

## 2 CORE VALUES AND THEIR RELATION TO PRIVACY

This chapter provides the basis for our overall goal of developing recommendations on how a culture of privacy and trust on the Internet can be fostered. We begin by presenting an understanding of privacy developed in the first stages of this project that is used throughout this document. Since the recommendations are derived from core values that we hold fundamental in our European democratic tradition and are also in line with an underlying understanding of human freedom, this chapter introduces the core values – free self-determination, democratic participation, and economic well-being – and indicates why we have selected them. Following this, we discuss each of the core values in greater detail, taking the perspectives of the social sciences, ethics and law into account. We also elaborate on the specific relationship between the core values and privacy. Showing the inextricable linkage between privacy and the basic principles of a free, pluralistic and democratic society will lay the foundation for transferring this relationship to the cyberworld,<sup>5</sup> and more specifically, to two exemplary Internet-application areas: OSNs and e-commerce.

### 2.1 PRIVACY

One definition we have found which takes into account a large number of relevant aspects was developed in the 1970s by social psychologist Irwin Altman, who conceptualized privacy as "an interpersonal boundary process by which a person or a group regulates interaction with others. By altering the degree of openness of the self to others, a hypothetical personal boundary is more or less receptive to social interaction with others. Privacy is, therefore, a dynamic process involving selective control over a self-boundary, either by an individual or a group."<sup>6</sup> Privacy for Altman is consequently in general an "interpersonal event,

involving relationships among people."<sup>7</sup> According to his way of thinking, privacy norms are subject to society's definition, while individuals apply these norms within social situations, depending on the context as well as on the desired state of privacy they would like to achieve. In addition, drawing interaction boundaries regulates "Control of Input from Others" and "Control of Output to Others"<sup>8</sup> – in other words, the flow of information (outwards and inwards). In sum, Altman accounts for both the individual as well as collective dimension of privacy; he allows for the conception of privacy as a state of affairs to be achieved by various means: material (walls, clothes, technology), semiotic (signs) and normative (social rules and customs); and he is clear about the fact that while privacy might be related to information flow, it is generally about social situations.

If, however, personal privacy (in contradistinction to the privacy of private property<sup>9</sup>) is to be understood as a mode of social being, i.e. as a phenomenon relating to how human beings share the world with one another, Altman's definition must be examined closely, as an explicit phenomenological unfolding and subjected to critique.<sup>10</sup> Accordingly, personal privacy is fundamentally the aspect of social interplay relating to how persons show themselves as who they are, which includes the negative or deficient modes of such self-showing, namely, a privatio of self-revelation. Privacy thus consists of concealing who you are – either completely (anonymity, secrecy, incognito), or concealing only certain aspects of one's identity, (use of a pseudonym) or concealing identity only in certain situations and contexts (location and time). Privacy is multifaceted and complex, but all these facets relate to a person's identity through the various dimensions of self-display and self-concealment. In the Western world, personal privacy concerns an individual freedom of self-determining how to reveal oneself in

<sup>5</sup> On the choice of the term 'cyberworld' in preference to 'cyberspace' Buchmann 2012, Sections 2.3.5 and 2.4.5.

<sup>6</sup> Altman 1975, p. 6.

<sup>7</sup> Altman 1975, p. 22.

<sup>8</sup> Altman 1975, p. 29.

<sup>9</sup> Buchmann 2012, Sections 2.2.5-2.2.6.

<sup>10</sup> Buchmann 2012, Sections 2.2.1-2.2.5, 1.10 and 2.4.6-2.4.10.

the ongoing interplay of the social world. The interplay of identity formation is as much a freedom to display oneself as it is to withdraw and conceal oneself or to present oneself with a certain 'spin', i.e. self-display (showing off who you are) and self-concealment are two sides of the same, multifaceted coin. Furthermore, freedom pertains not to an actual state of affairs, but to a potential to determine one's own life-movements within the interplay with others, so it has the aspect of a social power play (that may also enter the political domain) which by no means guarantees a successful outcome. Hence, informational privacy, i.e. the freedom to self-determine what information (digital data) is released into or withheld from the public domain of the cyberworld, is merely derivative of the more fundamental individual freedom to play the game of showing oneself to others or concealing oneself from them in the abovementioned multifaceted sense.

