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PRIVACY ONLINE: NEW FORMS OF DOMESTIC VIOLENCE IN THE AGE OF DIGITAL SURVEILLANCE*

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Digital surveillance is ubiquitous and uses various intrusive technologies which pose a threat to privacy. From in-built cameras which capture images and videos to sensors, GPS systems and massive databases, these new technologies are incorporated into everyday life, and they are exposing the private zone in new and unexpected ways. As a result, new forms of domestic violence start to emerge.

This paper is investigating the impact and implications these new forms of domestic violence have on the concept of privacy. It seems that these new technologies are radically redefining privacy, considering the fact that domestic violence is being exported from the privacy of home into the public domain of internet. Furthermore, it can be argued that various contradictory definitions of privacy are being used to create strategies to either justify violence or protect victims, which is why the concept is further relativised and devalued.

KEY WORDS: *privacy / domestic violence / surveillance / technology*

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1. INTRODUCTION

In the twenty first century, digital technologies affect lifestyles and patterns of behaviour, but they also radically transform some of the old concepts which remain to be operational. Privacy seems to be one of the crucial concepts which reflect these technological changes of the society, but at the same time, it is itself evolving and this transformation should be closely monitored and analysed.

One of the phenomena that can shed light on transformations of the concept of privacy is domestic violence. Private/public relation is essential to the problem of domestic violence as Lockean definition of privacy implies that it refers to the family as well as the individual (Kelly, 2003: 12), and hence new forms of domestic violence must have major implications on the concept of privacy.

These new forms of domestic violence stem from the use of modern technologies which are exporting the private realm via in-built cameras, microphones and sensors, populating the virtual space of internet which can be defined as the new public or political sphere (Chadwick and Howard, 2009: 1). This cyber version of domestic violence occurs on social networks, blogs and websites rather than in the physical space, and its most extreme form is non-consensual pornography which often has severe consequences in victim's real life (Citron and Franks, 2015: 345), and yet it is not considered as a criminal offence in most countries around the world including Serbia. Non-consensual pornography is a severe violation of privacy as well, and the fact that so many countries do not recognise it as crime implies that privacy itself has been devaluated in the age of digital technologies.

The aim of this paper is to analyse relationship between these modern forms of domestic violence on internet and the concept of privacy. In the first chapter I will discuss different definitions of privacy and analyse how its meanings depend on specific historic and cultural contexts. I will then discuss the contemporary western concept of privacy and its relation to modern technologies and analyse various ways in which technology enables violations of privacy and affects how people perceive private versus public. In the second chapter I will investigate what the privacy implications of new forms of domestic violence are, the ways in which the concept of privacy is being used in the context of this type of violence and implications on the meaning of the private versus public.

2. WHAT IS PRIVACY TODAY?

The notion of privacy encompasses various meanings which always depend on a particular context (Arijes, 2000: 5), and it is virtually impossible to establish a permanent definition of this concept. Ever since modern technology enabled collecting and storing great quantities of personal data, there had been numerous attempts to define privacy, and yet it has great variability across historical periods,

different societies and even individuals (Nissenbaum, 2010: 107). Hence it is considered to be a social construct which was not always present in the public discourse. Privacy has become one of the key social issues in the second half of 1960's when first big computer databases emerged (Nissenbaum, 2010: 108), but the major concern for private as defined in contrast with public appears in the 18th century when "modern type of house, with rooms which were independent" emerged (Aries, 1962: 415) and when John Locke defined the principles of liberalism which are based on this difference.

According to Lockean theory, the answer to the question "what is privacy?" would have to depend on the existence of some kind of borderline between private and public. Locke defined private as opposed to public, as a realm that lies outside the political and is not subjected to governmental control (Locke 1823: 105). Private therefore refers to home, family and individual. It is the space where one can exercise his or her freedom as the state has no right to interfere unless there is a very good reason.

But while Locke considered the sphere of private a-political, feminist critics pointed out that even the sphere of private family life is in fact political and that the private/public divide cannot be identified with a difference between political and a-political realm (Arneil 1999, Jaggar, 1983 and Pateman 1988). It may even be argued that Locke envisaged family as a "naturally peaceful and paternally run association" and ignored the problem of familial conflict or domestic violence (Kelly, 2003: 13).

In this sense there is no borderline between private and public, because they both remain the sphere of political. Furthermore, contemporary technologies erased even the physical boundaries between private and public spaces by exporting the entire domain of private into the domain of internet (and intranet) via digital media and surveillance technologies.

