



Journal of Information, Law & Technology

Privacy, Technology Law and Religions across Cultures¹

Prof. Joseph A. Cannataci
Director of the Centre for Law, Information & Converging Technologies
University of Central Lancashire
jacannataci@uclan.ac.uk

This is a **refereed article** published on 28 May 2009

Citation: Cannataci, JA., 'Privacy, Technology Law and religions across cultures', 2009(1)
Journal of Information, Law & Technology (JILT),
<http://go.warwick.ac.uk/jilt/2009_1/cannataci>

¹ This version of the paper given at the 'Living in truth' conference at Babes-Bolyai University in September 2007 was revised and up-dated for publication in JILT in September 2008-May 2009

Abstract

The freedom to receive and impart information, privacy and the freedom from discrimination on grounds of religious belief are universally recognised as fundamental human rights and, as such, also form part of the basic values of democratic societies. These rights have, in the main, only been adequately articulated and increasingly protected at the international level after the Second World War, relatively very late in more than seven thousand years of civilization. In contrast, the values promoted by religions have often been recognised as such for millennia. Where do the values of privacy law and religions conflict and where do they converge, especially in a world where information technology is ubiquitous? The paper examines the debate over privacy from various perspectives, identifying those areas where religions appear to have confronted issues of human rights and where lawyers have been joined in the debate by philosophers within the rapidly developing field of information ethics. It concludes by listing a minimum ten areas where religions may possibly contribute to the intercultural debate on privacy in the Information Society.

Keywords

Privacy and Information Society, Information ethics, Information Technology and Theology, Information Technology and Culture, Information Technology and religious belief, Information Technology and Human Rights.

'Information law, including the law of privacy and of intellectual property, is especially likely to benefit from a coherent and comprehensive theory of information ethics...'

Dan L. Burk

'We are at the beginning of what I call intercultural information ethics, whose aim is not just to compare similar or dissimilar concepts by juxtaposing them, or to look for a conceptual or even moral consensus – but to become aware of our mutual biases on the basis of a nuanced understanding of similarities and dissimilarities beyond the simple dichotomy between "East" and "West."'

Rafael Capurro

'Any tendency to treat religion as a private matter must be resisted. . . . To the extent that religion becomes a purely private affair, it loses its very soul.'

Pope Benedict XVI

1. Introduction

The debate on ‘Privacy and Information Technology’ has been predominantly carried out from a ‘Western’ perspective for over forty years. It is only relatively recently that an interest has arisen in examining where other cultures, such as those which characterise China and Muslim societies, may stand on similar issues. In an effort at contextualising the debate, this paper will set out to map where we are in the complex landscape that is the intercultural debate on privacy, occasionally pausing to get a glimpse on how we possibly got here, focusing on who the actors are almost as much as on what they have to say about the matter. In this sense it is more of an overview than an in-depth review of any one particular aspect of the privacy debate: expect an aerial view of the terrain which attempts to outline the bigger picture before enticing the reader to later plunge deeper into the undergrowth.

The terrain in this case is one marked by at least five major religions which had already started to ‘go global’ a thousand years and more before the Internet and commerce made globalization a popular term. Christianity, Islam, Hinduism, (Confucian-based) Chinese traditional religion and Buddhism together account for well over 5 billion adherents out of the world’s 6.3 billion population². While at first this may give rise to the hope that an examination of privacy across religions need only start off by seeking harmony and consensus across these five major religious systems, it will be seen that religion is but one element in a complex multi-cultural and intercultural scenario.

This paper may incidentally also provide a tiny contribution to the growing debate about the complex links between religion, law and information technology. Since its very beginnings, the relatively young discipline of Information & Technology Law has concerned itself with the flow of information within society and the resultant impact on the distribution of power within society. That particular focus has manifested itself in various ways and particularly in the long-running debates on data protection law and freedom of information legislation. The introduction of data protection law provoked a new interest in privacy as a fundamental human right and has led to a string of related legislative and judicial developments especially in countries like Germany. These developments have been variously chronicled elsewhere but have led to the inception of new rights like ‘informational self-determination’ and even ‘on-line privacy’.³ While some leading European jurisdictions come up with such developments, others outside Europe are considering the wisdom of signing up to the Council of Europe’s 1981 Data Protection Convention⁴ while some inside Europe⁵ are calling for a wholesale review of the EU’s

² See e.g. breakdown at http://www.adherents.com/Religions_By_Adherents.html#Chinese , accessed on 17 August 2008

³ For a useful overview of relevant developments in German law see Hornung, G and Schnabel, C (2009), ‘Data Protection in Germany I: the population census decision and the right to informational self-determination’, 25 *Computer Law & Security Review*, 84-88.

⁴ Australia, Philippines and other ASEAN states are reported to have actively looked into committing to the COE’s Convention 108. This possibility has also been discussed by various commentators e.g. ‘Signing the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data could be an interesting alternative to achieving a regional standard of protection, although it does appear a “long-shot” at this stage’, Galexia ‘Asia-Pacific region at the Privacy Cross-roads’, 2008, accessed 11 May 2009 at http://www.galexia.com/public/research/assets/asia_at_privacy_crossroads_20080825/asia_at_privacy_crossroads-Other.html

Directive 46 of 1995 which is largely based on the COE's 1981 convention. These varied and sometimes apparently conflicting developments in that part of ICT law we today bundle under the umbrella of 'Privacy & Data Protection' compel us to think more deeply about the values underlying privacy, where they come from, how they have developed and where they may or should be going.

