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## Applying the “Contextual Integrity” Model of Privacy to Personal Blogs in the Blogosphere<sup>1</sup>

### ABSTRACT

In this paper, we analyze some controversial aspects of blogging and the blogosphere from the perspective of privacy. In particular, we focus on Helen Nissenbaum’s theory of privacy as “contextual integrity” and apply it to personal blogs, in general, and the case of the “Washingtonienne” blogger, in particular. We examine the question of whether personal blogs that are not password protected can be considered “normatively private contexts” according to Nissenbaum’s principles of privacy. We argue that they cannot. Using Nissenbaum’s original model, we conclude that privacy expectations for those who disclose personal information in such blogs are unrealistic. We also suggest that Nissenbaum’s expanded theory (see Nissenbaum, 2010) can inform the contemporary debate about privacy and blogging in a wide variety of newer technological contexts, in addition to personal blogs, and we encourage researchers to apply Nissenbaum’s model in those contexts.

### INTRODUCTION

In a previous work, we examined Helen Nissenbaum’s theory of “privacy as contextual integrity” (Nissenbaum, 2004) in light of the RIAA (Recording Industry Association of America) v. Verizon and the MGM v. Grokster cases.<sup>2</sup> There, we used her privacy model to illustrate why P2P networks could be considered *normatively private* situations/context.<sup>3</sup> This theory has clarified, for us, some of the conceptual muddles surrounding privacy and technology. In the present paper, we ask whether Nissenbaum’s theory can also be applied to privacy concerns that arise in the “blogosphere,” where expectations and assumptions about privacy are quite distinct from those affecting users in both the Verizon and MGM cases. The present paper is organized into four sections. In Section 1, we briefly review both the original and expanded versions of the theory of privacy as contextual integrity. Section 2 briefly describes a specific case involving blogging (viz., “The “Washingtonienne” controversy that occurred in 2004), which we later use to illustrate some key aspects

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<sup>2</sup> See “Online File Sharing: Resolving the Tensions between Privacy and Property Interests” (Grodzinsky and Tavani, 2008). There, we focused on privacy concerns affecting the surveillance of users in the context of P2P networks and showed how Nissenbaum’s privacy theory applies.

<sup>3</sup> The expression “normatively private situation” was introduced by James Moor (1997), but applies to Nissenbaum’s privacy theory as well. Moor contrasts situations or contexts that are “normatively private” from those that are merely private in a “natural” or descriptive sense. In the latter kinds of contexts, there are no normative policies or laws that apply when a person’s privacy is lost.

of Nissenbaum's privacy theory. In Section 3, we examine some features of blogs and the blogosphere, focusing our attention primarily on personal blogs. Section 4, which applies Nissenbaum's privacy theory to the Washingtonienne case, examines three key questions: (1) Is a personal blog a normatively private context? (2) Were Jessica Cutler's assumptions about privacy protection affecting her blog correct? (3) Were Robert Steinbuch's expectations of privacy (in the context of the Washingtonienne case) unrealistic?

We conclude our analysis by arguing that Cutler had no reasonable expectation of personal privacy in her blog, mainly because it was not password protected and thus would not qualify as a context that deserves normative privacy protection for the author/diarist. But we also argue that Nissenbaum's theory can show why Steinbuch's privacy, as well as the privacy of other unconsenting parties whose names appeared in Cutler's blog, had been violated because of the inappropriate ways in which personal information about them had become subject to transmission via that blog.

## PRIVACY AS CONTEXTUAL INTEGRITY: THE THEORY

In her essay "Privacy as Contextual Integrity," Nissenbaum (2004) expands upon the core concerns affecting (what she calls) "the problem of privacy in public," which she introduced in two earlier essays (Nissenbaum, 1997, 1998). Her theory (as expressed in Nissenbaum, 2004) is based on two principles:

- (i) The activities people engage in take place in a "plurality of realms" (i.e., spheres or contexts)
- (ii) Each realm has a distinct set of norms that govern its aspects.

