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## Blurred Line: Zooming in on Google Street View and the Global Right to Privacy

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# BLURRED LINE: ZOOMING IN ON GOOGLE STREET VIEW AND THE GLOBAL RIGHT TO PRIVACY

## INTRODUCTION

Not since Gutenberg invented the modern printing press more than 500 years ago . . . has any new invention empowered individuals, and transformed access to information, as profoundly as Google.<sup>1</sup>

As residents of Planet Google,<sup>2</sup> a world both inundated and enamored by Google products, services, and technology, most people are aware of the Google Internet search engine.<sup>3</sup> The self-proclaimed mission of Google is “to organize the world’s information and make it universally accessible and useful,”<sup>4</sup> and in many ways, Google has already fulfilled its objective of “global ubiquity.”<sup>5</sup> Google dominates information gathering on the Internet as the world’s most widely used search engine.<sup>6</sup> “No other brand has achieved global recognition faster than Google.”<sup>7</sup> In fact, Google has not only changed the way people retrieve data,<sup>8</sup> but has become a part of global life and culture.<sup>9</sup> Its “appeal

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1. DAVID A. VISE & MARK MALSEED, *THE GOOGLE STORY: FOR GOOGLE’S 10TH BIRTHDAY 1* (2008).

2. “Planet Google” is a phrase meant to illustrate the pervasiveness of Google technology. See RANDALL STROSS, *PLANET GOOGLE: ONE COMPANY’S AUDACIOUS PLAN TO ORGANIZE EVERYTHING WE KNOW 1* (2008); see also Alex Williams, *Google Wants You*, N.Y. TIMES (Oct. 16, 2006), <http://www.nytimes.com/2006/10/15/fashion/15google.html> [hereinafter Williams, *Google Wants You*].

3. Williams, *Google Wants You*, *supra* note 2.

4. *Company*, GOOGLE, <http://www.google.com/corporate/facts.html> (last visited Sept. 30, 2011); see also Sam Anderson, *Algorithm and Blues: The Wonder and Terror of Google*, N.Y. MAG. (Oct. 5, 2008), <http://nymag.com/arts/books/reviews/50994> (reviewing STROSS, *supra* note 2) (“Google’s original mission statement was, in retrospect, a masterpiece of bland modesty: ‘To make it easier to find high-quality information on the Web.’ This would be the rough equivalent of Napoleon Bonaparte’s declaring, in 1783, that his goal was ‘to hold some kind of public office in France.’”).

5. Williams, *Google Wants You*, *supra* note 2. By 2006, Google had already provided the world with more than two dozen applications and tools. *Id.*

6. *Google, Inc.*, N.Y. TIMES (Aug. 16, 2010), [http://topics.nytimes.com/top/news/business/companies/google\\_inc/index.html?scp=1&sq=google,%20search%20engine&st=cse](http://topics.nytimes.com/top/news/business/companies/google_inc/index.html?scp=1&sq=google,%20search%20engine&st=cse); see also VISE, *supra* note 1, at 1 (“Google has seemingly overnight become indispensable. Millions of people use it daily in more than 100 languages and have come to regard Google and the Internet as one.”).

7. VISE, *supra* note 1, at 146. “By 2003, tens of millions of people daily were searching Google using their native tongues, choosing from a list of nearly a hundred available languages . . . and for fun Pig Latin.” *Id.* at 142–43.

8. Williams, *Google Wants You*, *supra* note 2 (quoting Donna L. Hoffman, founder of eLab 2.0) (“Google has in the minds of many users ‘become one with the Internet,’

is universal, enabling it to overcome differences in culture, language, and geography en route to becoming a global favorite.”<sup>10</sup> Since its launch, Google introduced a number of features and applications in its enduring effort to innovate.<sup>11</sup> Google first ventured into Internet mapping when it presented Google Earth in 2005<sup>12</sup> and just two short years later unleashed Google Street View,<sup>13</sup> the subject of mounting international controversy.<sup>14</sup>

Google Street View is a free mapping service that uses 360-degree panoramic photos to provide street level images, creating the illusion that

achieving a meta-status because as the most-used search engine, it literally augments your brain. I don't have to remember quite a few things now because Google can remember them for me. Google is an additional memory chip.”)

9. VISE, *supra* note 1, at 146. “To *google* means ‘to search.’ That the company’s names has become a verb in English, German, and other languages is testament to its pervasive influence on global culture.” *Id.* at 7; *see also* Andrew Lavoie, Note, *The Online Zoom Lens: Why Internet Street-Level Mapping Technologies Demand Reconsideration of the Modern-Day Tort Notion of “Public Privacy,”* 43 GA. L. REV. 575, 601 n.123 (2009) (finding that Google Maps is a service that has infiltrated popular culture, evidenced by the fact that it is used by prominent government figures (George Bush) and cartoon characters (Marge Simpson)).

10. VISE, *supra* note 1, at 1.

11. *See generally* STROSS, *supra* note 2 (describing Google’s multiplying services and ascent as a corporate powerhouse and cultural icon).

12. The Google Earth application has also been criticized for both invasion of privacy and for leaking sensitive information. *See* Karen Barlow, *Google Earth Prompts Security Fears*, ABC NEWS ONLINE (Aug. 8, 2005), available at <http://www.abc.net.au/news/indepth/featureitems/s1432602.htm>. Terrorists have admitted to using the platform to obtain information and some speculate as to whether this medium was used to further an illegal plot. *See, e.g.,* Rahul Bedi, *Mumbai Attacks: Indian Suit against Google Earth over Image Use by Terrorists*, TELEGRAPH (Dec. 9, 2008, 6:25 PM), <http://www.telegraph.co.uk/news/worldnews/asia/india/3691723/Mumbai-attacks-Indian-suit-against-Google-Earth-over-image-use-by-terrorists.html>; Clancy Chassay & Bobbie Johnson, *Google Earth Used to Target Israel*, Guardian (Oct. 24, 2007), available at <http://www.guardian.co.uk/technology/2007/oct/25/google.israel>. Nonetheless, Google Earth, though in some ways related to Google Street View, is beyond the scope of this Note.

13. *Google History*, GOOGLE, <http://www.google.com/about/corporate/company/history.html#2008> (last visited Sept. 30, 2011).

14. *See generally* Miguel Helft, *Google Zooms in Too Close for Some*, N.Y. TIMES (June 1, 2007), <http://www.nytimes.com/2007/06/01/technology/01private.html> (offering different perspectives on Google Street View and its depiction of unwitting individuals); Calum MacDonald, *Google’s Street View Site Raises Alarm over Privacy*, HERALD SCOTLAND (June 4, 2007), available at <http://www.heraldscotland.com/google-s-street-view-site-raises-alarm-over-privacy-1.859078> (raising concern with regards to individuals captured by Google Street View, including sunbathers, a nose picker, and a man entering an adult book store).

the navigator is literally standing at the inputted intersection.<sup>15</sup> Among the photos Google Street View has captured and disseminated are controversial images, such as a naked female in Taiwan,<sup>16</sup> dead bodies in Brazil,<sup>17</sup> and a man entering an adult video store in the United Kingdom.<sup>18</sup> Such images are no different than what anyone actually present at the location would see, yet it is unlikely that the individuals caught by the Google Street View cameras were cognizant that such episodes from their lives would be broadcast to the world. Furthermore, as eloquently put by Electronic Frontier Foundation<sup>19</sup> attorney Kevin Bankston,<sup>20</sup> “[t]here is a certain ‘ick’ factor here.”<sup>21</sup> Although this remarkable technology enriches the user’s ability to virtually navigate online maps, it also challenges preexisting notions of privacy and prompts questions as to where the line ought to be drawn between what is considered public and private, as well as how far one’s right to privacy regarding his or her own image extends.

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15. Matt Williams, *Behind the Scenes: Google Maps with Street View*, GOOGLE MAPS, [http://www.google.de/intl/en\\_za/help/maps/streetview/behind-the-scenes.html](http://www.google.de/intl/en_za/help/maps/streetview/behind-the-scenes.html) (last visited Sept. 30, 2011) [hereinafter Williams, *Behind the Scenes*].

16. Chris Anderson, *Ogle with Google Maps: Street View Captures Nude Taiwanese girl*, CNNGO (Mar. 12, 2010), <http://www.cnn.go.com/explorations/none/google-street-maps-captures-nude-chinese-girl-taiwan-550974>.

17. After capturing what seemed to be dead bodies, Google Street View was forced to remove the graphic images. Andrew Hough, *Google Forced to Remove ‘Dead Body’ Images from Brazil Street View Service*, TELEGRAPH (Oct. 6, 2010, 3:00 PM), <http://www.telegraph.co.uk/technology/google/8046212/Google-forced-to-remove-dead-body-images-from-Brazil-Street-View-service.html>.

18. Matthew Moore, *Google Street View: Private Moments Captured*, TELEGRAPH (June 19, 2008, 8:58 PM), <http://www.telegraph.co.uk/earth/earthnews/3345004/Google-Street-View-Private-moments-captured.html>.

19. The Electronic Frontier Foundation (“EFF”) is an organization devoted to addressing fundamental rights in the face of evolving technology. See ELECTRONIC FRONTIER FOUND., [www.eff.org](http://www.eff.org) (last visited Sept. 30, 2011).

20. Ironically, Mr. Bankston was one of the first individuals speculated to be captured by Google Street View; he was captured while he was secretly smoking a cigarette. See Kevin Poulsen, *EFF Privacy Advocate Sighted in Google Street View*, WIRED: THREAT LEVEL (June 11, 2007, 10:41 AM), [http://blog.wired.com/27bstroke6/2007/06/eff\\_privacy\\_adv.html](http://blog.wired.com/27bstroke6/2007/06/eff_privacy_adv.html); see also Lavoie, *supra* note 9, at 578 n.3.

21. Michael Liedtke, *Google Hits the Streets, Raises Privacy Concerns*, MSNBC.COM (June 1, 2007, 6:03:49 PM), <http://www.msnbc.msn.com/id/18987058> (quoting Kevin Bankston) (asking whether Google Street View goes too far and suggesting that even if Street View is lawful, it may not be responsible).

