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**THE RIGHT TO PRIVACY AND DEFENCE OF THE RIGHT TO INTRUDE: A MORAL
AND PRACTICAL QUESTION IN AN ELECTRONIC AGE**

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NOT TO BE QUOTED WITHOUT PERMISSION

ABSTRACT

The most common defence for the intrusion of privacy by the media is that of public interest. An examination of professional journalistic codes of practice reveals that although the defence of something being in the public interest is present in all the guidelines, no definition of what the public interest is exists - only areas where public interest might operate. This lack of definition has given rise to problems in adjudication when someone complains that their privacy has been intruded upon. If this has been a site of conflict with regard to traditional media, no serious attention has been given to the question of privacy presented by new media that increasingly do not recognise national boundaries. If in the past it was difficult to define the public interest, it is almost meaningless now when confronted by a public that is global. Rather than a public, one has a variety of publics that are not joined by any common interest, having access to communications that is virtually impossible to regulate in the manner of the past.

The paper explores what privacy might mean, and what defence can be mounted in the new communications age to protect privacy. The research included interviews with senior media personnel, radio, television and print, along with internet providers, and regulators. The work also examined the public's response to privacy and how they construed defences for the intrusion of privacy – this involved a series of focus groups and a national representative survey. Particular attention was paid to the access of information via the internet. Given that the research was in progress during the events of September 11th in New York, special treatment was given to considerations of the privacy of those caught up in the events, and the degree to which the internet was used as a vehicle for following the events.

The paper presents a qualitative and quantitative basis for considering the protection of privacy in a converged media world.

INTRODUCTION

Some years ago, the British Section of the International Commission of Jurists under the Chairmanship of Mark Littman and Peter Carter-Ruck (1970) observed:

At any given time, there will be certain things, which almost everyone will agree ought to be part of the 'private' area which people should be allowed to preserve from the intrusion of others, subject only to the overriding interests of the community as a whole where this plainly outweighs the private right. Surrounding this central area there will always be a 'grey area', on which opinions will differ, and the extent of this grey area, and also that of the central one, is bound to change from time to time. (p4)

The reference to 'the community as a whole' resonates with ideas of intrusion into privacy being legitimate if to do so is in the public interest. Also embedded in the above is the suggestion that the idea of privacy is normative, and being normative changes with time. Indeed, very much in the same way that ideas of taste and decency are normative. These jurists go on to say:

The problem is one of balancing the individual need for privacy against legitimate needs of the community constituted by his fellows...Our task therefore, is to discover, if we can, what we mean by privacy, what limitations on that privacy the community can legitimately claim to impose, and what are the kinds of legal rules and machinery most apt to strike the balance between the two. (p4)

In two research studies¹ (Kieran, Morrison and Svennevig, (1997 and 2000), and Morrison and Svennevig (2002)), one conducted in 1997 and 2001, we addressed the question of rights to privacy. Although we claim, through an empirical basis, to understand how people in Britain view the right to privacy, and how they construe a defence for intrusion, the matter left hanging in the above jurists' report is that even having decided rights and defence, how does one regulate to protect privacy. Littman and Carter-Ruck appear readily to assume that regulation is primarily a matter of constructing an appropriate legalistic machinery of control. It is more likely, however, at the time of their writing erecting the machinery of control did appear simply a matter of will and technical arrangement. The passing of time however, just over thirty years, has seen such profound alterations in the dissemination of information that once that which was seen as a mere technical matter of legalistic arrangements has now, in terms of capability, been defeated by technology.

Is it, we must ask, in the age of the Internet, possible to regulate? If not, we must ask the further question, what might this mean for the protection of privacy? But first, we look at the right to privacy and what defence, from a value position, might be constructed for its safeguard.

THE RIGHT TO PRIVACY

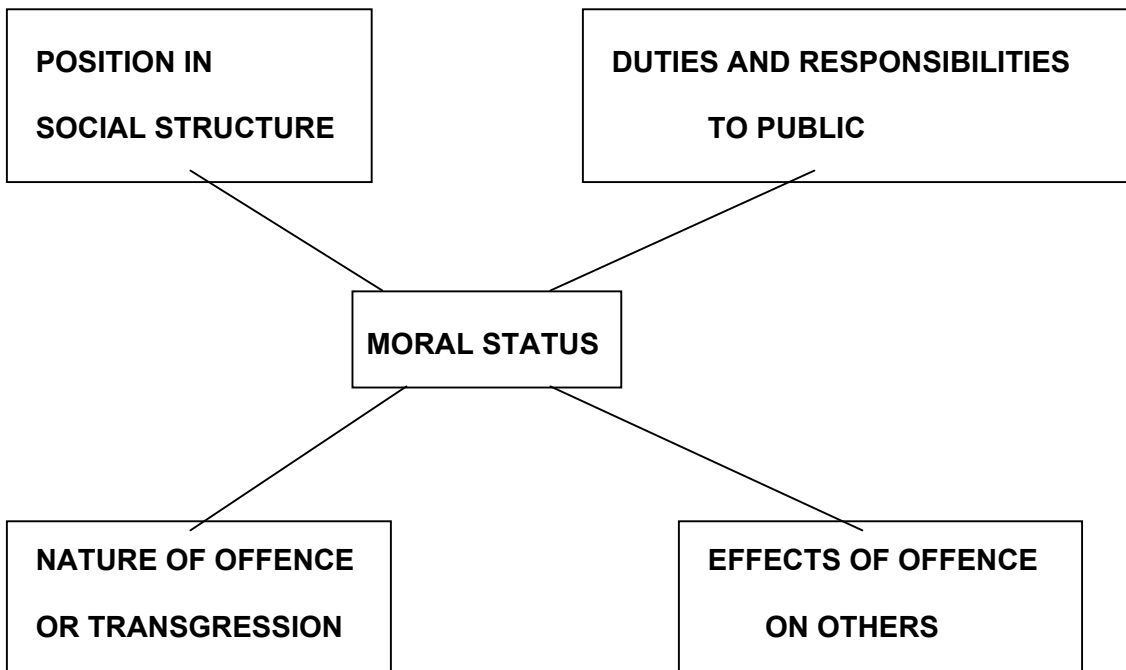
The following is drawn from our 1997 study based on fourteen focus groups, split by age, social grade, subscription to cable and satellite television, and geographical location. Two waves of focus groups were conducted. Wave one (6 groups) taking place before the first UK representative survey of 1,062 adults, and the second wave (8

¹ The 1997 study was undertaken on behalf of the Broadcasting Standards Commission (BSC) and the 2001 study was undertaken on behalf of a consortium of industry bodies: the BSC, the Independent Television Commission (ITC), the British Broadcasting Corporation (BBC), the Radio Authority (RA), the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS), and the Institute for Public Policy Research (IPPR).

groups) followed the analysis of the survey returns. Following the second wave of focus groups a second national representative survey was undertaken. (see Kieran, Morrison and Svennevig (1997) for details)

In the focus groups we asked who had the right to privacy, and with regard to what. We will leave the ‘what’ for exploration based on the findings of the 2001 study, and concentrate here on who has the right to privacy. What emerged was the status of the individual involved in an event or happening influenced judgements as to the right of privacy. By status we are referring to moral status, not simply economic or social status: high status, for example, means that right is on the persons side, or that his or her actions are justified. Individuals have different positional status –doctors high, politicians low; innocent victims high, criminals low, adulterers low(ish) and adulterers’ partners high (ish) The higher the moral status the greater the claim the individual has to privacy and the greater the right to be consulted about his or her privacy, and the greater the right to be consulted about his or her presentation. Children, for example, have an extremely high moral status based on the presumed innocence of childhood, and therefore their right to privacy is almost inviolable. Conversely, the lower the moral status, the more these rights are effectively forfeited. The following diagram represent the determinants of moral status.