We too, like Altman, conceive of privacy as a state of affairs being inherently social, that is, by "privacy" we mean a specific mode in which the social interplay is acted out. What follows from this is that privacy does not mean the isolation of an individual from the (social) world; rather, the concept refers to the specific and dynamic configuration of revealing and concealing who you are *within* the social interplay among the social players. However, while being subject to societal, customary definition, privacy preferences (i.e. what, how, how much, when and where an individual shows or conceals who he or she is) vary from one individual to another, so our understanding of privacy has to allow for a spectrum of individual privacy preferences. Secondly, whereas we are interested in *informational* privacy, we must always keep in mind that privacy is about social situations and people living their lives with one another. Therefore, we consider privacy a specific form of social interplay. And finally, here we do not leave the issue of whether

to conceive of privacy as having some "intrinsic value".<sup>11</sup> Nor do we attempt to encompass all the phenomena falling under the rubric of privacy. Instead, in the present limited context, we treat privacy only insofar as it pertains to our chosen core values.

## 2.2 OUR APPROACH

Any presentation based on cultural values or basic social principles has normative features. Socio-cultural values arise from the desire to live well in a given society and assume the shape of norms and rules for human behaviour. Insofar as the selection of three core values we deem indispensable for a flourishing and free society – self-determination, democratic participation, and economic well-being – we follow a normative approach. One obvious reason for this is the value-context in which this text is produced. We believe that value-orientation is a vital precondition for any culture of privacy and trust, both in the offline world and in the cyberworld. We are well aware that a normative approach is culturally specific and is indebted to the ideal of a European community of values. We are also aware that this ideal has been thoroughly deconstructed.<sup>12</sup> Whereas such deconstruction may modify our understanding of these values in the sense that they become visible as a culturally-generated ideal, this consideration does not lead to a repudiation of these values. As the values cherished by Europeans correspond to a deeper understanding of freedom whose validity is upheld interculturally, our approach is open to a dialogue between all those committed to human freedom *per se*, albeit in various cultural guises.<sup>13</sup> An approach based on considerations of human freedom *per se* is no longer normative (since freedom is an option for living together, not a moral imperative), but sheds light on how human beings can freely share a world.

<sup>11</sup> To do so would be to follow here Daniel J. Solove, who holds that "The value of ameliorating privacy problems lies in the activities that privacy protections enable." Solove 2008, p.85. However, against this argument from consequences, it must be kept in mind that the social interplay of revealing and concealing who you are is a core aspect of freedom *per se* that cannot be traded off for functional benefits or consequences.

<sup>12</sup> Chakrabarty 2007.

<sup>13</sup> Buchmann 2012, Section 2.5.

Within this value framework, our three selected core values: free self-determination, democratic participation and economic well-being, relate intimately with human freedom. Free self-determination is a precondition for fostering free, self-determined and responsible individuals constituting a free society. Democratic participation, a value guaranteed on the political plane by the German constitution, ensures the sovereignty of the people and is also a precondition for a free democratic society. Economic well-being is a basic goal of a free market economy where cutthroat or unfair competition among the players is suppressed for the sake of the freedom and fairness of interplay. Good governance needs not only to ensure basic economic well-being for the people in the sense of a standard of living, but also to secure the framework within which economic players can freely and fairly engage in pursuing a livelihood.

When elaborating upon these values of freedom, our ultimate objective is to deliver a richer view of each value by bringing together multiple perspectives into a multifaceted, inclusive description. Such a comprehensive depiction of the various dimensions of a core value is necessary to assess an Internet application's potential for enhancing and promoting that value whilst at the same time identifying possible risks and threats to it, tasks we take on in Chapters 4 and 5. We integrate sociological, ethical, legal, economic and technical perspectives to pinpoint opportunities as well as potential threats for both individuals and society as a whole (sociological and ethical), for users and consumers (economic), and the respective constitutional rights (e.g. the right to informational self-determination) and national objectives e.g. democracy (legal). Technological solutions and limitations provide boundaries for proposals as to how our values can be manifested in the cyberworld.

A multi-perspective approach leads to uncovering viable options from the opportunities and risk-scenarios identified. A multidisciplinary perspective is also helpful for establishing context when evaluating threats to a given core value, where a seemingly harmless deviation in one context can have detrimental consequences in another. We now proceed by elaborating each of our core values and exploring how privacy as outlined above relates to each one of them.