Nissenbaum argues that norms affecting these two principles both shape and limit our roles, behavior, and expectations by governing the flow of personal information in a given context.<sup>4</sup>

There are two types of informational norms in Nissenbaum's privacy scheme: (a) norms of appropriateness, and (b) norms of distribution. The first of these determines whether a given type of personal information is either *appropriate* or *inappropriate* to divulge within a particular context. The second set of norms restricts the flow of information within and across contexts (Nissenbaum, 2004, p. 125). Nissenbaum argues that when either of these norms is "breached," a violation of privacy occurs. We have argued elsewhere (Grodzinsky & Tavani, 2005) that one virtue of her theory is that it illustrates why we must always attend to the *context* in which personal information flows, not the nature of the information itself, in determining whether normative protection is needed.<sup>5</sup>

Another virtue of Nissenbaum's theory is that it avoids a tension often found in traditional privacy frameworks, where privacy tends to be viewed in terms of either limited access to *or* control over personal

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<sup>4</sup> The contextual-integrity model proceeds on the assumption that there are "no areas of life are not governed by norms of information flow" (Nissenbaum 2004, p. 137). Our analysis of this model draws from an examination of the privacy-as-contextual-integrity theory in Tavani (2008a, 2008b).

<sup>5</sup> In the Verizon case, we saw that rather than focusing on the nature of the information included in a P2P situation – i.e., asking whether or not it should be viewed as private – we can ask whether P2P situations or contexts (in general) deserve protection as "normatively private situations."

information. Those who view privacy as a form of information control (e.g., Fried, 1990) often suggest that limited/restricted access accounts of privacy are inadequate. And those who defend the restricted access view of privacy (see, for example, Gavison, 1980) tend to question the adequacy of any account of privacy based on the notion of control of personal information. Nissenbaum believes that the debate over whether privacy is a “right to control versus a right to limit or constrain access to information by others” can be avoided, pointing out that

The framework of contextual integrity reveals why we do not need to choose between them; instead, it recognizes a place for each. The idea that privacy implies a limitation of access by others overlaps, generally, with the idea of an informational norm...Control, too, remains important in the framework as one of the transmission principles. (2010, pp. 147-148)<sup>6</sup>

More will be said about informational norms and transmission principles later in this paper. However, we should first address a potential criticism that might be leveled against Nissenbaum’s privacy framework – e.g., a critic might argue that the contextual-integrity model is not easily adaptable to new technologies that arise in which there are no clearly articulated practices, expectations, or norms governing the flow of personal information. In fact, in a recent work, Nissenbaum anticipates this kind of criticism by pointing out a “blind spot” in her original privacy framework. For example, she concedes that “[c]ontextual integrity, as it has been described thus far, is inherently conservative, flagging as problematic any departure from entrenched practice.” (2010, p. 161) Nissenbaum notes that this problem becomes paramount when trying to apply the theory to newer technologies. If we become entrenched in conservatism, we relegate contextual integrity to a descriptive theory, but it only minimally helps us in trying to make decisions about the “moral status of new practices that transgress entrenched norms” (Nissenbaum, p. 161). To address these concerns, Nissenbaum has developed a “decision heuristic” that is derived from the original framework but augmented by some “prescriptive elements.” She hopes that this expansion will “provide an approach to understanding the source or sources of trouble as well as an approach to evaluating the system or practice in question.”(Nissenbaum, 2010, p. 181) Her decision heuristic includes nine guidelines:

1. Describe the new practice in terms of information flows.
2. Identify the prevailing context . . . and identify potential impacts from contexts nested in it. . . .
3. Identify information subjects, senders, recipients.
4. Identify transmission principles.
5. Locate applicable entrenched informational norms and identify significant points of departure.
6. Prima facie assessment. . . . A breach of information norms yields a prima facie judgment that contextual integrity has been violated because presumption favors the entrenched practice.
7. Evaluation I: Consider moral and political factors affected by the practice in question. . . .
8. Evaluation II: Ask how the system or practices directly impinge on values, goals, and ends of the context. . . .
9. On the basis of these findings, contextual integrity recommends in favor of or against systems or practices under study. . . . (Nissenbaum, 2010, p. 182)

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<sup>6</sup>Although the debate involving the control vs. restricted-access views has been important in the theory of privacy, we will not examine it in greater detail here, as it is not critical to the main objectives of this paper. For a detailed discussion of this debate, see Tavani (2007).

We will see that the guidelines in Nissenbaum's heuristic device are especially helpful in analyzing privacy concerns affecting emerging technologies, as well as relatively recent technologies such as blogs where practices and expectations affecting their use have not yet become "entrenched." We discuss this below in the section regarding norms of distribution of personal blogs, where we identify some specific guidelines in Nissenbaum's heuristic scheme that can be used to analyze some tensions that arise in disputes affecting privacy vs. free speech in the context of personal blogs.

We next apply the general outline of Nissenbaum's theory of privacy as contextual integrity to concerns affecting blogging and the blogosphere, using the controversial "Washingtonienne" case as an illustration.