When delving deeper into underlying values, it is inevitable that one encounters religions and other cultural sources of value systems. As one asks the questions 'What is privacy? When and where did it begin? How is it enhanced or threatened by technology? What rules should one adapt or adopt?' one discovers a number of things that the debate about religion, information flows and information technology may have in common with themes that have now traditionally been explored in the field of Information & Technology Law. Thus, in the same way as we are in IT Law concerned with the distribution of power in society, we discover interest in exploring religious texts such as the Christian Bible 'in a one to one relation with political power' where 'the text is generated by the shifts of power that need to be given religious legitimacy'.⁶ Indeed, from a certain viewpoint, several, if not all, religions may be studied in terms of 'information flows' and 'information technology'. The field of study of information technology and religion is vast and fascinating: it may range from how early information technology like the printing press was key in altering political power in Europe especially because of the role of printed matter in the Reformation, through how religions took to modern media for 'tele-evangelisation', to how Digital Islam has now grown to be a regular stream <http://www.digitalislam.eu/article.do?articleId=1817> in one of Europe's largest IT Law conferences.⁷

It is beyond the scope of this paper to attempt to chart all the intersections of ICT Law with religion and information technology but instead the objective is far more modest if nonetheless complex. This paper will restrict itself to one value or set of values from the perspective of the intersection between law, information technology, values and religions. The case study chosen for this paper is privacy which is undeniably a universal value albeit finding different forms of expression in different cultures. Laws consist of rules which exist *inter alia* to protect and promote values. The main thrust of the debate launched in this paper is whether we can get religions to contribute to the formulation of legal concepts and possibly to agree about or at least not hinder the development of certain values such as privacy in a society where information technology is ubiquitous. Key ICT Law texts such as the 1981 COE Data Protection Convention cite implementation of Art. 8 of the European Convention of Human Rights as one of their primary concerns and thus the discussion will commence with an evaluation of privacy from the point of view of fundamental human rights.

2. A lawyer's dilemma?

⁵ See especially the views of the out-going UK Information Commissioner Richard Thomas and his attempt to invigorate the debate by commissioning a related report from the Rand Organisation, available at: www.ico.gov.uk/upload/documents/pressreleases/2008/ico_leads_debate_070708.pdf - also Various reports

⁶ Brueggemann Walter when describing 'Power, Politics and the Making of the Bible' by Robert B. Coote & Mary P. Coote, Fortress Press, Minneapolis, USA, 1990.

⁷ See for example Cyberspace 2007, Cyberspace 2008 <http://cyberspace.muni.cz/english/index.php> and <http://www.digitalislam.eu/>

When people sit down and sign a contract it is normally hoped that some agreement has been reached on something specific and that the signatories are clear as to what they have agreed to. This is at least as important in international law as in national law: an international contract such as a bi-lateral treaty or a multi-lateral convention can have consequences for individuals far beyond national jurisdictions and is often in effect for decades. What is one to make, therefore of the following principle 12 from the most-translated document in history, the UN's Universal Declaration of Human Rights?

'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.'

So, if all the countries of the world signed up to this, what exactly have they agreed? The main problem is of course that nowhere else in this milestone document do we read 'For the purposes of this declaration "privacy" means "XYZ"'. Sixty years after the UN's Human Rights declaration was launched in December 1948, many scholars within different jurisdictions have engaged in a continuing debate about the definition of privacy but while this debate has yielded many valuable insights we are nowhere closer to having a universally agreed definition for a universal value such as privacy.

To complicate matters further, while the Universal Declaration contained no definition of privacy, religious differences eventually came to the fore: the UN 1948 declaration was later labelled 'a secular understanding of the Judeo-Christian tradition', which could not be implemented by Muslims without trespassing the Islamic law.⁸ In the 1990 Cairo Declaration on Human Rights in Islam, a quarter of the world's countries signed up to a new document which contains a number of nuances to the 1948 UN document and attempts to interpret all fundamental rights in accordance with Shari'ah Law. In Article 18, the 1990 CDHRI tends to give the impression of having developed a more detailed concept of what is understood to fall within the definition of privacy:

'(b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.'

'(c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.'

This was far more detailed and arguably more restrictive than section XXII of the Universal Islamic Declaration on Human Rights of December 1981 which had read simply: 'Every person is entitled to the protection of his privacy.' Indeed, it may possibly be inferred from the later

⁸ Iranian representative to the United Nations Said Rajaie-Khorassani as cited by Littman, D (1999), 'Universal Human Rights and 'Human Rights in Islam'', February/March, Midstream

1990 declaration that the right to privacy is largely restricted to ‘conduct of private affairs in his home and among his family’. What happens outside home and familial spaces (e.g., a hotel room or the Internet) may possibly not qualify for protection under the right to privacy in terms of Art. 18 CDHRI. If in nothing else, the Muslim states are clearly in agreement with Pope Benedict XVI when he holds that religion is not simply a matter for private life. The Islamic view is that ALL of life’s fundamental principles must be in accordance with religious law (Shari’ah)⁹ and indeed Muslim scholars are at pains to trace the roots of most Islamic fundamental rights principles to the Quran¹⁰. Interestingly enough, although predominantly Muslim, the Arab states did not opt for this wording in their 1994 Arab Charter on Human Rights, the revised version of which (May 22, 2004), entered into force March 15, 2008¹¹. The latter document in Art 21 maintains a verbatim copy of Principle 12 of the 1948 UN Universal Declaration. At least, in terms of strict legal wording, in the case of privacy the drafters of the Arab Convention avoided the criticism levelled at the CDHRI and especially that it ‘gravely threatens the inter-cultural consensus, on which the international human rights instruments are based’.¹²

The controversy on the approach of religions as to which set of international human rights many countries actually adhere to has not abated. On Human Rights Day, 10 December 2007, the Pakistani Ambassador to the UN Human Rights Council claimed that the Cairo Declaration of Human Rights in Islam, adopted in 1990 by the 56 member states of the Organisation of the Islamic Conference ‘is not an alternative’ to the Universal Declaration but ‘complementary’. The IHEU¹³ was quick off the mark to comment ‘*Complementary? Yet the Cairo Declaration makes no mention of the Universal Declaration and clearly states that: “All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’ah” and “The Islamic Shari’ah is the only source of reference for the explanation or clarification to any of the articles of this Declaration...”*’ <<http://www.iheu.org/node/2949>>. In its strongly worded statement of the 24 February 2008, the IHEU concluded that

‘21. The vast majority of the Member States of the OIC are signatories to the UDHR and the International Covenants, the ICCPR and ICESCR. By adopting the 1990 Cairo Declaration those States are in effect renegeing on the obligations they freely entered into in signing the UDHR and the two covenants.

22. The Cairo Declaration of Human Rights in Islam is clearly an attempt to limit the rights enshrined in the UDHR and the International Covenants. It can in no sense be seen as complementary to the Universal Declaration’ (Ibid).

⁹ ‘WHEREAS the human rights decreed by the Divine Law aim at conferring dignity and honour on mankind and are designed to eliminate oppression and injustice;’ from the preamble of the Universal Islamic Declaration of Human Rights, 19 September 1981, <<http://www.alhewar.com/ISLAMDECL.html>>

¹⁰ ‘Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice’, Saelm Azzam, Secretary General of the Islamic Council of Europe, 19 September 1981, <<http://www.alhewar.com/ISLAMDECL.html>>

¹¹ Reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005),

¹² L Adama Dieng, a member of the International Commission of Jurists, as cited by Littman, D (1999), ‘Universal Human Rights and 'Human Rights in Islam’, February/March, Midstream.

