Throwing It All Away: Community, Data Privacy and the False Choices of Web 2.0

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Abstract

Online privacy has long been a challenge, but the rise of Web 2.0 technologies has made it easier for more people to share personal information about themselves. There is a particular concern that young people who have grown accustomed to baring their private information in the public Internet sphere are especially vulnerable to potential harms now and in the near future. There is even a recurrent meme\textsuperscript{1} that posits people today, especially young people immersed in the digital culture, no longer value the right to privacy; the assumption is that between the equal values of community and privacy, Web 2.0 users are choosing community and thus rejecting privacy. However, that perspective follows the typical rational actor model, which leaves people under-informed, over-confident and vulnerable to manipulation from the status quo. The claim that people do not care about privacy is too extreme – humans are, en masse, wired for community and social interaction; however, that does not mean bloggers, social networkers, etc. do not value privacy. On the contrary, when web users realize that their privacy has been unreasonably sacrificed, many fight back, either by attempting to withdraw information or by urging the application developers to add on my privacy-enhancing features. The real problem is not that users don’t value privacy, but they are forced to choose between building and keeping social ties online versus protecting their privacy and remaining digitally isolated. And the real solution is to press Web 2.0

\textsuperscript{1} The term “meme” was coined by evolutionary biologist Richard Dawkins to describe “cultural transmissions” of human practices and ideas. “Examples of memes are tunes, ideas, catch-phrases, clothes fashions, ways of making pots or of building arches. Just as genes propagate themselves in the gene pool by leaping from body to body via sperms or eggs, so memes propagate themselves in the meme pool by leaping from brain to brain via a process which, in the broad sense, can be called imitation.” Richard Dawkins, The Selfish Gene, 192 (Oxford: Oxford University Press, 1976).
developers to build in meaningful opt-in and opt-out choices so that people can manage their personal data and be social online.

**Introduction**

The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual; but modern enterprise and invention have, through invasions upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury.\(^2\)

I started a LiveJournal [LJ] blog to 1) talk about any number of subjects clogging my brain and 2) to keep in touch with friends and acquaintances who where in my geographic area (but very busy) as well as those who lived hundreds, if not thousands, of miles away.\(^3\) My journal was (and continues to be) full of non-sequiters, bits of personal news, silly personality quizzes and occasional rants. For items that seemed somewhat racy or highly personal, I "locked" the posts so that only my "friends" (i.e. other LJ users that I've designated as friends).

I also used my LJ to post my notes of library conference events that I attended – who the speakers were, their messages, audience reactions, my reactions. One post dealt with a session regarding digital librarianship and standards that was done by a major "mover and shaker" in the field -- my post was really brief and not substantial ... and yet said mover and


\(^3\) The use of narrative discourses in legal scholarship is a controversial topic that has been addressed the areas of critical race and gender theory. I appropriate the style here to illustrate that a) the interplay of community and privacy on the Internet is common and b) I am no more or no less than an average Internet user, and I do not hold myself out to be ‘smarter than the average bear’ in regards to the issues addressed in this paper. See Kathryn Abrams, *Legal Feminism and the Emotions: Three Moments in an Evolving Relation*, HARV. WOMENS L.J., Forthcoming, available at http://ssrn.com/abstract=673742 (last accessed May 5, 2008).
shaker managed to track me down and send me a nice little email. It made me think ... I didn't occur to me that anyone outside of my immediate friends would read it, or that anyone besides myself would care.

On a later date, I posted a rant about libraries and Internet filters to my LJ. My friends applauded via comments. Then I received an email from someone I didn't know. Someone who ran a library-related blog who saw my post, linked to it in his blog, and then put my LJ in his blogroll. Which would then allow all sorts of current and future colleagues to see my blatherings, dumb jokes and inane quiz results. After investigating my options, I created a separate librarianship blog and begged my new friend to edit his blogroll to point away from my "personal" site.

The concept of privacy is bifurcated – privacy is a right of autonomy (i.e. the right to make certain choices without interference from others, particularly the state) and a right of informational privacy. Informational privacy is the right to keep one’s personal data out of the view of others. Such personal data may be demographic, social, physiological or psychological in nature. A general right to privacy has been recognized as constitutionally protected, although much of the focus of seminal privacy cases has been on the autonomy right. However, informational privacy is also a principle of tort law and consumer protection law. Some states, in addition, may explicitly protect informational privacy in their constitutions.

Attendant with the growth of the Internet has been a concern with online informational privacy, often termed data privacy or data protection. Data privacy includes not only the words, images and video that are posted by users, but also the data trails that are generated in the course of such activity, whether they are feeds, cookies, clickstreams, etc.
Much of what we do on the Internet leaves some sort of data stream, and some activities elicit more data than others, such as participating in an online bulletin board, buying an item online or subscribing to a website to access its featured content.

