Chapter 17
Surveillance: Extending the Limits of Privacy Impact Assessment

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17.1 Introduction

Privacy impact assessment (PIA) can be used to investigate the impact upon privacy that surveillance, using new information and communications technologies (ICTs) or information systems, might have before these applications are fully developed and implemented. PIA requires that an organisation subject its plans to more or less rigorous screening through the lens of privacy or data protection, to identify weaknesses in the innovation’s compliance with relevant laws or principles, and to indicate how these might be eliminated. Myriad stakeholders potentially affected by the innovation may also be involved in this investigation. In an extreme situation, a project could be abandoned if its PIA indicated irremediable shortcomings.

As other chapters in this book show, a variety of PIA models exist across the world, in terms of their scope, procedures, the involvement of bodies such as regulatory agencies or civil society organisations, and transparency requirements. Some focus on information privacy (data protection) only, while others say that PIAs should address all types of privacy. PIA differs from privacy audits and other inspections and analyses of organisational data processing in that the latter are usually performed on systems and technologies already in use. As a fairly recent addition to the array of tools and methodologies that can be used to avoid or mitigate the negative impacts upon privacy of a new technology or service, PIA is required in some countries and strongly urged upon data collectors in others. Handbooks, guidance materials and examples of PIA are readily available.\(^1\) PIA plays a part in an organisation’s procedures for compliance with privacy and data protection laws and good

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\(^1\) For a compendium and analysis of PIA methodologies from seven countries and of 10 PIA reports, see Wright, David, et al. (eds.), *A Privacy Impact Assessment Framework (PIAF) Deliverable D1*, a report of the PIAF consortium prepared for the European Commission, September 2011. [www.piafproject.eu](http://www.piafproject.eu)

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practice. These important contributions to privacy protection are likely to spread further in future, and PIA – especially if legally mandated to be carried out – may become one of the key instruments available to privacy policy-makers, regulators and practitioners themselves.

On the other hand, PIA is subject to a number of objections and limitations. This chapter briefly reviews them and offers some rebuttals before looking more closely at surveillance practices and their users: the what and who of surveillance. It then indicates some analytical dimensions of surveillance – their visibility, legality, power implications and targets – that raise ethical concerns. Following that, it reflects upon one of the main limitations of PIA: its nearly exclusive focus on privacy, to the neglect of a range of other individual and societal values, rights or freedoms that may be impacted by surveillance. In the light of this, the chapter finally considers how PIA could be extended to assess the impact of surveillance on this broader range.

17.2 Objections to Subjecting Surveillance to PIA

Sceptics and critics have often resisted the application of PIA techniques to surveillance projects on a variety of grounds. This section considers and rebuts some of these arguments.

17.2.1 A Brake on Technical Progress

Information and communication technologies – although themselves shaped by social processes – are among the most powerful drivers of today’s economy and society. An argument can be mounted that the pace of technological development ought not to be slackened by the “interference” that PIA might represent, and that any adverse effects can be controlled by appropriate responses and resilience rather than through ex ante, or precautionary, application of PIA. This argument seems to prevail in the training and education of technologists as well as in the philosophy of those who use their products, so that special effort has been required in very recent years to insinuate the merits of PIA and “privacy by design” into the thinking and practice of the laboratory and boardroom.

Against this is the argument that to separate technical progress from other social phenomena is to create, without sufficient warrant or reason, a zone of exception in which other values cannot enter, thus altering the nature of society and the possibility of individual privacy through a form of political and economic fiat. Simply because there are precedents for this is no reason for sealing the issues off from deliberation and action that might reconfigure the relationship between technology and society. PIA takes its place alongside other techniques associated with technology assessment in seeking a different point of departure.