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CCTV and Human Rights

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► Over the past twenty years, the use of CCTV cameras has become increasingly common throughout Europe. Although countries like France, Germany, Holland and Italy were initially slow to follow the United Kingdom's lead, CCTV systems are now being installed in towns and cities across the continent, with the result that public area surveillance is an inescapable fact of life for a growing number of Europeans. Although it appears that there is considerable public support for the use of CCTV, the spread of this technology has serious implications for civil liberties and the relationship between citizens and the state. In particular, CCTV cameras represent a substantial threat to individual privacy and to the exercise of rights such as freedom of expression and freedom of association. As a consequence, it is vital that those responsible for the management and operation of these systems are aware of the dangers of public area surveillance, and that they work to ensure that CCTV does not threaten fundamental human rights.

This chapter provides a brief overview of the human rights implications of CCTV surveillance, and aims to help CCTV managers and operators develop public area surveillance policies and practices that are consistent with a commitment to the protection of individual rights and a respect for civil liberties.

CCTV and Privacy

All of us need a degree of privacy. Without it, it would be impossible to maintain a sense of dignity, develop meaningful relationships with others, or simply find time to be alone with our thoughts. Privacy is crucial to the development of the self because it frees us from having to worry about being constantly watched and judged by those around us, and it enables us to control how and when we share information about ourselves with others.¹ It is for these reasons that most countries recognize at least some basic right to privacy, and limit the ability of individuals, private organizations, and the state to collect information about people's personal lives, or to monitor them without their knowledge or consent.²

It is important to recognize that the right to privacy does not disappear as soon as we step outside our homes. Although no sensible person would expect to enjoy the same level of privacy in the street as they would in their own living room, most of us do expect to enjoy a certain degree of privacy and anonymity as we go about our business in public. Indeed, one of the great joys of living in cities is the ability to lose oneself in the crowd, and to be free of the demands of

¹ For an overview of the different theories of privacy, see: Solove, D.J. (2002), "Conceptualizing Privacy", *California Law Review* 90: 1087-1155; Solove, D.J. (2009) *Understanding Privacy* (Harvard University Press: Cambridge, Mass.); and Nissenbaum, H. (2010), *Privacy in Context* (Stanford University Press: Stanford, California).

² One of the clearest assertions of the right can be found in Article 8 of the European Convention on Human Rights, which states that: "Everyone has the right to respect for his private and family life, his home and his correspondence."

³ See: Goold, B.J. (2002), "Privacy Rights and Public Spaces: CCTV and the Problem of the 'Unobservable Observer'", *Criminal Justice Ethics* 21(1) Winter/Spring; and Goold, B.J. (2008) "The Difference between Lonely Old Ladies and CCTV Cameras: A Response to Jesper Ryberg", *Res Publica* (March).

our families, friends, and colleagues. In part, it is this promise of anonymity and the freedom that goes with it that attracts many people to town and city streets. Equally, although few would expect to meet a friend at a restaurant or a coffee shop and be entirely free from scrutiny, there are strong social conventions that help us to enjoy a reasonable level of privacy in such circumstances. While nowhere near as extensive as in such obviously private spaces as the home or car, it is clear that we do have a right to some privacy in public.³

By its very nature, public area CCTV undermines this right. By exposing us to scrutiny every time we walk down the street, cameras strip us of the possibility of anonymity and make us visible to the watchful eye of the state. While we obviously surrender a great deal of privacy every time we go out in public, it is still no defense for users of CCTV to point out that other members of the public are also watching us. Being watched – and possibly recorded – by a camera is different from being looked at by a stranger. The former type of observation is typically longer, more intense, and intimately connected with the power of the state. Because we cannot see or question the person behind the camera, it is hard for us to know how to respond to being watched, or to decide what we should do about it. Because we cannot know whether the images captured by the cameras will be kept or who might have access to them, we cannot be sure that they will not be misinterpreted or used in objectionable ways. As philosopher and criminologist Andrew von Hirsch has observed, being watched by CCTV "is like conducting one's activities in a space with a one-way mirror; while one may know that someone is watching behind the mirror, one does not necessarily know who they are or what they are looking for."⁴