### 2.3 FREE SELF-DETERMINATION

Free self-determination lies at the core of any understanding of freedom because ultimately each individual human being controls his/her own life-movements, even when they submit freely or under compulsion to another, whether it be another person, an institution such as the state, or the tenets of a religion. Free self-determination also lays the foundation for creating a singular identity. Identity-formation, in turn, is the interplay with the world through which a who<sup>14</sup> finds its self reflected by the world, thus casting and assuming its self-identity.<sup>15</sup> One's identity goes hand in hand with revealing and concealing who one is and is already shaped within the rules of interplay of a concrete culture within a shared world. A self has to be free to shape its own life and to freely express its decisions in an interplay with other self-determining selves if true freedom is to be achieved. The free – invariably courageous – existential shaping of one's own life also pushes the boundaries of how others can shape their own identities in the shared world by showing alternative socio-cultural options for identity formation, which historically are constantly in flux. In this sense, self-determination cannot be restricted to individual aspects of life (individualism), but colours and influences the freedom of social interplay as a whole, and not only within the European context.

<sup>14</sup> The distinction between *what* and *who* is essential; Buchmann 2012, Section 2.2.1. Cf. also "While literature on the 'digital identity' is growing, newer research has shown that it is not enough to analyse identity questions in terms of those matters that mostly concern the *identification of a person* rather than his or her *identity as a person* (philosophy distinguishes between identity of the same – idem – and identity of the self – ipse)." EGE 2012, p. 38.

<sup>15</sup> Buchmann 2012, Section 2.2.2.

## 2.4 PRIVACY IN RELATION TO FREE SELF-DETERMINATION

Free self-determination is dependent on both intrinsic and extrinsic factors. It requires a self capable of presentation within the interplay with others, and thus also able and willing to risk participating in the play of concealment and disclosure.<sup>16</sup> However, free self-determination concurrently implies a self freely able to cast its identity within the implicit and explicit rules of interplay in a given society. A free society thus provides a framework within which such choices of the self are both safeguarded and catalysed, including how this self can present in different contexts, both revealing and concealing certain facets of the self. The tension between free self-determination and the interests of others or the state is mirrored in privacy debates when, for instance, privacy is restricted for security reasons.<sup>17</sup> However, it has to be kept in mind that free self-determination also benefits society by enabling and fostering creative, courageous citizens. Free self-determination as central to any kind of human freedom goes hand in hand with privacy since the individual freedom to reveal and conceal – i.e. to pretend to be, in the broadest sense, who you are – is an essential aspect of free, self-determined life-movements.

A major safeguard of freedom is privacy in the restricted sense of being able to withdraw certain aspects of the self from (public) disclosure into concealment. Self-presentation has self-concealment as its inverse. If privacy is not guaranteed as a retreat from the shared world, the self is deprived of necessary physical, psychological, spiritual and emotional preconditions for the reflection and evaluation that enable free formation of identity. Privacy, however, is

not synonymous with the private sphere, but also encompasses the freedom of self-presentation in public whilst maintaining concealment of other aspects of one's self, i.e. there is an inherent tyranny in demanding that any self should totally reveal who they are, and in many contexts anonymity must be safeguarded in public intercourse such as commerce.

However, safeguarding privacy cannot be simply decreed. A single all-encompassing 'right to privacy' is not granted in the European context. While Art. 7 of the Charter of Fundamental Rights of the European Union (CFREU) guarantees an abstract respect for private life,<sup>18</sup> Art. 8 CFREU is more specific in protecting personal data. In Germany, the complex of privacy can only be described legally via the interplay among several basic rights accorded to individuals and the public interest. With regard to privacy on the Internet, the basic right to informational self-determination in Arts. 2.1<sup>19</sup> and 1.1<sup>20</sup> Grundgesetz (GG, the German constitution) is the most prominent, from which systematically follow all German data protection regulations. The EU Data Protection Directive<sup>21</sup> does not mention informational self-determination explicitly, but the EU data protection acts are all heavily influenced by this German basic right and the associated jurisprudence. Informational self-determination is not a "right to be left alone in isolation", but rather the individual's right to monitor personal information in the process of communication with others. This concept is in accord with Altman's privacy definition, but misses the basic distinction between the *what* of information and the *who* of free selves living their self-determined lives, both showing and concealing who they are. Indeed, without having the who behind the what of digital data

<sup>16</sup> Buchmann 2012, Section 2.2.4.