Figure 1 DETERMINANTS OF MORAL STATUS:



To arrive at these determinants a whole series of cases were given to members of the focus groups and have them decide the degree of privacy each warranted. All the cases given were well-known to the participants. For each, but we will only present a few here, we constructed a Table of Rights, not just for the person at the centre of the story, but other individuals featured. (Tables1-4). Each example also gives a brief summary of the underlying rationale.

Table 1 James Bulger²

	STATUS	PRIVATE RIGHTS	PUBLIC RIGHTS	RIGHTS TO PRIOR CONSULTATION BY MEDIA
Killers of James Bulger	Low	None	High	None
Parents of killers	Low	Low	High	Limited
Parents of James Bulger	High	High	High	Substantial

- The killers were children: but the nature of the crime forfeited the normally high status of childhood.
- Again, very high public interest: how could children do this, what was the role of T.V and video and parents?
- Killers' parents have low status - guilt by association - parents are held to be important formative influence of children. Some consultation, since responsibility questionable.
- High public interest overrules Bulger parents' rights to privacy and /or veto.
- The trade-off for parents is full consultation

Table 2 The Yorkshire Ripper (Peter Sutcliffe)³

	STATUS	PRIVATE RIGHTS	PUBLIC RIGHTS	RIGHTS TO PRIOR CONSULTATION BY MEDIA
Peter Sutcliffe	Low	None	High	None
Sutcliffe's victims	High	High	High	Substantial
Sutcliffe's wife	Medium	Low(ish)	High	Medium

- Sutcliffe forfeits all rights due to the nature of his crimes.
- Knowledge is in the public interest - how such crimes can happen, insight into dark corners of human behaviour.
- Sutcliffe's wife's right to privacy is overruled by the high level of public interest and the insight into the case that she would be able to give - guilt by association.
- Trade-off for victims is full consultation.
- Sutcliffe's wife's rights to consultation are forfeited by the fact that she was his wife.

² A small boy, Jamie Bulger, was abducted and murdered in 1993 by two older children in the British city of Liverpool North West of the UK. The two children were later caught and prosecuted by the police.

³ Peter Sutcliffe was a serial killer of women in Yorkshire, UK. He was responsible for 13 murders and several attempted murders of women, and was eventually tracked down after nearly five years.

Table 3 Alzheimer's Disease (fictitious example)

	STATUS	PRIVATE RIGHTS	PUBLIC RIGHTS	RIGHTS TO PRIOR CONSULTATION BY MEDIA
The Alzheimer sufferer	High	High	High	Not applicable
The sufferer's family	High	High	High	High

- Both the sufferer and their family have a high moral status as innocent victims of an indiscriminate disease.
- Unable to think for himself/herself, the sufferer cannot be consulted. Therefore his/her family, who are responsible for his/her interests, have high rights to consultation.
- Public knowledge of this illness, which is not uncommon, is important and therefore generates a high level of public interest. However, this does not overrule the privacy rights of the sufferer and his/her family, who as innocent victims have high rights to privacy.

The Alzheimer case was the only fictitious scene introduced. This was created for the purposes of exploring situations where the person involved was in no rational condition to agree to the intrusion of his or her privacy. (This has contemporary relevance as demonstrated in the second study (2001) relating to interviews made with relatives of the dead from the September 11th tragedy – respondents in the focus groups questioned the ability of the relatives of the dead people to freely give their consent to interviews when in a distressed emotional state). In the case of the person suffering from Alzheimer's, the situation presented to the groups was one where a television crew engaged in a documentary on the illness wished to film inside a hospital. Reflecting on the situation one young man in a Northern group said:

They would need to get the family's permission because it's not going to effect the person with Alzheimer's. It makes no real difference to them, but to the family who have to go through the tragedy of watching this relative deteriorate and all the people who know the family. If a producer asks the family's permission and they give it because they think people should know about it, then that's fine, but they just can't go ahead and make the film without the family's permission and they are sitting at home watching it, that wouldn't be right.

A middle-aged man in a group in the North West of England said:

My dad died of Alzheimer's so I've been through that. I saw it right from the start when he started losing his memory, to when he wasted away. I don't think I would have liked that to be shown. It might be all right watching someone else's dad. I wasn't even close to my dad, but I wouldn't like to see that.

This moving statement opened up the conversation to rather sensitive commentary among members of the group. Another man said:

Once somebody involved gets Alzheimer's and you start going to the hospital it's amazing how many people you see that you've known through your life. If you don't highlight some aspects of the illness then you'll never get people to understand it.

Here was a genuine moral dilemma, and it is being discussed in moral terms – a kind of public interest defence is also entered, that the public should know about the nature of this disease so that they can be educated to its effects and the extent of its prevalence.

Compare this however, with comments made concerning David Mellor, a Member of Parliament and Minister in charge of Media, Culture and Sport who had an affair with an actress (Antonia de Sanchez) which, much to the delight of the tabloid press, featured the pleasure Mellor gained from toe sucking. He resigned his official post as a result of the press coverage. One man from a Midland group commenting on the case said:

The thing that I don't like about privacy is that if you've got an MP who wants to be elected he can't get his face on the telly enough, he's there with his wife and kids. And then a bit later when he's been elected and something comes out about his past – if that would have affected the way people voted if they had known about it then I think it should be publicised. I think if they are going to set themselves up as guardians of our morality then they should be spotless – one thing I don't like is somebody telling me what I should and shouldn't be doing when they are doing it themselves.

But how about Mellor's wife, an innocent party in the affair? What rights to privacy did she have. Common to many of the groups, one young man in a Northern group believed:

I'd like to say leave Mrs Mellor alone, but it is not as simple as that is it? She should have her privacy, but if you're married to someone who is in the spotlight and they do something wrong, then unfortunately you have to take the consequences'.

The above shows status at work in determining rights to privacy. Indeed, drawn from the survey findings one can see how status is distributed among a range of types of people and what rights in terms of degree of protection to privacy such people have (Table 4).⁴

Table 4 The Right To Privacy

<i>Television news and documentaries often feature different kinds of people. Which of these best describes your view of how much say they should have in how they might be shown in a TV programme</i>	Full rights ← OPTIONS → No rights					
	A	B	C	D	E	F
A child	54	19	10	6	3	3
A patient with Alzheimer's disease	54	20	12	4	3	2
A parent of a murder victim	54	24	13	4	3	2
A person with a severe disability	49	23	14	6	3	2
A witness to a crime	48	28	11	6	3	2
A victim of crime	47	26	12	5	4	4
A lottery winner	46	31	10	5	4	3
A member of the Royal Family	16	19	22	22	12	6
A schoolteacher	13	24	17	20	17	5
A senior policeman	11	18	15	23	21	9
A senior civil servant	10	15	16	27	21	7
A businessman	9	17	21	28	17	4
A film star	8	13	21	21	10	3
A religious leader	8	12	18	23	21	11
A politician	6	10	14	28	29	11
A shoplifter	4	8	9	24	26	25
A drug dealer	3	3	5	9	20	57
A rapist	3	3	3	8	19	60

1997 Survey 1 "Don't knows" not shown

⁴ The full version of the scale shown in Table 5 is:

A The right to prevent the programme showing or mentioning them at all, B The right to prevent the programme giving any personal details about them, C The right to control what is shown or said about them in the programme, D The right to be told in advance what is to be shown, but not to prevent it, E No right to prevent the programme showing or mentioning them but a right to comment, F No right to prevent the programme showing or mentioning them and no right of comment

THE DEFENCE OF INTRUSION

Although the status of the individual clearly influences how the general public construct the right to privacy between people, it is not always clear where rights to privacy cross with expectations of privacy. Indeed, rights and expectations appear, in an applied sense, to be intertwined. The question is, are people saying that some people have less right to expect their privacy to be respected in the sense that given their position it would be foolish for them to consider that their private lives would be respected, or are they saying that in a judicial sense that their status separates them off from full consideration of a right to privacy? 'Both' is probably the answer. Indeed, in our latest (2001) study on privacy, more concerned with the grounds upon which privacy could be intruded upon, it became obvious to us that rights to privacy were a dependent of expectations that privacy would be respected, and that expectations to privacy was a dependent of types of inhabited space. When people in the focus groups talked about privacy and their rights to privacy being observed, it was clear that rights moved along a continuum of inhabited space.

