

Privacy Discourses and a Data Governance Stewardship Council

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Data Management and Use, a joint report from the British Academy and the Royal Society, has recommended that a data governance stewardship council be set up to influence the evolution of the landscape, as data play an ever more prominent role in our daily lives. The report leaves open the question of what principles the council should be endeavouring to preserve, and what its priorities should be.

There are many potential functions that such a body could undertake. The report itself focuses on three broad groups of function: anticipation and evaluation of trends; building practices and setting standards; enforcing norms and remedying harms. In this short paper I don't want to enter directly into the debate about precisely where such a body such focus its resources and attention. Rather, I want to propose a framework for separating out and distinguishing the functions it might take on.

I will apply a framework currently under development to understand and disentangle the many overlapping discourses on privacy,¹ whose aim is to resolve at least some of the confusion, complexity and category error characteristic of privacy discussions.² Privacy is of course one of the central factors in data governance, indeed a factor which, according to the report, is "under unprecedented strain" (p.2). I will therefore focus on privacy; however, the framework may be extendable to other aspects of data governance. Privacy is only a part of such a council's competence, but an important part.

The framework separates out seven distinct types of privacy discourse, which are often confused and inappropriately mixed. For each of these levels, we can ask *should the data governance stewardship council operate at this level?*

Level 1: Concepts.

Privacy takes many forms, and the various conceptions of what privacy consists in are the topic of level 1. In the realms of data, conceptions include informational privacy (Bob does not process data about Alice), decisional privacy (Bob doesn't interfere with Alice's decisions, e.g. by providing her with partial data), and economic privacy (Bob doesn't appropriate Alice's intellectual property). Discussion of privacy at level 1 concerns the nature of privacy relations implicated by particular uses of data.

There are few pressing functions at this level for the council. However, this would cover horizon scanning, to explore the privacy implications of alternative and possible futures and 'black swan' events, and also scrutinising the status quo to determine what privacy issues exist today that perhaps have not been surfaced.

Level 2: Empirical measurement.

Given a particular conception of privacy, the level 2 discussion is whether people in actual fact have privacy in that sense. E.g. if the privacy notion under discussion is that Bob doesn't process Alice's

¹ Kieron O'Hara, 'The seven veils of privacy', *IEEE Internet Computing*, 20(2), 2016, 86-91.

² Cf. e.g. Daniel Solove, *Understanding Privacy*, Harvard University Press, 2008.

data, then the level 2 discussion would be the fact of the matter of whether Bob actually does or does not process Alice's data. If the former, then Alice does not have privacy in this sense; if the latter, then she does. She may not care if she does not have privacy in this sense, or she may have provided her consent – these are irrelevant to the question of whether or not she actually has privacy.

If the council had level 2 functions, then these would connect with an ombudsman-like role, exercising quasi-legal powers to: demand information about their data processing from data controllers; conduct assessments and spot inspections; determine whether privacy policies were being followed; or mandate particular cybersecurity techniques.

Level 3: Phenomenology.

Level 3 contains the (relatively rare) discussions about what privacy (or its lack) actually feels like to an individual. Face to face privacy breaches tend to produce feelings of shame or embarrassment, but data breaches can be unnoticed. Facebook spends a lot of resource in making its users feel private even while they haemorrhage data in the general direction of Zuckerberg. Too-specific, too-timely adverts can give people feelings of creepiness. Users of smartphones feel that their phones are extensions of themselves, not that they are gathering and disseminating data. On the other hand, in many cases a lack of privacy can feel invigorating or exciting.

Level 3 functions for a council would be relatively rare, and unlikely to be its sole focus. However, there are numerous opportunities for HCI research to change the status quo around data consent, but fundamental to such change is that people see a need for it. One may have very well defined terms and conditions, but if people don't even know their data is being accessed – if this use is not apparent in the first place – transparency about the process will add very little. Potential level 3 roles for the council would be to monitor data-users' advertising to ensure it is not misleading, or to promote designs which signal the fact of data use in some way.

Level 4: Preferences.

Level 4 contains discussion of individuals' privacy preferences. These can be entirely idiosyncratic, and need not be consistent, rational or reasonable. It is hard to generalise; sometimes people wish to be concealed, and sometimes they wish to be visible to their network. On other occasions, people might want privacy in the abstract, but have a greater preference for some other type of good (e.g. free services). At this level, we find ideas such as consent, personal data stores and privacy markets, which allow individuals to impose their own conditions on the use of their data.

If the council was to be focused around level 4, then we would expect its role to be to ensure that individuals' preferences about the use of 'their' data (however that phrase is understood) are respected.

Level 5: Norms.

At level 5, we find discussions about social norms of privacy, conventions, regularities, expectations. These norms are unenforced. To complicate the issue, they also vary across culture, generation and gender.

A focus at this level for the council would mean that its role was to preserve the reasonable expectations of privacy of citizens, and to help manage the contextual integrity or appropriacy of information flow.

Level 6: Law and regulation.

Level 6 is the level at which we discuss the legal questions of privacy – what privacy breaches are against the law, and when does the state mandate transparency? Jurisdictional issues are relevant here as well. Data protection (unlike privacy) is an entirely legal concept, and lives at this level.

This is perhaps the least likely level at which the council might find a role, as it would usurp functions of the courts (for privacy and rights judgements) and the Information Commissioner's Office (for data protection issues).

Level 7: Politics and morality.

The final level is that of the value of privacy, and when privacy is right or wrong. Issues here include whether privacy is essential for vital civic functions such as democratic deliberation, or psychological well-being and the development of individual autonomy, and whether privacy is damaging for other important social goods, such as security, or investigations into criminality or terrorism.

These are essentially political matters, so if the council worked at this level it would share an arena with Parliamentary politics and the media. However, it could help pronounce on, or shape opinion about, complex questions in this zone such as when concerns about privacy are trumped by the social value of, say, data-driven medical research.

The council could work at any or all of these levels, as deemed appropriate. However, it would also be reasonable to expect that it would work best if it was targeted directly at one or two levels, in order to ensure clear lines of control and power, and to establish its particular expertise. This paper is agnostic about which levels they may be. However, it is hoped that the 7-level framework outlined is helpful in framing the future discussion.