<sup>17</sup> Solove 2011.

<sup>18</sup> International Covenant on Civil and Political Rights (ICCPR), Art. 17; Universal Declaration of Human Rights by the United Nations (UDHR), Art. 12; European Convention on Human Rights (ECHR), Art. 8.

<sup>19</sup> Art. 2 (1) GG: Jeder hat das Recht auf die freie Entfaltung seiner Persönlichkeit, soweit er nicht die Rechte anderer verletzt und nicht gegen die verfassungsmäßige Ordnung oder das Sittengesetz verstößt.

<sup>20</sup> Art. 1 (1) GG: Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller staatlichen Gewalt.

<sup>21</sup> EU Directive 95/46/EC.

circulating in the cyberworld, it is impossible to distinguish between data needing privacy-protection and data that is innocuous. Thus, if the principle of self-determination over personal data were applied in a blanket manner, the cyberworld itself would become impossible, because every single movement of an individual in the cyberworld necessarily leaves behind a digital trace whose informational release would require personal consent. This is not a trivial detail. Furthermore, privacy cannot be protected without an active involvement of the self, as only the self is able to determine the boundaries and play of personal concealment and also subtle modes of disclosure. Conversely, society must also be taken into account, since personal preferences might lead to a level of self-concealment detrimental to other aspects of sharing a social world. In certain contexts it is imperative that a self reveals who they are for the sake of public order, e.g. when boarding a flight at an airport or when an income-earner is compelled to assume the identity of a taxation file number.

## 2.5 DEMOCRATIC PARTICIPATION

Democratic participation, here viewed far more broadly than the people's right to participate in free and fair elections to elect a government, is a core characteristic of personal freedom. Namely, it encompasses everyone's freedom of self-presentation in the form of (public) self-expression and thus the freedom to participate in social goings-on and to have one's say, including in elections.<sup>22</sup> Such expressive freedom cannot be lived by distancing oneself from others and the world, but only by taking a dynamic stance in the interplay with others in our shared world. Freedom of expression, political and otherwise, is one essential facet of the freedom of individual life-movements. Participation in public power plays at all levels safeguards the fluidity of interplay, freeing it from overly-restrictive rules and customs by addressing and challenging them via e.g. art or

the full gamut of critical discourses. Democratic participation is also a guardian of personal autonomy. A self cannot be truly autonomous in the sense of being self-determined unless it also participates critically in the ongoing social dialogue in an interplay with other self-determining selves that contributes to shaping what existential options a given society offers.

## 2.6 PRIVACY IN RELATION TO DEMOCRATIC PARTICIPATION

To what extent can democratic participation benefit from and tolerate privacy and how do they interact and depend on each other? If privacy is a privatio in the sense of concealing certain aspects of the self from public disclosure, then democratic participation, understood as free and fair social interplay, requires that such personal privacy be safeguarded. A stock example is the secret ballot essential to free and fair elections. Personal privacy guarantees the freedom of choice, that is, the choice whether certain opinions, facts, and facets of a self's personal world and self-presentation to the world are disclosed or concealed, and within which circle of openness, broad or narrow. However, privacy is also a necessary condition for democratic participation insofar as privacy establishes the zones and contexts that make selectively negotiating the social rules of interplay and citizens' relation to the state possible in the first place: privacy allows for "limited and protected communication".<sup>23</sup> It safeguards the opportunity for group members to share their worldviews, exchange religious or other sensitive/private views, and to engage in debate in self-selected contexts. The self you present in various contexts, including what you say when and where and to whom, is an essential aspect of modulating and self-determining your own democratic participation in society. In this sense, not only informational privacy, but the personal freedom both to express and show one's self and to refrain from such self-disclosure, contributes to democratically shaping the political will.

<sup>22</sup> Buchmann 2012, Section 2.4.4.

<sup>23</sup> Westin 1967, p. 32.