We distinguished from the groups the various types of space where privacy might be, or might not be, expected – **closed public space**, **restricted public space**, and **open public space**.

The first, closed public space, was that bounded by the home, and in that sense not public at all. The second, restricted public space, included the neighbourhood where they lived, the office or workspace, and areas such as secluded countryside and beaches or sheltered picnic spots. The third, open public space, included town centres, shopping malls and exposed beaches.

The expectation of intrusion was inversely related to the degree of openness. Thus, there was absolute expectation that performances in the home would not be open to inspection, through to open public space where absolute expectation existed that performance would be open to inspection. This division of space into expectations of surveillance must, however, as it relates to the intrusion of privacy, take into account people's expectation of publication, or rather, the nature of publication, something that we will see has ramifications for internet intrusion of privacy. To be captured in open public space by closed-circuit TV (CCTV) cameras was of no bother whatsoever – it was closed and not open publication. Neither did being caught in open public space by a television camera or photographic lens matter provided one did not have an individual biographical presence. That is, to be caught on camera as part of a crowd at some soccer match was of no concern, but to be a face in the crowd was, as one member in one of the London focus group explained when his friend was shown crying in a lingering television close-up when his beloved team lost. What came across is that, although a stadium is open public space and therefore one's presence could be captured as part of a general presence, to single an individual out for attention was wrong. Thus, to feature the individual in such a way, even in open public space, requires some defence.

This expectation of privacy as a dependent of space, fits well with expectations of privacy as a dependent of status. But expectation becomes a right, where right translates to reasonableness. In other words, it is unreasonable for a public figure, especially if they have courted publicity in order to become a public figure, to expect the same considerations as a non-public figure. And, it is unreasonable because one has a duty of care concerning how one behaves. Yet, all this can be over-ruled, to varying degrees, if to intrude is considered to be in the public interest. Be that as it may, it is far

from clear what the public interest is, indeed, as with the term national interest, disagreement is likely to exist over the nature of interests. In a highly complex modern society it is extremely unlikely that any issue will generate a totality of agreement among its citizens when judging the issue. This we will see later in discussing the events of September 11th.

Before commencing the 2001 study we examined numerous codes of practice of regulatory bodies and journalists associations, guilds, professional bodies and so on, both nationally and internationally. It was found that the defence for the intrusion of privacy invariably included the statement that to intrude into the private lives of individuals was legitimate if to do so was in the public interest. Nowhere, however, did we find a definition of public interest. What we did find was examples of where public interest might be held to operate, for example, in areas such as public health, safety, military security and so on. Yet, going back to the Littman and Carter-Ruck statement shown in the Introduction, they argue that the individual need for privacy requires balance 'against the legitimate needs of the community constituted by his fellows'. The concept of the public interest here is cast in terms of a community of interest; that is, that the interest is social rather than individual. Thus, the community has the right to override the interests of the individual qua individual. The point to stress, however, is that what is considered to be in the public interest represents a document of the values of any particular society. The public interest, constructed from the values people hold, and values that they wish to be upheld, means that the intrusion of privacy is not always authorised on what might be termed technical considerations of material damage to the community, but, in a Durkheimian sense of social solidarity, on the moral implications of acts (Durkheim 1993, 1997).

If community and public interest are ineluctably woven together we still face the problem, as with national interest, in deciding on what constitutes a community. For example, what is in the national interest is value laden and as often as not a dependent of political position, and structural location. It is deeply ideological. It assumes a consensus view, where no consensus may exist, and to replace national interest with a community of interest to stand for public interest is merely to square the circle of the analytical problem. Although it may be the case that the philosophical idea of 'moral community' (see Rorty 1985, and Scruton 1984) to resolve problems of ethical absolutes may do the work attributed to it, it is far from clear that such communities, especially in the developed West, empirically exist. What, in other words, are we referring to by appeal to a community of interests?⁵

Communities, as classically understood, refer to groups of people, most usually in defined geographic space, that share similar life chances, and hence similar values, beliefs and norms. Most usually they are occupationally based –fishing communities, mining communities, agricultural communities and even industrial communities wherein the members labour in the same industry and live collectively in approximation to that industry. In pure form such communities tended to have a high degree of horizontal integration, with relatively low level of vertical integration (Shils 1959) They were separate, in a sense, from wider associations. The fluid nature of, and transient exchanges that take place within heightened modernity (Giddens 1992) preclude communities in any meaningful sense. It is possible, perhaps, to talk in a restricted

⁵ See Tester, 1994, (Chapter 4) for a discussion of Rorty and the possibility of the media producing a moral community.

sense of 'a community of beliefs' where ethnicity is embedded with the religious to an approximation to that which in the past was referred to as a community. Even so, it is difficult in the modern world, and one configured on communications (Thompson 1995), to see such island fortresses. Even if one could discern an empirical community it is far from clear that to intrude upon someone's privacy by the defence of a community of interests is reasonable. Indeed, even within philosophy the appeal to moral community does not make the practices of such a community right in some reasoned manner, only that actions are taken to be right by that community (see Kymlicka 1989, Waldon 1993, and Rawls 1971). In terms of making judgements about the rights of entry into the lives of others by the media we must therefore ask, can a community of interests be an appropriate court of adjudication where values, practices and behaviour of those belonging to the community contrast and conflict with wider associations?

When we talked with the focus group participants the idea of public interest, as opposed to what the public was interested *in*, had attachments that can only be described as social. That is, notions of the collective were there, even though much confusion existed in giving voice to what it actually entailed, or more precisely, there were quite large departures in the manner in which it was defined. However, in distilling responses, especially those collected in the focus groups where given the nature of the methodology people could use more naturally occurring language in deliberating the issue, the idea of the social as opposed to the individual was present.

Whether it was legitimate to intrude into someone's privacy involved notions of social solidarity, that is, it was right to open events, behaviour and beliefs to the public gaze where doing so assisted the continuation of social association. To draw on Durkheim, social solidarity is assured by moral rules, and moral rules are made manifest in acts. Hence the courts in their sentencing procedures enshrine the moral rules. So, in a sense we do come to the idea of collectivity: some kind of recognition, no matter how loose, of people in defined geographic space bound together by agreed ways to live, or at least sufficiently agreed to that the whole holds together. This then brings us to ask how does the internet fit into this idea of collectivity to the extent that one might meaningfully apply a test of legitimate intrusion of privacy. In other words, what is the collective to which the internet address communicates, or in publishing terms, what is the collective within which the internet supplier is grounded? What does social solidarity mean when viewed globally? It can mean nothing. Thus, quite apart from questions of regulating this new form of communication, of how one can technically do so, rests the fundamental question of rights when rights tend only to make solid sense in a local context. Indeed, rights are socially constructed through interactions with others in a lived setting. In short, they are culturally framed.

THE PUBLIC INTEREST

As stated in the Introduction, professional guidelines for journalistic practice and regulatory guidelines single out the public interest as justification for intruding into privacy, but yet no rigorous definition is provided, merely areas of operation where it public interest might rest. Throughout the stages of the 2001 study - in interviews with media personnel and regulators, in the focus groups, and the national survey findings - it was clear that a definition of the term 'the public interest' does not exist. Nevertheless, there was clear ways in which it was seen to work.

In both the focus groups and the survey, we asked respondents directly to say what they understood by the term 'the public interest'.

Over 90% of the survey sample did offer a definition in their own words of what they understood by 'the public interest', demonstrating that the broad term at least is recognised, even if it is not clearly or consistently articulated.

The verbatim replies from the survey were inspected and content-analysed into broad categories. The categorisation focussed upon the underlying rationale of the definitions given by the sample, and up to two different categories were coded for each. There was no clear shared majority definition to be found in the sample's definitions. Rather, there were disparate categories of themes, shown in Tables 5-7, together with examples of each category.