Advancing technological development triggers “urgency” for new policies to adapt to recently introduced threats to privacy.<sup>22</sup> Google’s other internet-based applications constantly infiltrate society, even extending Google’s reach beyond the computer through telephones: “Googles Goggles” allows an individual to snap a picture on their mobile device for Google to identify.<sup>23</sup> Furthermore, Google continues to serve as a prominent platform in which personal images are disseminated. “Online image management” is increasingly evolving into “a necessary prophylactic” for those who publish Internet photos.<sup>24</sup>

These are just a few examples of the Google features created to enhance the experience of the user and make the world a more accessible place that, albeit fascinating, are also problematic. But, the problem doesn’t simply end with Google, for other companies have also developed similar technology. “Layar,” for instance, provides “augmented reality” by informing the user about the location in which they are present.<sup>25</sup> Thus, despite its pervasiveness, Google Street View is in many ways just the tip of the iceberg. Consequently, it is necessary to address these important issues and formulate a system in which the interest of technological advancement is reconciled with the ever-important right to privacy.

Privacy “underpins human dignity”<sup>26</sup> and other cherished values and therefore has “become one of the most important rights of the modern age.”<sup>27</sup> Accordingly, the United Nations (“UN”) attempts to protect these rights. Global coordination and international recognition of human rights began with the Charter to the United Nations (“the Charter”), which specifically provides for the advancement of human rights.<sup>28</sup> Additionally, the Charter requires that member states “pledge themselves to take joint and separate action” to promote human rights.<sup>29</sup> The Charter is a binding

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22. David Banisar & Simon Davies, *Global Trends in Privacy Protection: An International Survey of Privacy, Data Protection, and Surveillance Laws and Developments*, 18 J. MARSHALL J. COMPUTER & INFO. L. 1, 3 (1999).

23. *Google Goggles*, GOOGLE MOBILE, <http://www.google.com/mobile/goggles/#landmark> (last visited Sept. 30, 2011).

24. Jamuna D. Kelley, Note, *A Computer with a View*, 74 BROOK. L. REV. 187, 202 (2008).

25. LAYAR, <http://www.layar.com> (last visited Sept. 30, 2011).

26. *Id.*; see also ELEC. PRIVACY INFO. CTR., PRIVACY AND HUMAN RIGHTS: AN INTERNATIONAL SURVEY OF PRIVACY LAWS AND DEVELOPMENTS 1 (2007) [hereinafter EPIC].

27. EPIC, *supra* note 26, at 1.

28. BARRY E. CARTER, PHILLIP R. TRIMBLE & ALLEN S. WEINER, INTERNATIONAL LAW 780 (5th ed. 2007); see also U.N. Charter art. 55.

29. CARTER ET AL., *supra* note 28, at 780; see also U.N. Charter art. 56.

treaty, which means that those who sign and ratify it are legally obliged by its provisions.<sup>30</sup> Though the Charter does not explicitly define the human rights to which member states are committed to uphold, the UN General Assembly adopted, without dissent, a Universal Declaration of Human Rights (“UDHR”).<sup>31</sup>

The UDHR is not a treaty and thus originally lacked binding authority.<sup>32</sup> After passing the UDHR, however, the UN took steps to convert the Declaration provisions into binding treaty obligations.<sup>33</sup> This led to the promulgation of the International Covenant on Civil and Political Rights (“ICCPR”),<sup>34</sup> which has been signed and ratified by 160 states.<sup>35</sup> Both the UDHR and the ICCPR list privacy as a human right.<sup>36</sup>

The right to privacy is fundamental<sup>37</sup>—it is a right that all people deserve.<sup>38</sup> Despite the widespread recognition of and appreciation for the right to privacy, protecting this right remains an elusive task, for as “capacity and speed of information technology . . . [accelerate] rapidly . . . the potential to invade privacy increases correspondingly.”<sup>39</sup> Thus, although the right is generally acknowledged, protecting the right is difficult.<sup>40</sup>

30. CARTER ET AL., *supra* note 28, at 782.

31. *Id.* at 780.

32. *Id.* at 782. Nonetheless, there may be independent grounds of obligation, such as customary international law. *See id.*

33. *Id.* at 783.

34. *Id.*

35. *Id.*

36. International Covenant on Civil and Political Rights, art. 17, Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]; Universal Declaration of Human Rights, art. 12, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

37. Not only is privacy recognized in municipal Constitutions and international instruments, such as the Universal Declaration of Human Rights, but the notion of privacy is also the basis of other significant human rights, such as the right of religion or free speech. *See Privacy and Human Rights*, Global Internet Liberty Campaign, <http://gilc.org/privacy/survey/intro.html> (last visited Sept. 30, 2011). The right to privacy goes hand in hand with the right to be an individual. *Id.*

38. It should be noted that there is some disagreement as to what constitutes a fundamental human right, as compared to an ordinary human right. Theodor Meron, *On A Hierarchy of International Human Rights*, 80 AM. J. INT’L L. 1, 6 (1986) (“The literature of international human rights demonstrates that some observers believe that there is a substantive difference between fundamental human rights and other human rights.”).

39. Banisar & Davies, *supra* note 22, at 4.

40. A useful way to frame this issue is through the microcosm of the Burning Man “counter cultural art” festival. *See EFF v. Burning Man at Open Video Conference*, OPEN VIDEO ALLIANCE, <http://openvideoalliance.org/2010/06/eff-vs-burning-man-at-open-video-conference/?l=en> (last visited Sept. 30, 2011). Burning Man is an annual gathering

One major problem is that, though most nations either acknowledge the right to privacy explicitly in their Constitution or by means of international agreement, the extent to which privacy is defined and protected around the world varies.<sup>41</sup> While many countries began enacting legislation to protect individual privacy around the 1970s, the scope of such protection lacks consistency.<sup>42</sup> Since then the world has become much more connected and there is thus a greater need, not just for local laws, but for global standards and regulations that safeguard the right to privacy.<sup>43</sup> However, this is particularly challenging due to inconsistent—and sometimes incompatible—notions of privacy among states; disparate laws in different countries reflect a lack of uniformity and incongruent priority on privacy.

The nature of the Internet, more specifically, Google Street View, is one that defies geographic boundaries and jurisdictions.<sup>44</sup> Since the Internet functions transnationally and easily sends images across borders, Google Street View technology presents particularly complicated questions, for it not only implicates the privacy rights and protections afforded domestically, but triggers the attention of the entire international community. Therefore, arriving at a sound, generally accepted policy is difficult. “It is a normal, even necessary, process to debate universal hu-

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in Black Rock, Nevada, in which tens of thousands of pilgrims flock to express themselves. *See id.* The celebratory event is notable for its encouragement of freedom of individuality and personal expression. *See id.* However, the hosting organization is highly restrictive with regard to photography. *See id.* “Anything goes in Black Rock City—except, apparently, when you’ve got a camera in your hand.” Rosalie Fay Barnes, *Burning Man at Open Video Conference in October*, BURNING MAN, <http://blog.burningman.com/category/digital-rights/> (last visited Oct. 14, 2011). All photos taken at the event are under the ownership of the Black Rock organization. *See id.* The EFF attacked these rules, launching an “internet battle for the ages.” *Id.* While Burning Man maintains that the prohibitions are necessary to uphold the privacy rights of the attendees, the EFF argues that the copyrights of the individuals ought to be preserved as well. *See id.* The conflict begs the question: how do we strike an optimal balance between the privacy rights and other countervailing electronic interests?

41. Global Internet Liberty Campaign, *supra* note 37.

42. *Id.* Throughout the world, there is a general movement toward the adoption of comprehensive privacy laws that set a framework for protection. *See id.*

43. *Id.*

44. *See* Lance E. Rothenberg, *Privacy: Peeping Toms, Video Voyeurs, and the Failure of the Criminal Law to Recognize a Reasonable Expectation of Privacy in the Public Space*, 49 AM. U. L. REV. 1127, 1128 (2000).

man rights . . . [b]ut how to protect human rights in international relations remains a perplexing question.”<sup>45</sup>

This Note contends that Google Street View violates an international right to privacy. Furthermore, this Note proposes industry-regulated international safeguards to combat the threat to privacy posed by Google Street View and other similar modes of Internet navigation services.

Part I of this Note introduces Google Street View and address the cross-border challenges it presents to the right of privacy. Part II provides a background of the right to privacy, focusing on its evolution at the global level. Part III discusses the sources of international law, focusing on the UDHR, the ICCPR, and expressions of customary international law. Following examination and application of the international legal instruments of the international right of privacy and finding that Google Street View technology violates the international right to privacy, Part IV suggests that, given the emergence of similar technology, the best solution is not to ban Google Street View, but to instead develop regulations and standards appropriate to monitor what images and data are broadcast over the Internet.

## I. GOOGLE STREET VIEW AND THE PROBLEMS IT POSES

An individual always loses privacy when he becomes the subject of attention. This will be true whether the attention is conscious and purposeful, or inadvertent . . . but attention alone will cause a loss of privacy even if no new information becomes known.<sup>46</sup>

Google is used all over the world.<sup>47</sup> Introduced in 2007,<sup>48</sup> Google Street View has developed and expanded rapidly. The feature first debuted in only a few American cities, but presently boasts the ability to capture locations spanning the globe. Today, Google Street View is available on all seven continents:<sup>49</sup> not even the penguins of Antarctica can

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45. Mahmood Monshipouri, *Promoting Universal Human Rights: Dilemmas of Integrating Development*, 4 YALE HUM. RTS. & DEV. L.J. 25, 25 (2001) (quoting DAVID P. FORSYTHE, HUMAN RIGHTS IN INTERNATIONAL RELATIONS 49 (2000)).

46. Ruth Gavison, *Privacy and the Limits of Law*, 89 YALE L.J. 421, 432 (1980).

47. In fact, “the Company’s name has entered the lexicon not only in English but in several other languages too: Germans *googelte*, Finns *googlata*, and the Japanese *guguru*.” VISE, *supra* note 1, at 146.

