

BOOK REVIEW – *Intellectual Privacy: Rethinking Civil Liberties in the Digital*

Age

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In *Intellectual Privacy: Rethinking Civil Liberties in the Digital Age*, Neil Richards explores the roles of free speech and privacy in the modern world. Opening with the tale of Operation Optic Nerve, the joint U.S./U.K. surveillance program that collected still webcam images from unsuspecting Yahoo! users' devices, the book is a mixture of cautionary tales, fascinating legal cases, and legal philosophy. Part I, "The Limits of Tort Privacy," argues that free speech should always win over privacy tort, as most emotionally harmful disclosures can be remedied by other torts, such as invasion of privacy tort or confidentiality. Part II, "The Promise of Intellectual Privacy," makes the case that free speech is an essential component of intellectual privacy, as surveillance and interference – whether in our reading, thinking, or communications with others – can have a disastrous impact on the creation of new ideas and the maintenance of a healthy democracy. The final section, "Information Policy and Civil Liberties," expands on Richards' own ideas for the protection of free speech and intellectual privacy. The author lays out his basic principles of intellectual privacy protection, as well as reminds the reader of the growing responsibilities of both the creators and users of new technologies. *Intellectual Privacy* ends with a reminder from Richards: whilst the scenarios featured in this book may seem alarming and dystopian at times, we are not experiencing "the death of privacy." The way we use and share information is constantly changing, and a conversation surrounding this is never a bad thing.

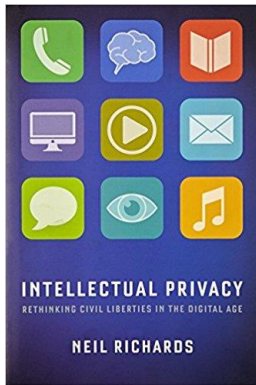
The crux of the author's argument in *Intellectual Privacy* is that freedom of thought and speech are inextricable from a functioning democracy. Richards argues in favor of "liberty as both an end and a means" (38); that is, freedom of thought inevitably leads to freedom in all regards. Free speech is important because of its effects upon a populace, rather than any lofty philosophical reasoning. The ability to criticize the government freely, as the American First Amendment grants, is integral to the existence of an informed demos. We must be free to make up our minds as we choose and the way to do this, according to Richards, is through intellectual privacy. If our thoughts are tracked in any way (through our reading, conversations, or testimony), even if there is no threat of prosecution, the average person will be more cautious in their approach to thinking, reading, and conversing. Without mental privacy, we are less likely to think of new ideas, let alone champion them with confidence. Richards believes this, citing the once controversial but now widely-accepted concepts of democracy, separation of church and state, and equality.

There are several issues featured in *Intellectual Privacy* that would benefit from further discussion. For instance, where do we draw the line between public and private matters? This line is becoming increasingly blurred, as gossip websites divulge the intimate details of celebrities' private lives and ordinary people often share theirs voluntarily on the Internet. The tort of disclosure requires the public disclosure of private facts but, in the digital age, public interest now appears ubiquitous. In the future, this change in culture could make it harder to legally prove that one's privacy has been infringed upon. It would have been interesting to read the author's opinion on how this could be counteracted, if at all. On a similar note, the role of journalists with regard to privacy is legally unclear. Richards touches on this, mentioning that when deciding on the newsworthiness of private facts, the U.S. Supreme Court is reluctant to ever second-guess the editorial judgements of journalists. What he does not mention is that this essentially allows journalists to make the law, rather than the court. This has arguably led to the American courts upholding the publication of the names of rape victims, as mentioned in Part I. It is difficult to see how this information would be newsworthy or of public concern, yet it was shared due to the courts' fear of editorializing. Whilst

not directly related to privacy, it could be seen as a consequence of judges prizing free speech as a lofty concept, rather than seeing it as a tool for strengthening democracy.

Even though the book was only published in 2015, there are aspects that could already benefit from updating or rethinking. Richards states his belief that “emotional harm caused by public discussion is a price we pay for a free society” (47). When applied to minority groups, this becomes unpalatable. It would be difficult to justify this idea to someone whose identity is threatened by hate speech; for example, a gay person feels attacked by a religious extremist’s belief that homosexuality should be punishable by death. On a similar note, with the advent of media personalities who are famous for being outrageous, the author’s thoughts on the value of controversial ideas seem outdated. He says correctly that “many of today’s most cherished ideas were once highly controversial” (98). The rise of abhorrent but groundless ideologies, such as the “alt-right,” seems far removed from the informed debates of the past. Whilst it is important for a democracy that debate exists, individuals must possess the knowledge and critical thinking skills required for healthy debate. Otherwise, Richards’ idea of unregulated speech could give rise to emotionally-driven, hate-filled discourse, which would ironically be very damaging to democracy. *Intellectual Privacy* was completed in 2014, yet the United States has changed drastically since. It would be enlightening to see Richards’ opinions on more current issues, from Instagram to smartphones to the Trump presidency.

Whilst *Intellectual Privacy* focuses on legal and philosophical issues, its topics are relevant to any user of modern technology. The author’s accessible writing style, coupled with the often-familiar examples at the start of each chapter, makes this a good read for scholars, IT professionals, and laymen alike. Richards reminds the reader of the perils of surveillance; even if we have nothing to hide, being watched can hold us back in ways we never could have imagined.



Intellectual Privacy: Rethinking Civil Liberties in the Digital Age

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