Ensuring privacy in the broadband era

By Nolan Bowie  |  July 9, 2007

I WAS in London two weeks before the latest terror plot engulfed the city. Part of the credit for officials' rapid response goes to London being a 21st-century surveillance society. While I took tourist photographs, I was myself photographed over and over in a city that has the most surveillance cameras per capita of any in the world. Discreet and overt cameras can be seen on traffic signals, attached to buildings, in stores and government buildings, and even on trains and buses.

This use of technology in this age of small-group, high-impact destruction understandably leads many people to consider government surveillance an unqualified necessity, a completely justified sacrifice of privacy. Critics risk being written off as civil libertarian quacks. There are in fact good reasons to debate where this surveillance can go.

Individuals with legitimate but dissenting views are easily targeted and harassed by government agents. In the recent CIA "family jewels" report, the government admitted years of unlawful surveillance of peaceful assemblies and demonstrators. People who voluntarily provide information to obtain credit or home mortgages may find that the government is too busy spying on domestic dissenters to watch when ordinary citizens' identities have been stolen by those lurking in cyberspace.

The ease of access to personal and private information undermines confidence in democracy. Even new technologies, such as universal broadband, that would promote adult literacy and life long learning, can cultivate distrust. "Please don't tell me," a Detroit friend, who is a labor and civil rights lawyer, harrumphed indignantly, "that broadband is a one-way device." It has, she reminded me, "the potential of extracting data, sound, and photos from the feed," and "it presupposes the integrity of those who would control it." Ubiquitous...
broadband service fuels my Detroit friend's self-described "paranoia" about a "spying/lying government."

Obviously, my friend has a valid point, for every rose has its thorns. The capacity of always-on, high-speed broadband to spy on and observe individuals or groups is unparalleled among communications technologies. Notwithstanding any protection provided by encryption software and fire walls, the Internet is still more of an open post card than a sealed letter. It can indeed be used to record and store every keystroke, every website visited, every song, news article, photo, e-mail or instant message sent or received by innocent civilians, as observed in my friend's nightmare of a "spying/lying" government.

The Fourth Amendment to the US Constitution prohibits unreasonable government invasions of our privacy. But what is unreasonable in the post-9/11 era and a war against terrorism that has no closure? Will fear and the manipulation of fear lead the United States into becoming a "panopticon" society to create a sense of security from terrorist acts and violent crime?

The term panopticon is identified with the mid-18th-century English philosopher and social reformer Jeremy Bentham, who also gets credit for saying that government's role is to assure the greatest good for the greatest number. Bentham thought a panopticon would be useful in prisoner rehabilitation. A prison inmate, confined in his cell, could be observed constantly via a series of mirrors that reflected his image to a distant viewer.

Bentham believed the inmate would assume that he was always being observed, just to be cautious. Further, Bentham argued, after a period of time, the observed inmate's behavior would change for the good, and, with the passage of more time under surveillance, the prisoner's personality would change and he would be effectively rehabilitated.

My friend in Detroit objects to the prospect of becoming an experimental subject in a Bentham-like panopticon. She is right to worry when invasions of privacy become routine.

Here are my suggestions: The states should add an amendment to their constitutions for a general right of privacy, as is now included in the state constitution of California; Congress should create a federal Privacy Commission, whose role would be to investigate violations of privacy laws and bring cases to the Department of Justice for prosecution, modeled after the Privacy Commission of Canada; Congress should also strengthen existing federal privacy laws.

Broadband service and surveillance cameras are necessary technologies that are not going away. In the post-9/11 era, however, they could render the notion of privacy as outdated as Bentham's panopticon. Innocent citizens beware. A "spying/lying" government may be trying to rehabilitate you, too.

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