But advances in web-based software and systems have led to new and greater opportunities to form online communities. In those communities, people are sharing information about themselves, their friends, family, co-workers, acquaintances and more. Much more. A range of commentators – politicians, journalists, parents, privacy advocates, technology experts, pundits and others – have formed a growing chorus of concern over how much people are revealing about themselves and their lives and the implications of such disclosures. The complex issues of informational privacy in a Web 2.0 may be simplified (perhaps oversimplified) to the following:

- Who sees what information?
- Who controls the information?
- What are the consequences (if any) of the status quo?

The rise of the Web 2.0/social networking

Early in the existence of the Internet, newsgroups and mailing lists were fora for online, multi-person interaction. Electronic mailing lists (email lists) were developed very early back when the Internet was still under the aegis of ARPA (and called ARPANET) and allow users to post and receive emails from any member of the group, to be read by everyone in the group. Newsgroups were also an early manifestation of Internet communication and community. Usenet, a hierarchical newsgroup system developed in

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1979 at Duke University, was initially meant to facilitate the transfers of files, but also became a popular way of publicly exchanging messages.\(^5\)

Online communities formed around bulletin boards systems that users could either use the telnet protocol to access or dialed up directly. One of the first and most popular of these sites is The Whole Earth ‘Lectric Link, more commonly known as the WELL, founded in 1985.\(^6\) The WELL is considered a pioneering force for online communities:

The WELL is often associated with the term "online community". The idea that community can develop through online interaction is not unique to the WELL. But the WELL, because of its organizational and technical history, has survived primarily through the online personal interaction of its subscribers and staff rather than through successful business strategy developed by its owners and managers. The discussion and dialog contained and archived on the WELL are its primary products.\(^7\)

Wired Magazine called the WELL the “world’s most influential online community” back in 1997.\(^8\)

With the development of the World Wide Web in 1992, bulletin boards and forums moved onto the web.\(^9\) Some forums existed as standalone operations, while others were tied

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\(^{6}\) See [CLIFF FIGALLO, THE WELL: SMALL TOWN ON THE INTERNET HIGHWAY SYSTEM, Sep. 1993, available at](http://w2.eff.org/Net_culture/Virtual_community/well_figallo.article) [http://w2.eff.org/Net_culture/Virtual_community/well_figallo.article](http://w2.eff.org/Net_culture/Virtual_community/well_figallo.article) (last accessed Apr. 19, 2008).

\(^{7}\) Ibid.

\(^{8}\) Katie Hafner, *The Epic Saga of the WELL*, [WIRED MAGAZINE, 5.05 (May 1997), available at](http://www.wired.com/wired/archive/5.05/ff_well.html) [http://www.wired.com/wired/archive/5.05/ff_well.html](http://www.wired.com/wired/archive/5.05/ff_well.html) (last accessed Apr. 19, 2008).

\(^{9}\) The Internet is a network of servers; the World Wide Web is a network of hypertext information and addresses that allows browsers to jump to and access information in a linear or non-linear fashion, independent of the type of computer being used. *See generally* Tim Berners-Lee, Frequently Asked Questions by the Press, [World Wide Web Consortium,](http://www.w3.org/People/Berners-Lee/FAQ#InternetWeb) [http://www.w3.org/People/Berners-Lee/FAQ#InternetWeb](http://www.w3.org/People/Berners-Lee/FAQ#InternetWeb) (last accessed May 5, 2008).
to sites that offered original content by paid staff or freelancers: one prominent example is Salon.com, an e-magazine that also runs a substantial forum called Table Talk. And while there are many stable and popular online communities based on bulletin boards, the rise of Web 2.0 has building and sustaining communities online faster, easier and broader in terms of ease of use, convenience and interactivity, and more complicated in terms of privacy, control and reputation.

What is Web 2.0? Tim Reilly, a major software and Internet technology publisher credited with coining the term in 2004, developed this definition in 2005 to describe the common characteristics of web-based start-ups that survived the 2001 dot.com bust:

Web 2.0 is the network as platform, spanning all connected devices; Web 2.0 applications & [are] delivering software as a continually–updated service that gets better the more people use it, consuming and remixing data from multiple sources, including individual users, while providing their own data and services in a form that allows remixing by others, creating network effects through an ‘architecture of participation,’ and & deliver rich user experiences.

