# Chapter VIII
# Privacy and the Identity Gap in Socio–Technical Systems

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## ABSTRACT

*The chapter discusses the traditional expectations about privacy protection and argues that current models for the governance of data do not adequately fulfil these expectations. The traditional models of privacy protection are based on the assumption that strict anomymisation of released statistical data is the way to protect privacy and ensure public trust in the research enterprise. It will be argued that the main barriers to privacy preservation and the perpetuation of public trust are due to the capabilities of information technology on the one hand and the availability of numerous data sources on the other. Furthermore, both types of resource enable certain types of organisation to 'read' and categorise other people. The realities of data-processing technologies challenge the dichotomy, present in the legal framework for data-protection, between 'personal' and research data. This dichotomy, moreover, is not useful in the protection of informational privacy. The chapter will refer to several examples of uses of data in what are in effect 'socio-technical systems', which arguably challenge accepted methods of privacy protection in this area.*

*So act that you use humanity, whether in your own person or in the person of any other, always at the same time as end, never merely as a means.* (Ak 4:429)

—Kant, I, 1997 Translation,
*Groundwork of the Metaphysics of Morals*
Cambridge University Press

## INTRODUCTION

Research organisations maintain that strict anonymisation of disseminated results is the bedrock of privacy protection and the best way to ensure public trust. In this chapter it will be argued that the realities of data processing within certain 'socio-technical systems' mean that the process of anonymisation, which is applied to statistical data, does not alone satisfactorily achieve these aims. The chapter considers traditional approaches taken to the protection of the privacy of data subjects by research organisations. It will be argued that these must be rethought in the light of the availability and use of sophisticated data-processing technologies and multiple data sources. Research organisations rely on a traditional model of anonymisation and informed consent to ensure ethical treatment of data and this approach is still the standard (Lowrance, 2002). This model ostensibly allows data-subjects to control the circumstances in which they provide data and ensure that direct consequences arising from the provision of data will be limited. However, there are many challenges to the efficacy of this model in protecting the values it intends to protect, including privacy and related benefits (Vedder, 2001). The chapter will discuss ways of understanding privacy and consider how certain types of reuse of data, such as profiling, are outside the original organisational context, challenge accepted norms of data classification and as a result undermine the ability of the current data protection framework to protect privacy. Nissenbaum's (1998) concept of 'contextual integrity' will be used to explore likely expectations with regard to privacy. The chapter will refer to the use of outputs of National Statistical Institutes (NSIs) in 'socio-technical systems' such as that constituted by the information super-bureau, Experion. NSIs provide a good example of a visible public sector organisation, which compiles and disseminates statistical or anonymised data.

The chapter will provide an example of how data disseminated by NSIs can be incorporated into socio-technical systems which reside primarily within the private-sector. It will be argued that within the type of 'socio-technical systems' discussed here, secondary use of data may turn out to be quite different from that what is ordinarily understood as 'statistical.' The chapter will discuss the role that information technology plays in blurring the distinction between identified and statistical data. The reason for this blurring, it will be argued, is primarily due to uses of data analysis software to group people into categories and the subsequent use of these categories as a basis for decision-making. Nissenbaum deals with the issue of identified data being used outside of its original context (1998, 2004). However, she also introduces the reader to the threats posed by profiling, which functions by combining identified and statistical data (Nissenbaum, 1998, 2004). In this chapter it will be contended that 'contextual integrity' is also at issue where data which is not recognised as 'identified' or 'personal data' by legislation (see Dir 95/46/EC) is used in combination with 'personal data' to create profiles, which are then used to ground decisions about individuals. The concept of 'contextual integrity' will, therefore, be extended to include non-identified data. The relationship between the uses of data discussed here and privacy does not correspond to the legal position on data protection. The legal view is that there is a data-dichotomy with 'personal data' on one side and statistical or anonymised data on the other. The corollary of this is that privacy protection is only seen as being relevant for the former. It will be argued that the consequences of certain uses of outputs from NSIs mean that the distinction between statistical and non-statistical data is lost. In other words, the quality of the information is ultimately less important than how it is used and the consequences of these uses. The question then, becomes one of whether the data is used in a non-statistical way. The guidelines of the International Statistical Institute characterise statistical uses as follows: 'Statistical data are unconcerned with individual identities. They are collected to answer questions such as 'how many?' or 'what proportion?' not 'who?' (ISI, 4.5, 1985). Below it will be argued that statistical data can be and is used in focusing upon and uncovering

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