

## TABLE OF CONTENTS

<b>Abbreviations</b>		<b>XV</b>
<b>One</b>	<b>Introduction – <i>Sjaak Nouwt, Berend R. de Vries</i></b>	<b>1</b>
1.1	The Research Project	1
1.2	Reasonable Expectations of Privacy	3
1.3	Contents of the Book	4
<b>Two</b>	<b>A General Survey of Video Surveillance Law in the United States – <i>Robert Gellman</i></b>	<b>7</b>
2.1	Introduction	7
2.2	Government Video Surveillance: Constitutional Limitations	9
2.3	Government Video Surveillance: Statutory Limitations	18
2.3.1	Foreign Intelligence Surveillance Act	18
2.3.2	Privacy Act of 1974	20
2.3.3	General regulation of law enforcement surveillance	23
2.4	Other Statutory Regulation of Video Surveillance	25
2.4.1	Video voyeurism	25
2.4.2	Granny cams, nanny cams, and other state camera surveillance statutes	27
2.4.3	Racial profiling	30
2.4.4	Privacy torts	30
2.5	Conclusion	35
<b>Three</b>	<b>Privacy and Data Protection in the Workplace: the US Case – <i>David J. Phillips</i></b>	<b>39</b>
3.1	Introduction	39
3.2	Practices	40
3.3	Legal Regimes	41
3.3.1	Constitutional law	41
3.3.2	Statutory law	42
3.3.2.1	Federal statutes	42
3.3.2.1.1	Electronic Communication Privacy Act	43
3.3.2.1.2	National Labor Relations Act	44
3.3.2.1.3	Americans with Disabilities Act	44
3.3.2.1.4	Employee Polygraph Protection Act	45
3.3.2.1.5	Federal drug testing regulations	45
3.3.2.2	State regulation	46



3.3.2.2.1	Drug testing	46
3.3.2.2.2	Lie detectors and polygraphs	47
3.3.2.2.3	Workplace monitoring	47
3.3.2.2.4	Offsite monitoring	47
3.3.2.2.5	References	48
3.3.3	Tort law	48
3.4	Cases	50
3.4.1	Electronic monitoring and computer searches	50
3.4.2	Visual monitoring, searches, and videotapes	53
3.4.3	Drug tests	56
3.5	Comments	58
 Four	 <b>Video Surveillance and Privacy Protection Law in Canada</b> – <i>Colin J. Bennett, Robin M. Bayley</i>	  61
4.1	Introduction: The Development of Video Surveillance Practices in Canada	61
4.2	The Evolution and State of Privacy Law in Canada	62
4.3	Constitutional Law Cases	66
4.4	Federal Statutory Law Cases	68
4.4.1	The Personal Information Protection and Electronic Documents Act (PIPEDA)	68
4.4.2	The Federal Privacy Act	74
4.5	Provincial Statutory Law Cases	77
4.5.1	The Quebec Act respecting access to public documents and the protection of personal information	77
4.5.2	The Alberta Freedom of Information and Protection of Privacy Act (FOIP Act)	79
4.5.3	The British Columbia Freedom of Information and Protection of Privacy Act	81
4.6	Provincial Civil Law Cases	83
4.7	Conclusion	85
	Annex I	88
	Annex II	89
 Five	 <b>Switching Off the Surveillance Society? Legal Regulation of CCTV in the United Kingdom</b> – <i>Lilian Edwards</i>	  91
5.1	Introduction	91
5.2	Data Protection Law and CCTV	95
5.2.1	Personal data	96
5.2.2	Processing by ‘automatic means’	102
5.2.3	How does the data protection regime regulate CCTV?	103
5.2.4	CCTV in the workplace	105
5.3	Common Law Rights of Privacy and Breach of Confidence, and the European Convention on Human Rights, Article 8	107



