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Experts See Need for Relaxed Privacy Rules During Pandemic

People should be prepared to give up some of their privacy to help society fight the COVID-19 pandemic but should insist that privacy policies be tightened once the crisis ends and that personal information collected is subject to rules about its use and retention, privacy advocates said today.

"Even though people talk about privacy being a fundamental human right, at times of crisis you still make adjustments," said Daniel Castro, vice president of the Information Technology Innovation Foundation, during a virtual event hosted by ITIF titled "How Much Privacy Should We Trade to Survive a Pandemic?"

Peter Micek, general counsel for Access Now, expressed concern that personal data collected during the pandemic could be retained by government authorities and used for other purposes later. "Surveillance is a bad party guest," he said. "It stays much longer than you welcome it for." A framework is needed to govern how the personal information will be used and how long it will be retained, he said.

Mr. Micek's concerns were echoed by Rachel Levinson-Waldman, senior counsel for the Brennan Center for Justice's Liberty and National Security Program. "Mission creep" could result in data collected during the pandemic being used by the federal government for law enforcement investigations or immigration enforcement, she said. "It's critical to have public health expertise be really front and center in this discussion in terms of what kinds of data are going to be useful for public health interventions."

Ms. Levinson-Waldman acknowledged, however, that privacy must be balanced against other societal values, and its importance is diminished during a public health crisis. "But I don't think there's a scenario in which we say, or in which I would want to say, privacy just gets shunted aside."

Albert Gidari, director-privacy at Stanford Law School's Center for Internet and Society, noted that private sector entities with large amounts of personal data were sharing that data voluntarily with government authorities during the current crisis and that federal laws like the Stored Communications Act contained "emergency exceptions" that allowed authorities to circumvent restrictions on the collection of personal data during crises.

What's missing from federal law, Mr. Gidari said, are rules on how data collected during a crisis should be treated after the emergency ends. "We've never had a system on the back end to limit what the government does with it," he said. "You never need to know what those safeguards are until you don't have them."

But he said epidemiological studies had shown the value of using call-detail records and geolocation data to do “contact tracing” of infected individuals during outbreaks. “Contact tracing has value throughout the entire life cycle of a pandemic and is the only thing that prevents a complete shutdown,” he said. —Tom Leithauser, tom.leithauser@wolterskluwer.com

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