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by Demetrios Klitou

1. Technology apparently meant to improve the security and wellbeing of citizen poses a serious threat to privacy and liberty.

2. Existing data protection/privacy laws in the US and the EU/UK are inadequate to safeguard privacy and liberty against the privacy-intrusive capabilities of the latest technologies. More specifically, the laws do not ensure the adequate enforcement of the fundamental privacy principles for the latest Privacy-Invading Technologies (PITs) (case studies: body scanners, CCTV microphones and loudspeakers, RFID implants).

3. The current legal framework, pertaining to privacy/data protection in the US and the UK/ EU, focuses predominantly on data controllers/processors, service providers and operators, and traditional policy or legal-based solutions are mainly focused on the users of PITs, as opposed to the developers/manufacturers.

4. Demonstrated through the case studies, the premise is that privacy laws directly applied to the manufacturers and the design/development of PITs can more effectively protect privacy against the threats posed by existing technologies than laws only applied to data controllers and the users of PITs.

5. Although there are standards and legal requirements with regards to data security and audit mechanisms thereof, the other principles of privacy are generally left out. The technical emphasis, at present, found both in law and industry standards, is all too often focused on data security alone.

6. As a consequence, the privacy/data protection laws have often fallen behind new technological developments and have failed to address the privacy-intrusiveness of numerous PITs at the design stage.

7. The law should move away from focusing primarily on data controllers and users/operators of PITs and should instead impose technical/design obligations, known as “Privacy by Design” (PBD) requirements.

8. A desirable outcome is a legal framework that combines legal solutions with technical solutions. New laws should mandate that the designers/developers of PITs must implement PBD solutions and take into consideration all the applicable principles of privacy when designing/manufacturing PITs.

9. As demonstrated through the case studies, both privacy and other civil liberties, on the one hand, and (public/national) security, on the other, can be safeguarded through the mandated implementation of PBD.

10. However, while PBD may be critical for protecting privacy against the intrusive capabilities of the latest technologies, in practice, the approach is not a panacea for defending privacy.