As for the sovereignty of the people who take part in the political formation of will and decision-making processes through public debate, it is vital for every citizen to be able to engage in free speech and to assemble freely as their statutory right without fear of repression. Conversely, if verbal expressions become public beyond the chosen context, individuals might be deterred from speaking freely. Likewise, these individuals might be deterred from taking part in assemblies if everyone were able to learn that they had attended. Privacy at certain times or locations is necessary not only for people to participate, but also to be able to participate *without coercion*. Such legally-sanctioned concealment, i.e. privacy, safeguards self-determined democratic participation. It may also be important for some people to keep private (secret) party, club or union memberships, to engage in such activities without unfair social pressure. Privacy is consequently a vital aspect of democratic participation.

## 2.7 ECONOMIC WELL-BEING

Economic well-being in a (reified) market economy mediated by commodities is equated with earning a livelihood. Earned income is spent on those commodity services and products of all kinds that contribute to living well in a material sense. From this way of life arise the needs that can be satisfied by consumers spending income.<sup>24</sup> Income is gained through partaking in the gainful game<sup>25</sup> with other players (who include the collective enterprise players striving to earn profit-income). This game is played by competing for income within the constantly fluctuating, estimating interplay among economic players mediated by things of value. Any positive individual outcome of the gainful game thus represents a livelihood earned for the player concerned, along with the player's dependants. For a whole economy, well-being in one sense amounts to flourishing income-earning for all involved. In another sense, however, economic well-being resides in the

freedom and fairness of how the gainful game is played out in striving for potential gain. The competition for income in the gainful game of a market economy should be fair; anything else is an abuse of social power. Such fairness is endangered, in particular, if any of the players is able to secure any, sometimes subtle or hidden, kind of monopoly, whether it be on the side of the employers, the enterprises, the financiers or the landowners.<sup>26</sup> (An interventionist economy may have also state enterprises, including such that are state monopolies.) For employees, in particular, who earn wages and salaries as income, economic well-being consists not only in earning enough, but also in having one's abilities fairly estimated and valued by the market (usually the particular employer). All income earners as consumers have an interest in being able to procure goods and services supporting a good life at reasonable prices, i.e. prices undistorted by any kind of monopolistic or other unfair trade practices. Freedom is served only when the economic interplay of the gainful game is fair and not unnecessarily hindered.

## 2.8 PRIVACY IN RELATION TO ECONOMIC WELL-BEING

We have seen that privacy is indispensable for realizing the core values of free self-determination and democratic participation. Regarding the third core value, economic well-being, however, things are not as clear-cut. On the contrary, in the context of today's emerging cyberworld, privacy requirements are typically perceived as a threat to economic well-being. In this section we examine to what extent this may be the case. Data-centric business models incorporating the necessity of achieving economies of scale may generate temporary monopolies. A revised and adapted understanding of privacy, at first glance apparently unrelated to information asymmetries, may be a means of enabling a sustainable equal power distribution amongst the stakeholders, which may indirectly influence economic well-being.

<sup>24</sup> Buchmann 2012 Section 2.2.11.

<sup>25</sup> Buchmann 2012, Section 2.2.6.

<sup>26</sup> *ibid.*

We contend that companies may have difficulties and ultimately may be forced out of business if they face very strict regulation in terms of data-protection guidelines. The economic players most affected by privacy regulations, and accordingly a focus of our study, are data-centric services. Data-centric services offer seemingly free services (that cost something, perhaps a great deal of money, to provide) in exchange for personal data. While users pay a certain 'price' (their personal data, as yet unmonetised) for a certain service or good, the data-centric service determines another (realised monetary) price to be paid by third parties (such as advertising agencies) with an interest in the personal data originally provided by the users of the data-centric service. Perhaps such a business model per se violates a well-considered concept of freedom.

#### **Negative impacts of privacy on data-centric services**

Several factors may make the provision of data-centric services more expensive, thereby reducing the profits of the companies offering these services. If a business model is based on the sale of personal data gathered from customers, who in exchange receive cheap or free goods or services, that business model will be compromised and services reduced if data-protection regulations prohibit personal data from being processed and passed on in any form. The same is true if legal regulations require anonymization of data which makes them less valuable for the mining of commercially pertinent information. Furthermore, acquiring privacy-enhancing technologies (PETs) can be an expensive investment for private companies. If data-protection restrictions are imposed only on some companies by national legislation they may face a distinct disadvantage *vis-à-vis* their transnational competitors who are not subject to these restrictions.