## THE WASHINGTONIENNE CASE

In 2004 Jessica Cutler (aka "The Washingtonienne"), who was employed as an assistant to U.S. Senator Michael DeWine (R-Ohio), authored an online diary posted on blogger.com. This diary described a number of personal details about Cutler, including her annual salary as a Washington, DC Congressional Staff Assistant or "DC staffer" (\$25,000). Her diary also disclosed that most of her living expenses were "thankfully subsidized by a few generous older gentlemen." Additionally, Cutler's diary described her sexual relationships with these men, one of whom was married and an official in the Bush Administration. Cutler had assumed that her blog was being read only by a few close friends. However, in May 2004, an editor at *Wonkette: DC Gossip*, a popular blog in the DC area, discovered "The Washingtonienne" diary. When Cutler learned that her blog had been discovered, she deleted its contents from blogger.com (on the same day, ironically, that it appeared in *Wonkette*).

When Cutler was eventually "outed" in *Wonkette* as "The Washingtonienne," she was fired as a Congressional staffer for misusing computer resources. Shortly after her termination, however, Cutler received a book contract to publish details of her encounters and experiences as a DC staffer. She was also later sued by one of the men implicated in her original blog (Leiby, 2004).

A source of considerable controversy and discussion, the Cutler case has received national attention in the U.S. media since 2004.<sup>7</sup> Before analyzing the Washingtonienne case vis-à-vis Nissenbaum's privacy theory, however, we believe that it is important first to ask: What, exactly, is a blog?

## BLOGS

According to the (online) *Merriam Webster Dictionary*, a blog (or Web log) is "a Web site that contains an online personal journal with reflections, comments, and often hyperlinks provided by the writer; *also*: the

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<sup>7</sup> The Washingtonienne case raises a host of ethical issues, in addition to concerns about personal privacy. For example, ethical and legal questions having to do with free speech and defamation, as well as questions about a blogger's expectations regarding anonymity and confidentiality, also arise. Of course, our focus on this case in the present paper is on the implications it has for personal privacy. For a discussion of the Washingtonienne case from the perspective of some broader ethical and social concerns, see Tavani (2011).

contents of such a site” (<http://www.merriam-webster.com/dictionary/blog>). Note that in this paper, we do not discuss the history of blogs; interested readers are instead referred to Anton Zuiker’s Web site ([www.unc.edu/~zuiker/blogging101/](http://www.unc.edu/~zuiker/blogging101/)) for historical information on this topic. We do, however, believe that it is important to note that there are several different types of blogs. For example, there are political blogs, personal blogs, topical blogs, health blogs, literary blogs, travel blogs, and so forth. As a type of online personal diary, Jessica Cutler’s blog would seem to fall under the category “personal blog.” So, in this paper, we limit our analysis of blogging vis-à-vis the “privacy as contextual integrity” model to personal blogs.

Blogging has become popular because it is an easy way to reach many people. Subscribers to sites such as Blogger.com can post their thoughts and opinions on whatever topic they choose. The personal blog has virtually replaced distribution list emailing to family and friends. A friend whose son is teaching in China for the year reflects on his experiences, shares his photos and gives his family accounts of his experiences. Another, whose husband is overseas in the military posts pictures of the children and recounts the daily happenings at home. The personal blog is an easy way to keep in touch. Others use personal blogs as a forum for opinions. In 2009, four students in the Philippines received a 10 day suspension from high school for insulting the principal on a personal blog (Sans appeal, 2009). The administrators at the school claimed such a posting impacted the school’s reputation. Should personal bloggers be held to the same standards as online journalists? The debate centers on the motivation of the blogger. Personal bloggers argue that they are not journalists and their blogs are sites of personal reflection. Others say that irrespective of motivation, “responsible bloggers should recognize that they are publishing words publicly, and therefore have certain ethical obligations to their readers, the people they write about, and society in general” (A Bloggers’ Code of Ethics, 2003). On the Web site CyberJournalist.net there is a Bloggers’ Code of Ethics that is modeled on the Society of Professional Journalists Code of Ethics. The site explains that “these are just guidelines – in the end it is up to individual bloggers to choose their own best practices” (A Bloggers’ Code of Ethics, 2003).