Aside from the obvious intrusion, it is this uncertainty that poses one of the greatest threats to our experience of privacy in public. Faced with the prospect of constant video surveillance, it is reasonable to expect that some members of the public will feel the loss of privacy keenly and change how they behave; not because they believe they are doing anything wrong, but because they don't want to be the subject of police attention or risk having their actions misinterpreted. This is likely to be especially true for young people and certain minorities, who may already feel unfairly targeted by the police and local governments. As Giovanni Buttarelli, the Assistant European Data Protection Supervisor has argued:

*“Being watched changes the way we behave. Indeed, when watched, many of us might censor our speech and our behaviour. This is certainly the case with widespread or continuous surveillance. Knowing that every move and gesture is monitored by a camera may have a psychological impact and change behaviours. This constitutes an interference with our privacy.”*⁵

How should operators and managers of CCTV systems seek to ensure that the use of public area surveillance does not fundamentally undermine the right to privacy or negatively change the way in which people enjoy public spaces? First and foremost, it is essential for such systems to be operated in accor-

⁴ von Hirsch, A. (2000). “The Ethics of Public Television Surveillance” in von Hirsch, A., Garland, D. and Wakefield, A. (eds.) *Ethical and Social Perspectives on Situational Crime Prevention* (Hart Publishing: Oxford)

⁵ “Legal Restrictions – Surveillance and Fundamental Rights”, Speech delivered by the Assistant European Data Protection Supervisor Giovanni Buttarelli at the Palace of Justice, Vienna, June 19th 2009 (available at: www.edps.europa.eu/.../site/.../09-06-19_Vienna_surveillance_EN.pdf)

dance with local and national laws, and every effort must be made to prevent abuse of the cameras and breaches in system security. Secondly, the cameras should only be used for those purposes originally identified when the decision to install them was taken: gradual “function creep” must be avoided. Finally, systems must be open and transparent, and those responsible for running them directly accountable to the public. Although the installation of surveillance cameras in public places will inevitably have a negative effect on individual privacy, by ensuring that the above steps are taken CCTV operators and managers can help to minimize the loss of privacy and ensure surveillance is both lawful and appropriate.

CCTV, Freedom of Expression, and Freedom of Association

Although it is clear that CCTV cameras have serious implications for privacy, the use of public area surveillance technologies by the police and local governments can also undermine other fundamental human rights. In particular, CCTV surveillance has the potential to discourage people from exercising their rights to freedom of expression and freedom of association in public places. Both of these rights are essential to the idea of democratic self-government, and must be protected in order to ensure that individuals are free to organize themselves politically, criticize the decisions of their elected representatives, and hold their government to account. If citizens know that they may be captured on video every time they attend a public rally or take part in a protest march, then there is a very real danger that the presence of CCTV cameras could have a substantial chilling effect on these rights, eventually leading to a reduction in political freedom and democratic partici-

pation.⁶ This is a point that was recently acknowledged by the U.S. Department of Homeland Security in a privacy impact assessment of a CCTV system operated by U.S. Immigration and Customs:

“Cameras may give the government records of what individuals say, do, and read in the public arena, for example documenting the individuals at a particular rally or the associations between individuals. This may chill constitutionally protected expression and association.”⁷

Given the potential threat to freedom of expression and association, it is important that CCTV is only used to prevent crime and promote public safety, and never for the purpose of gathering information about the political views or activities of citizens. Where, for example, the police plan to use CCTV to monitor a protest march in their efforts to maintain order or prevent violence, they must be careful not to retain any images of individuals unless they are to be used as evidence in a criminal investigation. Similarly, where images of a person are recorded with a view to prosecuting him or her for a criminal offence, these images should not be subsequently passed on to se-

⁶ As Keith Boone has argued, privacy is “vital to a democratic society [because] it underwrites the freedom to vote, to hold political discussions, and to associate freely away from the glare of the public eye and without fear of reprisal.” As a consequence, where surveillance threatens privacy it also threatens political freedom. See Boone, C. K.