The largest proportion of the replies (34% of the sample) fell into the category we have called **Public Rights**. A defining feature of this category is the use of 'imperative' terms - *needs, rights, should*, and so on - used in support of the principle of public, democratic rights to information. The next largest category of definitions – **Public Effects** - centres around the issue of effects and impacts. Essentially, the argument is that large-scale effects on the public at large are *a priori* a matter of concern.

Table 5: Public interest definitions given by survey: In the Public Interest

Sometimes the media argue that intrusions into privacy are justified because they are in the public interest. What do you understand by this term - "the public interest"?

Category	Examples
Public rights 34%	It's information that the public has the right to know. Something going on needs to be brought to the public's notice. Government officials should be accountable for their mistakes - the public should be aware of this. There are certain issues that the public should be made aware of - this is what 'public interest' means. That it's important for people to know about what's going on in the world and for them to make informed decisions and opinions. To make things common knowledge.
Public effects 28%	Issues that affect ordinary people directly. Something affecting others rather than just that person. If it's important to other people and it is likely to affect or harm other people. If it would affect you as a member of the public like war, disasters or floods. Where the issue has a direct effect on people's lives.
National interest 3%	If it's to do with the security of the country - deviousness by politicians - that sort of thing. Something basically important - in the national interest or the people at large. General public as a whole, all 60 million of us. In case of danger to the public or the country and national security. What it means is security of the country. If [<i>popular singer</i>] is wearing pink knickers that's not important to the country, but if she was a spy, that is in public interest, national security.

A second grouping of replies (Table 6) illustrates clear confusion for some people between the more abstract concept of the public interest as a form of public good and the specific interests of members of the public, either en masse or as individuals. These replies hinge around public interest being defined by the opinions and interests of the media consumer, rather than taking the more abstract form demonstrated by the replies in Table 5 above. Within this broad grouping of interest-led definitions are three distinct divisions into the **public**, **personal** and **community** levels.

Table 6: Public interest definitions given by survey: Interests of the Public

Sometimes the media argue that intrusions into privacy are justified because they are in the public interest. What do you understand by this term - "the public interest"?

<p>Interests of the public 15%</p>	<p>Some news like war news and New York towers information is interesting. Good for people to know and we can discuss it with friends.</p> <p>Things that the public would be interested in hearing about, celebrities' and politicians' private lives.</p> <p>Anything the public would be interested in reading about.</p> <p>Kind of what people are interested in reading about, what people want to see or read.</p> <p>Giving the public what they want.</p>
<p>Personal interests 7%</p>	<p>[The public interest] is not easy to define, some subjects may be of interest to some members of the public and others may be not.</p> <p>Something that is going to interest you or benefit you.</p> <p>Only way would be a paedophile situation because that would affect me, it would be in my interest to know as I have children.</p> <p>If it doesn't affect us we don't need to know.</p> <p>If it's going to affect you.</p>
<p>Local / community interest 2%</p>	<p>Nowadays people often don't know their neighbour, so they need to know what is going on in their neighbourhood to protect themselves. The local papers, news etc does this, this is "public interest"</p> <p>Relevant to particular sections of society.</p> <p>If there is a local crime or paedophile in the area, anything like that.</p> <p>What is happening within your local area.</p> <p>The people in the community should know what's going on if it affects them.</p>

There is a further set of definitions (Table 7) which again reflect a different style of understanding of the public interest concept. These are basically formulated as observations of media practice, rather than reflections upon what form the ideal might take. Two of the categories are unreservedly critical: the media intrude for the 'wrong' reasons (unwarranted intrusion); and 'public interest' is simply a convenient cover term used by the media for the media simply doing whatever they want (media excuse).

A third subset of these replies (warranted intrusion) show that media intrusion can be part of the public interest, though again defining the concept more by actions rather than principles.

Table 7: Public interest definitions given by survey: Media Practices

Sometimes the media argue that intrusions into privacy are justified because they are in the public interest. What do you understand by this term - "the public interest"?

<p>Unwarranted intrusion 16%</p>	<p>Just like to be nosy. Not always in public interest. Good reporting shouldn't be intrusive.</p> <p>I think they want to be nosy - delve into people's private lives.</p> <p>Anything you think of, there is anything in public interest. I think due to public interest, newspapers take advantage to expose privacy of the person.</p> <p>Public interest means that some of the things that come out will be detrimental to the people involved. Sometimes they don't have the facts right.</p> <p>It's just gossip, and telling people what they think they want to hear.</p>
<p>Media excuse 12%</p>	<p>Statement media use to absolve them of all sin. Carte blanche because they say it's public interest.</p> <p>They are still just trying to sell their newspapers saying it's public interest.</p> <p>Public interest is just a way of broadcasting what media want.</p> <p>It's a catch-all term that gives the media carte blanche to do what it likes.</p> <p>Public interest is when they get a story and make some money out of it.</p>
<p>Warranted intrusion 5%</p>	<p>Anything that people are interested in, particularly in other people's lives, particularly celebrities and such like, just human instinct to be nosy, particularly if it is not good.</p> <p>If the matter of the subject transcends or supersedes the individual's right to privacy.</p> <p>I think, have a right to know what famous people get up to as people i.e. children look up to them. The politician found out doing dodgy deals etc, the public have a right to know.</p> <p>You know the full character of the person involved, whether they're entirely honest and reliable.</p>

What these verbatim definitions given by the sample show clearly is the lack of a common, shared definitional base for the term 'public interest'. This conclusion is reinforced by considering the fact that this question was preceded by others which did raise the general issues of public interest - these replies were not given *in vacuo*.

Nevertheless, in deciding whether or not the media had a right to intrude upon privacy, notions that approximate to what regulators mean by public interest came to the fore. Both in the focus groups and in the survey, the idea of the generalised self is there, as also is the idea that for something to be in the public interest it had to involve the well-being of a collection of people. In short, the importance of collective well-being outstripped any expectations on the part of an individual, organisation or agency that their lives or performances were of their concern only. People other than themselves had good reason in knowing what they were doing, or had done.

These survey findings can be fleshed by the more detailed answers given in the focus groups. A series of scenarios were given to each focus group to work through in an applied manner to determine whether or not the story as given was in the public interest, and to determine what methods of intrusion could be employed by a journalist in pursuit

of the story. The included National Health Service doctors withholding expensive cancer drugs to the old, to the case of a school teacher leaking exam questions to pupils in order to advance his or her career by gaining high pass rates, to a story about a famous television personality who was terminally ill and on holiday. We cannot give the findings in full, but the responses to the scenarios suggested the idea of social importance as a defining characteristic of public interest. That is, for intrusion to take place it had to be justified by exposing something that had importance for a collective - it could not be justified on grounds of personal interest, or even the interests of many if the knowledge provided did not impact in some collective manner.

These scenarios were followed by asking members of the focus groups directly, 'what do you understand by the term in the public interest'. To give a few examples. Q: Journalists, they actually say, it is in the public interest. ... What to you does that phrase mean, if it is 'in the public interest'?

Something that belongs to the public we should know about. Is it in the public interest for someone to say there is a bomb heading for London right at this moment and everyone panics.

London 30-45 year-old men

Newspapers treat it as anything basically that we are interested in and we want to read, but if someone said to me 'it's in the public interest', then I would think that it is something that helps the public.

Or the public needs to know, like there is a paedophile living next door.

You need to know so that you can protect your kids from it you know, but the fact that Victoria Beckham bought a new pair of shoes and a matching handbag... Ok interesting, but it's not very in the public interest to know it, you know. It isn't going to make a difference to their life, it's not important.

Yeah, something that makes a difference to the public's life.

London young women, aged 18-25

It's such an individual sort of thing. What I might think is the best for the 'public interest' might be different to what you might think. So whatever the paper might say is going to generate an interest in some people and not others. Which is bound to be the case. So the public interest must be everything. There must be nothing that isn't in the public interest. It's very difficult to try and define it isn't it. I wouldn't like to try and define it. It's public benefit or when they say interest, is it a benefit.