¹³ Based in London, International Humanist and Ethical Union is an international NGO established in 1952 with Special Consultative Status with the UN (New York, Geneva, Vienna), General Consultative Status at UNICEF (New York) and the Council of Europe (Strasbourg), and maintains operational relations with UNESCO (Paris)

While the debate rages on as to whether the CDHRI is actually a major, religion-induced schism in the international, intercultural consensus on human rights, it does not appear that current and past commentators within religious circles have contributed much to a better understanding of what is actually meant by the term privacy. Perhaps this is because, as Abraham Marcus (1986) aptly remarks:

‘As a historical theme privacy poses some particular difficulties. The phenomenon itself is of unusual conceptual complexity, as the growing literature on the subject illustrates. Its pursuit ...encounters problems of inadequate evidence, impenetrable intimate worlds of thought and behaviour, questionable assumptions about Islam and Middle Eastern society, and intricate causal relationships between culture and social conditions.

The larger context must be invoked constantly to render observations more intelligible; privacy is the story not of one idea, institution, or social group but of a phenomenon inseparable from the cultural vision and social processes of the community at large.’

The above statement was made in relation to life in 18th Century Aleppo, Syria, where a Muslim majority co-existed with significant minorities of Christians and Jews but it could apply equally accurately to the situation in many countries in the 21st Century. Privacy has, if anything, become much more complex a phenomenon than it was three centuries ago, largely as a result of societal changes influenced by information technologies but, the question must be asked, does religion (or do religions) have a contribution to make to the debate about the interplay between privacy and technology?

Firstly, in many countries, societies are today at least as complex as life in a large city in 18th Century Syria. Most societies are not homogeneous: they are increasingly a complicated mixture of groups or individuals of different ethnic origins with different community cultures and different personal and religious beliefs. One major difference is that in a majority of states, religion is no longer an over-arching source of either unity or rule-making. Whereas, especially in the West, organized religion had a huge influence on the nature of rules made by secular society, this influence has waned steadily since the 18th Century. Indeed, religious apathy is now so far advanced in many European states, that the population there would be unable to properly appreciate the extent to which policy-makers in, e.g., the United States, have to adjust what they say and do, in order to maintain support (or, at minimum, not alienate) the more religious segments of US citizens.

This difference in religiosity between, say the EU and the US, is also one which reminds us of the fact that there exist considerable differences in approaches to privacy between these two leading gigantic blocs of civilization as well as internal differences within the two blocs. A good way to illustrate this is to start by briefly considering the debate about the definition of privacy that has raged in the United States for decades.

It would take a fair-sized book to do justice to the US debate on the definition of privacy as it has evolved in the last hundred years. For reasons of space and focus I will not attempt to summarize this when it has been so ably done already by a number of people. I will simply rely on one of the best recent US attempts to categorize conceptualization of privacy (Solove, 2002):

‘Despite what appears to be a welter of different conceptions of privacy, I argue that they can be dealt with under six general headings, which capture the recurrent ideas in the discourse. These headings include: (1) the right to be let alone—Samuel Warren and Louis Brandeis’s famous formulation for the right to privacy; (2) limited access to the self—the ability to shield oneself from unwanted access by others; (3) secrecy—the concealment of certain matters from others; (4) control over personal information—the ability to exercise control over information about oneself; (5) personhood—the protection of one’s personality, individuality, and dignity; and (6) intimacy—control over, or limited access to, one’s intimate relationships or aspects of life’ (Ibid, p.1092).

In his extremely interesting analysis, Daniel Solove concludes that, after a hundred and ten years of American lawyers wrangling over the definition of privacy,

‘with a few exceptions, the discourse seeks to conceptualize privacy in terms of necessary and sufficient conditions. In other words, most theorists attempt to conceptualize privacy by isolating one or more common “essential” or “core” characteristics of privacy. In contrast, I argue that privacy is better understood by drawing from Ludwig Wittgenstein’s notion of “family resemblances.” As Wittgenstein suggests, certain concepts might not have a single common characteristic; rather they draw from a common pool of similar elements’ (Ibid, p.1091).

Solove is a Law Professor and a relatively recent (1997) graduate from Yale, building on a US tradition where lawyers have had a head start in dissecting privacy for over a century. Yet he succeeds in writing an otherwise extremely profound 67-page article which does not pause once to look at recent European tradition in development of privacy law. Perhaps this is symptomatic of an unhealthy insularity which is not altogether unusual in American legal writing but it is an interesting reminder of how diverse these two main branches of Western legal thinking have become. Solove loses out on the opportunity to note how, for over 25 years the European approach has been to side-step the quagmire that is the debate as to whether privacy is a property right but rather rely on the fact that it is a fundamental human right in terms of Art 8 of the European Convention on Human Rights (ECHR) of 1950 which states,

- ‘1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.’

The ECHR has probably been much more successful (in terms of application on the ground) than the UN Declaration of 1948 because of the key institution set up by the ECHR itself: the European Court of Human Rights in Strasbourg has successfully overseen the application of the ECHR in the unprecedented position where individuals could take their national governments to

a supra-national court over human rights matters. This has led to a case law on privacy which is in some instances comparable to that of the US Supreme Court but which has also inspired (and at times contributed directly to) important developments in the law regulating information technology. The Council of Europe's 1981 Data Protection Convention (COE 108), which in some places drew on the debate leading up to the 1974 US Privacy Act¹⁴, explicitly builds on the concept of privacy as expressed in Art 8 ECHR to emerge with a number of data protection principles which have since become incorporated into the laws of more than 30 European states. These principles create a protection regime for all forms of personal data. This treaty spawned the first EU Directive inspired by Human Rights, EU 46/95, which essentially takes the same data protection principles of COE 108 and makes them compulsory across the 27 member-states of the European Union.