⁷ U.S. Department of Homeland Security, *Privacy Impact Assessment for the Liveness CCTV System* (September 17, 2009). This point has also been made by Buttarelli, who notes that: “CCTV may discourage legitimate behaviour such as political protests supporting unpopular causes. Participants traditionally had the right to anonymously participate in a peaceful assembly, free of risk of identification and repercussions. This is fundamentally changing.” See: “Legal Restrictions – Surveillance and Fundamental Rights”, Speech delivered by the Assistant European Data Protection Supervisor Giovanni Buttarelli at the Palace of Justice, Vienna, June 19th 2009, p. 8.

curity services or other law enforcement agencies unless there is a compelling reason to do so.

In addition to these restrictions, the police and other users of public area CCTV must ensure that the public are fully informed about the purposes, operation, and regulation of the systems. If the chilling effects of surveillance are to be avoided, it is not enough to restrict the use of CCTV and adopt robust privacy protections. The public must also be able to trust that the systems will not be abused, and that over time they will not be used for political purposes. This is especially important in countries that have only recently made the transition to democracy, and where memories of political repression are likely to be relatively fresh. Trust in the police and government is hard won and easily lost, and it is not difficult to see how the misuse of CCTV for political or some other illegitimate purpose could seriously undermine that trust.

Reconciling Safety, Security, and Rights

“There are indeed circumstances when it is legitimate and necessary to sacrifice privacy and other fundamental rights to a certain degree, in the interest of security. Our society must be able to defend itself in the best way against threats. However, the burden of proof must always be on those who claim that such sacrifices are necessary and the proposed measures are all effective instruments to protect society.”

Giovanni Buttarelli, Assistant European Data Protection Supervisor, Vienna, June 2009⁸

One of the most difficult questions society faces is how best to reconcile the public’s demand for safety and security with the need to respect and protect individual rights. Although CCTV cameras in public

places like streets and city centers can play a major role in reducing crime and disorder, they can also constitute a serious threat to individual and political rights. As a consequence, it is vital that the police and other users of CCTV keep the following in mind when engaging in any form of public area surveillance:

► *CCTV surveillance inevitably infringes an individual's right to privacy*

As a consequence, it is for the police and local governments to ensure that they can provide a convincing and lawful justification for the use of cameras in public spaces, and that they develop systems of control and accountability that seek to minimize the negative effects of surveillance on individual privacy

► *CCTV surveillance poses a significant threat to the exercise of political freedom*

Because state-sponsored surveillance of public spaces and events has the potential to seriously undermine the ability and willingness of individuals to exercise their rights to freedom of expression and association, CCTV must never be used for the purpose of collecting information about the political activities or affiliations of citizens. Users of CCTV must be able to guarantee that cameras will not be used for political purposes, or to discourage public assemblies or protests.

► *The public must be able to trust the users of CCTV to respect their rights*

Perhaps most important of all, the public must be able to trust users of CCTV to respect their rights, and

⁸ "Legal Restrictions – Surveillance and Fundamental Rights", Speech delivered by the Assistant European Data Protection Supervisor Giovanni Buttarelli at the Palace of Justice, Vienna, June 19th 2009, p.4 (available at: www.edps.europa.eu/.../site/.../09-06-19_Vienna_surveillance_EN.pdf).

for that trust to be justified. Even if CCTV is not being misused, if the public believe that their rights are being infringed then the presence of cameras may still undermine trust and confidence in the police and government. It is not enough for the users of CCTV to respect the individual rights; the public must believe that they are committed to protecting privacy and respecting rights to freedom of expression and association.

Operating public area CCTV systems necessarily requires the police and other public bodies to confront one of the most fundamental tensions in modern democratic societies: the competition between the demand for security and our shared commitment to the protection of individual rights. If they are to successfully reconcile these two objectives, then the police and others must first begin by acknowledging that it is the state to justify why it should be allowed to watch its citizens, and not for citizens to have to explain why they shouldn't be watched. As soon as this fundamental truth is forgotten, it is only a matter of time before surveillance begins to place rights in jeopardy.