Leeds 50-60 year-old men

If it's going to affect you personally.

Yes, if it's going to affect everybody.

It's about things that happen to change your life

Yes, in general.

It's got to affect a good proportion of the population, hasn't it?

Leeds 30-45 year-old women

Yet, in this group, this idea of something that affected people in general took a different turn when someone entered the casual comment: 'People wouldn't read papers if they weren't curious'.

We then gave the example of a male TV celebrity under police investigation and asked whether this case was a matter of public interest.

He's a public figure isn't he because he's on television?

He's courted the publicity.

But it doesn't affect us though does it really.

Yes, we're interested in it.

It's not just what effects you, it's curiosity.

The 18-25 year-old men from Leeds gave similar definitions of 'the public interest':

Not just affecting a single person, a single life.

These exchanges demonstrate just how elusive the term 'the public interest' can be, or perhaps, more accurately, the confusion that it causes. At some points the term refers to something that has an impact on large numbers of people, and equally, at other times it refers to material the public is interested in. It is undeniable, however, that amidst the statements concerning the nature of public interest there does rest a sense of public interest referring to matters that cannot simply be of personal interest, or, where it is of personal interest, it must also be not only of interest to others, but also in their overall interest. Equally, a 'public interest' story could exist that hardly anyone was personally interested in, but, nevertheless, the information given was in their interest. This, however, seems somewhat optimistic when set against news values: it is difficult to imagine a news organisation, at least with any frequency, publishing material that its readers, viewers or listeners, were not interested in, even though it was in their interest.

THE PUBLIC AND INTEREST

What we see in the above, both from the survey and focus groups, is that something that affects numbers of people is construed as being sufficiently important for intrusion, of some degree, to be warranted. This judgement of when privacy can be intruded upon is right to call public interest, but what cannot be avoided, as Tables 5 to 7 showed, is that confusion over the term itself does exist. In light of this, it is we have reasoned that some new term might be more appropriate in clarifying the defence of intrusion, or at least form the basis for discussion.

We must say, however, that we are less than convinced that a public interest basis for judging whether intrusion is justified is adequate at a global level when confronted by a non-localised communication channels such as the internet. It can hardly be said, however, that following the laying of the transatlantic cable in the late 19th century, nor with the founding of the great news agencies in the middle of the 19th century (see Boyd-Barrett 1980) that communications suddenly became global, but it is to say that a time-space distantiation (Giddens 1991) has occurred with the internet to a degree otherwise unknown. Further, the great print news agencies were still national, in the same way that is largely true of the modern electronic news agencies filtering the news, even for distant markets, through national eyes in a way that cannot so readily be said of communications carried through the internet, or at least, to be more precise, a plethora of voices are carried that makes the internet as a communication channel, non-national (in principle if not yet entirely so in practice⁶).

Thus the idea of public interest, as so far discussed, involving the self-interest of a collective unwinds. It is difficult to identify that which constitutes the collective. However one ascribes the properties of globalisation, it has not meant in any identifiable sense, the undermining of the nation-state and the idea of citizenship based on such

⁶ NUA estimate that in February 2002, 65% of all internet users live in North America or Europe. In world population terms, North America and Europe constitute around 17% of the world population

membership (Boyer and Drache, 1996, Brubaker, 1992). To be a citizen of a state represents belonging and departure. Identity, who one is, draws its meaning in part from who one is not. Yet, the events of September 11th although they may have drawn Americans closer together, as is so often the case in the face of external threat when differences become submerged by collective fate, nevertheless present interesting questions concerning the intrusion of privacy.

THE CASE OF SEPTEMBER 11TH

The selection of the twin towers of the World Trade Centre and the White House as targets undoubtedly reflect their physical and symbolic representations of American political and financial power, but the scale of the destruction fulfilled cardinal news values, in particular, the dramatic and the negative (Galtung and Ruge 1965). Yet, a news value does not make the news in the public interest. A news value represents what the public is interested in. However, there can be no denying that the events of September 11th were in the public interest, and in the public interest at an international level, not just within America. The events, what they represented, almost immediately held promise of an international response to that which had taken place. Even without such wider ramifications the event was intrinsically politically newsworthy – it could not be ignored by anyone concerned by, or interested in, the political shaping of the world. Yet, it is one thing to consider the reporting of an event to be in the public interest and therefore intrusion of privacy to be legitimate, but this does not escape consideration as to how intrusion, or the degree of intrusion, might not have been legitimate. This became clear both in the focus groups, and in the national survey.

In the survey stage of the study⁷, a sizeable minority, 20% of the sample, considered that the media coverage had contained items that they felt were not 'in the public interest'. Anyone who said they had seen such coverage were then asked what it was in their words, and the interviewer coded replies using a supplied list derived from comments made in the focus groups. A large proportion of these answers were very general – about how terrible the event was, or upsetting. Many, though, homed in on one very specific aspects of media coverage, particularly the pictures of people jumping from the twin towers before their collapse, the replaying of victims' phone calls to relatives, and interviews with victims' relatives (Table 8).

It is difficult to place the reactions to people jumping from the WTC in a public interest framework – if anything, it is closer to a taste and decency issue, a response to something upsetting. The two other most-mentioned themes are conceptually different, in that they centre around grief and reminders of the dead. Certainly, as far as the focus groups were concerned, these types of coverage do involve issues of privacy, both of the dead and of the living. Essentially private acts – making final calls to loved ones, and giving vent to intense emotions – were on public display courtesy of the media.

⁷ The survey took place in the last two weeks of October 2001.

Table 8: The World Trade Centre Attack

Did you see, hear or read anything in the media coverage of this which you thought was <u>not</u> in the public interest?		
	%	
Yes	20	
No	80	
IF 'YES': What sort of thing did you have in mind?		
	% of all saying 'Yes'	% of total sample
Pictures of people jumping out of the buildings	36	7
Phone calls from the victims to their families	18	4
Interviews with relatives of the victims	16	3
Pictures of bodies being recovered	11	2
Pictures of injured survivors	8	2
Pictures of people on the ground panicking	8	2
Details of what went on in the hijacked aircraft	6	1
Interviews with survivors	4	1
Other type of coverage	46	10

The limited number of categories used to code replies was largely based on the London focus groups' comments about coverage immediately after the event itself. The survey question, though, was asked a month or more after the event. As can be seen, a large proportion of the replies could not readily be fitted into the categories given. However, there is some evidence from some interviewers' notes of the verbatim answers given which helps us to see what this 'other' category consists of.

Many centred around the 'distressing' aspects of coverage – 'continual repetition of planes crashing', 'aircraft crashing into the building was on day after day, very distressing', 'cheering children and adults in Arab countries, starvation of children in Afghanistan', 'dwelt too long on gory details'. 'pictures of families at funerals'. These are best thought of as further reactions to distasteful material.

Others, interestingly, focussed on what can be described as 'public interest' issues: 'Opinion, not facts', 'Spreading panic about a Holy War', 'blaming Muslim fundamentalism before it's had proof', 'attacks on religious groups', 'Giving out too much military information over the media', 'shouldn't know where Tony Blair is at any given time'.

A third general category within 'other coverage' was that of repetitiveness and weight of coverage: 'repetitive coverage of events', 'continuous coverage', 'over-exposure'

The survey took place some time after September 11th and it could be argued that these results result from reflective hindsight rather than genuine reactions from seeing the events themselves. However, the second wave of focus groups coincided with the

attacks⁸. We specifically asked whether the falling bodies of those who had jumped from the WTC windows should have been shown. A range of responses were given in the group of London women aged 50-60.

'Yes it could be shown because it shows the horror of the situation'. 'Unlike the other pictures (people running from the scene) these people are faceless, but it's still an intrusion on that persons privacy, but I don't see it a problem in that respect'. 'I think it's painting the horror isn't it? I just think oh my God, it's a good job you can't see their faces because you can imagine if their families were watching'.

