

## Neil Livingstone writes on personal privacy and national security...

- 1 We live in information-based societies and it is inevitable that law enforcement and security forces utilise such technology to better protect us. In Britain, closed-circuit television (CCTV) cameras are used to fight crime and have elicited little public concern or criticism. Authorities are also monitoring the internet more closely in an effort to curtail child pornography. These actions are seen by some as an assault on privacy and a reduction of personal freedom, yet few would suggest that authorities be barred from access to such data. 5
- 2 The great novelist John Steinbeck once observed, "We spend our time searching for security, and hate it when we get it." Thus is our conundrum in the wake of the 9/11 attacks on New York and Washington which traumatised Americans and many of our friends and allies around the globe. Today we face unprecedented security risks to our lives and the fragile infrastructures we depend on to sustain our livelihoods and well-being. Our enemies are far more sophisticated than the stereotype of a bearded jihadist toting an AK-47 hunkered down in the mountains of Pakistan or Afghanistan, an illiterate and superstitious individual eager to impose the religious doctrines of the 7th century on the modern world. In reality, many jihadists are technologically sophisticated and linked by the Internet, which they use to download information on our vulnerabilities to assist them in the design and construction of explosive devices and even chemical, biological and radiological weapons. 10 15
- 3 We now live in an age where it is not a matter of 'if' but rather 'when' such an [chemical, biological or nuclear] event will occur. In response to this very real and ongoing threat, Western governments have adopted many measures to monitor the activities, communications and movements of potential terrorists and other aggressors all around the globe and to amass data, with the assistance of advanced information technologies, to authenticate and verify the identities of both citizens and non-citizens alike. In the wake of 9/11 and in the light of the vulnerability of information systems, governments are changing legislation to permit scrutiny of Internet traffic in an attempt to thwart potentially catastrophic attacks on government and commercial computer systems. The current debate over privacy is, in many ways, inevitable, and it has become a clichéd reality that every compromise we make to civil liberties in the war on terrorism is itself a victory for those who would like to destroy our way of life. 20 25
- 4 Critics argue that this is a suspension of common sense. But what are they suggesting? That we forgo any effort to collect data about airline passengers because we will necessarily accumulate more data about non-terrorists than terrorists, given that there are tens of millions of ordinary flyers compared with only a handful of terrorists? Most citizens are willing to permit governments to employ advanced information technologies to help identify and find actors who are hidden among the general population, who have the potential for creating harm of such magnitude that a consensus of society requires that government adopt a preventative rather than reactive approach. 30 35
- 5 Yet, this *so-called* right of privacy is, as the phrase suggests, founded upon the traditional claim that a man of stature has the right to pass through this world, if he wills, without having his picture published, his business enterprises discussed, his successful experiments written up for the benefit of others, or his eccentricities commented upon either in handbills, circulars, catalogues, periodicals or newspapers. *After all, gentlemen do not read each other's mail.* Given the security dilemmas of this democratic age, this view is quaint and unsuited to contemporary times. Does it mean that a man should not have his business 40

- enterprises discussed if he is making dangerous products or evading his taxes? What if a bank is laundering money to facilitate terrorist attacks? Should a person's "eccentricities" be overlooked if they include bomb building or, on a more domestic level, the dissemination of predatory child pornography? Are we to neglect the forest for the trees? 45
- 6 Americans have no expectation of complete privacy for there are no absolutes in life. The Constitution does not explicitly grant or even address the right of privacy. Privacy, even by the 18<sup>th</sup>-century standards of the Enlightenment, is a very recent phenomenon. It was not mentioned by 18th-century revolutionaries in their lists of demands or even enshrined in international human-rights laws and treaties until after the second world war. The first obligation of a government is to protect its citizens. The Declaration of Independence, on the other hand, states without equivocation that every man is entitled to "life, liberty, and the pursuit of happiness". Note that life is the pre-eminent value. 50 55
- 7 Today, above all else, it is for the protection of the lives of its citizens and their cherished freedoms that governments have undertaken some of the steps that might be considered violations of privacy. We submit to checks of our baggage and person in order to board an aircraft. Most of us do so with little complaint, despite the inconvenience, because we want to arrive safely at our destinations. Likewise, most citizens are not terribly concerned by warrantless wiretaps of terrorist suspects, because they believe that their security and that of their families depends on aggressive measures by the government to combat terrorism. 60
- 8 Opponents of Homeland Security argue that 9/11 has simply given governments further impetus to strengthen current surveillance and information interception systems. Afterall, in 1947, the governments of the United States, the United Kingdom, Canada, Australia and New Zealand signed a pact to carve the world into spheres of influence and surveillance. The irony cries strong in the wake of the terrorist attacks of the 1970s and 1980s, let alone of 9/11 and the Madrid and London bombings subsequently. The CIA identified the possibility of the WTC bombings several months before but the Bush administration dismissed the reports. The problem lies, they argue, not in the efficacy of the intelligent systems but in Western arrogance. 65 70
- 9 However, this proves above all else, that information systems like the internet should be subjected to continued, extensive surveillance as should all other large information networks. If our information is properly stored and protected, and access to it is appropriately controlled, how much real privacy have we lost? Would we rather our identities have been stolen or the computer systems we depend on are incapacitated by denial of service attacks? Credit cards make our lives immeasurably simpler, yet they, too, depend on validation codes and full owner information. Are financial fraud and theft to flourish because we want to restrict the amount and kind of information needed in the verification process? 75 80
- 10 In short, if we are identified, but not compromised, what have we lost? The vast criminal cyber-networks in existence today seek to acquire and sell the intellectual property on which much of our national economy depends. Others regularly hope to compromise our national security by breaking into highly restricted computer sites. The West is no longer complacent. Should we not do everything in our power to police such activities and preserve both the utility and efficacy of the internet, even if it means that we may have to scrutinize all users? What options have we? 85

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