48. STROSS, *supra* note 2, at 144.

49. In October 2010, Google Street View was introduced in Antarctica. See Matthew Shaer, *Google Street View now with Penguins*, CHRISTIAN SCI. MONITOR (Oct. 1, 2010), <http://www.csmonitor.com/Innovation/Horizons/2010/1001/Google-Street-View-now-with-penguins> (“The extent of the Street View images in Antarctica are relatively limited,



escape Google's reach.<sup>50</sup> Street View, a function of the Google Maps and Google Earth applications, enhances a user's mapping experience by providing panoramic views of a location from the street level, and thereby allows the user to feel as though he or she is actually standing at that particular site.<sup>51</sup> According to Google Maps' project manager, "Street View provides users with a rich, immersive browsing experience directly in Google Maps, enabling greater understanding of a specific location or area."<sup>52</sup>

Google Street View functions by dispatching a fleet of assorted vehicles<sup>53</sup> with specialized cameras and other equipment to different locations.<sup>54</sup> Using this apparatus, images are captured, matched to the location using GPS, and then "sewn" together to provide users with "360-degree horizontal and 290-degree vertical panoramic street level views."<sup>55</sup> Consequently, users are able to click a site on an online Google map, which will then open "digital images of the street façade of that intersection."<sup>56</sup> With the help of navigational arrows and "Pegman,"<sup>57</sup> the

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but include some pretty spectacular panoramas of Half Moon Island, a locale populated primarily by chinstrap penguins.").

50. According to geospatial technologist Ed Parsons, "this allows people to understand the contrast between New York's Times Square and being on the edge of a glacier looking at penguins." Josh Halliday, *Google Street View: No More Privacy for Penguins as Antarctica Gets Mapped*, GUARDIAN (Sept. 30, 2010), <http://www.guardian.co.uk/technology/2010/sep/30/google-street-view-map-antarctica>.

51. *Using Street View*, GOOGLE MAPS, <http://maps.google.com/intl/en/help/maps/streetview/learn/using-street-view.html> (last visited Sept. 30, 2011).

52. Melissa Lafsky, *Google Maps Project Manager Speaks Out on "Street View"*, FREAKONOMICS BLOG (June 5, 2007, 4:17 PM), <http://www.freakonomics.com/2007/06/05/google-maps-project-manager-speaks-out-on-street-view/?scp=1&sq=speaks%2520out%2520on%2520google%2520street%2520view&st=cse>.

53. Recently, Google Street View employed the use of a "trike" in order to access more remote locations. See Matt Williams, *Behind the Scenes*, *supra* note 15.

We basically took the same technology in our Street View cars and towed them behind a 3-wheeled tricycle in a device reminiscent of an ice cream cart. The Trike lets us reach areas not accessible by car, such as hiking trails, biking trails and college campuses, just to name a few.

*Id.*

54. *Id.*

55. *Id.*

56. Kelley, *supra* note 24, at 190.

57. *Who is Pegman?*, GOOGLE MAPS, <http://maps.google.com/intl/en/help/maps/streetview/learn/pegman.html> (last visited

clothespin character seen on top of the Google Map's zoom-in zoom-out lens, users "walk" down the street with a sense of immersion into the targeted address.<sup>58</sup> As Google's website describes: "We like to think of Street View as being the last zoom layer on the map—when you've zoomed all the way in you find yourself virtually standing on the street."<sup>59</sup> This platform has not only improved the virtual landscape, but has sparked a profusion of controversy regarding the meaning and function of global privacy.

Though Google is the most popular, it is not the only source of this type of mapping technology.<sup>60</sup> Nonetheless, Google attracts the most attention as well as the most criticism. For example, Stop Internet Predators, a coalition dedicated to online child safety, worries that Street View could easily be manipulated by stalkers, child predators, and sexual assailants.<sup>61</sup> Moreover, unwitting individuals have already been caught in compromising situations by this digital platform.<sup>62</sup> Consequently, the worldwide community now faces questions regarding the relationship between the right to privacy and online image management.<sup>63</sup> Online

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Sept. 30, 2011). Users drag Pegman to the desired intersection to feel "in" the scene. See, e.g., *Using Street View*, *supra* note 51.

58. Kelley, *supra* note 24, at 191.

59. *Explore the World with Street View, Now on All Seven Continents*, GOOGLE LATLONG (Sept. 30, 2010, 9:11 AM), <http://google-latlong.blogspot.com/2010/09/explore-world-with-street-view-now-on.html>.

60. Kelley, *supra* note 24, at 191–92; see, e.g., Chris Pendleton, *Bing Maps Adds Streetside, Enhanced Bird's Eye, Photosynth and More*, BING MAPS BLOG (Dec. 2, 2009, 10:55 AM), [http://www.bing.com/community/site\\_blogs/b/maps/archive/2009/12/02/bing-maps-adds-streetside-enhanced-bird-s-eye-photosynth-and-more.aspx](http://www.bing.com/community/site_blogs/b/maps/archive/2009/12/02/bing-maps-adds-streetside-enhanced-bird-s-eye-photosynth-and-more.aspx).

61. Brian Stallworth, *Google Imperfect: Googling for Principles in Online Behavioral Advertising*, 62 FED. COMM. L.J. 465, 474–75 (2010); see also About, STOPINTERNETPREDATORS.ORG, <http://www.stopinternetpredators.org/about> (last visited Oct. 30, 2011) ("Stop Internet Predators has a special focus on new internet technologies that pose a risk to . . . children's safety, such as Google's Street View.").

62. Anderson, *supra* note 16; Hough, *supra* note 17; Moore, *supra* note 18; see also William L. Prosser, *Privacy*, 48 CALIF. L. REV. 383, 394 (1960) (addressing the question, if being in public gives others the right to publish pictures of you taken at this time. Prosser asks, "[w]hat if an utterly obscure citizen, reeling along drunk on the main street, is snapped by an enterprising reporter, and the picture given to the world? Is his privacy invaded?").

63. Some British citizens even stood in the road forming a "human chain" to protest Google Street vehicles that were photographing the area. *Residents Challenge Google Camera*, BBC NEWS (Apr. 3, 2009, 2:17 PM), [http://news.bbc.co.uk/2/hi/uk\\_news/england/beds/bucks/herts/7980737.stm](http://news.bbc.co.uk/2/hi/uk_news/england/beds/bucks/herts/7980737.stm) ("Police were called to Broughton after residents staged the protest, accusing Google of invading their privacy and 'facilitating crime.'").

image management is the “concern for an individual’s ability to define one’s image (both pictorial and reputational) on the Internet.”<sup>64</sup> Accordingly, Street View’s potential to strip an individual’s ability to define his or herself by broadcasting information without the consent of those depicted threatens a person’s integrity, reputation, and fundamental right to be let alone.<sup>65</sup>

Google itself acknowledges conflict with privacy and to address it, now blurs faces and license plates and will remove images upon request, if the content is inappropriate.<sup>66</sup> Despite this concession however, generally Google contends that photos of the *public* can hardly be seen as an invasion of *privacy*.<sup>67</sup> However, this view is misinformed. The predigital age afforded anonymity, “not by law, but by the crude state of technology.”<sup>68</sup> Google Street View is not simply capturing images that were always considered public, but taking the information and rendering it easily available for universal access. Passing details are not just memorialized; rather Street view “encourages ‘the scrutiny to be extended indefinitely.’”<sup>69</sup> Furthermore, despite the option of image removal, once a photo reaches the Internet, it has the potential to be encrypted and downloaded and stored in the virtual landscape forever.<sup>70</sup>

Many countries have grappled with how to deal with this novel form of technology. The Czech Republic denied Google permission to register the street view technology on privacy grounds.<sup>71</sup> The country’s “privacy

64. Kelley, *supra* note 24, at 224.

65. *See id.* at 224–26.

66. *Privacy*, GOOGLE MAPS, [http://maps.google.com/intl/en\\_us/help/maps/streetview/privacy.html](http://maps.google.com/intl/en_us/help/maps/streetview/privacy.html) (last visited Sept. 30, 2011).

67. It should be noted that Google did have the foresight to prevent information about domestic violence shelters from leaking. *See STROSS, supra* note 2, at 145.

68. STROSS, *supra* note 2, at 145.

69. Kelley, *supra* note 24, at 195–98.

The practical consequences for individuals whose images have been captured online are wide-ranging and sometimes destructive. For example, South Korea’s famous ‘Dog Poop Girl’ was socially ostracized in her home country and vilified internationally after a digital photograph showing the girl’s unwillingness to clean up her dog’s excrement on a subway was disseminated on the internet . . . ‘Dog Poop Girl’ was eventually forced to quit college due to the public harassment she experienced.”

*Id.*

70. *Id.* at 196.

71. *Czech Republic Bans Google ‘Street View,’* MSNBC.COM (Sept. 22, 2010, 6:39 AM), <http://www.msnbc.msn.com/id/39302384/> [hereinafter *Czech Republic Bans Google ‘Street View’*].

watchdog” says the product “disproportionately invades citizens’ privacy.”<sup>72</sup> Australia joined the ranks of states conducting investigations that question the legality of Google Street View,<sup>73</sup> and Greece cited privacy reasons for banning Street View within its borders.<sup>74</sup> In Germany, a nation haunted by its past secret police surveillance practices, critics question Google Street View’s transparency.<sup>75</sup>

As nations confront this new threat to privacy, global privacy laws must be synchronized, for the very nature of the Internet—and particularly the advent and popularity of Google Street View technology—threatens government oversight<sup>76</sup> and the capacity for nations to independently deal with these transnational threats.

## II. BACKGROUND OF THE GLOBAL RIGHT TO PRIVACY

In one sense, all human rights are aspects of the right to privacy.<sup>77</sup>

Today, most countries recognize the right to privacy, explicitly or otherwise.<sup>78</sup> For example, “most recently-written Constitutions such as South Africa’s and Hungary’s include specific rights to access and control one’s personal information.”<sup>79</sup> Such recognition of a right to privacy has deep historical roots in texts and scripture from antiquity.<sup>80</sup> This acknowledgment began to be formally codified in modern society with the

72. *Id.*

73. *Investigations of Google Street View*, EPIC.ORG, <http://epic.org/privacy/streetview> (last visited Sept. 30, 2011) [hereinafter *Investigations of Google Street View*].