It is somewhat ironic that the European tradition in data protection law was sparked off by the US mid-'sixties debate on the potential menace for privacy as posed by new computer technology. For while the US has continued to witness a fragmented approach to privacy and data protection that distinguishes between personal data held in the public sector and that held in the private sector, Europe has not shirked from adopting an omnibus approach whereby personal data is clearly defined as 'any data relating to an identified or identifiable individual'¹⁵ and which is protected regardless of whether it is collected and processed by the public or private sectors. Now while this may be a pragmatic if imperfect approach to tackling personal data in an age where information technology is ubiquitous, it does not solve the problem that Solove sets out to tackle i.e. actually come up with a working definition of privacy that is conceptually robust. For the US and European debate on what constitutes 'privacy' and 'private life' are considerably wider than the narrower discussion afforded by 'personal data'.

Which is why Solove would have probably done well to pay closer attention to the development of personality law in Europe. It would appear that while 'personhood—the protection of one's personality, individuality, and dignity;' is one of the six categories that Solove actively considers within US law, he has missed out on the opportunity to compare this to how a *Lex Personalitatis* has developed in many European states since 1949. Now this is surprising, since in his analysis Solove observes: 'In *Planned Parenthood v. Casey* the Supreme Court provided its most elaborate explanation of what the 'privacy' protected by the constitutional right to privacy encompasses:

'These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State' (Solove, op.cit., p.1117).

Solove sums this up thus 'In other words, the Court has conceptualized the protection of privacy as the state's noninterference in certain decisions that are essential to defining personhood.' One of the great differences that Solove misses to point out is that the parallel development of *Lex*

¹⁴ I have dealt with this aspect in greater detail in Chapter 5 of the book 'Privacy & Data Protection Law' published by Norwegian University Press in 1987.

¹⁵ Art 2, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, <<http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm>> accessed 17 August 2008.

Personalitatis in, say, German Law has been hierarchical in nature. Rather than putting ‘personality’ or ‘personhood’ at par with five other elements of the US privacy debate, the German approach (as the Hungarian, Slovenian and Romanian) has been to declare an over-arching constitutional right to ‘dignity and free development of personality’ and effectively treat privacy as an ‘enabling right’, one which exists (together with other enabling rights such as freedom of expression and access to information held by public bodies) principally as an instrument to give effect to the supreme value of unhindered development of personality.¹⁶

3. A philosopher’s dilemma?

I have selected Solove out of a few dozen potential other candidates writing from a predominantly legal background because, amongst other positive aspects, he deliciously embarks upon an (ultimately unfinished) exercise of applying a philosopher’s approach to problem solving. By invoking Wittgenstein in an attempt to re-conceptualize privacy, Solove the lawyer is doing something which too few lawyers do i.e. look beyond the law and the discipline that is legal science for inspiration as to how the law should properly tackle an issue. While lawyers have an excellent pedigree to draw upon within human rights law, philosophy of law and information law, it is by consistently going *beyond* the law and enriching their analysis through inter-disciplinary work that they can hope to more adequately hone the science of rule-making. Which is why it is advisable at this stage to turn our attention to information ethics and especially its usefulness in understanding the intercultural dimensions of privacy, religion and information technology.

Information ethics is a relatively new off-shoot of ethics, the long-standing major branch of philosophy concerned with right conduct and good life. One widely-accessible definition reads ‘Information ethics is the field that investigates the ethical issues arising from the development and application of information technologies’ <http://en.wikipedia.org/wiki/Information_ethics>. Although IT is undoubtedly a most fertile area of primary concern, this definition would seem to be somewhat restrictive since there are various types of information flows pre-dating or outside IT which have ethical dimensions of the types now claimed for information ethics. These information flows concern forms of behaviour unaided by technology (such as speaking in public) or facilitated by non-digital technology (such as books, newspapers, analog TV and radio broadcasting) all of which precede the digital era and all of which had ethical dimensions which needed to be properly addressed. That many of these flows have now moved to digital platforms does not necessarily justify nor does it negate the need to create a new label for the current attempts by philosophers to analyze activities most of which have had serious ethical dimensions for decades and (in the case of print and photography) centuries. I am therefore much happier with Froehlich’s informal definition of information ethics, ‘In fact, it can now be seen as a confluence of the ethical concerns of media, journalism, library and information science, computer ethics (including cyberethics), management information systems, business and the internet’ (Froehlich).

¹⁶ For a more detailed treatment of this subject see Cannataci, J (2008), ‘*Lex Personalitatis* & Technology-driven Law’, 5:1 SCRIPTed 1, available at: <<http://www.law.ed.ac.uk/ahrc/script-ed/vol5-1/editorial.asp>>

Froehlich traces the history of information ethics to work within Media studies initiated by Capurro in Germany, and initiatives within Library studies spearheaded by Robert Hauptmann in the USA, to 1988 (Ibid). This was not the first time that the ethical dimension of information use had been dealt with by lawyers, ethicists, computer scientists or information professionals but it has been during the last twenty years that a more structured approach has been introduced to the subject. The arrival of the Internet in the mid-nineties led to the creation in 1999 of the International Centre for Information Ethics (ICIE) based on co-operation between five German universities and led from the beginning by Rafael Capurro from the University of Applied Sciences in Stuttgart. The ICIE and its official journal, the International Review of Information Ethics, (IRIE) are firmly rooted in Europe, with a strong international following from all around the world. This is a remarkable achievement. Starting from scratch, barely a decade or two ago, this band of eminent ethicists has made considerable inroads into a field of inquiry which has long been the hunting ground of information lawyers and computer scientists.

The August 2008 volume of IRIE is built around the theme of 'Religion and IT', and afforded Udeani, Fruhbauer and Capurro the opportunity to open their editorial with the observation that

'Religion - from an evolutionary point of view - can be called the very first information business of humankind. The medicine man, the priest, the witch doctor were indeed the first institutions to deal with information only. Their core business was to provide information on the transcendent that is not directly present and accessible: the will of the goddess, the sense of life, what may come after death'¹⁷

a theme which they continued to build upon in their paper in the same issue:

'Religions are not only communities of faith but also of communication. Religious communication takes place vertically between human beings and a transcendent holy entity. It also occurs horizontally among individuals and groups. This is the reason why religions cannot remain unaffected by the development and the future directions of the global digital network' (Udeani, Capurro and Frühbauer, 2008, p.3).

Udeani, Fruhbauer and Capurro provide us with a useful check-list of why information technology and ethics should be important to religion:

- Do religions conceive ICT inventions and innovations as threatening or as beneficial?
- Do they see the opportunities offered by ICT as a possible avenue to communicate their contents and values?
- Or do they, on the contrary, see ICT as a threat arising from the free access to information that allows alternative groups to offer different kinds of meanings to texts and events?
- Which kinds of relations are being addressed by religions, in general, towards the media?