In response to this we asked if to capture the full horror of the event it would have been permissible 'to show more close ups'. The response was:

'No that wouldn't have been right at all, that would have been totally unnecessary because it's bad enough that you see this happening, but to actually have this picture of their faces as these people are dying, there is no need for that'.

The conclusion to be drawn was that although privacy had been intruded upon, to show people falling or jumping from the stricken building was justifiable – it had a point and a purpose, namely, to convey the full dimensions of the drama taking place. To have shown close-up pictures so that those falling to their death could be recognised, was, as far as this group were concerned, not merely amplifying the intrusion of privacy, but turned intrusion from the acceptable into the unacceptable. To do so would have been bad taste: *'I think looking at the faces close-up when we've already got pictures like that I think we're coming into decency really'.* We pressed the point by asking, 'whether this was a matter of privacy or taste and decency'. The response was: *'I think both'.* This was agreed to: *'Yes, privacy and decency, I think both, yes'.* The relaying of the last minute messages from those on the doomed hijacked aircraft, came in for similar consideration. In another group, one man, aged 30-40, although agreeing that such messages got across the full horror of that taking place, considered: *'If you can identify individuals then that shouldn't be published, but as an illustration it certainly brings home the horror of the situation'.*

The voice left on the answerphone, whoever's property it becomes, was not an unidentified individual, but had a name attached and often accompanied by biographical detail. These were real people in the strict sense of representation, not people trapped in aircraft or bodies falling from a building that 'stood in', so to speak, for the horror of what was happening to all the victims. We must also ask, would the person on the aircraft have granted permission for his last words to be made public?

If we return to the women in London then once more the relaying of such messages appeared to them to be in poor taste, but they also raised the issue of emotional competence to give rights to publication. One woman pointed out that the interviewee must have sought the interview herself: *'It was her son. Her son rang her' (from the doomed aircraft)* It was added: *'When you are in a situation like that maybe you are not thinking straight, but if the person consented...I think that's fine'.* This was followed by: *'She obviously relayed that (phone message) to someone and told them what it was about – that's the assumption I am making, she had a choice. I don't know'.*

This is not an easy question to resolve, clearly shown by her agreement that the mother had a choice and so it was correct to broadcast the interview and message, but then she adds – *'I don't know'.* The difficulty is what, in the context of receiving a phone call from a son who is about to die, does choice mean? Choice suggests a rational decision-making

⁸ Two groups were held in London in the evening of September 11th and two more on the 12th. The news of the attacks broke in the in the early afternoon UK time

process. Some members of this group called into question whether in such a situation the person granting an interview or releasing information could be said to be sufficiently in control of their emotions for it to be said that consent had been given:

They (journalists) are sort of getting you at the moment when you are not thinking straight, they are catching you when you're at your very lowest ebb and sometimes you just want to talk and maybe months after this she might be thinking, 'Oh my God, why did I ever do that'... this is where I think sometimes the reporters they know, and they jump in when something like this happens and they get you, whereas at another time you wouldn't give them the time of day...I would like to think one would have a certain amount of decency and give people time to grieve.

We talk about not intruding into private grief, and on that basis this is an intrusion of privacy. Consent may alter that, although, from the above, it is not clear what consent actually means in such an extreme situation. The feeling gained was that the broadcasting of such messages involved questions of taste and decency as much as it did the intrusion of privacy. Indeed, as in the instance of privacy cutting with news values, here we have privacy being cut by taste and decency.

The defence of 'in the public interest' for the intrusion of privacy in the context of September 11th, can be raised in two ways. First, this was a news event that was in the interest of all to know about. It carried with it repercussions of major and international importance and, therefore, it was essential to put over in the fullest possible manner what had happened, and to some extent this was achieved by homing in on individuals caught up in the tragedy. But then, as we have seen, the question arises of how much information of a personalised nature was required to substantively tell the story.

The second argument for it being in 'the public interest' to intrude into the private moment before death is the overtly propagandist one of fuelling anger at those who committed the atrocity. Here we move into a situation where the media are not simply conduits of what we might term news as events, but news as propaganda, at least in a functional if not intentional sense.

To raise the temperature of anger by the transmission of private moments, one can assume, reasonably enough, to have assisted in the Bush administration's militarisation of politics. But, not all within America agreed to such a development. Thus if one was against such militarisation then to amplify anger in this way would not be seen to be in the public interest, and vice versa. Public interest and national interest here become coterminous, yet, as stated earlier, this presents problems of deciding what is in the national interest as indeed it does for the public interest. Both assume, as does community of interest, that there is an empirical state of absolute agreement of what 'interest' is taken to be. The whole point of raising this question is to show that it is difficult, when referring to public interest, to assess just what interest is being referred to.

There is little doubt that cultural differences exist between America and Britain with regard to that which is tasteful and decent. In fact, general entertainment programming demonstrates such to be the case. Programs can cause offence in America that would not cause offence in Britain, and vice versa. Indeed, the very notion of that which constitutes the private realm is a cultural artefact, and can change between historical periods. This is something we encountered in the focus groups - there was a difference between younger and older people a result in part of the structural changes of physical living, but also as a result of transformation of intimacy (see Giddens 1992) due to changes in existence within heightened modernity. But, however privacy is construed and taste and decency fashioned, the media historically have been subject to some form of regulation in all countries. The degree and style of regulation owes much to the

ideological underpinnings of each society concerning institutional structural performances and the degree to which the state ought to govern its citizen's lives. However, the coming of the internet alters the communicative relationship, in terms of access to information, between the state and the citizen – central point surveillance is no longer so readily possible, if possible at all.

Leaving aside considerations of the internet, we considered that whilst people in our study had difficulty in giving precise definition to what was meant by in the public interest, there was sufficient evidence to suggest that they shared, by and large, a similar working idea to that possessed by regulators and media practitioners whom we interviewed. That is, it had to involve more than what individuals were interested in, and had to include some notion of collective importance. Even so, that seemed to us to be somewhat unsatisfactory. As a result we opted for the term social importance to justify intrusion.

A NEW TERM

The term 'social importance' appears to us to capture all that 'in the public interest' refers to without the associated operational difficulties of the latter. At a stroke, it gets rid of the troublesome referent, *the public*, and the cognitively bothersome word, *interest*. The term 'social importance' opens judgement of intrusion to reason in a way that is not so readily the case with the term in the public interest. What, for example, is the social importance of a picture of a female newsreader sunbathing on a holiday beach? In other words, in what way can it be said that not to see such a picture, not to possess such 'knowledge', would have repercussions on how we negotiate our lives. The term, social importance can, furthermore, be scaled in a way that is not very meaningful to do so in the case of public interest. The term public interest has a gravity attached that makes it a too severe a test for intrusion of privacy - it has little sensitivity. Social importance can be scaled from very high social importance to very low social importance. Once the level of social importance is understood, it then follows that the degree of intrusion considered to be appropriate is dependent upon that importance. It is almost arithmetic. The flexibility of the term as an operationalisable concept means that it can handle the different types of performance expected from different types of media. The notion can take account of the logic of media performances in a way that the more legal, or quasi-legal, concept, public interest, cannot.

SOCIAL IMPORTANCE AS SOCIAL SOLIDARITY

We have drawn the notion of social importance at the empirical level from how issues of privacy were discussed in the focus groups. To quote from one of the focus groups involving 30-45 year-old Leeds women discussing public interest: *'If it's going to affect you personally'; 'Yes, if it's going to affect everybody'; 'It's about things that happen to change your life'; 'It's got to affect a good proportion of the population, hasn't it'*. Even where it was mentioned that for something to be in the public interest had to affect you personally, it transpired that the personal included the generalised other, that is, that what was personal to her, because of shared similar conditions, would be important to others also. The above operates as a distillation of comments, and much confusion was apparent in giving definitions to the public interest. But the idea of the social was paramount over the individual, and so also was the idea of importance - *'things that happen to change your life'*. Yet, things might be of importance that are not of such gravity as to be life-changing, and not all media content is constructed from such material.