74. *Greece Puts Breaks on Street View*, BBC NEWS (May 12, 2009, 12:51 PM), <http://news.bbc.co.uk/2/hi/technology/8045517.stm>.

75. *Czech Republic Bans Google ‘Street View,’ supra* note 71 (finding that critics worry that Street View may be abused because “thieves could use it to identify targets, security firms could use it to pitch sales, job seekers might find their homes scrutinized by employers and banks could inspect the homes of loan applicants”). Furthermore, in Germany, “where the debate on surveillance is tinged with memories of the role played by the Nazis’ Gestapo and the East German Stasi secret police, doubts have been raised about the transparency of the project.” *Id.*

76. JACK L. GOLDSMITH & TIM WU, *WHO CONTROLS THE INTERNET? ILLUSIONS OF A BORDERLESS WORLD* xi (2008).

77. EPIC, *supra* note 26, at 1 (quoting FERNANDO VOLIO, *Legal Personality, Privacy and the Family*, in *THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* (Louis Henkin ed., 1981) (emphasis added)).

78. Banisar & Davies, *supra* note 22, at 3.

79. Global Internet Liberty Campaign, *supra* note 37.

80. Classical texts and religious scripture provide many of the earliest examples of a recognition in the right to privacy: ancient Jewish law protected private spaces and prohibited gossip; the Qur’an urges guarding the privacy of the home; certain provisions of the Hippocratic Oath involve professional nondisclosure. KEVIN M. KEENAN, *INVASION OF PRIVACY* 5 (2005).

American Constitution and the creation of the Bill of Rights, which proclaimed the existence of many incontrovertible rights that would later be interpreted to reflect an inherent right to privacy.<sup>81</sup> During this revolutionary period, analogous rights were legislatively enacted in European countries, manifesting a similarly profound recognition of a natural right to privacy, including prohibitions against certain conduct that violated this important liberty.<sup>82</sup> Privacy continued to be an essential right, but it was during the second half of the 20th century that the world experienced increased attention to human rights,<sup>83</sup> and among such, the right to privacy.<sup>84</sup>

The right to privacy, though incredibly important, evades easy definition. Different jurisdictions have invoked the right of privacy to varied extents.<sup>85</sup> Many states merge the notion of privacy with an individual's right to manage their personal information.<sup>86</sup> Frequently, the definition of privacy extends beyond protection from government intrusion to encompass an expectation of security from other entities, such as companies. For example, the Preamble to the Australian Privacy Charter<sup>87</sup> provides, "a free and democratic society requires respect for the autonomy of individuals, and limits on the power of both state and private organizations to intrude on that autonomy."<sup>88</sup> While Australia's definition respects the right to privacy against interference by companies, other countries, such as the United States, do not explicitly lay out the contours of the right to

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81. See, e.g., *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965) ("[S]pecific guarantees in the Bill of Rights have penumbras . . . . Various guarantees create zones of privacy."); see also U.S. CONST. amend. I-X; KEENAN, *supra* note 81, at 7.

82. KEENAN, *supra* note 81, at 8.

In 1776, the Swedes adopted a law prohibiting the government from keeping information about its citizens that was not to be used for legitimate purposes. In 1789 . . . the Declaration of the Rights of Man and of the Citizen defined liberty as 'the freedom to do everything that injures no one else' and limited law to 'prohibit only such actions as are hurtful to society.'

*Id.*

83. Such increased recognition of human rights is largely a result of the atrocities that took place during World War II and a global commitment to prevent offenses from occurring again. CARTER ET AL., *supra* note 28, at 777.

84. Eric Caprioli et al., *The Right to Digital Privacy: A European Survey*, 3 RUTGERS J.L. & URB. POL'Y 211, 212 (2006).

85. See JAMES MICHAEL, *PRIVACY AND HUMAN RIGHTS* 1 (1994).

86. EPIC, *supra* note 26, at 1.

87. Austl. Privacy Charter Council, *Australian Privacy Charter*, AUSTL. PRIVACY FOUND. (Dec. 6, 1994), <http://www.privacy.org.au/apcc/Charter.html>.

88. *Id.*

privacy at all.<sup>89</sup> Yet other definitions link privacy to anonymity.<sup>90</sup> Despite the varying incantations of the right to privacy,<sup>91</sup> Louis Brandeis may have articulated it best over a hundred years ago as “the right to be let alone.”<sup>92</sup> Brandeis<sup>93</sup> prophetically warned about the dangers inherent in technological innovation, including potential abuse of the right of privacy.<sup>94</sup>

Promulgated in the aftermath of World War II, the UDHR<sup>95</sup> and the ICCPR<sup>96</sup> provide the benchmark for the modern international right to privacy. Many countries have implemented treaties, obligating themselves to protect and uphold the rights expressed in these international instruments.<sup>97</sup> For example, in 1950 the European Union (“EU”) enacted the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>98</sup> Article 8 states: “Everyone has the right to respect for his private and family life . . . [t]here shall be no interference.”<sup>99</sup> Legal bodies designed to enforce Article 8 have interpreted this precious right as “the right to live . . . protected from publicity.”<sup>100</sup> These international instruments are undeniably important in establishing international norms regarding the right to privacy,<sup>101</sup> but as states simultaneously de-

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89. See generally Kelley, *supra* note 24 (summarizing the evolution of privacy jurisprudence in the United States and the uncertainty that persists as to this right).

90. See generally Gavison, *supra* note 46 (proposing that privacy consists of anonymity, secrecy, and solitude).

91. See EPIC, *supra* note 26, at 1.

92. *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting), *vacated by Katz v. United States*, 389 U.S. 347 (1967).

93. Brandeis along with his co-author, Justice Samuel Warren. See Samuel Warren & Louis Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).

94. *Id.* at 195 (“Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life.”).

95. UDHR, *supra* note 36, art. 12.

96. ICCPR, *supra* note 36, art. 17.

97. EPIC, *supra* note 26, at 6–7.

98. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, E.T.S. No. 5, 213 U.N.T.S. 221 [hereinafter ECHR], available at <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>. The Convention is of particular significance because so many states who later become member states sign on to it. See Caprioli et al., *supra* note 84, at 213.

99. ECHR, *supra* note 98, art. 8. Though the text of Article 8 focuses on interference from a public authority, this author argues that the spirit of this Convention suggests that human rights and fundamental freedoms such as privacy should not be violated by anybody – either private or public actor.

100. EPIC, *supra* note 26, at 7 (quoting *X v. Iceland*, App. No. 2525/65, 5 Eur. Comm’n H.R. Dec. & Rep. 86 (1976)). Therefore, there are at least some parts of the world currently defining privacy as freedom from unwanted exposure. *Id.*

101. *Id.*

velop their own domestic privacy protections using this international standard,<sup>102</sup> the extent to which privacy is protected diverges.<sup>103</sup> While different countries struggled to enact legislation within the international framework, the phenomenon of the Internet and information technology emerged. This presents an added hurdle, as nations are consequently forced to expound privacy laws that include data protection.<sup>104</sup> Although the spirit of these statutes tends to overlap, they fail to protect privacy on an international level.<sup>105</sup> The present lack of uniformity between nations is an ongoing problem in the effort to regulate the Internet.

Regions, as well as nations within regions, demonstrate great disparities regarding how privacy should be addressed. In Japan, opponents protested against Google Street View services by local government, expressing concerns of community privacy.<sup>106</sup> Efforts are underway to enact proper measures and set “guidelines or voluntary rules regarding the use of new technology to ensure harmony and consistency with the Japanese culture of privacy.”<sup>107</sup> The Asia-Pacific Economic Coordination Cooperation (“APEC”), a regional coalition, endeavors to “promote a flexible approach to information privacy protection across APEC member economies.”<sup>108</sup>

European countries have approached Google Street View differently. Germany is especially hostile to Google Street View,<sup>109</sup> and even condi-

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102. Caprioli et al., *supra* note 84, at 214.

103. *Id.*

104. *Id.* at 211 nn.13–16.

Legislation in Europe began with the West German Land of Hesse passing the very first Data Protection Act in 1970 which created the first data protection authority: the Datenschutzbeauftragter. This was soon followed by Sweden’s Data Act of 1973 . . . France followed suit by enacting the Data Protection Act in 1978 to regulate the use and storage of personal information held by government agencies and private entities.

*Id.*

105. *Id.* at 211.

106. Hiroshi Miyashita, *Changing Privacy and Data Protection in Japan*, 10 SEDONA CONF. J. 277, 280 (2009).

107. *Id.*

108. Asia-Pac. Econ. Coordination Coop. [APEC], *Privacy Framework*, APEC Doc. 205-S0-01.2 (2005), available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(03995EABC73F94816C2AF4AA2645824B\)~APEC+Privacy+Framework.pdf/\\$file/APEC+Privacy+Framework.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(03995EABC73F94816C2AF4AA2645824B)~APEC+Privacy+Framework.pdf/$file/APEC+Privacy+Framework.pdf).

109. Nicholas Deleon, *Google Street View Launches in Germany (But with a Win for Privacy Advocates)*, TECHCRUNCH (Nov. 2, 2010), <http://techcrunch.com/2010/11/02/google-street-view-launches-in-germany-but-with-a-win-for-privacy-advocates>.

tioned the acceptance of Google Street View on advanced notice.<sup>110</sup> Now, the “German [Google] Street View is unique in that it is the only implementation of the service where people can request ahead of time to have their property blurred.”<sup>111</sup> On the other hand, a 2009 UK investigation, analogizing to bystanders captured in newscasts, concluded that there was no violation of its domestic Data Protection Act.<sup>112</sup>

The EU offers stringent protections of the individual right to privacy<sup>113</sup> and seeks to update its privacy and data protection laws, which are, at the time of writing this Note, fifteen years old.<sup>114</sup> In fact, the EU is heeding recommendations to further sharpen its privacy laws and crack down on Google Street View practice.<sup>115</sup> Among the EU’s efforts to modernize its legal privacy scheme, the EU is drafting Article 29 to address data protection in light of recent technological innovations.<sup>116</sup> Additionally, the EU requests that Google take down images after six-months, instead of one year, and that it provide advance notice before photographing a given location.<sup>117</sup> The head of the EU data protection group intimated that the benefit from retaining the photos for a year was “disproportionate” to the privacy interests at stake, whereas a six month retention period for unblurred images would provide a more optimal balance.<sup>118</sup> Finally, the EU also enacted Article 25 of the European Parliament’s Directive on

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110. *Id.*

111. *Id.*

112. Press Release, Info. Comm’n Office, Common Sense on Street View Must Prevail (Apr. 23, 2009), *available at* [http://www.ico.gov.uk/upload/documents/pressreleases/2009/google\\_streetview\\_220409\\_v2.pdf](http://www.ico.gov.uk/upload/documents/pressreleases/2009/google_streetview_220409_v2.pdf).