5.4	Law of Evidence and Admissibility Rules	111
5.5	Conclusions	112
Six	<b>Camera Surveillance in the Netherlands – <i>Sjaak Nouwt, Berend R. de Vries, Dorus van der Burgt</i></b>	115
6.1	Introduction	115
6.2	General Legal Framework	116
6.2.1	Historical perspective	116
6.2.2	The Personal Data Protection Act 2000	118
6.2.3	Other applicable legislation	120
6.3	Camera Surveillance in Public Places	122
6.3.1	Introduction	122
6.3.2	Observation by the police	124
6.3.3	Prevention of public disorder within municipal boundaries	129
6.3.4	Observation by private parties in public places	131
6.4	Camera Surveillance in Private Places	132
6.4.1	Introduction	132
6.4.2	The workplace	132
6.4.3	Camera surveillance in non-contractual relationships	135
6.5	Conclusion	136
Seven	<b>Privacy and Data Protection in the Workplace: the Netherlands – <i>Frank Hendrickx</i></b>	139
7.1	Introduction	139
7.2	Approaching Employment Privacy	139
7.3	Personnel Files and Data Processing	142
7.3.1	General aspects	142
7.3.2	Disclosure of data to third parties	143
7.3.3	Sick employees and medical data	144
7.3.3.1	Monitoring the absence of sick workers	145
7.3.3.2	Discriminatory behaviour towards sick workers	147
7.3.3.3	Sick and healthy workers	148
7.3.4	Conclusions	149
7.4	Monitoring and Surveillance	149
7.4.1	Telephone monitoring	150
7.4.2	Camera surveillance	152
7.4.3	Monitoring the internet and e-mail	153
7.4.3.1	Privacy language	154
7.4.3.2	Employment language	155
7.4.3.3	Relevance of policies	157
7.4.3.4	Mixed language	158
7.4.4	Conclusions	160
7.5	Observations Concerning Off-duty Conduct	162
7.6	Concluding Remarks	163



Eight	<b>Camera Surveillance and Workplace Privacy in Belgium</b>	
	– <i>Paul de Hert, Mieke Loncke</i>	167
8.1	Introduction	167
8.2	Camera Surveillance	168
8.2.1	General remarks	168
8.2.2	The Belgian Privacy Commission opinions	169
8.2.3	The Collective Labour Agreement No. 68 of 16 June 1998	172
8.2.3.1	Background	172
8.2.3.2	The basic provisions of the agreement	173
8.2.4	Comments	175
8.2.4.1	No legal framework	175
8.2.4.2	The abstract or absent status of data protection	177
8.2.4.3	Judges prefer balancing	179
8.3	Workplace Privacy	181
8.3.1	General remarks	181
8.3.2	The post-Niemietz period	182
8.3.3	The Belgian Privacy Commission's opinion No. 3/2000 of 3 April 2000	184
8.3.3.1	Background	184
8.3.3.2	The main principles	185
8.3.4	The Collective Labour Agreement No. 81 of 26 April 2002	188
8.3.4.1	Background	188
8.3.4.2	The agreement in detail	188
8.3.5	The new realities of the workplace	190
8.3.6	Recognition of the horizontal effect of the European Convention on Human Rights	191
8.3.6.1	Acceptance by the Court of Cassation	191
8.3.6.2	The requirement of proportionality	192
8.3.7	Recognition of collective labour law as an instrument to protect privacy	193
8.3.7.1	A new role for collective labour laws	193
8.3.7.2	A new role for the National Labour Council	194
8.4	Concluding Remarks	195
	Annex I	197
	Annex II	203
Nine	<b>Privacy and Data Protection at the Workplace in Germany</b>	
	– <i>Thomas Hoeren, Sonja Eustergerling</i>	211
9.1	Historical Development of Data Protection in Germany	211
9.1.1	Introduction	211
9.1.2	The development of data protection	212
9.1.2.1	Formation of the Bundesdatenschutzgesetz (BDSG)	212
9.1.2.2	'Data privacy' as a constitutional civil right – 'Volkszählungsurteil'	213



9.1.3	The legislation within the federal state	215
9.2	The Legal Basis of and Restrictions on Data Protection in the Workplace	216
9.2.1	Constitutional basic principles	216
9.2.1.1	Allgemeines Persönlichkeitsrecht – the constitutional right to freely develop one's personality	217
9.2.1.2	Menschenwürde – human dignity	218
9.2.1.3	Fernmeldegeheimnis – secrecy of telecommunications	218
9.2.2	General legal principles	218
9.2.2.1	Bundesdatenschutzgesetz (BDSG) – Federal Data Protection Act	218
9.2.2.2	Landesdatenschutzgesetze (LDSG) – State Data Protection Acts	222
9.2.2.3	Information- and telecommunications acts	222
9.2.2.4	Betriebsverfassungsgesetz (BetrVG) – Works Council Constitution Act	223
9.2.2.5	Fiduciary duty of the employer deriving from Article 611 BGB	224
9.2.2.6	Criminal issues	225
9.3	Agreements	225
9.3.1	Employer/works council agreement; collective labour agreements	225
9.3.2	Consent	226
9.4	Data Privacy at the Application Stage	227
9.4.1	Questions which are allowed to be asked	227
9.4.2	Medical and psychological examinations	229
9.4.3	Data collection with respect to third persons	231
9.5	Data Protection in the Course of Employment	232
9.5.1	Surveillance of telecommunications	232
9.5.2	Video surveillance	236
9.5.3	Genome analyses	240
9.5.4	Employer/works' council agreements; the right of co-determination	241
9.6	Special Rules for the Civil Service	242
9.7	Data Protection after the Termination of the Employment	242
9.8	Conclusion	242
	Annex	245
Ten	<b>Privacy and Data Protection at the Workplace in Hungary</b> – <i>Máté D. Szabó, Iván Székely</i>	249
10.1	The Change of the Political System and the New Informational Rights	249
10.2	Specific Features in the Implementation of Privacy Rights in Hungary	252
10.3	The Presentation of Cases	256
10.3.1	Employee selection	256
10.3.1.1	Data processing by head-hunting firms	257