¹⁷ Editorial (2008), 9(August) International Review of Information Ethics, 1

- Which principles of information ethics are being applied or betrayed?
- Which kinds of political, economic or ideological movements can become a threat for these principles being misused or undermined?
- How do religious institutions (such as churches, local communities, charity organizations, religious orders, religious groups, religious media institutions, etc.) use and evaluate ICT?
- To what extent can religious groupings contribute to the international ethical debate regarding ICT and its application? (Ibid)

It is of course the final point that is of greatest interest for the immediate purposes of this paper but it is worth noting that this latest (August 2008) contribution is not the first that members of this group have made to the debate about the intercultural aspects of ICT. For while global religions may span cultures, their take on privacy is often determined by the underlying national or regional culture which may or may not be influenced by religion or quasi-religion, such as Confucian, thinking.

Thus Capurro's 2005 paper on 'Privacy and Intercultural Perspective' provides an excellent beginning for those scholars and lawyers seeking to find common avenues of understanding on principles of international law such as privacy. Capurro renders an invaluable service by bringing to the notice of the English-speaking world his own précis of a German translation of Bin Kimura, who opines that 'Japanese subjectivity is discontinuous and thus opposite to a classic Western view of subject and identity as something permanent and even substantial. "Discontinuous identity" means that subjectivity is the effect of a network of relations and situations...'

'if we operate within a (Western) society with strong or substantial subjectivities, which are continuous, then the meaning of "privacy" and respect for this "privacy" concerns basically this individuality, i.e., as a continuous, substantial something that should be protected, no matter the situation and no matter what happened. Indeed, respect for autonomy and individuality belong to the basic moral and legal norms in the West. On the contrary, if we are dealing with a (Japanese) subjectivity – one which is not permanent, but dependent on situations and networks of relationships – then there is no possibility for respecting "privacy" in the Western sense as a permanent quality of a substantial subject. The result is a world with clear rules – Japanese *Seken* – that are not based on the respect for permanent identities but on the respect for the space(s) and situations between individualities – Japanese *Aida*. This could be a reason why Western privacy rules remain *Shakai* to Japanese, i.e., not related to the structure of Japanese subjectivity' (Capurro, 2005).

Across the sea, in China we find that intercultural differences on privacy are apparently just as wide as those between the West and Japan. Lu Yao-Huai provides us with an insightful analysis of where China stands in relation to Western concepts of privacy:

‘Recent anthropological analyses of Chinese attitudes towards privacy fail to pay adequate attention to more ordinary, but more widely shared ideas of privacy – ideas that, moreover, have changed dramatically since the 1980s as China has become more and more open to Western countries, cultures, and their network and computing technologies. ...contemporary notions of privacy in China constitute a dialectical synthesis of both traditional Chinese emphases on the importance of the family and the state and more Western emphases on individual rights, including the right to privacy. This same synthesis can be seen in contemporary Chinese law and scholarship regarding privacy. A review of recent work in philosophical ethics demonstrates that information ethics in China is in its very early stages’ (Yao-Huai, 2005).

In these latter two examples, Japan and China, we are referring to societies where quasi-religious Confucian thought has, over the millennia, contributed to the creation of strong national cultures with tendencies of collectivism which differ markedly from post-war Western thinking where the individual has been given more and more prominence. These lead to intercultural differences and nuances which cannot but have an impact on the concept of privacy as established under international law in instruments such as the UN’s Universal Declaration on Human Rights but these differences and their impact on, as well as the impact upon them, by globalization and the Internet await a far deeper evaluation than the present study can afford.

Before turning to certain other aspects of religion and privacy, for the sake of completeness of our mapping exercise, it is worth noting that the term information ethics has not been monopolized by philosophers. ‘**INFORMATION ETHICS** is the first web-site of its kind in the UK. Its principal role is to offer a point of reference for members of the Chartered Institute of Library and Information Professionals (CILIP)’ <<http://www.infoethics.org.uk/CILIP/admin/>>. While in the US too one finds claims that ‘Information ethics has grown over the years as a discipline in library and information science’, Froehlich admits ‘but the field or the phrase has evolved and been embraced by many other disciplines’ (Froehlich). Which is why some computer ethicists claim that ‘Computer ethics as a field of study was founded by MIT professor Norbert Wiener during World War Two’ (Baynum) while some US lawyers such as Dan Burk turn to Italian-born but UK-based Luciano Floridi when it comes to inspiration in the field of information ethics (Burk). My interest here is not to endorse one camp or belittle another or attempt to pigeon-hole a locus for discussion on the subject: a good idea is a good idea wherever it comes from. It is simply refreshing to note this increased interest in information ethics by lawyers and other disciplines working in privacy and other areas covered by information law. To borrow Burk’s apt conclusion ‘While information ethics holds some promise to bring coherence to this area of the law, further work articulating a richer theory of information ethics will be necessary before it can do so’ (Ibid, p.1).

4. A theologian’s dilemma?

So as lawyers and civil liberties group agonise over the impact of information technology and especially the Internet on a fundamental right such as privacy can they look to theologians and religious groupings for useful contributions to the debate on information ethics and ICT? Or will most theologians and some religious groupings continue to be conspicuous by their absence?

While the number of works devoted to use of ICT by religions seems to be on the increase (see for example, Radde-Antweiler; Hojsgaard, 2005) the actual studies on privacy from a religious point of view continue to be very thin on the ground (if you exclude the mountain of ‘noise’ that any search on privacy and religion will throw up in the form of opinions about abortion). This may be due to the fact that ‘At the core of the problematic relationship between religion and privacy is the fact that privacy is inherently non-doctrinal. It creates a positive space in which people may choose to do as they want, without fear of consequence as long as their deeds do not violate societal norms’ (Allen, 2007).

The latter point of view may be more applicable to Western (and largely Christian tradition) societies where the last three hundred years have witnessed a growing separation between church and state than in other cultures. This separation is often less clear in a number of societies where Islam is more prominent. This very much depends on the state concerned, the extent of historical secularization and the type of Islam which is predominant. Thus, as seen in the references to CDHRI above, one can detect a right to privacy entrenched in Islamic scholarship:

‘Islamic jurists’ views on this point can be summarized by saying that the privacy of the people could not legitimately be invaded if there was no apparent misconduct or violation of the law. The sanctity of privacy was earlier postulated by the Prophet [Mohammed] himself and can also be found in the *Qur’an*; the Prophet prohibited entering any residence without the owner's permission’ (Moussalli, 2001, p.129).