113. See Jordan E. Segall, Note, *Google Street View: Walking the Line of Privacy – Intrusion upon Seclusion and Publicity Given to Private Facts in the Digital Age*, 10 U. PITT. J. TECH. L. & POL’Y 1, 14 (2010).

114. Drew Singer, *EU Calls for Stronger Internet Privacy Laws*, JURIST (Nov. 4, 2010, 10:36 AM), <http://jurist.org/paperchase/2010/11/eu-calls-for-stronger-internet-privacy-laws.php>.

115. Clint Boulton, *EU Wants Google Street View Image Retention Cut to Six Months*, EWEK.COM (Feb. 2, 2010), <http://www.eweek.com/c/a/Search-Engines/EU-Wants-Google-Street-View-Image-Retention-Cut-to-Six-Months-804697>.

116. *Investigations of Google Street View*, *supra* note 73 (quoting Letter from Jacob Kohnstamm, Chairman, Article 29 Working Party to Google (May 26, 2010) (“Given the predominant role of the Google search engine in the daily lives of all citizens of the European information society, the apparent lack of focus on privacy in this area is concerning.”)).

117. Boulton, *supra* note 115.

118. *Id.* (“Calling Google’s retention period ‘disproportionate,’ the head of the EU working party said a “maximum retention of 6 months for the unblurred copies of the images would strike the right balance between the protection of privacy and the ability to eliminate false positives.”).



Data Protection, which proscribes information sharing between countries with less rigorous privacy shields in place.<sup>119</sup> The EU's effort illustrates how Europe considers privacy a priority as it takes steps to prevent certain technologies—such as Google Street View—from encroaching on the fundamental right.

The EU and the United States diverge on their approach to the “privacy in public” issue.<sup>120</sup> Traditionally, American courts take a hard line stance in refusing to acknowledge the right of privacy in public; American courts are much less receptive than the EU to individual privacy claims.<sup>121</sup> Although privacy is acknowledged as a fundamental right, it is not explicitly recognized in the U.S. Constitution. Rather, in the 1965 landmark case of *Griswold v. Connecticut*,<sup>122</sup> the Supreme Court instead found that the Bill of Rights create a “penumbra” of related and implied liberties, including certain zones of privacy.<sup>123</sup> Thus, while not overtly expressed, the guarantees within the Bill of Rights inherently reflect a right to privacy. For example, the Fourth Amendment protection against search and seizure is built upon privacy rights in one's home.<sup>124</sup>

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119. Segall, *supra* note 113, at 16 (quoting HARRY HENDERSON, PRIVACY IN THE INFORMATIONAL AGE 59) (“Doing so could lead to improper disclosure or other abuses and ultimately defeat the purpose of the legislation.”).

120. In *Boring v. Google, Inc.*, the court held in a factually similar case that no one “other than the most exquisitely sensitive—would suffer shame or humiliation” as a result of Google's street view car taking photos of the plaintiff's residence. *Boring v. Google, Inc.*, 598 F. Supp. 2d 696, 700 (W.D. Pa. 2009) *reconsideration denied*, CIV.A 08-694, 2009 WL 931181 (W.D. Pa. Apr. 6, 2009), *aff'd in part, rev'd in part and remanded*, 362 F. App'x 273 (3d Cir. 2010), *cert. denied*, 131 S. Ct. 150 (U.S. 2010), and *aff'd in part, rev'd in part and remanded sub nom.*, 362 F. App'x 273 (3d Cir. 2010), *cert. denied*, 131 S. Ct. 150, 178 L. Ed. 2d 38 (U.S. 2010).

121. See Segall, *supra* note 114. With regard to the tort for invasion of privacy, states' policies vary, despite a common hesitancy to expand the right of privacy. *Id.* at 6–19.

122. The court declared a state law that prohibited the use and distribution of contraceptives unconstitutional. *Griswold*, 381 U.S. at 486.

123. *Id.* at 485.

124. *Id.* at 484. Although the privacy rights of criminal defendants are beyond the scope of this Note, the Supreme Court's consistent approach is worth noting. Criminal investigations often prompt questions about the use of technology to obtain personal information. See Rothenberg, *supra* note 43. In such cases, the United States Supreme Court has routinely held that while one is in the public sphere there is no *expectation* of privacy, and thus there can be no encroachment of privacy. See *Katz v. United States*, 389 U.S. 347 (1967) (concluding that law enforcement's use of a listening device on the outside of a telephone booth where the defendant was speaking constituted a “search” for purposes of the Fourth Amendment. This action violated the defendant's fourth amendment right as he *did* have an actual and reasonable expectation of privacy in this context.).

Since *Griswold*, much relevant jurisprudence regarding the right to privacy has been developed through tort case law,<sup>125</sup> and in many ways the right has been limited “by balancing it against the legitimate interests and needs of government”<sup>126</sup> and society. Dean William Prosser identified four common law torts related to the right of privacy, which were later adopted in the Restatement.<sup>127</sup> The most relevant of these torts for a Street View plaintiff is the intrusion upon seclusion tort and the tort of public disclosure of private facts.<sup>128</sup> However, Prosser limited these privacy torts, maintaining that in public, a person has no “right to be alone.”<sup>129</sup>

A recent decision reflecting the reluctance of U.S. courts to expand the right to privacy is the fitting case of *Boring v. Google, Inc.*, 598 F. Supp. 2d 696, 700 (W.D. Pa. 2009), in which the Western District of Pennsylvania dismissed a suit against Google filed by a couple whose private home was photographed by Street View cameras.<sup>130</sup> Given the absence of offensive imagery and based on the notion that people implicitly consent to disclosure when in public, the court maintained the Dean Prosser/Restatement approach.<sup>131</sup> This case exemplifies the difficulty for plaintiffs to prevail in a suit for an intrusion on their privacy in the United States.

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125. Segall, *supra* note 113, at 10.

126. KEENAN, *supra* note 81, at 18.

127. Kelley, *supra* note 24, at 207–08. Prosser’s four common law torts include the following: “(1) ‘Intrusion upon the plaintiff’s seclusion, solitude, or private affairs[;]’ (2) ‘Public disclosure of embarrassing private facts about the plaintiff[;]’ (3) ‘Publicity which places the plaintiff in false light in the public eye[;]’ and (4) ‘[Commercial] [a]ppropriation of the plaintiff’s name or likeness.’” Segall, *supra* note 113, at 6 (quoting Prosser, *supra* note 62, at 389).

128. Segall, *supra* note 113, at 6. Intrusion upon seclusion occurs when one “intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.” RESTATEMENT (SECOND) OF TORTS § 652B. Under this tort, a claimant must show that a private matter existed, that the claimant had a right to keep the information private, and that the private information was discovered by unreasonable means. Kelley, *supra* note 24, at 208–09. The intrusion must also be “highly offensive to the reasonable person.” *Id.* Similarly, “the tort of public disclosure of private facts provides an action for the ‘disclosure of private information that is (1) widely disseminated; (2) highly offensive to a reasonable person; and (3) not ‘newsworthy’ or ‘of legitimate concern to the public.’” *Id.* at 209.

129. *Id.* at 7 (citing Prosser, *supra* note 62, at 391).

130. *Boring*, 598 F. Supp. 2d at 704.

131. Prosser, *supra* note 62, at 391; RESTATEMENT (SECOND) OF TORTS § 652D cmt. b (1977) (“Complete privacy does not exist in this world except in a desert, and anyone who is not a hermit must expect and endure the ordinary incidents of the community life of which he is a part.”).

Moreover, this ruling puts the American system even more out of sync with the European approach, since this was not a “private-in-public” scenario, but a purely private location. Many legal commentators have called for the United States to restructure its notion of privacy.<sup>132</sup> Furthermore, if the UDHR and the ICCPR are manifestations of customary international law, the United States is simply in breach of the accepted legal principles, while the “EU is setting the standards of privacy protection for the rest of the world.”<sup>133</sup>

Canada’s approach occupies somewhat of a “middle ground” between the United States and Europe.<sup>134</sup> Though the Canadian Constitution does not explicitly recognize the right to privacy—the right developed through an implicit understanding of liberty, like in the United States—Canada departs from the United States’ stance and leans closer to the EU position in that it has promulgated specific laws aimed at championing the right of privacy.<sup>135</sup> The Personal Information and Electronic Documents Act explicitly references the need to balance the right of individual privacy with the interests of those organizations that collect and disclose such material.<sup>136</sup> Additionally, there is an Office of the Privacy of Canada, which exists to ensure compliance with privacy legislation.<sup>137</sup>

Moreover, beyond the different ranges of protection of privacy offered around the globe, there is also significant variation within the models and systems used to monitor the right to privacy.<sup>138</sup> Europe, Australia, Hong Kong, New Zealand, and Canada employ a public official to enforce privacy law and oversee compliance.<sup>139</sup> This official is typically the international liaison for data protection and sharing.<sup>140</sup> Yet though this regulatory model is preferred by a number of countries, the power of each com-

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132. See generally Kelley, *supra* note 24 (arguing that online image management should be recognized by the legal community and calling for tort reform to further privacy interests); Lavoie, *supra* note 9 (demanding stronger legal protection for the right to privacy in public).

133. Cherise M. Valles, *An Alternative Voice: Setting the Course on Data Privacy*, N.Y. TIMES (May 28, 2001), <http://www.nytimes.com/2001/05/28/news/28iht-btalt28.html>; see also DOROTHEE HEISENBERG, NEGOTIATING PRIVACY 1–4 (2005).