10.3.1.2	The use of lie detectors	258
10.3.1.3	Psychological tests	259
10.3.1.4	Medical examination of job applicants	259
10.3.2	Monitoring employees during work	262
10.3.2.1	Private e-mails and files	263
10.3.2.2	Using the Internet	265
10.3.2.3	The use of telephones at work	265
10.3.2.4	Global Positioning System as an instrument for checking on employees	266
10.3.2.5	CCTV at work	267
10.3.2.6	CCTV in the Commissioner's office	268
10.3.3	Investigations by employers	269
10.3.3.1	The use of personality tests in the course of the investigation	270
10.3.3.2	The use of polygraphs in investigations at work	271
10.3.4	Other cases affecting employees' privacy rights	274
10.3.4.1	Investigating the political past	274
10.3.4.2	Freedom of conscience, freedom of religion and data protection	276
10.4	A General Assessment of Privacy Rights in the Workplace	278
 Eleven	 <b>Personal Data Protection in the Workplace in Italy</b> – <i>Giusella Finocchiaro</i>	 285
11.1	Introduction	285
11.2	General Principles	285
11.2.1	The right to the protection of personal data	285
11.2.2	The principle of simplification and the data minimisation principle	286
11.2.3	Scope of application	286
11.2.4	Information to the data subjects	286
11.2.5	Consent	287
11.2.6	Notification	287
11.2.7	Security measures	288
11.2.8	The data subject's rights	288
11.3	Workplace Privacy Protection Issues	289
11.3.1	Code of conduct for the management of employer-employee relationships	289
11.3.2	Collection of data before appointment to a job	289
11.3.3	Video surveillance	290
11.3.4	Telework	290
11.3.5	Consent	290
11.3.6	Right to access personal data	290
11.3.7	Distance monitoring via on-line connections	291



Twelve	<b>Video Surveillance and Related Privacy and Data Protection Issues: the Italian Experience – <i>Paolo Balboni</i></b>	293
12.1	Introduction	293
12.2	Video Surveillance and Related Issues	295
12.2.1	Introduction	295
12.2.2	Legal instruments and specific initiatives taken at the European level	296
12.2.3	Italian law related to video surveillance	298
12.3	Italian Decalogue 2004	299
12.3.1	Introduction	299
12.3.2	General principles	299
12.3.2.1	The lawfulness principle	299
12.3.2.2	The necessity or data minimisation principle	303
12.3.2.3	The principle of proportionality	303
12.3.2.4	The finality principle	306
12.3.3	Duties and obligations	308
12.3.3.1	Duty to inform	308
12.3.3.2	Preliminary verification	310
12.3.3.3	Authorisation	311
12.3.3.4	Notification	311
12.3.3.5	Written designation of the subjects involved in data processing	312
12.3.3.6	Security measures	313
12.3.3.7	Retention of images	313
12.3.3.8	Data subject's rights	314
12.3.4	Breach of rules and related sanctions	315
12.4	Video Surveillance in the Workplace	315
12.4.1	Legal grounds for privacy protection	316
12.4.2	The specific rules set out in Decalogue 2004	316
12.5	Conclusions	319
Thirteen	<b>Analysis of the Country Reports – <i>Sjaak Nouwt, Berend R. de Vries, Roel Loermans</i></b>	323
13.1	Introduction	323
13.2	Analysis of Camera Surveillance	323
13.2.1	Does legislation matter?	323
13.2.1.1	The United States	324
13.2.1.2	Canada	325
13.2.1.3	The European countries	325
13.2.1.4	Conclusion	330
13.2.2	The importance of case law	331
13.2.2.1	The United States	331
13.2.2.2	Canada	332
13.2.2.3	Europe	334



---

13.2.2.4	Conclusion	338
13.2.3	Future challenges	339
13.3	Analysis of Workplace Privacy	340
13.3.1	Does legislation matter?	340
13.3.1.1	The United States	340
13.3.1.2	Europe	341
13.3.2	The importance of case law	345
13.3.3	Future challenges	350
13.4	General Conclusions	351
13.4.1	Reasonable expectations of privacy?	351
13.4.2	Different contexts and content	352
13.4.3	The reasonable expectation of privacy v. the right to privacy	353
13.4.4	Conclusion	356
 <b>About the editors and authors</b>		 359