As seen in CDHRI 18, one finds a major emphasis on territorial (sanctity of the home environment) and bodily privacy as direct injunctions from the *Qur’an* and the Sunnah (Ibid). The CDHRI position seems to be more in accordance with ‘the classical Islamic public law doctrine, particularly as stated in the still authoritative work in that field by Mawardi, a Shafi’i (d. 1058 C.E.)’ whereas other modern-day applications include those of ‘the contemporary laws and practices of Saudi Arabia, a state that aspires to adhere literally to classical Islamic law among and despite the drastically changed circumstances of today’. In an interesting analysis, Vogel (2003) focuses on ‘the function of the muhtasib, or the state official charged by Islamic constitutional law to carry out the Qur’anic injunction of “ordering the good and forbidding the evil” (al-amr bi-al-ma ‘ruf wa-al-nahy ‘an al-munkar). The reasons to focus on the muhtasib are obvious: an official religious censor, a moral policeman, seems the apotheosis of state invasion of the private realm’. So does the muhtasib (or the Committees which perform analogous functions) have a role in checking what private citizens are up to on the Internet in Saudi Arabia? It would appear not since the authorities there prima facie seem to prefer to rely on a system of denying access to sites rather than scrutinize individual on-line behaviour (Zittrain and Palfrey, 2008). This trend towards filtering of Internet access on moral grounds is not one restricted to the Saudi Wahhabi brand of Islam. Indeed, the majority of those 40-odd states which have been documented as practicing some form of Internet filtering are those where Islam is the predominant religion¹⁸. The extent of on-line surveillance practiced by these states however

¹⁸ Based on an analysis of those countries reported upon in *Access denied op. cit.*

appears to vary significantly and the reasons these variations may be cultural, religious or otherwise require more detailed investigation.¹⁹

While the case of Saudi Arabia (and that of several other Islamic states) may potentially muddy the waters when discussing the relationship between religion, privacy and technology, in other countries the separation of church and state has led to a different situation, one where it is unlikely that the state would employ any coercive or technological surveillance powers on behalf or in the interests of any religion. Thus Werner-Allen sums up as follows:

‘This becomes particularly difficult in secular Western countries where religion has been stripped of coercive power in the public sphere. If a Catholic kills his wife in his own home the privacy typically afforded to that space is no protection against state action; that is to say that the state retains the ability to invade whatever spheres of privacy it allows to be set up when it has a legitimate interest in doing so to preserve public order and enforce its laws. The Church is not granted this power, so if a Catholic chooses to use birth control in his own home the privacy afforded by the state to that space is probably sufficient to prevent this violation of Church doctrine from coming to light. In effect, state-church separation, to the degree that it is present, prevents the Church from enforcing its strictures to the degree that they continue past ones put into place by the state’ (Allen, *op.cit.*, p.2).

Thus if ‘Thou shalt not kill’ has been translated into criminal law, Christian or Islamic ethics systems continue to be applied by the secular state but not necessarily so for ‘Thou shalt not commit adultery’. Now, unfortunately, ‘thou shalt not breach another’s privacy’ had not made it into the top ten commandments of the Judaeo-Christian tradition so in that case we cannot really chart its progress from a religious ethics system into a secular one; unlike the case with Islamic tradition for example where we have seen a concern with privacy which extends to at least a millennium. It is likewise unfortunate that when the Christian Church has sought to speak of rights neighbouring privacy such as development of personality, there is less clarity than one would expect in support of the right to free development of personality. This may be especially apparent if one briefly revisits the arguments previously made on *Lex Personalitatis* wherein the case was made for privacy as being subservient to an overarching supreme value of the right to dignity and unhindered development of personality. Fifteen years after these principles found their way into Arts. 1 and 2 of the German Grundgesetz, there appeared *Dignitatis Humanae*,²⁰ an official papal encyclical promulgated in 1965 by Pope Paul VI. While the main thrust of this document is securing ‘social and civil freedom in matters religious’ there are some interesting lines of thought from which personality or privacy-related rights could be inferred. Thus one reads an introduction which has strong overtones of ‘self-determination’:

‘A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man and the demand is increasingly made

¹⁹ For more details see *Access denied op.cit.* but some doubt exists as to the actual current activities of the Saudi Intelligence agencies especially under the cover of authority for counter-terrorism.

²⁰ Subtitled ‘On the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious’.

that men should act on their own judgement, enjoying and making use of a responsible freedom'.²¹

It comes as no surprise that the Vatican interpreted this trend as regarding 'in the first place, the free exercise of religion in society' but it went on to admit a condition for acquiring religious beliefs in a manner where freedom is a prerequisite: 'The truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power'. Perhaps this is what Werner-Allen had in mind when citing the next paragraph from the same encyclical:

'Religious freedom, in turn, which men demand as necessary to fulfil their duty to worship God, has to do with immunity from coercion in civil society. Therefore it leaves untouched traditional Catholic doctrine on the moral duty of men and societies toward the true religion and toward the one Church of Christ' (Allen, op. cit., p.2).

To Werner-Allen 'this sounds very much like the creation of a space, untouched by traditional Catholic doctrine, indeed very much like the space afforded by a right to privacy' (Ibid). I find little evidence for this latter conclusion in the paragraph he cites. Rather than Art 8 ECHR, I find this is more related to Art. 9 of ECHR and Art 18 of the 1948 UN Declaration, i.e., an ad hoc *sui generis* proviso establishing both freedom from discrimination on grounds of religious belief as well as freedom to practice religion. In US terms 'this is much more First Amendment than Fourth or Fourteenth'. Yet I do detect in the same document the support of the Catholic Church for a position where religion (or any other ethics system) cannot be forced upon man and where 'men should act on their own judgement'. The problem of proper conceptualization of privacy again presents itself. This is, properly speaking, not privacy *per se*, but the right to dignity and unhindered development of personality, a *jus personalitatis* which is nourished by a set of 'enabling rights' including privacy, freedom of expression, access to information etc.