Contemporary societies with ubiquitous digital surveillance in contemporary societies was described in many ways from the "societies of control" (Deleuze 1992), "surveillance societies" (Lyon, 1994) and "transparent societies" (Brin, 1998) in the 1990's to "sensor societies" (Andrejevic and Burdon, 2015) which refers to the latest form of surveillance in the age of big data.

As Zygmunt Bauman puts it, contemporary surveillance is almost like a snail's house which has to be carried at all times in the form of smart phones, tablets and laptops which can be perceived as the extension of the body (Bauman and Lyon, 2013: 54). These devices often contain everything from miniature offices to entertainment and all sorts of private data, but considering the nature of these devices and reproducibility as well as shareability of the digital information, this virtual private space can easily be penetrated and exported into the virtual public sphere without the owner even knowing.

Physical private spaces are populated with surveillance technology. Hidden or exposed cameras are cracks on walls like keyholes. Miniaturisation has made surveillance technology easily accessible and difficult to detect, and possibilities for recording and storing photographs and videos are greatly enhanced (Clough, 2010:

449). Surveillance therefore becomes almost invisible, and it can lead to various abuses.

Technically, nothing can be considered as private in this strict Lockean sense because physical and virtual space merged into a unified public space. But some authors argue that it is legitimate to claim the right to privacy in public spaces as well as in private spaces (Moreham, 2006, Nissenbaum, 1998). Surveillance in public spaces is not necessarily targeting criminals, but occasionally ordinary people performing ordinary activities and anybody can watch anybody. Public realm had always throughout history been seen as a space where citizens spend their private time dedicated to socialising and entertainment. It is now extended to the virtual space of internet and it makes sense to raise the issue of privacy within the public sphere considering the ubiquitous surveillance technologies.

There are numerous cases of privacy violations in public city spaces populated with security cameras. One of them is the case of abuse of a footage filmed by a police camera in Belgrade. In 2011 a pornographic video recorded by a police camera located in a car park by the Combank Arena has become viral and appeared on several pornographic websites. The film shows a couple in a sexual intercourse and the media assumed that the police is responsible for making and distributing it as only the police had access to the recorded materials, even though the perpetrator was never caught and there was no criminal procedure (Stojković and Sekulić, 2011). This example clearly shows how easy it can be to misuse surveillance technologies and expose private lives of citizens.

Merging of private and public is especially significant for the issue of domestic violence. The introduction of women's and children's rights means that governmental interference into the private sphere has been de facto legalised and that family matters such as domestic violence are no longer strictly private. But additionally, new technologies enabled new kinds of domestic violence by exposing the private sphere on internet.

This has major implications on privacy. Despite the omnipresent surveillance, the concept of privacy is still operational and as it is one of the core values of contemporary democratic societies. Privacy is considered as one of the pillars of democracy whereas totalitarian regimes tend to eradicate it and establish a system of partial or total surveillance in order to control the citizens.

From the legal perspective, the right to privacy guarantees privacy of correspondence, personal data and family life, but this human right is constantly being challenged by the right to security. The two opposing values, privacy and security, are in fact undermining each other and constantly creating challenges to determine which right should have the priority in a specific situation. The question is therefore not "what is private?", but rather "what private should be".

With proliferation of the digital image and development of new communication and surveillance technologies, sexuality becomes more public and transparent. Private pornography and real sex videos are populating the internet and spread virally, often leading to abuses such as non-consensual pornography or revenge pornography and

therefore severe infringements of privacy. As the vast majority of victims are women, children and homosexuals, it seems that transparency of sexuality reinforces the traditional gender roles. This new digital violence can be defined as extension of traditional domestic violence and a form of cybercrime.

3. REVENGE PORNOGRAPHY: PRIVACY VIOLATIONS AND NEW FORMS OF DOMESTIC VIOLENCE?

The invention of photography radically changed the understanding of sexuality by making transparent what was meant to stay invisible and private, especially pornography as one of its genres. As Walter Benjamin argues, the camera has the ability to see what cannot be perceived with the bare eye (Benjamin, 2008: 21) which is precisely why photography was seen as a threat to privacy ever since it was invented. It was the first handheld camera by Eastman Kodak introduced in 1884 that announced the new possibilities of image which had devastating consequences for privacy, and it motivated Samuel Warren and Louis Brandeis to write their famous article *The Right to Privacy* published in *Harvard Law Review* in 1890 (Parsons, 2012: 107).

Digital image has virtually unlimited possibilities to reveal the body and sexuality not just because of the quality of reproduction, but also because of the speed of reproduction and sharing. Pornography is now being reproduced on a mass scale and on a daily basis, but while it was mainly professional pornography throughout the twentieth century, nowadays the amateur production overtakes the market. Some research show that in the UK more than 50% younger population exchanges private pornographic content with their partners (*Revenge Porn*, 2015), and at the same time amateur pornography is becoming increasingly popular on pornographic websites around the world. In the age of big data, private pornography is one of the most sought after private content which can be stolen, sold, shared and abused.