The breadth of this description belies the controversy over just what Web 2.0 technology encompasses. Does it describe technology? Mindsets? Business models? Is it merely

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10 Salon.com bought the WELL in 1999 and continues to host it and its Table Talk property. *See* The WELL – Learn About the WELL, WELL.com, [http://www.well.com/aboutwell.html](http://www.well.com/aboutwell.html) (last accessed Apr. 19, 2008).
hype. Nonetheless, the term has become well-accepted, although lacking consensus on the underlying definitions and concepts. The 25-words-or-less description of what Web 2.0 has come to mean – at least for the purposes of this paper – is aptly made as follows: “The key feature of Web 2.0 is the development of software which enables mass participation in social activities.”

The participatory aspect of Web 2.0 is perhaps its most popular feature. Instead of being passive consumers of content, Web 2.0 has allowed people to comment on other’s content and contribute their own via text, audio and video. It is easy to start and maintain a blog, using Blogger, LiveJournal, MovableType, TypePad, WordPress or other services. YouTube hosts millions of videos from around the world. Social networking sites such as Facebook, MySpace, Xanga and others allow people to create profiles, connect and exchange messages with friends and find new friends and acquaintances. Twitter enables “micro-blogging” (150 characters or less) from one’s cellphone. These services, and many others, allow web users to keep up with family, friends, business associates and others in synchronous and asynchronous ways, live and delayed, in chronological or thematic order, with the opportunities of others to “talk back” to the original content producer.

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15 A clear, succinct definition of social networking websites is “web-based services that allow individuals to (1) construct a public or semi-public profile within a bounded system, (2) articulate a list of other users with whom they share a connection, and (3) view and traverse their list of connections and those made by others within the system.” danah m. boyd and Nicole B. Ellison, Social Network Sites: Definition, History, and Scholarship, JOURNAL OF COMPUTER-MEDIATED COMMUNICATION, 13:1, Art. 11, 2007, http://jcmc.indiana.edu/vol13/issue1/boyd.ellison.html (last accessed Apr. 20, 2008).
There’s been explosive growth for these types of websites. Facebook bills itself as having 70 million active users and being the 5th most-trafficked website in the world.\(^{16}\) ComScore, a research firm that specializes in measuring Internet traffic, announced that in February 2008 alone, 80.4 million viewers in the U.S. watched 3.42 billion videos on YouTube.\(^{17}\) According to the Pew Internet & American Life Project, 55 percent of teenagers who are active online has posted a profile to a social networking site as of December 2007.\(^{18}\)

Even governments are turning towards Web 2.0 functionality to implement e-government initiatives. A recent story highlighting a report on the use of Web 2.0 applications by governments heralded, “[g]overnments are expected to increasingly use social networking and other Web 2.0 innovations as a means of fostering greater participation and dialogue with their citizens, as well as encouraging more effective intragovernment communication.”\(^{19}\)

So, is it all good? Not quite …

In building relationships online, web users reveal things about themselves just as people off-world would: information about their jobs, health, family, love life, politics, religion, and the like. But there are two aspects of the Web 2.0 world that has some people


worried. First is the findability of information. Search engines such as Google, Yahoo! and Ask have indexed billions of pages on the Open Web and made them available to any user who uses the appropriate keywords. The second aspect is the persistence of information. Google, in addition to indexing information, also caches copies of pages that are accessible to users. The Internet Archive is an archive of websites dating back to 1996 and has currently saved over 4 billion webpages. These two aspects of the web basically mean that 1) the information we place online can be seen by a greater number of people than we may realize and 2) the information may last much longer than we anticipate.

**Are people revealing too much about themselves online?**

Recently the New York Times wrote about the trend of people writing or making videos about their divorces in considerable detail and the effects such disclosures may have. One estranged wife posted a video on YouTube complaining that while she and her husband have not had sex in months, he had a stash of “Viagra, pornography and condoms.” One divorce lawyer called this public confessional/tarring a “scary step.” Late last year, a Vermont judge in a divorce action ordered the husband to stop blogging about his divorce, but rescinded this order weeks later. Another judge refused to block podcasts created by

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22 Id.

the founder of DivorcingDaze.com, after her ex-husband found out about podcasts and sued her for violating the terms of their divorce settlement.24

The law of unintended consequences has affected some users who post personal information about themselves online. One example, albeit an outlier, is that of Jessica Blinkerd. She was charged with drunken driving and vehicular manslaughter and given a prison sentence of over 5 years. At the sentencing, the judge pointed out that photos of Blinkerd on her MySpace page that depicted her out drinking and partying with her friends after the auto accident belied the remorse she expressed in court.25 More common are negative employment repercussions. Workers have been fired by their employers for writing about their jobs on their blogs.26 Even prominent technology companies, like Google, have taken issue with some of the information blogged by employees.27 Moreover, potential employers are doing online searches for interviewees and take into account what they find online about the people they are considering hiring. As of July 2006, a survey of employers found that over a quarter of them used search engines to find online information about job candidates or looked at those candidates profiles on social networking sites.28 A later survey revealed that while approximately 20% of employers look for information about potential hirees online, 59% of those who do admit it influences their hiring decisions, and a quarter of human resources personnel had rejected an applicant based on information found