It is interesting that those who advocate for this code also appeal to the integrity of the bloggers in the “practice of ethical publishing.” Yet, many who write personal blogs do not consider themselves “authors” in the field of publishing. Engaging in personal blogging is instead a form of social networking for the blogger, and the blog becomes a venue to reveal details of the blogger’s personal life. To what extent is this trend generational? Warren St. John (2006) suggests that for many young people, blogging and social networking have become a part of one’s social identity. He writes,

Through MySpace, personal blogs, YouTube and the like, this generation has seemed to view the notion of personal privacy as a quaint anachronism. Details that those of less enlightened generations might have viewed as embarrassing — who you slept with last night, how many drinks you had before getting sick in your friend’s car, the petty reason you had dropped a friend or been fired from a job — are instead signature elements of one’s personal brand. To reveal, it has seemed is to be (St. John, 2006).

There seems to be a misconception among some personal bloggers, Jessica Cutler included, that anonymity somehow protects the blogger and that only “friends” will be interested or know the identity of the writer of personal information. In their minds it is analogous to writing a personal diary and only allowing

certain friends to have access to the information. Given the nature of the Internet, however, this is often not the case, and personal bloggers can easily lose control over their personal information as did Jessica Cutler. To retain some semblance of control, many bloggers now choose to password protect their sites; others do not list their blogs, making it more difficult for search engines to find them.

The most open blog is completely unprotected. Why would a blogger sharing personal diary-like entries unprotect his/her blog? Often it is simple naiveté about the media or indifference. Nardi et al. report that “[i]n theory, about 900 million people (if current estimates of Internet connectivity [14] are correct) could read any blog that is not password protected. How did bloggers in our study feel about this? Responses varied. A common response was indifference” (Nardi, 2004). In an interview with the *Washington Post*, Cutler demonstrates this attitude when she remarks: “But I thought that was, like, too much trouble for my friends to have to type in a password. I thought there are so many people with their own blogs, mine is not even going to come up on the radar” (Witt, 2004). Cutler pointed out that she wrote her blog for three friends.

Nardi et al. indicate that for some, blogging is a social activity involving others, when they remark: “We learned that blogs create the audience, but the audience also creates the blog. This linkage happened in a number of ways: friends urging friends to blog, readers letting bloggers know they were waiting for posts, bloggers crafting posts with their audience in mind, and bloggers continuing discussions with readers in other media outside the blog” (Nardi, et al., 2004). This kind of behavior is apparent in Jessica Cutler’s blog. The *Washington Post* reported, “By the first week of May, she was having flings with so many guys that reporting them all to her girlfriends was starting to feel like way too much work. ‘So I sent a mass e-mail out: ‘You guys, should I have my own blog or what?’ I was kidding, ‘Jessica says. “But they were all, like, ‘Yes, if anyone should have a blog it’s you, because you have the most interesting life’” (Witt, 2004). Cutler’s intention to protect the privacy of her lovers is supported by the claim that in writing her blog, no one would be named. Instead, initials would be used to distinguish her sexual partners (Witt, 2004).

Is there any other way of protecting one’s privacy in personal blogs? Many blog sites that allow individuals to post personal blogs (in the form of online diaries) have privacy policies. For example, WordPress and BlogHer have explicit privacy statements available on their Web sites (<http://wordpress.org/about/privacy> and [www.blogher.com/privacy-policy](http://www.blogher.com/privacy-policy), respectively). However, these policies primarily state how personal information about the blogger is or is not collected via mechanisms such as cookies. These policies do not guarantee that any personal information entered into a blog is prevented from being seen by the public. It is up to the blogger to set up that constraint by password protecting his/her site, which Cutler elected not to do.

## APPLYING THE CONTEXTUAL-INTEGRITY FRAMEWORK TO PERSONAL BLOGS

We now focus our application of the contextual-integrity model of privacy, with its norms of appropriateness and distribution (described in Section 1), to personal blogs. In particular, we examine the application of this

model in the Washingtonienne case vis-à-vis certain norms of behavior and expectations of privacy for the author of that blog, as well as for the persons identified in it.

### **Norms of Appropriateness in a personal blog**

With respect to norms of appropriateness in the context of a personal blog, we first need to differentiate between password-protected and non-password-protected personal blogs. In the case of non-password-protected blogs that function as online diaries, we ask whether the creator of the “diary” has a responsibility to the people with whom she/he interacts in real life. Consider that in a traditional (i.e., physical) diary, the diarist shares intimate details not meant to be public; that is the nature of “the diary.” Personal information is under the control of the diarist who may or may not allow the diary to be read by others. Often the diary is key-locked, with the diarist having the only key. What happens, however, when that diary moves to an online forum or venue, and when its content can be more easily read by others?