Another consideration is that if companies do not take measures to protect (informational) privacy, this may have to be done by the state. The legislator may be reluctant to impose privacy regulations on private businesses for the

reasons stated, yet may still deem it necessary to implement privacy measures. This represents a burden on certain enterprises and indirectly on the state budget and taxpayers, insofar as the economy generates less total income and hence a smaller tax-base. This way of arguing basically from the viewpoint of benefits, efficiency and effectiveness, of course, points to economic consequences and results, whether they be benefits or disadvantages, either for certain economic players or for the whole economy or the state, thus pushing aside considerations of the intrinsic (non-economic) value of privacy as an essential aspect of personal freedom, which in the first place is a potential, not an actuality. To see this, one must step back from a narrow view of privacy as informational data privacy and the potential monetization of private data. From this perspective, the freedom to reveal or conceal who you are in various contexts is not negotiable for the sake of economic benefits, whether they be enhanced income generation or lower prices for some or for all. Furthermore, there is a fundamental flaw in regarding economic well-being as residing solely in the income actually generated by individuals, sectors or the economy as a whole since the gainful game is also a way of life borne by the actions of players whose freedom consists of the potential promised by the striving for income, i.e. "the pursuit of happiness", and not in guarantees of secured success. In this latter sense, economic well-being amounts to a free and fair gainful game.

#### **Positive impacts of privacy on data-centric services**

Leaving these considerations aside, however, recent empirical studies have shown that protecting customers' privacy also can have a positive impact on income generation and corporate profits, in particular. One aspect in this regard is the economic paradigm that information asymmetries due to a lack of data-privacy have negative impact on the economy in terms of their actual results. The other aspect is the enhanced reputation of a company consumers trust because they feel secure in entrusting their data to it without the fear of inappropriate use in other contexts.

Regarding the first aspect, economics Nobel laureate Joseph E. Stiglitz and his team have shown that information asymmetries lead to asymmetries in market economic power, i.e. unfairness in the gainful game, and thus cause economic problems.<sup>27</sup> Asymmetry means that certain parties have an information deficit and therefore are at an unfair disadvantage in the market interplay. Information asymmetries are present when there is insufficient transparency for customers about how their personal data is used and, accordingly, what their personal data is worth for a given data-centric service. The latter may use personal data for new transactions which lead back to the consumers even if they may not know of the existence and use of aggregated information. Our elaborated understanding of privacy implies that an important aspect of privacy is informational self-determination. Typically, a lack of informational self-determination starts with an information deficit on the part of the user. As a result, the user cannot control the use of his or her information. According to Stiglitz' theory, this information deficit may have detrimental effects on overall income generation, which implies that strengthening privacy may be a requirement for economic well-being conceived as *actually* achieved income-generation. Information deficits based on a lack of informational privacy presumably accelerate economies of scale and increase consumer/user switching-costs, which may have positive short-term impact

on economic output and individual productivity, but in the long run may lead to monopolisation and thus threaten economic well-being conceived as free and fair economic interplay. Therefore, we can expect that strengthened informational self-determination might reduce the risks of said information deficits occurring.

The second aspect comes into play when a product becomes more valuable for the consumer because of additional features. This is the case if the producer or seller of that product behaves in a privacy-friendly manner. As users become aware of their privacy requirements, privacy-friendliness can become a valued feature of data-centric services that may turn out to be a competitive advantage. Recent efforts by companies such as Google (with Google+) and Facebook to add privacy features and create more transparency for users show the importance companies are beginning to assign to privacy, or rather the relevance of privacy in users' or customers' decision-making. In a contested market environment, privacy-friendliness provides a competitive edge and customers have shown a willingness to pay for the privacy of their personal data. Studies suggest that overall, the importance of privacy for the exchange of products and services is dependent upon their sophistication, i.e. usually consumers of high-end products and services tend to invest more in privacy than buyers of low-end products.<sup>28</sup>

---

<sup>27</sup> Akerlof 1970, pp. 488-500.

<sup>28</sup> Turow et al. 2005, p. 25.