24 Kaufman, supra note 21.
25 David Schimke, Invading Our Own Privacy, UTNE READER, 16-17, May-June 2007.
26 See the discussion of Heather Armstrong and her blog, Dooce.com, in DANIEL SOLOVE, THE FUTURE OF REPUTATION, 39 hereinafter note 76.
28 Alison George, Things You Wouldn’t Tell Your Mother, NEW SCIENTIST, Sept. 16, 2005 at 50-51.
online. In its June 2007 issue, the Harvard Business Review addressed the issue of “goggling” interviewees and what should be done if unfavorable information is found, in its first Interactive Case Study. Recently, a university in Pennsylvania denied a bachelor of science in education degree and a teaching certificate to a student-teacher – while the university claims that the student had negative performance evaluations, the women is claiming in her lawsuit that she was denied her degree because of a photo of her on MySpace, in a pirate hat and holding a cup, with the caption “Drunken Pirate” under the photograph.

The concern also encompasses who controls how accessible personal information can be on a certain website. Facebook users revolted twice over changes to the site. In September 2006, the company introduced News Feed, which broadcasted every action taken by a user to every “friend” on Facebook. Researcher danah boyd, who specializes in examining the behavior and motivation of young people who interact via social networking

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30 Diane Contu, *HBR Case Study: We Googled You*, HARVARD BUSINESS REVIEW, June 2007 at 37-47.


33 This is not a typo; boyd does not capitalize her name. DANAH BOYD, “DANAH MICHELE BOYD,” [http://www.danah.org/name.html](http://www.danah.org/name.html) (last accessed May 5, 2008).
sites, called the feature “a privacy trainwreck,” “unhealthy [and] socially disruptive.” An even more controversial program was unveiled by Facebook in late November 2007. “Beacon” tracked Facebook users who visited and purchased items from 3rd-party partner sites, such as Fandango, NYTimes, Sony Online, Blockbuster, Bluefly.com, STA Travel, TripAdvisor, Travel Ticker, Yelp, WeddingChannel.com and Zappos.com – the activity was posted to the News Feed of each Facebook user for their friends to view. One issue that infuriated people was the inability to opt-out of all Beacon notifications; Facebook users could prevent a transaction or a site from being displayed, but could not turn off all Beacon displays. The following month, Facebook revised the controls for Beacon to allow users to opt out of the program entirely.

Even users do set limits to their profiles, posts and other information to control its dissemination, bugs in social networking/Web 2.0 platforms may undermine the user’s intent to keep the items semi-private. A security researcher discovered in 2007 that the advanced search in Facebook allowed searchers to see users’ names, pictures, religious preferences and sexual orientation, even for profiles where the privacy settings were to allow only friends of the user to see the profile. The BBC recently conducted an

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34 danah boyd, Facebook’s ‘Privacy Trainwreck’: Exposure, Invasion, and Drama, APOPHENIA BLOG, (Sep. 8, 2006), http://www.danah.org/papers/FacebookAndPrivacy.html (last accessed Apr. 20, 2008).
experiment where a computer programmer created a malicious program that could appear to
be harmless in the foreground, while in the background, it harvested the data of the
Facebook user AND the data of all of the friends of the user who installed that application.\(^{38}\)

In January 2008, the technology newsite Wired revealed that a ‘security hole’
allowed anyone to see photos uploaded to Myspace profiles that had their private settings
turned on (i.e. only people designated as friends of the user could access the profiles and any
content associated with them) – including the profiles of Myspace users under the age of
16.\(^{39}\) One week after the story, someone dramatized the privacy implications of the security
hole by downloading approximately 500,000 private pictures, compiling them into a 17-
gigabyte file and making the file available to general public via BitTorrent, a type of file-
sharing protocol.\(^{40}\) A similar occurrence happened on the photo-sharing website Flickr. A
woman uploaded three photos of her children skinny-dipping to her Flickr page and labeled
them private so that only designated family members could access them.\(^{41}\) But she found
out several months later that “the selected snapshots had been viewed thousands of times,”
presumably by strangers who should not have had access to the pictures.\(^{42}\)

\(^{38}\) Spencer Kelly, *Identity ‘at Risk’ on Facebook*, BBC.com, May 1, 2008,
http://news.bbc.co.uk/2/hi/programmes/click_online/7375772.stm (last accessed May 5,
2008)

Mar. 16, 2008).

\(^{40}\) Kevin Poulsen, *Pillaged MySpace Photos Show Up in Massive BitTorrent Download*,
(last accessed Mar. 16, 2008).