Although the idea of social importance as a test for rightfulness of the intrusion of privacy was in part generated empirically, especially the term social, the element of importance was created from ideas of nineteenth and early twentieth century social thought, namely, social solidarity. Put briefly, central to notions of social solidarity are values. Social cohesion can only be attained by the common holding-to of agreed values, and that which threatens to undermine the agreed moral framework poses a threat to the continuation of existing social association. Time and again in the focus groups, how people judged the right of intrusion into privacy, and the degree to which privacy could be intruded upon and by what methods, appeared to be determined by the degree to which they saw behaviour as a threat to social association, that is, that some act or another went against cardinal values upon which our society was structured. This was manifested in discussing a wide range of examples of wrongdoing – each was actually graded in terms of the threat that it posed to social organisation, although not expressed precisely in those terms. Furthermore, the notion of social importance, drawn from ideas of social solidarity, offers the great benefit over public interest in that it is based on moral judgement and as such offers the possibility of handling moral outrage in a way that public interest can not so readily achieve. This brings the beliefs of others into the fold of intruding into privacy on the grounds that those beliefs might constitute a threat to social solidarity.

The idea of social importance as a defence for the intrusion of privacy, and the ability to grade the degree of social importance, cuts away at the specious reasoning that is often presented as a justification for intruding into privacy. It also can handle what we might wish to know, but do not necessarily need to know. Social solidarity is assisted, to a degree, by the circulation of information that gives a feeling of belonging, of attachment to the world of others, and acting as conversational points between people. The documentation of the lives of celebrities does just that. However, such documentation would have to ensure that the degree of intrusion into someone's private life against their wishes, would be minimal: to establish a public interest for such intrusion is to suggest importance where no importance seriously exists. The concept of the public interest is both too clumsy and too grand to capture the operations of the media, and fails to defend itself by any appeal to what it precisely refers.

However, given that the term 'in the public interest' is well established, and of long use as the operating defence for the intrusion of privacy, it would be foolish of us, in a policy sense, to expect that the term will be replaced and substituted by the term social importance. The term public interest is simply too entrenched in journalistic repertoire to be replaced, despite the lack of any rigorous definition as to its meaning. We would propose, therefore, based on the research, that the term social importance, or rather the idea of social importance, is used as a test of public interest. By doing so, much of the confusion that exists, especially the difference between that which the public is interested in, and what is in the public interest, will disappear.

THE INTERNET AND PRIVACY

We do consider that the notion of social importance to be a good test for the existence of public interest. Having said that, it is as if we have drawn such a test from a prior age and hence suitable only for a prior age. One where there was no Internet. This, of course, does not devalue its application for much media activity, only that it does not cover all communicative outlets. For the moment let us leave aside possibilities of regulating the Internet, and stick with the central point that social importance is constructed out of the idea of social solidarity. What social solidarity, and whose social solidarity, are we talking about when material is posted on the Internet? As indicated earlier, it makes no sense to talk about global solidarity in the manner in which Durkheim cast social solidarity. Social solidarity, as stated, is assured by moral rules: an agreed way to live which is given form through shared values. It might be difficult in complex modern societies, even at the level of the nation state, to find agreed values in every area of performance, but nonetheless, core values exist sufficient for the whole to adhere together in the management of co-operative life, and this is so even in the realm of the management of conflict. Take this, however, to a global stage and it is hard, if not impossible, to talk about public interest *qua* social importance in any meaningful sense. Thus, the defence of the intrusion of privacy by appeal to public interest, in any moral sense, falls away. It might be, that one might wish to raise some other defence such as privacy being a basic human right⁹, but this does not obviate the problem of where the basic human individual right to privacy clashes with the rights of others to know the business of others. This bumps up against the central philosophical, and indeed sociological question, of the nature of the individual in society.

We profess to being at a loss as to how to resolve this moral and sociological question in the realm of the internet in the manner that we have done for other modes of communication. And this is irrespective of any technical questions of how one might regulate the internet. Indeed, the inability to regulate the internet to the degree which is possible with other more traditional forms of communication is really an extension of our arguing in relation to social responsibility. Social responsibility is to a *society*, which is still in the main the nation state. It is not, and could not be, social responsibility to a *concept*, that is, globalisation – which is a process, but not a concrete state in the sense of identifiable individuals living in geographic space that gives common interests born out of feelings of sharing a similar fate. To think in terms of global responsibility of each individual to all, is utopianism.

⁹ Such as, for example, the UN's International Covenant on Civil and Political Rights, Article 17 which states that:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

THE INTERNET'S ROLE AS A MEDIUM

Unable to resolve this 'problem', we have to turn to other ways of addressing the issue to see if there is a real – and different - question to answer in terms of privacy and the internet. Is the internet a 'medium' in the established sense? How do people use the internet? Are there similarities or dissimilarities with the established media? Here we will turn to various sources of data gathered from UK surveys.

From the available data, it seems to be the case that the internet is not 'just another' mass medium. While widely available, it is not used particularly widely in lieu of the other media for getting access to news. This is seen in data from our longitudinal panel study, *futura.com*, into the uptake and impacts of new technology¹⁰ in the UK. In the November 2000 survey wave, one in three (35%) of internet users said they used the internet for on-line news, compared with 82% searching for information, and 66% browsing for entertainment.

The same survey also showed that many users' perceptions of the internet are not exactly uncritical. Majorities expressed concern over the quality of information available, and felt the need to trust the source of information received (Table 9).

Table 9 Information and the Internet

(Questions asked on futura.com survey in November 2000)

	% of total sample agreeing	% of internet users agreeing
Information on the internet/Web is not always up to date	38	56
I would only trust information provided from a source I had heard of	65	59

Base: Adults aged 16+, Great Britain (1001). Internet users = use once a week or more often (600)

Moreover, many internet users have reservations about their – and others' – privacy on the net. These answers also reflect the fact that most internet users in the UK are largely unaware of whether the internet is regulated, and in what ways¹¹ (Table 10).

¹⁰ The *futura.com* study is based upon a nationally–representative panel sample of UK adults. It began in 1996, is based in the Research Centre for Future Communications in the University of Leeds Institute of Communications Studies. The study regularly surveys the panel using postal questionnaires. The November 2000 wave had a base size of 1001 adults aged 18+. For further details see Morrison and Svennevig (2000).

¹¹ This is in fact a very grey area, since almost all privacy laws are based in national law. This means that international issues – including much internet content – remain largely untouched by such regulation. In the UK, the only real regulatory avenue related to material originated in the UK itself and/or accessed via a UK-based ISP.

Table 10 Privacy and the Internet*(Questions asked on futura.com survey in November 2000)*

	% of total sample agreeing	% of internet users agreeing
There should be new laws to protect personal privacy on the internet	80	82
The internet should be regulated like any other communications system	78	76

Base: Adults aged 16+, Great Britain (1001). Internet users = use once a week or more often (600)

Further evidence of the equivocal status of the internet comes from the 2001 privacy survey. The sample were asked about a wide range of news sources, including internet news pages and chat rooms. Internet users' opinions on the established media do not differ from the overall norm, but their views on internet news pages and chat rooms are dramatically different. The majority of users believe that internet news pages are likely to intrude, and almost half believe the same to be true of chat rooms.

Table 11: Likelihood of Media Intrusion

How likely, if at all, do you think these various media are to intrude into people's privacy?

% saying very/fairly likely to intrude	Total sample	Internet Users
Popular daily newspapers (Sun, Mirror, Star)	90	93
Sunday newspapers	85	88
Television current affairs or documentaries	78	82
Other daily newspapers (Mail, Express, Telegraph, Guardian, Times etc.)	78	83
Television news	77	79
Radio current affairs or documentaries	58	58
Local newspapers	57	57
Radio news programmes	54	55
Radio music or chat programmes	37	35
Internet news pages	37	56
Internet chat rooms	33	48

Bases: Total sample 1049; Internet users 433

However, these levels of perceived intrusion are relatively low when compared to the 'mainstream' media. Internet users are just as likely as non-users to say that the press or TV act intrusively.