134. Avner Levin & Mary Jo Nicholson, *Privacy Law in the United States, the EU and Canada: The Allure of the Middle Ground*, 2 U. OTTAWA L. & TECH. J. 357, 360 (2005).

135. Privacy Act, R.S.C. 1985, c. P-21, s. 2 (Can.); Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5 (Can.) [hereinafter PIPED Act].

136. PIPED Act, *supra* note 135, pt. 1, para. 3.

137. *Mandate and Mission of the OPC*, OFF. PRIVACY COMM’R CAN. (Dec. 8, 2008), [http://www.priv.gc.ca/aboutUs/mm\\_e.cfm#contenttop](http://www.priv.gc.ca/aboutUs/mm_e.cfm#contenttop).

138. Global Internet Liberty Campaign, *supra* note 37.

139. *Id.*

140. *Id.*

mission varies greatly between implementing nations, and enforcement resources are often inadequately allocated<sup>141</sup>

Other countries, including the United States, prefer “sectoral laws” to govern privacy within specific fields, leaving enforcement to various mechanisms employed by the industry.<sup>142</sup> Different countries achieve success by this method to varying degrees.<sup>143</sup> A common drawback is that, in the absence of comprehensive data schemes, privacy protection often lags behind the rapid introduction of new technologies.<sup>144</sup>

These few examples of differing approaches across countries and regions with respect to individual privacy’s relationship with technological advancement illustrate the difficulties in establishing uniform legislation. The problem is real and demands a solution. “The greatest concern for a given country that interacts . . . with other countries, is how [its] citizen’s data and privacy is going to be protected by another country.”<sup>145</sup> Though new agreements aimed at cross-border protection emerged,<sup>146</sup> the effort to protect privacy and monitor the flow of information transnationally has become further complicated by the continuing sophistication of technology, such as Google Street View.

### III. INTERNATIONAL LAW AND GOOGLE STREET VIEW’S VIOLATION OF THE INTERNATIONAL RIGHT TO PRIVACY

Notwithstanding the variance in domestic protections, international law affords a high standard of protection for the right of privacy. Within this international legal framework, Google Street View violates the right to privacy.

Treaties are one of the most important sources of international law<sup>147</sup>—most rules of international law find their source in the explicit and usually written agreement of states.<sup>148</sup> Treaties create legal rights and duties upon those parties who obligate themselves and thereby consent to be bound.<sup>149</sup> Under the “fundamental and widely accepted rule of *pacta sunt servanda*: ‘every treaty in force is binding upon the parties to it and must

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141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. ALBERT J. MARCELLA & CAROL STUCKI, *PRIVACY HANDBOOK: GUIDELINES, EXPOSURES, POLICY IMPLEMENTATION, AND INTERNATIONAL ISSUES* 70 (2003).

146. Caprioli et al., *supra* note 84, at 214.

147. CARTER ET AL., *supra* note 28, at 93.

148. *Id.*

149. *Id.*

be performed in good faith.”<sup>150</sup> This rule lies at the heart of international law.<sup>151</sup> Thus, also under general customary international norms of comity, parties are expected to fulfill their treaty obligations in good faith.<sup>152</sup>

Customary law, by which persistent state practice performed out of a sense of legal obligation creates norms that evolve into obligatory law, is one of the major sources of international law.<sup>153</sup> Though over the last few decades treaties have become an increasingly significant source of international law, many important legal rules continue to arise from customary international law.<sup>154</sup> Furthermore, many rules otherwise included in major multilateral treaties are said to either have codified settled customary international law or to have “crystallized” emerging customary international law.<sup>155</sup> In such cases, the customary rules retain independent force and bind even those states that are not parties to the treaty.<sup>156</sup>

Individuals enjoy certain fundamental rights; at the international level, these rights are acknowledged as “human rights.”<sup>157</sup> Together, the UDHR and the ICCPR form an “international bill of rights.”<sup>158</sup> Privacy is a valued and internationally recognized right, as exemplified by these various international instruments and expressions of customary international law. Therefore, states are bound to respect these rights.<sup>159</sup>

*A. Sources of International Law—The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights*

In the aftermath of World War II, as the global community attempted to articulate certain human rights, the United Nations formed a Human Rights Commission.<sup>160</sup> The UDHR was promulgated in 1948 by the

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150. *Id.* at 102–03.

151. *Id.* at 103.

152. *Id.*

153. *Id.* at 123.

154. *Id.*

155. *Id.* at 135–36.

156. *Id.* at 134.

157. Brenda Sue Thornton, *The New International Jurisprudence on the Right to Privacy: A Head-on Collision with Bowers v. Hardwick*, 58 ALB. L. REV. 725, 731 (1995) (“‘Human rights’ are freedoms, immunities, and benefits which, according to widely accepted contemporary values, every human being should enjoy in the society in which he or she lives.”).

158. CARTER ET AL., *supra* note 28, at 783 (along with the International Covenant on Economic, Social and Cultural Rights, which is not the focus of this Note).

159. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE U.S. § 701 (1986) (“A state is obligated to respect the human rights of persons subject to its jurisdiction.”).

160. Thornton, *supra* note 157, at 733.

United Nations General Assembly.<sup>161</sup> Though there is debate as to whether this instrument confers binding obligations on accepting states or if it constitutes a (nonbinding) General Assembly Resolution, it undoubtedly enjoys worldwide respect and is “part of the constitutional structure of the world community.”<sup>162</sup> It is not a treaty, but today, many of the provisions of the UDHR have been codified in other treaties.<sup>163</sup> Furthermore, many scholars emphasize that the UDHR is “reflect[ive of] customary international law”<sup>164</sup> and is therefore binding even on nations that have not ratified relevant treaties.<sup>165</sup> As a codification of customary international law, therefore, even non-UN states must cooperate. The UDHR at the very least compels close adherence.<sup>166</sup>

UDHR Article 12 states: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”<sup>167</sup> Consequently, the UDHR asserts that privacy is a fundamental human right. It further intimates that all individuals should be protected from unnecessary infringement of this right to privacy, and links infringement of a person’s privacy to attack’s upon his honor and reputation. Google Street View, by portraying images of people without their consent, impedes this right.

After drafting the UDHR, the Human Rights Commission then drafted the ICCPR, which entered into force in 1976.<sup>168</sup> Article 17 of the ICCPR asserts in pertinent part, “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honor and reputation . . . Everyone has the right to the protection of the law against such interference or attacks.”<sup>169</sup> The

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161. CARTER ET AL., *supra* note 28, at 780.

162. *Id.* at 782–83.

163. *Id.* at 782.

164. Richard B. Lillich, *The Growing Importance of Customary International Human Rights Law*, 25 GA. J. INT’L & COMP. L. 1, 2 (1995–1996).

165. CARTER ET AL., *supra* note 28, at 782.

166. Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U. L. REV. 1, 16–18 (1982) (“The declaration thus is now considered to be an authoritative interpretation of the U.N. Charter, spelling out in considerable detail the meaning of the phrase ‘human rights and fundamental freedoms,’ which Member States agreed in the Charter to promote and observe . . . [it] is part of the constitutional structure of the world community.”).

167. UDHR, *supra* note 36.

168. ICCPR, *supra* note 36, art. 49, para. 1 (“The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.”).

169. *Id.* art. 17.

ICCPR expands the UDHR definition by proscribing “unlawful” interference as well as arbitrary interference. The ICCPR is a treaty and therefore undoubtedly part of international law and binding on all those who have ratified the treaty. It also employs a mechanism facilitating individual complaints.<sup>170</sup>

*B. Google Street View Interferes with the International Right to Privacy*

In order to resolve whether Google Street View violates international law notions of the right to privacy, a threshold matter, given the similar language of both the UDHR and the ICCPR, is to identify and define what constitutes an “interference” as a matter of statutory construction. Originally, the drafters of the UDHR attempted to proscribe “unreasonable” interferences.<sup>171</sup> However, many of the delegates at the drafting conference questioned this term and “arbitrary” was used in its place.<sup>172</sup> This word—*interference*—is used in other areas of the UDHR and, according to the New Zealand delegate at the conference, “signifie[s] everything not in accordance with accepted legal principles.”<sup>173</sup> Adoption of the second line of the provision calls upon the government and legal machinery to ensure these rights remain protected.<sup>174</sup> At the time of this Note, “there is little jurisprudence on the contours of the ICCPR’s right to privacy.”<sup>175</sup> Nonetheless, the available ICCPR and UDHR jurisprudence has led to differing opinions regarding the interpretation of an interference of an individual’s privacy.<sup>176</sup>

A number of regional treaties that also incorporate similar vocabulary help elucidate as to how the UDHR and ICCPR are to be construed.<sup>177</sup>

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170. Thornton, *supra* note 157, at 737.

171. JOHANNES MORSINK, UDHR: ORIGINS, DRAFTING AND INTENT, 136–37 (2000).

172. *Id.* at 137.

173. *Id.* at 138. Accepted legal principles can include those commonly embraced by a large number of countries. CARTER ET AL., *supra* note 28, at 154.

174. MORSINK, *supra* note 171, at 138.

175. *Id.* at 732.

176. For example, in the Human Rights Committee’s analysis of *Toonen v. Australia*, which held that sexuality is covered by the ICCPR’s right to privacy, the Committee found that in order to survive a challenge, an alleged privacy interference must be “proportional to the end sought and necessary in the circumstances of any given case.” *Toonen v. Australia*, U.N. Hum. Rts. Comm., Comm’n No. 488/1992, ¶ 8.3, U.N. Doc. CCPR/C/50/D/488/1992 (1994); see Thornton, *supra* note 157, at 769 (analyzing Views of the Human Rights Committee under article 5, paragraph 4 of the Optional Protocol to the International Covenant on Civil and Political Rights, Comm’n No. 441/1990, 51st Sess., U.N. Doc. CCPR/C/51/D/441/1990 Annex (1994)).