\(^{41}\) Kendra Marr, *Online Photos Not As Private As District Mother Assumed*, THE
WASHINGTON POST, Feb. 21, 2008 at D01, available at http://www.washingtonpost.com/wp-
dyn/content/article/2008/02/20/AR2008022002746.html

\(^{42}\) Id.
People have been shocked to find that messages they posted to a newsgroup 10 or 20 years ago are still accessible for the general public to find and read. Even if one wants to remove certain information, it may prove difficult. If the only information has the potential to be controversial, sometimes trying to delete it can garner more attention than the initial dissemination of it had received – the phenomenon has been given the catchy moniker of the “Streisand Effect.”

But another obstacle to removing information is the lack of opt-out features for Web 2.0 platforms. Earlier this year, users of Facebook complained that it was “nearly impossible” to remove their profiles – while accounts could be deactivated, there was no easy way of getting profiles removed and they remained on company servers (as well as findable via search engines) even when devoid of information. After considerable coverage in the mainstream and technology press, Facebook announced that it was simplifying the process for users to have their profiles removed.

**The End of Privacy?**

In response to these privacy concerns, some have claimed that the willingness of so many to expose personal details online signals ‘the end of privacy.’ A Pew/Internet study

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43 The Streisand Effect is aptly named for singer-actress Barbra Streisand. She sued a photographer who took over 12,000 aerial pictures of the California coastline to place on an environmental website, claiming that the incidental photo of her beach property was a violation of her privacy rights. After Streisand filed suit, the San Jose Mercury News reported that “more than 420,000” web users visited the site to see the Streisand house photo. See Paul Rogers, *Streisand Home Becomes Hit on Web*, SAN JOSE MERCURY NEWS, Jun. 24, 2003, available at [http://www.californiacoastline.org/news/sjmerc5.html](http://www.californiacoastline.org/news/sjmerc5.html) (last accessed Apr. 19, 2008).


found that “many Americans have softened their views about being monitored at work or being asked highly personal questions,” although adults did want to control their online information. But some people go farther, arguing that notions of privacy are not just softening, but dissolving away entirely – particularly among young people who have embraced social networking and the participatory aspects of Web 2.0. As phrased by tech blogger Robert Scoble, “Privacy is dead. … My 14-year-old kid just doesn’t care about privacy.”

An article dealing with this subject appeared in the February 12, 2007 issue of New York Magazine. Emily Nussbaum includes profiles a number of young people, with details of their online activities online and their attitudes. The conclusion that Nussbaum reaches, and reiterates throughout the article is, young people don’t believe in privacy and we who do may want to get over it.

So it may be time to consider the possibility that young people who behave as if privacy doesn’t exist are actually the sane people, not the insane ones. For someone like me, who grew up sealing my diary with a literal lock, this may be tough to accept. But under current circumstances, a defiant belief in holding things close to your chest might not be high-minded. It might be an artifact—quaint and naïve, like a determined faith that virginity keeps ladies pure. Or at least that might be true for someone who has grown up “putting themselves out there” and found that the benefits of being transparent make the risks worth it.

Nussbaum later analogizes the privacy stance that teens have, and the contradictions of that stance, to celebrities and politicians. She goes so far as to call adolescents “public

46 Madden, supra note 18.
According to the people profiled in the article, they have no concerns about who will see their information, how it will be received or how long the information will be accessible to the public. One explains, “My philosophy about putting things online is that I don’t have any secrets. … I put myself out there online because I don’t care.”

Even the specter of humiliating information becoming popular online doesn’t phase some of them. In response to a video of a young woman conducting a strip-tease and masturbation for her boyfriend, only for the video end up online, one response when questioned if a similar thing happened to her, “I understand that it’s really humiliating and everything … But I did it and that’s me. … It’s either documented online for other people to see or it’s not, but either way you’re still doing it. So my philosophy is, why hide it.”

**People are giving away their privacy … what can we do about it?**

There are two extremes of solutions that arise out of the assessment that people do not value their privacy. The first is to do nothing. If we, as a society, is giving up our privacy, then we should reap what we sow and experience the positive and negative repercussions of our choices. One of the subjects of Nussbaum’s article posits that online life, without privacy, will become more like real life when “reputation will be the rule of law,” and people will be chastened due to their online actions just as they are in offline interactions. A commentator who despairs over the potential commoditization of personal data that’s made available on Web 2.0 apps metaphorically throws up his hands and snarks

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49 Writing for a general-interest audience, Nussbaum does not discuss the implications of a whole swath of society being considered “public figures,” such as the higher standard of actual malice needed to prove defamation against a celebrity or politician, per *New York Times v. Sullivan*, 376 U.S. 254 (1964). Nussbaum, *supra* note 48.


helplessly, “When the Web 2.0 bubble bursts … the innovation will grind to a halt, and what's left will be the endless grinding of the marketeering machine. But hey - at least you'll be closer to your friends. And you'll have free photo hosting, too.” In a similar vein, author David Brin argues that our freedom from surveillance is already eroded past the point of no return, and thus we should embrace living in a ‘transparent’ society, where ordinary citizens, governments and organizations are all equally open and we can have the benefits of freedom and security. Only a “personal curtilage” would remain to protect the most intimate thoughts and conduct.

