"Queer Privacy"

Neil Brown reviews Sarah Jane Lewis's edited book "Queer Privacy", and reflects on what lawyers and privacy advisors can do differently as a result.

I read.

I read a lot.

I read books, academic journals, and conference proceedings. I read blogposts, regulatory consultations and responses, technical specs and RFCs, Twitter threads and more.

And, of the many tens of thousands of words I have read recently, those of "Queer Privacy" stand out.

In the words that follow, I'll outline why this is the case, and I'll set the scene for the book. But I am not going to attempt to summarise it, or reveal too much in the way of its content, for two reasons:

First, as I will discuss, the book is predominantly about experiences, often upsetting but all personal. I would do the authors a disservice in trying to re-tell their experiences in my own words.

Second, if you are reading this, you are probably a lawyer. This book is not going to stretch your resources budget. You can set the price you want to pay for it, anywhere between $7 and $30, with a recommended price of $13. For that, you are supporting an independent publisher (it was funded by the editor, Sarah Jamie Lewis), who paid each author for their contribution. Heck, buy it, read it and log it as CPD — if you care about privacy (*real* privacy, not just tick-in-the-box-compliance privacy), you'll get so much more from this than yet another piece about the GDPR.

So, with that out the way, let's talk about "Queer Privacy".

Privacy and marginalised groups

The essence of this book is how technologies and services, which many of us take for granted, cause harm to those in marginalised communities. Lewis has used the term "queer" to describe those margins, encompassing those who are not heterosexual, or whose gender identity differs from the sex assigned to them at birth ("non-cisgender").

Through a series of essays, the book explores and explains how design or commercial decisions taken by non-marginalised people contribute to, or even directly cause, harm to those in the queer community, largely through a failure to consider the needs of others. How a decision about a feature or policy position which may be entirely acceptable to non-queer users might render the service unusable, or even unsafe, for queer users, not through any malicious intent but through a simple failure to consider the broadness of the user base of the service in question.

The book contains essays about those forced to live separated lives, hiding themselves and censoring their expression for their own protection. About hate speech directed at queer users. About the dangers of "real name" or "forced identification" policies. About surveillance

by abusive partners or third parties, and the consequences of lack of compartmentalisation and leakage of information. Essays about life under stress and, ultimately, death. It is a distressing book.

It is not a book of answers, although some essays hint at technical options. Mostly, it is a book of opportunities, if I can put it like that. And not "opportunities" in the "here's an idea for a shiny app" sense, but a far more fundamental "take this chance to think of us," type of opportunity, "because, if you don't, you harm us".

And that is an opportunity we lawyers and privacy advisors should be taking.

But we comply with the law

No essay in the book suggests that the service providers in question do not comply with the law. This is not a book about "the law", although laws are mentioned occasionally. But it is a stark exposition of how the law can let down those who most need its protection: the vulnerable, the fearful, and the marginalised. And if the law does not do enough to protect, the burden falls on those involved in the development of products and services — from the magical to the mundane — to offer that protection.

Take, for example, the concept of a privacy impact assessment. It's a concept which has been around for years, and which is going to see an increased prominence under the GDPR. A privacy impact assessment, one would think, would be an ideal place to identify and foreground the type of issues discussed in this book, and afford an opportunity to address them.

But that's probably not the case.

Most privacy impact assessments — at least, most which I have seen — have been a quite mechanistic tool, working through what a service does, how the service will address the legislative framework. and identifying gaps for rectification. Even the Article 29 Working Party's view of a privacy impact assessment is "a process for building and demonstrating compliance" with the legal framework.[1] The ICO's code of practice envisages something broader, to its credit, but stops short of explicitly considering risks to marginalised groups.

Perhaps we need something slightly different.

The concept of a "human impact assessment" has come up a few times in the pages of "Computers & Law" over the last few years. I described it [https://www.scl.org/articles/3411-is-luddism-the-answer-to-keeping-humans-at-the-heart] in the following terms:

> "Fundamentally, a human impact assessment would aim to bring consideration of the question which the Luddites asked: is the innovation before us hurtful to commonality, or beneficial to it? It requires us to take a step back from the minutiae of a given technology, away from specific legal problems, and look at the bigger picture."

As we consider new technologies and services, can we try to distance ourselves from our own biases, and think about the development from the perspective of others, especially those who are likely to be most harmed by a poorly-made decision?

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[1] Article 29 WP's draft guidance on data protection impact assessments under the GDPR, page 4.

For those who do not already do so, should our privacy impact assessments have more of a human impact assessment element to them?

Who should be doing this

I'm very mindful of the fact that, after reading one book about queer privacy, I am no expert on the subject. I doubt that, no matter how many books I read, I could gain an expertise in it. And that's for a very simple reason: as a straight, white, male, solicitor, I am unlikely to experience firsthand much, if any, of what the authors describe.

Part of me questions whether I am the right person to be attempting to tackle this kind of issue in the advice I give. A far better outcome would be attained through the involvement of someone who has suffered even just some of these experiences. Someone who knows what it is really like, someone who has had to live with these challenges day to day.

Another part of me thinks that, for better or worse, I am in a position of advising. I have the opportunity of making a difference, and so should take it. If that is even as little as encouraging those making the decisions to think about the broader implications of their actions — a nudge to change perspective — that may be better than nothing. Perhaps there will be occasions when the best possible advice will be to seek the guidance of those in marginalised communities, as part of the process of gathering user requirements.

I very much doubt that anyone involved in privacy could read this book and think that nothing needs to be done.

Conclusion

Unlike most legal books, "Queer Privacy" is relatively short: I saw it on Twitter, bought it, downloaded it and read it cover to cover after dinner one evening. On my iPad's screen, it was just over 90 pages. It covers a lot of ground in that space, some of it really rather upsetting.

How has it left me feeling?

First, bloody lucky.

Second, moved, as I hadn't appreciated what friends, neighbours, and colleagues might have faced.

Third, more aware. There is plenty more for me to think about here, and this is but the tip of an iceberg. But at least I'm aware that the iceberg is even there.

Some of you may already be considering these issues in their day to day advice, and I would very much welcome thoughts and comments and suggestions as to how you have done this.

You can buy "Queer Privacy" online at https://leanpub.com/queerprivacy/.

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