The fact that pornographic content is so frequently being voluntarily shared today indicates that something changed in terms of valuing privacy of sexuality. What was once considered as intimate and hidden behind closed doors has been voluntarily exported into the public sphere which shows that the expectation of privacy is now lower. However, the problem arises when private content that is being spread virally through the virtual space is in fact private data which had been hacked, stolen or published without the owner's permission and were never intended to be published online.

Revenge pornography or non-consensual pornography is defined as explicit material published on internet together with personal data without the consent of the person who owns them, and is most commonly publicly shared by ex- spouses whose aim is to revenge on their previous partners (Ridley, 2015). There was a number of pornography websites that specialise in publishing this type of content until Google excluded them from internet searches in 2015 with the aim to limit the damage to victims. Even though the leading search engine resists censorship on internet, they

decided to make an exception with revenge pornography ("Google to exclude 'revenge porn' from internet searches", 2015).

Non-consensual pornography is a new type of crime enabled by proliferation of technology. It is often referred to as a serious form of harassment and a form of domestic violence as victims are threatened with sexual assault, harassed, forced to cancel their schools, jobs and names, and even sometimes led to suicide (Rotenberg, 2015). Since nude photos and sex tapes are considered as "the most private and intimate facts", then the conclusion many privacy defenders make is that revenge porn should be "criminalised", and yet in most countries in the world this is not considered as a criminal offense (Rotenberg, 2015).

A number of countries including USA, Germany, Israel and United Kingdom introduced laws to fight against unauthorised sharing of nude images. In the UK law it is considered as criminal offence and is described as "disclosing private sexual photographs and films with intent to cause distress" (Criminal Justice and Courts Act 2015, s 33).

However, many countries including Serbia still have not introduced any legislation to deal with this problem. Criminal Code of the Republic of Serbia recognises "showing, obtaining and possessing pornographic materials and abusing minors for pornography" as a criminal offense (Criminal Code of the Republic of Serbia, article 185), and yet revenge pornography itself is not regulated by law in Serbia.

Even though the term 'revenge pornography' was coined to describe a specific phenomenon of sharing ex-partner's photos in order to discredit them and get revenge on them, it actually refers to any un-consensual sharing of pornographic material. Researches show that victims are also persons whose images or videos had been stolen from their computers or cell phones (*Revenge Porn*, 2015).

Researches show that victims of revenge pornography are usually women and homosexuals which is why this phenomenon is understood as a manifestation of domestic violence (Ridley, 2015). This fact suggests that the privacy of sexuality is not equally important to the perpetrator and the victim or persons of different gender, and it is often the victim who is being blamed for the incidents (Kelly, 2002: 31).

Considering the nature of the digital image which can be infinitely multiplied and momentarily shared, revenge pornography is a problem which is difficult to resolve by introducing new legislations. While perpetrators can be prosecuted and punished, victims cannot be protected in an adequate way. The key problem is dissemination of images which can be very fast and quickly ruin victim's reputation at work, in school and in fact within the society as a whole. Internet tends to extend the life of any such malicious post (Citron, 2014: 4). Once they are published on internet, they can be virally spread and it is virtually impossible to trace all copies of them.

Even though the most popular internet browser Google excluded revenge pornography from searches and enabled victims the possibility to erase all the discriminating material, this did not solve the problem as revenge pornography can

appear anywhere including different social media or electronic mail and also continues to live on the so called ‘dark web’.

‘Dark web’ refers to encrypted networks which cannot be censored or in any way controlled. This means that it is a safe harbour for privacy on the one hand and a platform for many criminal activities on the other. While offering a possibility of private browsing and access to contents which are not available on the light web, encrypted internet is also being used for organising terrorist attacks, drug dealing, child pornography and other illegal activities. It therefore illustrates the paradox of privacy: while it is a pillar of democracy and a human right, it is also a potential danger for the society as a whole. But not only that privacy can be perceived as a threat to security, but it can also be argued that protecting one’s privacy can endanger someone else’s privacy. In case of revenge pornography, encryption on dark web protects perpetrator’s privacy while exposing victim’s privacy at the same time. Privacy can therefore be used as an argument to justify crimes and protect criminals just as much as it can be used to protect victims.

Some authors suggest that new forms of domestic violence enabled by internet and social networks are some kind of a proof of the existing gender inequality, discrimination of women, domination of patriarchal ideology and stereotyping of gender roles (Jens, 2015). However, it can be argued that the key issue is not the gender perspective, but the arbitrariness of the concept of privacy itself.