177. ECHR, *supra* note 98. The language of Article 8 of the European Convention for the Protection of Human Rights uses the term “interference.” *Id.* Since this term is con-

Article 8 of the European Convention for the Protection of Human Rights<sup>178</sup> has been expansively interpreted by the European Court of Human Rights (“ECHR”),<sup>179</sup> and thus the ECHR has made powerful strides toward increasing individual privacy under this treaty. The ECHR understood Article 8’s scope to extend beyond protection from public actions (by a state) to also protect from violations by other *private* entities,<sup>180</sup> as well as add a responsibility on the state to ensure that such violations by private entities do not occur.<sup>181</sup> In line with this reasoning, Google Street View may be within international law’s reach and may violate international law by infringing upon a person’s privacy.

The ECHR reviewed the topic of public figures involuntarily featured in public photographs in *Von Hannover v. Germany*<sup>182</sup> in 2004. In this case, Princess Caroline of Monaco took action against private magazine publishers for taking and printing photographs of her without her consent, as well as the state for its failure to safeguard her right to privacy.<sup>183</sup> The key inquiry was whether or not the Article 8 privacy provision of the ECHR applied to the photos published in the German magazines,<sup>184</sup> whereupon the court confirmed that the “concept of private life extends to aspects relating to personal identity, such as a person’s . . . picture.”<sup>185</sup> The Court found further that private life also included a person’s “physical and psychological integrity . . . [and] there is therefore a zone of in-

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sistent with UDHR and ICCPR, this Note treats the interpretation of “interference” under the European Court of Human Rights as guiding under international law.

178. ECHR, *supra* note 98.

179. *Von Hannover v. Germany*, No. 59320/00, 2004-VI Eur. Ct. H.R. 294, ¶¶ 50–53, *available at* <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=699729&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

180. *Von Hannover*, 2004-VI Eur. Ct. H.R. 294 ¶¶ 42, 56–57, 69–71. In the 2002 *Schüssel* case, involving a politician and the publication of his photograph, the Court found that people have a privacy interest in their photos and that Article 8 extends to the protection of a person’s picture. *Schüssel v. Austria*, App. No. 42409/98, Eur. Ct. H.R. (Feb. 21, 2002), *available at* <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=670496&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

181. *Von Hannover*, 2004-VI Eur. Ct. H.R. 294 ¶ 57.

182. *See id.* ¶¶ 1, 8–10.

183. *Id.*

184. *Id.* ¶¶ 49, 52–53.

185. *Id.* ¶ 50.



teraction of a person with others, even in a public context, which may fall within the scope of “private life.”<sup>186</sup>

Not only did the *Von Hannover* Court decide that publication of photos depicting an individual’s daily personal routine impeded the individual’s right to privacy, notwithstanding the fact that the subject was also a public figure, the Court also concluded that a private entity infringed this fundamental right. Moreover, the Court emphasized that “increased vigilance in protecting private life is necessary to contend with new communication technologies which make it possible to store and reproduce personal data.”<sup>187</sup>

Although the Court conceded that, if this was a suit directly against the government, it would be necessary to apply a bifurcated analysis—first to determine whether the photographs in question depicted public or private matters and second to establish the purpose of the photographs<sup>188</sup>—the court nonetheless held that the government had an affirmative obligation to prevent this sort of interference by private entities.<sup>189</sup>

The Court reiterates that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves.<sup>190</sup>

Therefore, photographs published in private German magazines of the plaintiff of her daily life fell within the scope of Article 8 protection. Additionally, the analysis of this private violation mirrored the analysis of when the alleged interference was performed by the state itself. Both situations demanded a balancing test of competing interests. Ultimately, under this balancing test, the court weighed the interest of the private magazine publisher against the privacy rights of the individual, and held that the photos were a breach of Article 8 of the Convention. Accordingly, enlisting the government to not only abstain from impeding the right to privacy but to better safeguard the right to privacy from violations by

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186. *Id.*

187. *Id.* ¶ 70 (“This also applies to the systematic taking of specific photos and their dissemination to a broad section of the public.”).

188. *Id.* ¶ 52.

189. *Id.* ¶¶ 56–57 (“In the present case the applicant did not complain of an action by the State, but rather of the lack of adequate state protection of her private life and her image.”).

190. *Id.* ¶ 57.

non-state entities underscores the significance of the right to privacy and how “interference” in international treaties should be read expansively to include broad protection from both the state and private sectors.

In 2009, the ECHR continued this line of reasoning and ruled that photographing a baby without parental permission violated the baby’s right to privacy, and thereby reiterated an expansive interpretation of Article 8 and the right to privacy.<sup>191</sup> An ECHR press release stated that the decision “stressed that a person’s image revealed his or her unique characteristics and constituted one of the chief attributes of his or her personality . . .”<sup>192</sup> This case is of particular significance because it further broadens the scope of the right to privacy: mere photography of an individual may be enough to constitute interference of the right to privacy. This further suggests that Google Street View may be under the purview of international privacy protections.

Under the balancing test employed by the ECHR in the aforementioned cases, an individual’s right to privacy grossly overshadows Google Street View’s interests. “Regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole.”<sup>193</sup> Therefore, the central analysis to be applied, as instructed by the ECHR, is “whether the photographs related to private or public matters and whether the material thus obtained was envisaged for a limited use or was likely to be made available to the general public.”<sup>194</sup>

Prong one of the analysis assesses whether the subject matter portrayed is public or private. This will undoubtedly vary with each photo. Someone in a crowded stadium may have a weaker argument than one leaving his or her gated community. Thus, there must first be an inquiry into the nature of the image in question.

However, if applying a definition of privacy as a right to be anonymous and free of publicity, this inquiry is problematic, for arguably every photo taken without consent of the subject will be deemed private. Furthermore, while a one time photo may not be private per se, the fact that Google Street View provides “an image for unlimited distribution, reproduction, downloading, and other secondary uses”<sup>195</sup> is beyond the realm of what a person just viewing this subject walking down the street would be able to do with their mental memory of the scene.

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191. *European Court Expands Image Privacy Rights*, OUT-LAW (Feb. 2, 2009), <http://www.out-law.com/page-9764>.

192. *Id.*

193. *Von Hannover*, 2004-VI Eur. Ct. H.R. ¶ 25.

194. *Id.* ¶ 52.

195. Kelley, *supra* note 24, at 195.

Therefore, despite the potential flexibility of the first prong, rather than allow a fact-sensitive inquiry into the nature of the image at issue (such as whether the setting is a sparse neighborhood or crowded street), bright line rules will serve as a better guide in the interpretation of Article 12. Accordingly, to satisfy the first step in this analysis, any picture taken without consent should be ruled private. Using consent as the touchstone of this analytical prong offers citizens strengthened confidence in the fact that they will not be involuntarily photographed and provides Google with clear limits as to who can be captured by Street View cameras. Additionally, this proves more consistent with the ECHR position: the ECHR has “moderated” the impact of the public-private distinction, articulating that “everyone . . . should benefit from a ‘legitimate expectation’ of protection and respect for private life.”<sup>196</sup> Moreover, the ECHR further expressed a preference for heightened caution in championing the private rights against the threat of innovative technology.<sup>197</sup> Hence, while the second prong tips the scales in favor of worthy interests,<sup>198</sup> the first element of the evaluation should not act as a *de facto* gatekeeper to screen out plaintiffs.

The next analytical prong demands scrutiny of the image’s purpose.<sup>199</sup> Is the ability to have a street level view of a location worth sacrificing one’s image, anonymity, and possibly reputation? No; “[t]he mere fact that a person can be seen by someone does not automatically mean that he or she can legally be forced to be subject to being seen by everyone.”<sup>200</sup> In the pre-Google era of life, people functioned with less sophisticated maps and cartographical resources. The value of such a close image for navigation purposes is inconsequential when compared to the potential damage caused by revealing an individual’s sensitive information. Though the meaning of privacy has evolved over the years, the nature of modern technology, particularly Google Street View, demands an expanded notion of what privacy ought to be. This feature departs

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196. Jean Herveg, *Chronicle of Case-Law (2000-2009): The European Court of Human Rights and the Protection of Patients Data*, SELECTED WORKS OF JEAN HERVEG 9 (Jan. 2009), [http://works.bepress.com/cgi/viewcontent.cgi?article=1010&context=jean\\_herveg](http://works.bepress.com/cgi/viewcontent.cgi?article=1010&context=jean_herveg) (quoting *Von Hannover*, 2004-VI Eur. Ct. H.R. ¶ 69).

197. *Id.* (quoting *Von Hannover*, 2004-VI Eur. Ct. H.R. ¶ 70).

198. ECHR, *supra* note 98 (including “interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”).

199. *Von Hannover*, 2004-VI Eur. Ct. H.R. ¶ 52.

200. *Sandars v. Am. Broad. Companies, Inc.*, 20 Cal. 4th 907, 916, 978 P.2d 67, 72 (1999) (quoting 1 J. THOMAS MCCARTHY, *THE RIGHTS OF PUBLICITY AND PRIVACY* § 5.10[A][2] (1998)).

from more traditional methods of information gathering and thus forces the legal community to concomitantly desert any preexisting notions of privacy and consider the issue with a fresh prospective. Google Street View gathers photos without consent of the individuals depicted and then publishes them on the Internet, creating a myriad of potential problems for the individual. The fundamental effect of Internet exposure, especially against one's volition, is a complete forfeit of one's anonymity and privacy and the potential sacrifice of one's reputation, job-seeking capacity, and more. While the threat of abuse seldom overpowers other policies, with regard to Google Street View, abuse is not just a threat but a reality, and one that will only get worse as the technology reaches new locations and encounters less sophisticated privacy laws. Therefore, privacy interests outweigh the interest of Google Street View and similar forms of technology.

Given the broad interpretation of the term "interference," the precedent of protecting one's anonymity and images, as well as the great harm many have already suffered at the hands of Google Street View, the intrusion of this technology upon the individual's right to privacy is certain. Google Street View violates the international right to privacy and steps must be taken to counter this threat to the right of privacy.