The other extreme is to protect certain segments from the potential downsides of the technology by hindering their access to the technology. If preferences are set against privacy, then paternalistic measures that protect certain vulnerable members of society become attractive. The popularity of social networking among young people, and the perceived threats from “sexual predators,” led Representative Mike Fitzpatrick (R-PA) to introduce a piece of legislation called “Deleting Online Predators Act of 2006” or DOPA. DOPA, if passed, would bar public schools and libraries from allowing minors access to commercial social networking websites and chat rooms, as defined by the Federal Communications Commission, unless with parental authorization (for libraries) or the site is

55 Brin, supra note 54 at 301.
56 Paternalism within behavioral theory refers to regulations or mandates that constrain the actions of individuals, presumably for their benefit. See generally Cass R. Sunstein and Richard H. Thaler, Libertarian Paternalism is Not an Oxymoron, 70 U. CHI. L. REV. 1159 (Fall 2003). See also Colin Camerer, Samuel Issacharoff, George Loewenstein, Ted O'Donoghue, and Matthew Rabin, Regulation for Conservatives: Behavioral Economics and the Case for ‘Asymmetric Paternalism,’ 151 U. PA. L. REV. 1211 (Jan. 2003).
used for “an educational purpose with adult supervision.”\textsuperscript{57} The American Library Association took a strong position against the bill, saying that it “paints an unflattering and distorted view of the Internet as a whole, serving to scare away parents, students, teachers and librarians from making use of all its resources.”\textsuperscript{58} However the Senate took no action on it; the bill was re-introduced into the House in 2007, and Sen. Ted Stevens (R-AK) integrated the 2006 bill into a Senate bill called the “Protecting Children in the 21st Century Act,” but both bills never left their respective committees.\textsuperscript{59}

The orientation of these perspectives is typical of the rational actor model. When it comes to choice, the model holds that:

\begin{quote}
We assume, then, that actions reflect something within us-our choices. Those choices reflect a stable set of preferences, which themselves determine and reflect our “personality” or identity. Because our behavior reflects such choices, most of what happens is controllable-simply a matter of choice. And because outcomes are subject to a person's control, each person is responsible for the outcomes that define her circumstances.\textsuperscript{60}
\end{quote}

But our “preferences” are not as ordered, stable or consistent as we believe or like it to be. There are behavioralist biases that influence our choices and shape our preference – our preferences are much more malleable than the rational actor model credits.\textsuperscript{61} One bias is the endowment effect, which leads people to value things they already have or believe they have

\begin{itemize}
\item \textsuperscript{57} Deleting Online Predators Act of 2006, H.R. 5319, 109\textsuperscript{th} Cong. § 2 (as passed by House, Jul. 26, 2006).
\item \textsuperscript{59} Protecting Children in the 21st Century Act, S. 49, 110\textsuperscript{th} Cong. § 201-204.
\item \textsuperscript{60} Jon Hanson and David Yosifon, \textit{The Situational Character: A Critical Realist Perspective on the Human Animal}, 93 GEO. L.J. 1, 31 (2004) (criticizing the rational actor model and applying a behavioralist approach to law).
\item \textsuperscript{61} See id. at 85-6.
\end{itemize}
access to over items or intangibles that they do not own.\textsuperscript{62} The endowment effect may easily explain the attitude displayed by the subjects (as well as the author) of Nussbaum’s New York article – if a person cannot hold onto their privacy, what is the point of trying to hold on to or attempt to regain it? The endowment effect has been discussed and examined within the privacy arena. A rational actor model of information privacy holds that privacy functions as a property right, and that if people give away their privacy for minor benefits, it means that they ascribe a “low value” to their private information – conversely, such information has a higher value to the companies that collect and trade the information.\textsuperscript{63}

But this view doesn’t take into account the difficulties in ascribing value to personal information at present and in the future. One obstacle is the aggregation effect, as described by Daniel Solove: “An individual may give out bits of information that in different contexts, each transfer appearing innocuous. However, when aggregated, the information becomes much more revealing. … It is the totality of information about a person and who it is used that poses the greatest threat to privacy.”\textsuperscript{64} Another obstacle is uncertain future uses. Solove writes, “The potential future uses of personal information are too vast and unknown to enable individuals to make the appropriate valuation.”\textsuperscript{65} Solove argues there is a considerable information gap between the abstract knowledge that personal information is collected (say via use of a grocery ’club’ card) and the range of specific possibilities that

\textsuperscript{62} Id. at 41.
\textsuperscript{64} Solove, The Digital Person, supra note 63 at 87-8.
\textsuperscript{65} Solove, The Digital Person, supra note 63 at 88.
information may be divulged, such as information of contraceptive purchase going to one’s employer, the government, or being used for targeted advertising for similar products.  

