

Disappearing Phone Booths, Part IV: What If Privacy Becomes Obsolete?

May 25, 2012

I recently gave a speech entitled "Disappearing Phone Booths" - this is the final entry in a four-part series recapping the speech. Part I addressed the [threat to privacy posed by new innovations](#) [1]. Part II described how a [confluence of circumstances has conjured a perfect storm that is rapidly eroding our right to privacy](#) [2]. Part III discussed [the harms caused by the loss of privacy](#) [3]. A full version of the speech can be found [here](#) [4].

In the *Iodestar* privacy case, [Katz v United States](#) [5], Justice Stewart wrote:

No less than an individual in a business office, in a friend's apartment, or in a taxicab, a person in a telephone booth may rely upon the protection of the Fourth Amendment. One who occupies it, shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world. To read the Constitution more narrowly is to ignore the vital role that the public telephone has come to play in private communications.

Mr. Katz closed the door to a phone booth, demonstrating that he expected the contents of his conversation would stay private. And, as Justice Harlan wrote in his now famous [conurrence](#) [6], that desire for privacy was one that society was prepared to recognize.

Today our phone booths are disappearing.

Yes, I mean that literally. Phone booths are hard to find these days.

But I also mean that figuratively. A key challenge for Congress and for our Courts over the next decade will be one of finding those metaphorical phone booths, those safe spaces or times or situations in which we may, to paraphrase Justice Stewart, be "entitled to assume that the words" we utter and the things we do "will not be broadcast to the world."

As I've talked about in earlier posts, we now live in a world in which technology has weakened the constitutional protections against government intrusion into that sturdiest of phone booths, the home.

And as I've discussed at greater length, we also live in a world in which digital third parties, typically companies, involve themselves in the huge majority of our actions and our communications, of our searches for information, of our speech, of our efforts to associate. If we want to communicate with friends, search for jobs, read the news, watch TV, seek out health information, or organize political protests, we have little choice but to "volunteer" this information not only to third parties, but to third parties that have the technical capacity, have reserved the rights, and may regularly exercise those rights, to monitor or use that information.

Where these third parties have free reign to collect and use this data however they so desire, and where our laws and jurisprudence similarly do little to limit government access to the data they hold, those metaphorical phone booths will become increasingly difficult, or even impossible, to find.

I'm not one to believe that technology has to kill privacy. But it will if we let it.

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[4] <https://www.cdt.org/files/pdfs/Privacy-In-Digital-Age.pdf>

[5] <http://www.law.cornell.edu/supct/html/historics>

[6] http://www.law.cornell.edu/historics/USSC_CR_0389_0347_ZC1.html