#### IV. THE NEED FOR MINIMUM TRANSNATIONAL SAFEGUARDS

We need an Electronic Bill of Rights for this Electronic Age.<sup>201</sup>

The greatest benefit—and threat—of the Internet is the ease by which information is transferred. While, as it has been demonstrated, many countries have enacted legislation designed to monitor the channels through which such information is transmitted based on the mandate by such universal instruments, many countries do not have such sophisticated laws. Thus, there is a great possibility that national laws may be cir-

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201. Al Gore, U.S. Vice President, Remarks at the New York University Commencement (May 14, 1998), available at <http://clinton3.nara.gov/WH/EOP/OVP/speeches/nyu.html>; see John M. Broder, *Gore to Announce 'Electronic Bill of Rights' Aimed at Privacy*, N.Y. TIMES (May 14, 1998), <http://www.nytimes.com/1998/05/14/us/gore-to-announce-electronic-bill-of-rights-aimed-at-privacy.html>. The idea for an electronic bill of rights was first conceived by John Perry Barlow, whose "Declaration of the Independence of Cyberspace" is posted on thousands of websites. *Board of Directors*, ELECTRONIC FRONTIER FOUND., <http://www.eff.org/about/board> (last visited Sept. 30, 2011). Barlow is an interesting character. He is the founder of the term "cyberspace" and the EFF, a writer for the *Grateful Dead*, and was the campaign manager for former Vice President Dick Cheney. *Id.*

cumvented.<sup>202</sup> These countries with lax privacy laws are often dubbed “data havens.”<sup>203</sup> Google Street View is accordingly not the problem of any one individual country; it presents a global epidemic that requires synchronization and coordination between municipalities.

While international treaties provide the essential background for the underlying individual right to privacy, that alone does not make such treaties the appropriate authority to monitor Google Street View. Given the difficulties in coordinating domestic laws, perhaps international law is not the paradigm authority to solve this problem; instead, the international community, together with the industry, should arrive at the appropriate standard. Rather than legislation, which faces jurisdictional obstacles, international bodies that set the industry standard should arrive at the necessary regulations that ought to be self-governed, with the international countries and states providing a check on that power. This may be the best way to overcome the pressing problem of the jurisdictional hurdle, in which the reach of strict privacy laws in some countries may not be felt in loosely regulated countries. Given the disparities among countries, global coalitions on Internet privacy are perhaps the superlative authority in this area.

For instance, though Europe and Canada use legislation as the primary vehicle to protect privacy rights, many U.S.-based companies prefer self and industry regulation.<sup>204</sup> An example of such industry regulation is in the Banking Sector. The Bankers Roundtable promulgated standards and guidelines, instituting privacy protections for the banking industry to uphold, including internal procedures to “assure compliance” and address violations.<sup>205</sup> The Direct Marketing Association, the Individual Refer-

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202. EPIC, *supra* note 26, at 16 (“[T]he ease with which electronic data flows across borders leads to a concern that data protection laws could be circumvented by simply transferring personal information to third countries, where the national law of the country of origin does not apply.”).

203. *Id.*

204. Jonathan P. Cody, *Protecting Privacy over the Internet: Has the Time Come to Abandon Self-Regulation?* 48 CATH. U. L. REV. 1183, 1203 (1999).

205. *Id.* at 1206.

The guidelines set forth eight privacy principles: (1) the recognition of a customer’s expectation of privacy, (2) use, collection, and retention of customer information, (3) maintenance of accurate information, (4) limiting employee access to information (5) protection of information via established security procedures, (6) restrictions on the disclosure of account information, (7) maintaining customer privacy in the bank’s business relationships with third parties, and (8) disclosure of privacy principles to customers. The guidelines also require the banks to set up internal mechanisms to assure compliance, address breaches, and maintain accuracy of customer information.

ence Service Group, and the Interactive Services Association are among other examples of industry-led regulatory groups that fill legislative voids and champion the individual rights of privacy in the United States.<sup>206</sup> Thus, parts of the banking industry are self-regulated, and this model may be translatable to the Internet.

The International Telecommunications Union (“ITU”) would also better govern Google Street View. The ITU is a global agency that has been regulating information communication and technologies since its inception in 1865 through cooperation between government and the private sector.<sup>207</sup> This international forum strives to achieve consensus among leaders in government and industry on important issues shaping the future of telecommunication.<sup>208</sup> The “Standardization Sector” of the ITU is dedicated to reaching worldwide agreement on transnational communication governance.<sup>209</sup> By incorporating elements of consent, best practices, and cooperation, this agency is a quintessential player in developing international safeguards to protect the individual right of privacy from Google Street View violations and abuse.<sup>210</sup>

Another potential regulating source of Google Street View may be the Internet Governance Forum (“IGF”), a series of symposia mandated by the UN to facilitate policy dialogue among stakeholders in addressing international issues regarding the Internet and telecommunications.<sup>211</sup> Under the IGF, issue-specific groups are formed.<sup>212</sup> Google is an active participant in its “Dynamic Coalition on Internet Rights and Principles,” which endeavors to “uphold human rights on the internet.”<sup>213</sup> Albeit informal, considering the difficulties of international negotiation and its past failures, this strategy of industry regulation provides promising new ground for solutions to combating the privacy threats posed by Google Street View.

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*Id.*

206. *Id.* at 1217–20.

207. *ITU-T in Brief*, INT’L TELECOMMS. UNION, <http://www.itu.int/net/ITU-T/info/Default.aspx> (last visited Sept. 30, 2011).

208. *Id.*

209. *Id.*

210. *Id.*

211. *About the Internet Governance Forum*, INTERNET GOVERNANCE FORUM, <http://www.intgovforum.org/cms/aboutigf> (last visited Sept. 30, 2011).

212. *Dynamic Coalition on Internet Rights and Principals*, INTERNET GOVERNANCE FORUM, <http://www.intgovforum.org/cms/dynamic-coalitions/72-ibr> (last visited Sept. 30, 2011).

213. *Id.* Other Coalition participants include UNESCO, Free Software Foundation Europe, IP Justice (U.S.), and the Swiss Federal Office of Communication. *Id.*

The Internet is often referred to as a space beyond governmental power.<sup>214</sup> However, an additional potential governance option is “Cyberlaw”—or Internet self-regulation—which encompasses control over information.<sup>215</sup> “Just as property rights are necessary to create and sustain markets for physical goods, rights to control information—intellectual property rights, privacy rights or rights to publicity—are necessary for information markets to function.”<sup>216</sup> This model of regulation, though dynamic, often depends on Internet architecture and societal norms to achieve successful results.<sup>217</sup>

Yet another possible remedy to the privacy interference of Google Street View is the simple one of notice. Like a film crew that wants to shoot at a specific location, individuals in a targeted area should be informed that the location will be photographed and accordingly could adapt behavior accordingly. This is feasible, and has already been used in Germany.<sup>218</sup>

Google’s CEO has suggested that since the Street View cameras do not monitor a given location, those who wish not to be captured by film should merely move out of the way.<sup>219</sup> The tone of the remark is unclear, but whether in jest or not, the concept is not altogether flawed—individuals aware of the interference could indeed move out of the camera’s frame. However, the burden is misplaced. Instead, the notice requirement should put responsibility on Google Street View, who is in a better position to prevent the undesired footage from being made public.<sup>220</sup>

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214. LAWRENCE LESSIG, CODE VERSION 2.0, at 31 (2006).

215. Vicktor Mayer-Schonberger, *The Shape of Governance: Analyzing the World of Internet Regulation*, 43 VA. J. INT’ L L. 605, 609 (2003).

216. *Id.* (“[Though] information markets existed long before the Internet, modern information technologies have made it possible for information to be digitized, thus rendering concepts of copy and original (and the resulting notion of value differentiation implicit in almost all traditional information markets) useless.”).

217. LESSIG, *supra* note 214.

218. Deleon, *supra* note 109.

219. John Letzing, *Wary of Google Street View? Move, CEO Says*, MARKETWATCH (Oct. 22, 2010, 9:24 PM), <http://www.marketwatch.com/story/wary-of-google-street-view-move-ceo-says-2010-10-22>.

220. In the Netherlands, the “portrait clause” of the Dutch Copyright Act reflects the value of consent: “If a portrait has not been made at the request of the person portrayed, that person may prevent the publication of the portraits if he has a reasonable interest that opposes such publication. This reasonable interest is usually privacy related.” Jens P. Van Den Brink, *Netherlands*, in INTERNATIONAL LIBEL AND PRIVACY HANDBOOK, A GLOBAL REFERENCE FOR JOURNALISTS, PUBLISHERS, WEBMASTERS, AND LAWYERS 273 (Charles J. Glasser Jr. ed., 2006). Unlike the current Google Street View approach, which permits a photo to be taken down *after* publication, the Dutch scheme puts power back in the sub-

## CONCLUSION

The convergence of globalization with rapidly innovating technology begs for a global privacy movement. Though fluid and difficult to define, the right to privacy is internationally acknowledged as one of the most cherished human rights in today's society.<sup>221</sup> Google Street View, however, poses a global threat to the right to privacy. Under balance, an individual's interest in privacy and online image management greatly surpasses the value of Google Street View and the company's interest in delivering Internet mapping services. In a world where the click of a button in one country can change a person's life in another country, we must commit to coordinating a solution that universally respects the right to privacy in the face of advancing technology. The issues posed by Google Street View and the need to promote international cooperation affords no easy answers; there is no clear illuminated path toward a solution.<sup>222</sup> Yet despite this challenge, the ideal strategy to safeguard privacy against other competing interests should be close adherence by Google Street View to the internationally recognized right to privacy, as expressed in the UDHR and ICCPR, and enforcement through a comprehensive framework of industry-led regulation.

*Lauren H. Rakower\**

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ject of the image. *See id.* This is particularly appropriate with Internet publication because once anything is made available on the Internet, there is no telling who has already accessed, downloaded, stored, and kept it. Melville Brown, *Opinion: "Private Lives – Part 1,"* INFORMM'S BLOG (May 29, 2010), <http://inform.wordpress.com/2010/05/29/opinion-private-lives-part-1-amber-melville-brown>.

221. Global Internet Liberty Campaign, *supra* note, at 37.

222. If only Google Street View could help us navigate this problematic area!

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