Rebutting the end

The assumption that Web 2.0 is leading to the end of privacy because people have rejected the notion of privacy is unrealistic in some regards, and wrong in others. It helps to understand the appeal of Web 2.0 and social networking.

As mentioned above, a major feature that drives the growth of Web 2.0 applications is its community building aspects. There are those who point to Abraham Maslow’s famous hierarchy of human needs. Tom Guarriello, a psychologist who pays attention to social networking, believes that social networking can help people fulfill their “needs for belonging, self-esteem and self-actualization.” Guarriello said at a recent technology conference about social networking, “It's the need to connect … We constantly look for ways to do that.”

Unfortunately, it is clear that Americans in particular are not connecting to as many people as they did in the past, when measured in traditional relationships where confidences are shared. A study of “core discussion networks (i.e. who do we talk with regarding important matters, on a regular or an emergency basis) concluded that Americans have become very socially isolated over a 20-year period, as measured by traditional metrics.

In spite of a large literature on declining civic engagement and neighborhood involvement, we began this analysis with the expectation that networks of core confidants would be a stable feature of one’s interpersonal environment.

66 Id.
68 Id.
Given the close, densely interconnected nature of the ties generated by the
[survey] question, it seemed unlikely that the typical American would not
mention several people in response. We were clearly wrong. The number of
confidants mentioned in 2004 is dramatically smaller than in 1985. Both kin
and non-kin ties have decreased, although the change is larger in non-family
ties. In the past twenty years, discussion networks have focused on the very
close family ties of spouse/partner and parent, while the potentially
integrative ties of voluntary group membership and neighbor have decreased
dramatically.69

In other words, many users are finding less avenues for community in the physical
world and more avenues for community in online spaces. Community feeds our needs for
friendship, esteem and self-actualization, if we turn again to Maslow’s hierarchy. danah
boyd’s research on teens and social networking buttress this point. In the offline world,
“hanging out amongst friends allows teens to build relationships and stay connected.”70
According to boyd, technology itself is not the primary driver of youth participation in
online communities, but the “lack of mobility and access to youth space where [teens] can
hang out uninterrupted.”71

By going virtual, digital technologies allow youth to (re)create private and
public youth space while physically in controlled spaces. [Instant
Messaging] serves as a private space while MySpace provide a public
component. Online, youth can build the environments that support youth
socialization.

Thus the conditions are ripe for Web 2.0 users to engage in community building.

But privacy, especially informational privacy, is somewhat harder to place to on the Maslow

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69 Miller McPherson, Lynn Smith-Lovin, and Matthew E. Brashears, Social Isolation in
America: Changes in Core Discussion Networks over Two Decades, AMERICAN
SOCIOLOGICAL REVIEW, Vol. 71 (June 2006), 353-375, available at
http://www.asanet.org/galleries/default-file/June06ASRFeature.pdf (last accessed Apr. 20,
2008).
70 DANAH BOYD, IDENTITY PRODUCTION IN A NETWORKED CULTURE: WHY YOUTH HEART
MYSPACE, AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE, St. Louis, MO
71 Id.
hierarchy. Certain violations or invasions of privacy may threaten our safety, but the benefits of informational privacy may well be higher up the pyramid and more abstract than the need to connect with others. But that’s not to say that privacy is not important. Community is important, but most people have no desire to live in a literal or figurative goldfish bowl, nor would it be healthy for individuals or society at large to do so. The importance of privacy, as a behavioral norm, has been largely overlooked within the field of social psychology, according to one theorist. However, it has been theorized by one researcher that privacy is a “cultural universal” and a wide range of human societies have some form of privacy. Yet another theorist points out that “patterns of coming and staying together imply counterpatterns of withdrawal and disaffiliation,” in which privacy is an important institutional mechanism for withdrawal. To build and participate in new communities, we often withdraw from or weaken our ties to old ones. According to Schwartz:

Daily life is therefore sparked by a constant tension between sincerity and guile, between self-release and self-containment, between the impulse to embrace that which is public and the drive to escape the discomfort of group demands. Accordingly our identities are maintained by our ability to hold back as well as to affiliate.