It should nowhere be construed that religions have had absolutely nothing to say about privacy or that they have not occasionally contributed to the modern privacy debate, however indirectly. To cite but two instances: in the author's personal experience as Vice-Chairman and then Chairman of the Council of Europe's Committee of Experts on Data Protection during the period 1992-1998, I had been deeply involved in the drafting of the provisions on genetics in Recommendation R(97)5²² on the protection of health data as well as the vetting of the draft Convention on Bioethics. Both these legal instruments had had the benefit of input from both geneticists and ethicists some of whom were also senior clergymen in various branches of the Christian churches. Yet, while doubtless mostly reflecting the ethical principles of their own religious persuasion, these experts acted in a personal capacity and when contributing to the debate they did not normally represent the official position of their particular religious

²¹ Art 1. of Dignitatis Humanae accessed on 17th August 2008 at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html

²² RECOMMENDATION No. R (97) 5 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE PROTECTION OF MEDICAL DATA, (Adopted by the Committee of Ministers on 13 February 1997 at the 584th meeting of the Ministers' Deputies) Accessed on 17th August 2008 at <http://www1.umn.edu/humanrts/instree/coerecr97-5.html>

institution. They had certainly not managed to bring the collective thinking power of their institutions to bear on the subject.

It is therefore interesting to note the viewpoint in similar cases of lay bioethicists and why they welcome the contribution of religions to the debate. ‘The long history of religious consideration of privacy and confidentiality can help us to think about emerging ethical issues such as the threat to privacy posed by brain imaging’ (Walpe, 2005, p.291). Paul Root Walpe (Ibid) goes on to grant liberal space to different denominations,

‘While it is up to religious thinkers in each tradition to develop their own interpretation of the challenges posed by brain imaging, some suggestions might be illustrative. In Judaism, for example, the Talmud has extensive discussion about what kind of information should properly be sought and communicated, particularly about a person’s family background that may be relevant to marriageability, or duties related to priestly descent. The Talmudic discussion is highly nuanced and has already been employed to elucidate issue in genetic privacy’. Likewise “Christianity, as another example, has a long history of concern about confidentiality in medicine; the Hippocratic Oath was adopted in a Christian version before the third century CE (Carrik 1985). The model of confessional confidentiality has been the hallmark of the Roman Catholic Church, and the balance of protecting individual privacy versus the public good has a long history of consideration in the church’.

While not negating the positive role of some religious traditions in privacy matters, it seems to me that, latterly, some elements of established religions have unfortunately picked up the less central parts of the privacy debate and expended themselves in the wrong directions. Some societies (and notably the US) have unfortunately brought in issues such as abortion under the umbrella term of privacy rather than deal with it in a sui generis fashion as happens in other societies. In such instances whenever religion has something to say about privacy it tends to lose focus or perhaps steps back in fear of saying the wrong thing. This is similar to the case of privacy and sexuality. While privacy may be a useful (indeed some would argue essential) ‘enabling right’ for sexual activity, it is not the key element in the issue of sexual choices. The Anglican Church has expended so much energy on divisive issues such as gay or women priests, the Catholic Church so much on abortion, yet where are they when civil society dreams up yet another way to nibble at our privacy?²³ These massive religions which for so often and for so long have presented themselves as having all-encompassing ethics systems capable of dealing with so many facets of daily life, from the food one eats to sexual activity during or after menstrual cycles, have been remarkably silent on the rights and the wrongs of Internet filtering or CCTV surveillance or biometric passports. Is it possible that they have nothing to contribute to the ‘comprehensive and coherent system of information ethics’ that Burk speaks of? Has the rapid rate of technology development rendered them defunct as organized suppliers of ethics systems?

²³ While some religious leaders and Bishops’ conferences have publicly voiced concerns over some impacts of technology this has mostly been in the case of reproductive technologies or GM technologies. Research to date has not uncovered many major, mainstream Church studies or pronouncements on the impact of Information Technology

5. Everybody's dilemma

Two experts on bioethics, one a priest, the other an ex-priest, recently accosted me at the end of a speaking engagement and asked me what would I envisage as being some of the issues that religions would need to tackle in order to make a useful contribution to the current debates linking technology and privacy. They were interested in the answer since they perceived that the religious groupings to which they belonged continue to be relevant in society and that the vast majority of the world's population who adhere to one religion or another equally have an important stake in the impact of technology on personality rights and privacy. Whilst not necessarily agreeing with their religious convictions, I do share the idea that everybody should participate in a debate²⁴ the subject-matter and outcome of which we all stand to be affected by (hence 'everybody's dilemma'). The existence of organised religion must be recognised and its value harnessed like that of other stakeholders, major and minor. My reply was therefore something on the lines that rather than more dogma I would welcome a sharing of millennia of experience and some new critical thinking. I then quickly rattled off a non-exhaustive list:

- Is it ethically acceptable and indeed desirable for religions to join the secular privacy debate?
- Where do religions stand on the right to free development of personality and the notion of privacy as one of a set of enabling rights within *Lex Personalitatis*, also including neighbouring rights such as freedom of expression on the Internet?
- What do religions have to say about protection of personal data from profiling through data-mining?
- What do religions have to say about the EU data retention directive or the US Government's recent legitimisation of snooping on citizens?
- What do religions have to say about issues raised by covert analysis of traffic data?
- What would religions contribute to the growing debate about the whys and wherefores of Internet filtering?
- What do religions have to say about the protection of privacy on the Internet?
- What do they have to contribute to the debate about other forms of technological surveillance such as CCTV imaging or the risks posed by biometric passports and ID cards?
- What do religions have to say about the Digital Divide and are they prepared to help narrow the gap between the 'information haves' and the 'information have-nots'?
- Where do religions stand on certain aspects of genetic data, especially un-intended findings?

²⁴ Some atheists would doubtless argue 'Why invite the religions into the privacy debate and risk muddying things further as may possibly be the case of Islam and fundamental rights?' Other atheists may counter 'There are only an estimated 300 million to one billion atheists on the planet as opposed to more than five billion theists. If we can get a significant number of them on board to protect privacy on the grounds that their ethical principles are, on this issue, convergent with ours, then let's do so, before the wrong sort of theists, those bent on creating a theocracy, get their hands on the technologies and manipulate them in all sorts of the wrong directions'.

If there are ten points raised above, I am not seeking ten new commandments from a religious source. I am however suggesting that it is right and fitting that the debate be properly joined. Whether atheist or agnostic, Monsignor or mullah, rabbi or radical, shaman or sham, all have to consider their ethical responsibilities when faced with whole swathes of technology that may eventually enslave rather than empower. Some will doubtless see parts of the technology as a threat to, or an opportunity for, their own belief systems, others will focus more on the threat to fundamental ethical principles that their belief systems promote and protect.

