

## Grappling with Privacy

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While many people in Ottawa are still struggling with how to implement GOL (that's "government on-line"), in a workshop this past week the Ottawa Centre for Research and Innovation took an important and positive step in encouraging debate on one GOL's most likely impacts – privacy. I think it's safe to say that the scenario of a 'big brother' style government that keeps track of and manipulates our every move is a scary one for most Canadians. OCRI's workshop was meant to air those concerns and to consider what privacy issues will be generated from a successfully implemented GOL.

Julien Delisle, the Executive Director at the Office of the Privacy Commissioner of Canada led off the debate describing privacy as a "fundamental human right", the "heart of liberty" and a "right of every Canadian to control information about themselves". He overviewed recent legislation, the *Personal Information Protection and Electronic Documents Act*, which is currently in effect for Federal Departments and Crown Corporations and that will begin to apply to Canadian companies in 2004. The Act enshrines privacy rights and creates penalties and rights of redress for individuals whose personal privacy has not been properly maintained by Canadian organizations.

While the promise of GOL centers around the reduction or elimination of information barriers between federal government departments and across other levels of government, the risk said Delisle is the potential for governments to undertake profiling, "the hallmark of a surveillance society". To counteract this tendency government needs to take steps to ensure that the right to privacy is protected, principally by requiring that the collection and use of citizen information is only with their consent.

I don't know when it happened – whether it was the talk of privacy as a fundamental human right or profiling as the hallmark of some dark Orwellian future – but I started thinking of my wife's experience growing up in the small Saskatchewan farming community of Gravelberg. In that town everybody knew what everybody else was doing all the time. At times it was irksome but mostly that 'pervasive knowingness' was the glue that defined the community. No one thought of it as an abrogated right. It was what brought help when people were in distress and brought the community together to share in an individual's success as a success of the whole community. Mostly though it was that feeling in the back of your mind that you were not alone. She never really felt alone until she moved to Toronto. So lack of privacy isn't necessarily as bad as it is made out and maybe not a 'right' that we really want to have.

David Gork of the RCMP triggered me out of my reverie exhorting the audience to remember that we don't live in a principled world and that there really are a lot of very nasty, unprincipled people out there from whom we all need to be protected. I can accept that. Like everyone else I want to feel safe and secure. But Brian O'Higgins of Entrust and members of the audience pointed out that human creativity being what it is and the rate of both technological change and software glitches will almost ensure that any technical solution to privacy will be short-lived. Privacy, as the Privacy Commissioner defined it, is all about control but the porousness of any kind of boundary around electronic information suggests the approach of control will be ultimately futile. One of my colleagues in the audience reminded me of Marc Andreessen's comment about privacy – "privacy on the Internet? There is none. Get over it."

As I thought about it, privacy isn't really the issue. The issue is I don't want people to do me harm or constrain my choices. Several comments from the audience affirmed this view. So how do I prevent people or organizations from doing me harm or constraining my choices when I know that control will have only limited usefulness?

I'm in the middle of reading Howard Rheingold's new book "Smart Mobs" and something he wrote seemed to rise out of my consciousness. Rheingold by the way is the guy who brought us the concept of virtual communities and his latest book is once again a truly captivating read on the social implications of the next generation wireless technologies. I digress though.

Rheingold was talking about E-Bay and it's simple system of maintaining feedback on the transactions it facilitates. If someone uses E-Bay to steal, defraud, misrepresent or even just provide shoddy merchandise, the injured party posts that information on E-Bay's site resulting in the same person not being able to transact business there again. E-Bay uses technology to build reputation capital with every individual and organization it interacts with.

Reflecting on this I think the problem with privacy needs reframing. The problem results from interactions with people who don't know each other (and sometimes don't even know they are interacting) and who may never interact with again. This encourages what economists call a 'free rider' attitude where people and organizations will attempt to take advantage of one another because future consequences are low or nil.

Framed in this way the problem of privacy is not that there is too little privacy but that there is too much. Too much privacy so that I don't really know the background and history of those I deal with. There's too much opportunity for some people to hide in their anonymity. The way of overcoming the 'free rider' tendency is to ensure that what someone does today can be known by everyone and that it can have significant consequences for the person tomorrow. This is what E-Bay does. It is not done by trying to secure some private space but by being open to the world. By being open you become vulnerable to social sanction when you misbehave just like in my wife's hometown of Gravelberg.

Tricia Trepanier of HRDC spoke about the attempts to bridge the silos at HRDC by integrating the legacy information systems that go back more than a decade. She highlighted the weak link represented by the need to properly identify and authenticate the citizens who make use of those systems, something that was underscored by a discussion with the audience on the overabundance of S.I.N. cards recently reported by the Auditor General of Canada.

However, it was her last point that struck me most. She spoke of a need to develop a culture in government that is naturally protective of privacy and understands its role as an information steward. Statistics Canada she suggested is one place in the federal government where this type of culture has been evident for many years. That led me to think that if we can't absolutely control the information about ourselves maybe we can create a culture where people and organizations have developed an ethical understanding on its use – like the neighbour in Gravelberg who knows and says nothing or who knows and uses that information only to help not harm.

Patrick Glemaud, Legal Counsel for Environment Canada presented many of the cautions I've heard before about operating in an Internet space – establish your jurisdiction, have a privacy statement, don't use information for things other than those described in your privacy statement and above all develop your online solution with a lawyer at an early stage.

All good advice. But Trepanier's comment about creating a culture respectful of privacy concerns was still on my mind and therefore what seemed to matter more in Glemaud's presentation was what he didn't say. He didn't talk about our legal culture that accepts any action as OK to do unless you're specifically told it is not OK. It's a culture that encourages people to find loopholes and that encourages indiscriminate use of new technologies until a slow, pondering legislative system catches up with them (at which point new technologies will be available). In other cultures, like in many First Nations cultures for example, anything is OK to do unless it causes someone harm or harms the environment. This line of

thinking makes me think that if the real problems associated with privacy are to be addressed we'll need to do a lot more than find technological fixes. We'll need to find and use new social and cultural tools to live with each other in this newly created global village.

This is where comments made by Don Lenihan, Director of the Centre for Collaborative Government, seemed to be quite sobering. Lenihan's remarks centered around the complex interdependent nature of the problems government tries to solve and the fragmented, program oriented nature of the solutions it tries to implement. "Programs said Lenihan, "tend to be focused on clearly defined objectives making them vertical approaches to horizontal problems. We need to be able to focus on problems and get out of the program box."

The current privacy debate is clearly a horizontal issue. It covers the full range of societal involvement – local, provincial, national and global; industry, government, education and civic; as well as physical, social and cultural technologies. Since government has assumed the leadership of the privacy debate, it's natural orientation towards program objectives makes that leadership suspect. It may well lead us, despite the best of intentions, to the kind of future no one wants because of its inability to think and act horizontally. The question therefore is how to change that program orientation or to pass leadership to some other body? This is an extremely fundamental question for privacy and one that is equally important for most other issues the government must deal with but one that the GOL workshop had to leave to another time.

While OCRI's GOL workshop didn't provide any solutions, the quality of the dialogue was both stimulating and edifying. Ottawa is definitely enriched by this type of forum. Bravo.

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