Privacy of sexuality can have different meanings for men and women, homosexuals and heterosexuals, children and adults and, ultimately, for victims and perpetrators. These different definitions of privacy can be used to both justify the abuse itself and protect the victim of domestic violence.

Just like classical forms of domestic violence, its new forms operate through this dualism of privacies, and it seems that the traditional gender roles are being reinforced, given that victims of revenge pornography are mostly women, children and homosexuals. However, unlike classical domestic violence which happens behind closed doors and inside the so called private sphere, modern types of domestic violence such as revenge pornography are essentially public shaming by revealing someone’s privacy online, in the virtual public sphere. In both cases the perpetrator devalues the privacy of the victim while protecting his or her own privacy.

3.1. What Remains Private?

Difference between privacy of the perpetrator and privacy of the victim makes it increasingly difficult to determine the limitations of privacy and control. The question is therefore what remains private?

Limitations of privacy can only be determined within a particular context and therefore privacy itself can only be contextual. Authors such as Helen Nissenbaum suggest that there should be a contextual approach to protecting privacy since developing some kind of a general approach to resolving conflicts between opposed values seems to be impossible within a pluralistic system of values (Nissenbaum,

2010: 110). She argues that privacy is "neither a right to secrecy not a right to control, but a right to *appropriate* flow of personal information" and this can be applied to the case of revenge pornography as a new form of domestic violence.

Social networks introduced the co called "privacy settings", and the concept refers to allowing users to adjust their privacy, or decide for themselves whether the content will be private or public or shared with a specified audience, be it a circle of friends or just one person. Privacy settings are the new definition of privacy on the internet and the model might be applied to the entire public domain which includes physical as well as virtual public spaces.

If we start from the premise that the traditional private/public opposition is no longer relevant and that what was thought to be a divided space into private and public domain is now one single realm which is public, then the privacy settings concept could resolve the problem related to contextualisation of privacy.

Contemporary pornography proves that the discourse on privacy no longer includes the traditional distinction between private and public. This opposition presupposes that sexuality is something which should always remain in the domain of private, but since it de facto does not, then we can only speak about the privacy settings.

Theresa Payton and Theodore Claypoole stress out that everyone should be able to decide what should remain private (Payton and Claypoole, 2014: 2). In this sense the right to privacy is the right to decide what is private and what is public.

CONCLUSION

In twenty first century, domestic violence is no longer associated only with the private space of home and family as it also happens in a new public space of internet. Non-consensual pornography is one of the most prominent new forms of domestic violence, and yet it is not considered as a criminal offence in most countries around the world including Serbia. Since it can be considered as a severe violation of privacy as well as a type of domestic violence, the fact that it is not considered as crime in many countries suggests that privacy is not highly valued.

Furthermore, in the context of non-consensual pornography, different meanings of privacy are being used for making arguments to protect either victims or perpetrators, which suggests that the concept of privacy does not have a definition which is operative and can be used when tackling these problems. Establishing some kind of a contextual approach to privacy would help resolve problems related to new forms of domestic violence such as revenge pornography.

The traditional division between private and public realm has become obsolete which means that privacy cannot be *a priori* defined or located, but can be determined within a specific context. This means that there has to be some criteria which will enable to determine what should remain private in a particular case or particular moment, within the unified public realm which includes physical and virtual space. Invention of the social media called "privacy settings" can serve as

some kind of a signal that points out the direction in which strategies of privacy protection should be moving.

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PRIVATNOST NA INTERNETU: NOVI OBLICI NASILJA U PORODICI U ERI DIGITALNOG NADZORA

Digitalni nadzor je sveprisutan i koristi različite tehnologije koje ugrožavaju privatnost. Od ugrađenih kamera do senzora, GPS sistema i ogromnih datoteka, ove tehnologije su inkorporirane u svakodnevni život i razotkrivaju privatnost na nove i neočekivane načine. Kao rezultat toga, pojavljuju se novi oblici nasilja u porodici.

Ovaj rad ima za cilj da istraži uticaj i implikacije ovih novih oblika nasilja u porodici na koncept privatnosti. Čini se da ove nove tehnologije radikalno redefinišu privatnost, s obzirom na činjenicu da se nasilje u porodici izvozi iz privatnosti doma u javnost interneta. Štaviše, može se tvrditi da se različite kontradiktorne definicije privatnosti koriste za kreiranje strategija da se nasilje opravda ili da se zaštite žrtve, a na taj način se koncept privatnosti još više relativizuje i devalvira.

KLJUČNE REČI: privatnost / nasilje u porodici / nadzor / tehnologija