

PRIVACY

Definitions

- The right to be let alone—T. Cooley
- “The condition of being protected from unwanted access by others – either physical access, personal information, or attention.”—Sissela Bok
- The maintenance of a personal life-space within which the individual has a chance to be an individual, to exercise and experience his own uniqueness.”—M. Levine, 1980
- “The claim of individual, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others.”—A. Westin, 1967

Why do we value privacy?

- The ability to maintain the confidentiality of personal information is the hallmark of an autonomous individual.
 - Others are not entitled to know everything about us.
- Privacy can protect us from scorn and ridicule by others.
 - The more others really know about us, the less powerful we become in controlling our destiny.
- Privacy, in the sense of being left alone, is valuable in keeping others at a distance and regulating the degree of social interaction we have.
 - Our laws against trespassing reflect this concern.

Privacy as a legal concept

Until the turn of this century there was no legal right to privacy in the U.S.

In the last 90 years, the right to privacy has gradually developed into four separate and distinct areas, or torts.

Intrusion: what many people think of when the subject of invasion of privacy arises.

- The media can be held liable for an unwarranted violation of one’s physical solitude.
 - A journalist who enters a private home uninvited, even at the invitation of law enforcement authorities, may be sued for intrusion.
 - The use of telephoto lenses to capture the private moments of an unsuspecting subjects and electronic eavesdropping can also pose legal problems.

Publicity of embarrassing private facts

The media can be held liable for publicizing embarrassing revelations about someone if the information would be highly offensive to a reasonable person and is not of legitimate concern to the public.

The media can also be held liable for publishing information that places someone in a false light.

Legal problems can arise when a newspaper, magazine, or broadcast station reports falsehoods or distortions that leave an erroneous impression about someone.

- For example, mismatching stories and pictures.

Appropriation

The oldest of the four types of invasion of privacy consists of the use of a person's name, picture, or likeness without that person's permission, usually for commercial exploitation.

- However, news coverage is not considered a trade purpose, and those who are featured in news stories cannot collect damages for appropriation.

Why do we need an ethic of privacy?

1. The law of privacy has virtually stripped away protection from public officials and public figures.

- The fact that they have chosen to inject themselves into the public arena suggests a willingness to undergo rigorous scrutiny and to suffer the consequences of embarrassing revelations.
 - From a legal standpoint, the argument has some merit:
 - From an ethical perspective, it is suspect.
- Public figures must expect some fallout from the glare of publicity, and their "zone of privacy" is more narrow than that of the average citizen.
 - But this is not to say that they must sacrifice all privacy and relinquish all autonomy over their personal affairs.
 - From the standpoint of ethics a key question should be to what extent the public information relates to the individual's public performance or image.

2. The second reason why an ethics of privacy is needed revolves around one of the primary legal defenses for the publishing of embarrassing private information: newsworthiness.

- The courts have taken a very liberal approach in allowing the media to define what they consider to be news or matters of public interest.
- But from an ethical standpoint more precise criteria are needed.
 - More attention should be paid to what the public needs to know rather than merely to what it has a curiosity about.
- An ethics of privacy should be concerned with the real public interest value of information rather than how much appeal to mere curiosity can be tolerated under the law.

3. The law of privacy has accorded substantial latitude for news-gathering in public places.

- The general rule is that anything that takes place in public view can be reported on.
 - The idea is that activities that transpire in public are, by definition, not private.
 - But even in public we sometimes covet some degree of solitude.
 - A sense of ethics would suggest that media people obtain permission from people they photograph in public, for two reasons:
 - common decency requires permission before intruding into a private moment, and
 - minor inconvenience to some may be acute embarrassment for others

- There are also times when good taste and simple compassion for the victims of unfortunate circumstances require a heightened degree of moral sensitivity on the part of media practitioners.
 - This is particularly true in situations involving accident victims or victims of other tragedies.

Journalistic Guidelines

At least three moral values should provide the foundation for an ethics of privacy for media practitioners.

Self-respect for persons as an end in itself.

- As autonomous individuals we are all entitled to a certain amount of dignity, which should not be arbitrarily compromised for the sake of some slogan such as “the people’s right to know.”
- When invasions of privacy are inevitable, as when someone involuntarily becomes a subject of public interest, the goal should be to minimize the harm.

Social utility.

- The moral agent must decide what information is essential or at least useful to the audience in understanding the message being communicated.
- This principle eliminates appeals to sensationalism, morbid curiosity, ridicule, and voyeurism as a justification for invasion of privacy.

Justice

- Moral agents are obliged to render judgments based on how much privacy their subjects really deserve under the circumstances.
- Public officials who are accused of violating their oath of office would, under most circumstances, deserve less privacy than victims of human tragedy.
- Certainly, the degree of “voluntariness,” or purposeful behavior, is a consideration in deciding what kind of treatment an actor really deserves.

In short:

If you respect a person’s privacy, you also respect the person.

Privacy Guidelines – Robert Ellis Smith, Privacy Journals Publisher

- Just because information is published in one place doesn’t make it public property everywhere.
- The more innocent the newsworthy behavior, the higher the entitlement to privacy protection.
- We are all not open targets for press coverage.
- When personal privacy is involved, reporters and editors should take extra time and care in delaying a story, if necessary, to reexamine its accuracy, its newsworthiness, and its negative impact on the individuals involved.
- Reporters should instinctively assume that any government document concerning an individual is inaccurate or misleading.
- The ultimate question for a reporter is: Would I deserve to live with the consequences if the information was printed about me?

Lou Hodges' Criteria for journalists contemplating invasion of privacy—Lou Hodges

- Public officials: In reporting on public officials we should publish private information, even against their will, if their private activity might reasonably have a significant effect on their official performance.
- Public figures: In reporting on public officials we should publish private information, even against their will, if their private activity might significantly affect their performance of duties to their publics.
- Celebrities: We should publish private information about them if readers are interested in knowing that information, provided that the information does no harm to the celebrity as a person. (The criteria of) “interest” surpasses that of “importance.”
- Temporarily newsworthy heroes: In reporting on people who have performed heroic acts, we should publish only that private information that relates directly to the newsworthy act.
- Innocent victims of crime and tragedy: We should report about them only that which they give permission to publish.
- Adult relatives of the prominent: We should report on them only because of the significance of what they do, not because of their family ties.

A News Photographer's Soul-Searching Checklist—Garry Bryant

- Determine if the private moment of pain and suffering I find myself watching needs to be seen. Should this moment become public? If so, does it tell the story or part of the story of this event?
- Are the people involved in such shambles over the moment that being photographed will send them into greater trauma?
- Am I at a distance trying to be as unobtrusive as possible?
- Am I acting with compassion and sensitivity?

A Privacy Checklist for Journalists:

- How important is the information I am seeking? Does the public have a right to know? A need to know? Merely a desire to know?
- What level of protection do individuals involved in the story deserve? How much harm might they receive? Are they involved in the news event by choice, or by happenstance?
- How would I feel if I were being subjected to the same scrutiny?
- Do I know the facts of the story well enough? What else do I need to know?
- What can I do to minimize the privacy invasion and the harm? Can I broaden the focus of the story by including more “victims,” thus minimizing harm to a select few? Can I postpone the story without significantly jeopardizing information to the public?
- Do I need to include in the decision making other individuals to gain more perspective?
- Should I be focusing more on the system failure or the big-issue picture as opposed to focusing intensely on individuals?
- Can I clearly and fully justify my thinking and decision? To those directly affected? To the public?