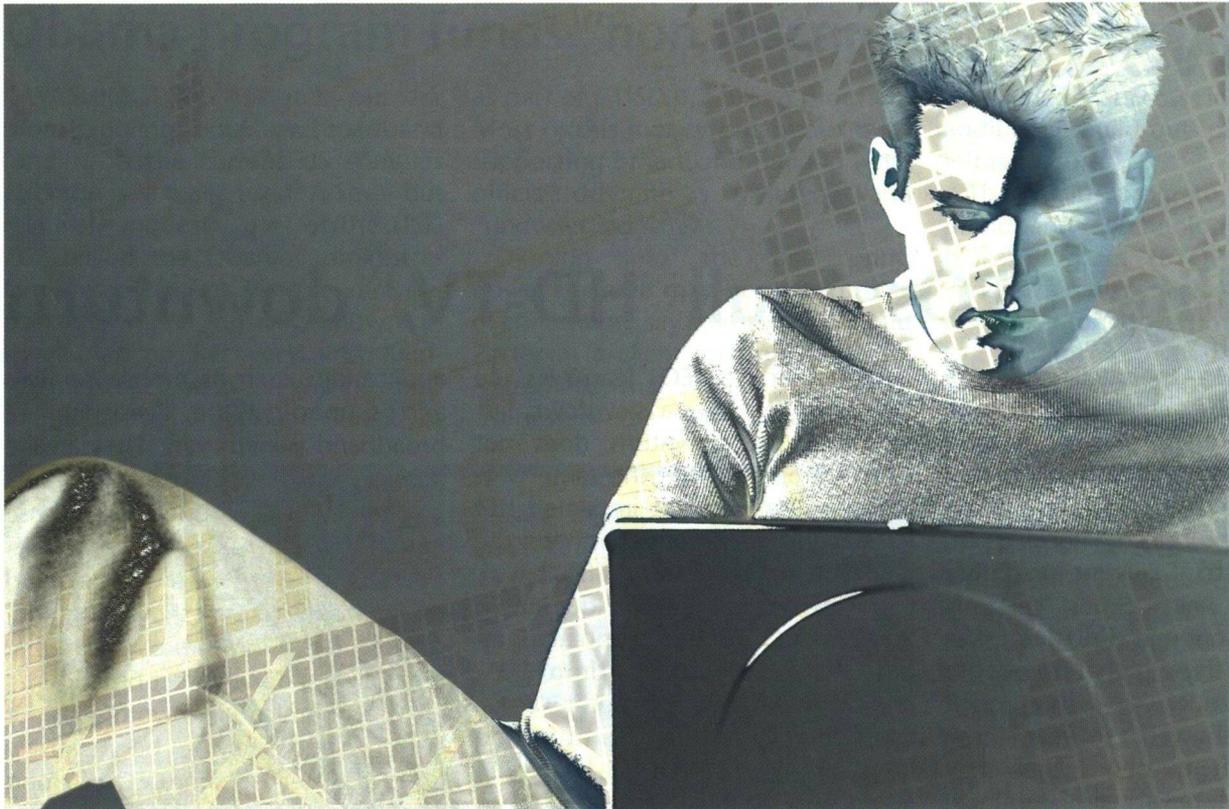
## Legislation rules OK?

Will pure legislative approaches work? Privacy seems to be the subject of ever more complex legal provisioning, although there seems to be a distinct feeling that problems emerge faster than new statutory approaches will be able to resolve them.

In Europe, ePrivacy is firmly on the agenda for renewed legislation but even here in the assiduous activity with which it is being pursued, it is bedevilled by many detailed issues. They include: IP addresses as personal data, browser settings and cookie opt-in/opt out for users, and even who should be able to inspect traffic. One European advisor suggests the ePrivacy review has been a "positive" but procedurally "painful" one.

Legislative pain may not stop there. Beyond that there are probably more questions still. What and whom are we regulating, questions one regulatory official, and in ticking off the very different scenarios that see a 14 year old filesharing illegally downloaded material, content providers spamming unwanted material, or e-commerce suppliers collecting data on customers' behaviour, suggest these are very different situations, and cannot be regulated by a single body of law.

But the Facebook issue may have also set a stage for the future in terms of resolution. Facebook seems to have resolved the immediate problem – and even garnered the approval of Web 2.0 rights campaigners – by emphasizing user ownership of their own data and immediately putting user governance at the heart of not just the rights' and privacy policies, but ostensibly into the trajectory of its entire future corporate development.



## What is the business model?

But the problem remains at least for the rest of the community. In the short term, other players may be under enormous pressure to adopt similarly 'democratic' policies. When Facebook's founder Mark Zuckerberg talks in terms of "...strengthening the trust people have in us" and "...strengthen(ing) the community and the bonds between us and the users", he may after all be talking about a new competitive edge for his own business.

Public response and reputational impact may after all be the best response in dealing with these issues. But I would argue that we will still have to deal with one fundamental issue, I would call the "user-provider pact", that users do, or should know, that they are receiving services in return for a fundamental, if implied, agreement with service providers and their business models.

Media executives, such as Andrew Walmsley of IMedia, a leading UK online media agency, argue that not only has there been a remarkable explosion in internet creativity and new services over the past fifteen years, but that "it wouldn't be there if it wasn't for advertising".

Mr Walmsley says the same is true right across the internet spectrum, for Facebook, Google, webmail, and instant messaging, but argues, that although media companies may have been guilty of a kind of unnecessary "data grab" from users in the past, they are not fundamentally interested in individual data, merely anonymized data of large scale trends. Nevertheless, in this view, the ability to run targeted advertising is of critical importance to the development of the industry.

The future of the pact and just how it is perceived may determine the future of the industry. In the meantime, we can look forward to more arguments, sensitivities, legislation – and, not a little, confusion over whether the pact does, after all, become a big faultline.

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Stephen McClelland is Editor in Chief of Intermedia and Director of Publishing at the IIC. This commentary does not reflect any official position but some comments reproduced come from the IIC UK Chapter Meeting on Privacy and Data Protection held in London on 11th February 2009. We gratefully acknowledge the assistance of Ann LaFrance of Squire Sanders Dempsey in co-ordinating this meeting.