6. Everybody's religion (or value-system)

The ten points identified are but part of the beginnings of a discussion that is much more complex than the ones usually attempted to date in the field of ICT Law. At this stage, it is important not to lose sight of the intricacies inherent in the situation as societies seek to adapt their legal infrastructure to the Information Age. It is likewise essential to recall that it is not only the 'major religions' mentioned above which may have something to contribute to the on-going debate on value systems which should underpin new regulations. Other religious value systems and particularly those of indigenous peoples may have conceptualizations of privacy and personality which may possibly inform the wider national and international debate about legal reforms related, directly or indirectly, to information technology. Perhaps this concluding point is best illustrated by the rich case study afforded to us by Australia.

The latter country has again recently engaged in an intense debate as to whether Australian constitutional law should be strengthened and clarified, particularly through a major re-vamp of provisions on fundamental human rights. In so doing, it cannot avoid a discussion about Privacy and Data Protection Law at the constitutional level. Any Australian jurist striving to learn from and make sense of European developments in this field²⁵ would also be living in a socio-legal environment which is acutely aware of sensitivities to and of the Australian aboriginal peoples. In practical terms the Australian jurist may be asking himself or herself whether Australia should adopt an Art. 8 ECHR approach and/or emulate those countries which have specific constitutional provisions on data protection. At the same time, that same jurist may be asking 'but to what extent should new 21st Century Australian legal developments also be reflecting and respecting the cultural values regarding privacy of the Australian indigenous peoples?' It is precisely at this juncture that the ICT Law debate about data protection and privacy would again intersect with religion. For privacy as a notion is integral to the religious cultural values of Australian indigenous peoples²⁶. When examining the impact of the meetings of cultural systems, law and privacy in 1977, Stanner put it thus:

'A general account of Aboriginal privacy and its exposure to damage or erosion by European law, law-officers or general administrators requires an appreciation of values enshrined in the Aboriginal conception of the individual persons as a bearer of a

²⁵ Particularly those where the Charter of Rights of the European Union provides two rights: one for privacy and the other for data protection. For an outline discussion of why this may confuse matters please see Cannataci, J A (2008), 'Lex Personalitatis & Technology-driven Law', 5(1) SCRIPTed 1

²⁶ For a more detailed account of the intricate relationship between Privacy and religion in indigenous peoples see Stanner, W E H and Martin, J H (2001), 'People from the Dawn: Religion, Homeland and Privacy in Australian Aboriginal Culture' (Antioch California: Solas Press).

distinctive culture and as an exponent of the reality stressed by it. The subject [of privacy] is inseparable from the philosophical considerations.’²⁷

Stanner made his remarks to Australia’s Law Reform Commission nearly twenty years before the impact of the Internet began making itself felt. In 2001, Martin observed ‘What use the Commission made of them is unknown’.²⁸ Certainly, more than thirty years later, the observations by an eminent anthropologist like Stanner would still be very relevant to the Australian jurist wondering how to tackle constitutional reform and data protection in the 21st Century. A generation after Stanner had first raised the subject, Australian jurists are faced with the reality that research into privacy attitudes within these indigenous societies is relatively scarce²⁹ and there is likewise comparatively little research on the impact that modern technologies are making on information ethics in general within such societies and on privacy in particular. The paucity of such research is visible even within the latest three volume (2008) report on Privacy by the Australian Law Reform Commission (ALRC) which concluded that:

‘7.49 In the current Inquiry, the ALRC did not receive sufficient information to recommend that the Australian Government introduce a legislative framework for the protection of a range of cultural rights relating to the traditional laws and customs of Indigenous groups—which might include rights akin to privacy, cultural heritage and intellectual property rights. Further, in the ALRC’s view, such a recommendation would be outside the Terms of Reference for this Inquiry.

7.50 A further inquiry should be undertaken, however, to determine whether the Australian Government should introduce a rights framework for the traditional laws and customs of Indigenous groups. Such an inquiry should involve extensive consultation with Indigenous groups and representatives, and could consider: whether such a framework is desirable; if so, what types of rights should be protected through such a framework; the most appropriate mechanism through which to recognise such rights; the methods for establishing rights and determining disputes among rights holders; and the relationship between such a framework and other Australian laws.’³⁰

This recognition that further research on the subject needs to be undertaken is again specifically re-iterated in Recommendations 7.1 and 7.2 of the ALRC’s major report of May 2008.³¹

Very few studies about the link between privacy, data collection and religious beliefs have appeared recently³², and it is submitted that the Australian position is typical of that involving privacy, religion, indigenous values and technology law in many countries. It is clear that there

²⁷ Ibid, p.159

²⁸ Ibid, p.147

²⁹ There appears to be very little published research on the subject beyond the short essays by Stanner, W E H and Martin, J H (2001), ‘People from the Dawn: Religion, Homeland and Privacy in Australian Aboriginal Culture’, (California: Solas Press) and even that is based on field-work which pre-dates 1977 (sometimes WWII).

³⁰ ‘Australian Privacy Law & Practice’, Vol. 1 Report 108, May 2008 (Sydney: Paragon Press) pp. 350-351

³¹ Ibid.

³² See for example, Deng, X, Foukia, N and Savarimuthu, B T R (2007), ‘Building Privacy Infrastructure for Culturally Sensitive Information of New Zealand Maori’, The Information Science Discussion Paper Series Number 2007/03 July 2007 New Zealand (ISSN 1177-455X)

may be underlying values relating to privacy reflected in or forming part of religious beliefs in many cultures. The extent to which these cultural values should or indeed in practice do inform modern laws designed to regulate the use of information technology is still an open question. The underlying values may be there in all their complexity and diversity as they have developed over thousands of years but anthropologists, sociologists and lawyers are often still in the very early stages of mapping them out or understanding them. The main point being made here is that in the area of religions of indigenous people as in that of the major 'universal' religions the debate has still to be properly joined. Whatever the eventual outcome of the debate, this paper³³ has only had enough space to exhort that the required research be carried out in a timely fashion and that the discussion not be neglected by all concerned, not least the more learned members of the organised religions, specialists in indigenous studies as well as the ICT Law community. A more detailed examination will doubtless benefit from the diversity of potential contributions in a multi-disciplinary environment, but it's early days yet.

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³³ This paper partially reflects views and research which are explored in more detail in a forthcoming book Cannataci, J A, 'The right that never [quite] was: Privacy, information ethics and technology law across cultures'.

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