

The Shield of Privacy: which limits? The Proportionality Scrutiny

Other interests can prevail over privacy—it depends on the jurisdiction

(es. Intellectual property)

Proportionality scrutiny: it is a means to assess the legitimacy of a solution

The structure of proportionality

1. Is the goal of a measure lawful?
1. Does the measure truly pursue the goal it purports to pursue?
1. Is the measure the least restrictive means to achieve the goal?
1. Do the benefits outweigh the damages?

Why the Proportionality Test is so important?

It shapes judicial assessments

It forces parliaments and executives to incorporate the proportionality analysis

It allows authorities without democratic legitimacy to address political issues

It incorporates technical considerations into legal analysis

It pushes private companies that deal with data to incorporate privacy analysis

An Example: Costeja Gonzalez v. Google Spain

Google publishes results and ranks them

Costeja Gonzalez complains that by publishing old information about him it is damaging his reputation and privacy

The “Right to be Forgotten” is born

The “Right to be Forgotten” requires a proportionality assessment

Legal & Technical Problems

How do you translate a proportionality assessment into google search?

Can you review it? The problem of “gaming the system”

The problem of intellectual property

The more you use privacy, the more boring the Internet becomes

The Importance of Privacy Design and of Going Beyond It

The time-consuming privacy protection

Information as cost and resource: the market and the burden of data

The consequence of the “opting in system”

The Healthcare Conundrum

The AI Act: going beyond privacy