So what is the status of the internet? Among users it is seen as relatively unlikely – compared to other forms of communication – to intrude into individuals' privacy. At the same time, it is not seen as being primarily a news-oriented medium, at least in the

sense of traditional journalistic news. In part this is most likely a reflection on the nature of internet provision, where the private individual/publishers far outnumber the professional news-gatherers. Also, it should be borne in mind that where news websites are concerned, all the available page traffic data point to the established print and broadcast news organisations' websites being the main sources of news used¹².

THE INTERNET AND SEPTEMBER 11TH

As far as September 11th was concerned, at least for the British, the internet was not a serious challenge to existing news sources (Table 12). Television was *the* main source of information for nine out of ten adults, far outstripping the other media. This is not surprising, given that the main American TV news organisations were on the scene within minutes of the first plane attacking, together with BBC1 and ITV abandoning most of their daytime schedules for live coverage across most of the day.

Despite the fact that over 40% of adults use the internet at least once a week, these show little difference in their media sources.

Table 12 The WTC Attack: Sources of Information

A few weeks ago, the World Trade Centre in New York was destroyed in a terrorist attack. Where did you find out most about what happened?

(Question asked on privacy survey in last 2 weeks of October 2001)

	% of total sample	% of internet users
Television	89	89
Radio	4	3
Other people	3	2
Daily newspaper	1	2
Internet	1	3
Sunday newspaper	*	*
Nowhere in particular	1	1

Base: Adults aged 16+, Great Britain. Internet users = use internet once a week or more often

For most people, TV remains firmly to the fore at times of crisis. Very similar findings were obtained in the USA in a Pew Research Center study¹³ a few days after the attacks: 88% of internet users reported TV as the main news source used compared with 8% getting most of their news from the internet.

Seemingly, then, the internet had no leading role to play in people's information-seeking. However, this may not be the case as far as the longer-term view is concerned. More

¹² For example, in the UK the BBC's website is consistently found in the Top 10 sites identified by Jupiter MMXI. IN the US, established news sources also feature regularly in these rankings.

¹³ Pew Research Center for the People and Press, *American Psyche Reeling from Terror Attacks*, Release date 19th September 2001.

recently, in the 2001 recruitment stage designed to boost the original futura.com panel¹⁴, we asked a question specifically aimed at clarifying the use of the internet with respect to September 11th.

Table 13 The WTC Attack: using the Internet

Have you looked at any websites for information or news about the September 11th attacks on the New York World Trade Centre?

(Question asked on futura/NOP Omnibus November 8th – December 4th 2001)

	% of internet users	% of <u>heavy</u> internet users
Yes	38	54
No	62	46

Base: 3,232 Adults aged 16+ who have used internet in past 3 months, Great Britain. Heavy users used within past week, base 1,369

Here again, the use of the internet for finding out about September 11th seems not to be particularly vital for most users

However, in the 2001 privacy study focus groups, there were some indications of how the future impact of internet information might begin to be felt more widely. People were aware of cases where restrictions on privacy and publication had been circumvented – both pre- and post-internet.

Invasion of privacy is probably a phrase that was generated before the introduction of the internet so it doesn't allow for that new media and it is the same....invasion of privacy, availability started when that [a retired British MI5 spy's memoirs]¹⁵ Spycatcher came out, you couldn't get it in the UK but you could still, someone from Australia could bring it to you, so that was an early version of what's available if you want it. Because it is banned in one place doesn't mean it is banned elsewhere. I mean the French privacy laws, where [President] Mitterand had that daughter by another woman and no-one ever said about in the paper until he died because of the archaic French law. In the UK people would probably have know that the Prime Minister had a love child.

Women, 50-60, London

I was watching, I think it was NBC on satellite yesterday and the reporter said we've got footage we can't possibly show because it was showing broken bodies at the bottom of the buildings basically and there were lots of amateur cameramen around so that has started appearing now and peoplewith cameras, so some of the stuff is probably going to start appearing on the web as it always done. After [Princess] Diana died it was done.

Well, people on the internet, if they want to see it they are going to look for it aren't they. The telly is coming straight in the house and you can't stop your family watching it.

Men, 30-45, London

The last quote illustrates a further, quite different point over the different nature of access to material on different media. Put crudely, watching television is a more public and

¹⁴ The recruitment of the panel was undertaken via the national Omnibus survey of Great Britain (excluding Northern Ireland) conducted by NOP World between November 8th and December 4th 2001. A total of 7,867 adults aged 15+ were interviewed.

¹⁵ This example is reminiscent of a more recent case where the internet was directly involved. David Shayler – another disgruntled MI5 operative – made his account of his activities within this security organisation available via the internet in the late 1990s. He is still in self-imposed exile in France, under threat of trial if he returns to the UK.

social activity, with a relatively low pressure on the user to 'search around' for content. Most viewers have a fairly limited channel repertoire of favoured channels and programmes drawn from a much larger 'pool' of potential viewing fare¹⁶. Also, internet use is largely solus rather than social in terms of the physical setting of the user. This is not to say that the internet is not used for social purposes, but that the typical user is physically on their own, unlike many TV viewers.

We also asked this group whether putting something on the internet was the same as having it available via the newspaper or television. Clearly, this is not quite the same thing in terms of its being in the 'public arena'. The example given of an internet photomontage would not have been widely known about without the intervention of the popular press.

I think it is not because there was a case recently where a young guy had split up with his girlfriend pretty acrimoniously and she actually used his head on someone else's body wearing lady's underwear and superimposed it. And the thing is, you wouldn't have known about it except that newspapers picked up on it [from the internet] and published it and that's when it became a much more in the public arena
(Men, 30-45, London)

We then asked what constituted 'proper' publishing.

On the internet, if you are in the know, visiting the sites that might pick up on that sort of thing then you will get to know a bit but it's much more of a 2 or 3 stage process. You have to go out and look for the stuff whereas in the national press or television it is there.

It depends on the site....if it's a site which is viewed by millions of people everyday, then it is exactly the same thing [as traditional publishing], if it is a website that is widely known.

(Men, 30-45, London)

Here again is the suggestion that the internet is qualitatively different from the established mass media in terms of the 'work' needed to utilise it: content has to be actively searched-for. But the second speaker makes a particularly interesting point about where this distinction might become blurred: 'a website that is widely known'. If widely known, then the process of actively searching for it becomes minimal, and the status of such a site might be indistinguishable from that of a TV station or a newspaper. Indeed, where interactive internet-enabled digital TV is available, the distinction could - to all intents and purposes - simply vanish. Thus it might well be the case that some internet/Web sources achieve 'full' media status, while the vast majority of sites - small, infrequently-visited, highly-focussed (or simply strange) do not do so.

There is also one other issue that needs some thought here. If, as we have suggested, the key to understanding the concepts of privacy and intrusion lies in what we have termed social importance, then we need to know much more about the intricate dynamics of internet use. When encountering material from a different social setting or place, does the user interpret that material through his or her own social positioning, or is the encounter more relativistic? Do internet users utilise a range of different interpretative frames of understanding and convention. Moreover, how cross-cultural is most internet use - do users tend to stick within the realm of material that has the capacity to be of social importance?

¹⁶ See, for example, Barwise 1998. This is only partly true for the UK, where over 50% of households only have access to a maximum of 5 terrestrial TV channels.

CONCLUSION

What our research suggests is that in terms of regulating the internet for the protection of privacy, then it is difficult to see technically how this can be done. But secondly, the defence most usually engaged for the intrusion into privacy, that of 'in the public interest', cannot be brought into play in the same way that it has traditionally been used. Why this is so we have clearly documented in the body of the paper, but we have also pointed out that a fundamental mistake is to view internet use through the traditional lenses of media consumption. At the very least, what our paper suggests is that less theorising and more empirical investigation of how the internet features in the lives of its users is urgently required.

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