Also, what are the expectations of privacy of those people who interacted with the diarist and are described in the blog? Do they expect to read about their private interactions in her blog, especially when personal details are more open and thus more accessible to others? Assuming that the parties involved have not consented to such information about them being included on the blog, it would seem that norms of appropriateness have been violated.

Of course, we could also ask the following question: What kinds of privacy expectations did bloggers, as well as Internet users in general, have about blogs have in 2004 (i.e., the time period involving the Washingtonienne case)? And have those expectations changed as the norms governing practices and expectations associated with blogging have evolved in recent years? Nonetheless, we believe that it is still reasonable to examine the Washingtonienne case vis-à-vis the norms of appropriateness (and distribution) that existed at that time, as a starting point for additional research on privacy theory as applied to new and evolving technologies.

### **Norms of Distribution in a personal blog**

Did Cutler’s behavior also violate the norms of distribution when she shared intimate details about her sexual relationships with unsuspecting readers in the blogosphere? Again, we can ask the question about whether consent was given by the parties involved – i.e., were they asked, and did they consent to having their personal information shared with others, including strangers? If not, would they have any reasonable expectations with regard to privacy? Robert Steinbuch, one of the men implicated in the Washingtonienne blog, has since sued Cutler, stating that her blog’s content was sufficient to reveal his identity and thus violate his privacy. Not only did he not consent to having information about him distributed, but Steinbuch apparently had no idea that he, via an alias (i.e., his initials), was even included in Cutler’s online diary. But what kind of recourse does/should Steinbuch have, given the public context of online personal blogs? There is no clear precedent here from a legal point of view. McClurg (2005) notes that Steinbuch’s case “hinges on a century-old privacy tort claim known as ‘public disclosure of private facts.’ In theory, the tort provides a remedy when

one publicizes private, embarrassing, non-newsworthy facts about a person in a manner that reasonable people would find highly offensive.” The courts, on the contrary, have tended to defer to the “free speech” argument against privacy, if the information published online is true (McClurg, 2005). However, we believe that this debate can be further informed by Nissenbaum’s contextual-integrity framework, especially in light of her “decision heuristic” (described in Section 1). Recall that Guidelines 5-9 in Nissenbaum’s heuristic device ask us to weigh the “moral and political factors affected by the practice” and to consider how that practice directly impinges on the “values, goals, and ends of the context.”

It would seem that Steinbuch’s privacy was violated both from the contextual norms of appropriateness and distribution. It is not clear, however, whether those same norms would have been violated in the Washingtonienne case, had the blog been password-protected and limited to the three people that Cutler mentions. It would then seem to be no different from instances where three friends share some intimate details about office affairs with one another in an off-line context such as a restaurant or a bar – the only difference being that there would be a log of the discussion as opposed to the whisperings at the bar. But the fact that Cutler took no precautions to protect the diary from the public resulted in the information in it being available to anyone, and this violated both contextual norms. The same would seem to hold for all non-password-protected blogs where all the parties mentioned have not consented to having their names included, or consented to having intimate details about them chronicled.

## CONCLUSION

In this paper, we have examined some privacy issues affecting blogging and the blogosphere. We focused in particular on personal blogs, as opposed to blogs in general (i.e., the wide range of alternative types of blogs currently available). And we further limited our discussion to personal blogs that function as online diaries and which were not password-protected. We then applied Nissenbaum’s theory of privacy as contextual integrity to the Washingtonienne case; we saw how both Nissenbaum’s norms of appropriateness and norms of distribution can be applied. On the basis of our analysis, we concluded that (1) authors of those types of blogs have no reasonable expectation of their personal privacy being normatively protected, and (2) the privacy of unconsenting parties whose names appear in those blogs can be violated.

Our analysis has not, however, examined privacy concerns affecting the wider blogosphere, including more recent controversies involving *twitter* and “reblogging.” In examining these controversies, as well as related privacy issues affecting some emerging technologies, from the perspective of the contextual-integrity model, one could apply elements in Nissenbaum’s “decision heuristic” (see Section 1). Of the nine guidelines comprising her heuristic device, the first five are of particular interest for newer practices and technologies affecting blogs and the blogosphere. For example, one could first describe any new practices that arise in terms of the “information flows” affecting them and then identify both the “information subjects” (senders and recipients) and the “transmission principles” involved. Next one could locate any “applicable entrenched norms” and then determine whether the norms involved depart significantly from existing norms. While an examination of privacy issues in these broader scenarios in terms of Nissenbaum’s heuristic device is beyond

the scope of the present paper, we believe that an analysis of these issues could generate some excellent case studies for the application of Nissenbaum's privacy theory in future research projects.

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