Based on this model, community and privacy are not strictly rivalrous concepts. We forge ahead, build connections, then draw back and gain a sense of self, before again moving towards social interaction. In behavioralist terms, preferences for privacy and community are as a per se matter situational, and as with the standard bell curve, very few

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73 Id.
75 Id. at 752.
people are on the margins of being concerned only about privacy or focusing solely on community.

Solove, in *The Future of Reputation*, cites historian Peter Gay on the societal importance of privacy, “[G]ranting privacy to others reflects ‘a capacity to respect people with ideas and ideals at odds with one’s own’ … We may not like what some people do in private, but we respect their freedom to do it so long as it remains out of the public eye.”76 Solove also argues for a notion of privacy that includes the ability for a community to “forget” past mistakes and conduct by allowing infamous or embarrassing incidents to fade from memory. But in an online world where every statement, video or photo may be available to anyone, for years, communal forgetfulness (and forgiveness) may not be possible, thus enabling people to be shamed, shunned or humiliated far beyond the scope of their original misdeed.77

However, the balance between transparency and privacy is not equal in Web 2.0 environments. Additionally, the prioritization of features and interfaces that focus on sharing/exposing information, over those that hide and protect information. As one social networks researcher noted, “Social networking sites may bias the way we think about our personal information, and we may lose focus of many other places where our information is searchable and accessible online.”78

As people grow more aware of privacy vulnerabilities, they use social networking software and other Web 2.0 applications in ways that they see as protecting their information while still retaining the benefits of participation in the social space. A recent study by the

77 Id.
78 Madden, *supra* note 18.
Pew Internet & American Life Project found that nearly frequent posters of “potentially personal” content tend to be “confident in their ability to limit and control the amount of information available about themselves,” and 71% of these frequent posters report that the amount of information they find about themselves match their own expectations of what is out there on the open web for others to find.\footnote{Susannah Fox, Privacy Implications of Fast, Mobile Internet Access, Pew Internet & American Life Project (Feb. 13, 2008), \url{http://www.pewinternet.org/PPF/r/238/report_display.asp} (last accessed Apr. 20, 2008).} Pew also reports that if web users have experienced embarrassing and/or inaccurate information about them being used/exposed in a negative way, those users are then sensitized to the issue of privacy and try to protect their information more activity.\footnote{Id.}

This finding of confidence among Internet users of being able to control their information flow is anticipated by another behavioralist concept known as the illusion of control: “People believe themselves to exercise more control over their environments than they actually do – a illusion that reflects an underlying motive to exercise control.”\footnote{Hanson and Yosifon, supra note 56 at 96.} This illusion of control actually makes individuals more vulnerable to manipulation.\footnote{Id. at 98.} In other words, being too confident of our ability to monitor and protect our privacy in certain environments may lead users to further reveal personal information without taking into account existing privacy controls, until an adverse situation has occurred.

Outside forces, including privacy organizations, regulators and engaged, organized users, may prove successful in encouraging, or enforcing, companies that build and utilize Web 2.0 platforms to prove stronger privacy features and make them default rules. Making privacy features the default on social networking platforms and other Web 2.0 application
may be seen as paternalism. A counter-argument is that individual choice and “freedom of the market” is not enough to overcome the basic inequalities of power between individuals and the companies that collect information. Solove argues, “Market-based solution work within the existing market; the problem with [databases that aggregate personal information] is the very way that the market deals with personal information – a problem in the nature of the market itself that prevents fair and voluntary information transactions.”

**Conclusion**

Yes, people reveal personal stuff to a website. They know that they revealed that information but they still have an assumption about how it is to be presented and the ways that make them comfortable and the things that make them ick. This is really about context, context, context. As i've said before, there’s no way that people can comfortably negotiate all contexts at all time.

They could retreat and go into hyper private mode but what kind of life is that? People choose to make risks based on what they assume the architectural affordances and norms of a space to be. I think that asking people to retreat into paranoia is completely unreasonable. Instead, i think we need to find ways of providing reasonable levels of protection and comfort, recognizing that there are always risks when you are still breathing.

Technology can allow us to have community and privacy online. Current applications have focused on community-building features but did not give as much attention to privacy-protecting ones. But the embrace of social networking to build and extend community online does not mean that people do not value informational privacy, at least for themselves. Privacy is a personal, and many would say fundamental right, but as social animals, we are generally hardwired to interact with others. It is the platform developers that have given us a false choice between community and privacy. We shouldn’t bemoan “the end of privacy” – it’s not dead yet. On the contrary, we need to press companies that build these platforms, then seek to monetize our personal information, to add

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83 SOLOVE, THE DIGITAL PERSON, supra note 63 at 91.
84 boyd, Facebook’s ‘Privacy Trainwreck, supra note 34.
in features that protect our privacy and give us real choices about how to be part of the Web 2.0 world without sacrificing our privacy.