TABLE OF CONTENTS

Summ	ary of Contents	V
Abbre	eviations	XV
One	Introduction – Ronald Leenes, Bert-Jaap Koops and Paul De Hert	1
1.1.	Background: developments in technology	1
1.2.	A comparative study	3
1.3.	Scope and research question	4
1.4.	Background: the Koekkoek report of 2000	5
	Policy developments	6
	Constitutional systems and the position of 'digital rights'	6
	Changes in legislation prior to 2000	8
	Constitutional revision up to 2000	8
	References	9
Two	Constitutional Rights and New Technologies in Belgium	
	- Els Kindt, Eva Lievens, Elenis Kosta, Thomas Leys and	
	Paul De Hert	11
2.1.	Introduction	11
2.2.	History of digital constitutional rights	12
2.2.1.	Before 2000	12
2.2.2.	Since 2000	14
	New federal instruments for governance	15
	New regional instruments for governance	16
	Governance and e-government	17
2.3.	Changes in the constitutional system	18
2.4.	Privacy-related rights	21
2.4.1.	Privacy and data protection	21
	The Constitution	21
	Constitutional case law	23
	Privacy versus security	24
	Data-protection legislation	25
2.4.2.	Inviolability of the home	26
	The Constitution	26
	Legislation	28

W 77	-	-	-
1/	11		
W I	ш		
v .	LJ		_

2.4.3.	Inviolability of the body	29
	The Constitution	29
	Legislation	31
2.5.	Communication-related rights	34
2.5.1.	Secrecy of communications	34
	The Constitution	34
	Legislation	35
2.5.2.	Freedom of expression	38
	The Constitution	38
	Case law	39
	Hate speech on the Internet	40
	Confidentiality of sources	41
	Right to reply	41
	Children: freedom of expression versus protection against harmful	
	material	42
	Other developments	43
2.6.	Other and new constitutional rights	43
2.6.1.	Equal treatment	43
2.6.2.	No crime without law	44
2.6.3.	Right of access to public information	45
2.6.4.	The right to communicate with the administration by electronic	
	means	47
2.6.5.	E-voting	48
2.7.	Conclusion	48
	References	49
Three	Constitutional Rights and New Technologies in Canada	
	-Jason M. Young	57
3.1.	Introduction	57
3.2.	History of digital constitutional rights	57
3.2.1.	Before 2000	57
3.2.2.	Since 2000	59
	Copyright	59
	Security versus privacy rights	60
3.3.	Changes in the constitutional system	62
3.4.	Privacy-related rights	63
3.4.1.	Privacy and data protection	63
3.4.2.	Inviolability of the home	68
3.4.3.	Inviolability of the body	69
3.5.	Communication-related rights	71
3.5.1.	Secrecy of communications	71
	General	71
	Lawful Access Initiative	73

TABLE	OF CONTENTS	IX
3.5.2.	Freedom of expression	77
J.J.2.	Anti-terrorism and cybercrime	78
	Human rights	79
	Political speech	80
	Court proceedings	81
	Blocking and filtering	82
	Protest and parody	83
	Anonymity	84
	Intermediary liability	85
	Copyright	86
	Trademarks and domain names	87
3.6.	Conclusion	88
J. U.	References	91
Four	Constitutional Rights and New Technologies in France	
1 Oui	- Fanny Coudert, Anne Debet and Paul De Hert	95
4.1.	Introduction	95
4.1.	History of digital constitutional rights	98
4.2.	Changes in the constitutional system	101
4.3.1.	The constitutional reforms	101
	Evolution of the jurisprudence by the Constitutional Council	101
4.5.2.	Constitutional revisions by the Constitutional Council	102
	The constitutional immunity of laws transposing European	102
	directives	103
		103
	Examining the compatibility of the transposition law and the directive	104
1 1		104
4.4.	Privacy-related rights Privacy and data protection	105
4.4.1.		
	a. Questions regarding the handling of personal data	106
	Setting up the processing of personal data	108
	The consultation of data bases	109
111	b. Problems related to the use of new surveillance technologies	110
	Inviolability of the hode	111
4.4.3.	Inviolability of the body	112
	General	112
	Bio-ethics laws	113
1 5	Processing biometric data	115
4.5.	Communication-related rights	116
4.5.1.	Secrecy of communications	116
	E-mail as private correspondence	117
	Retention of traffic data	118
	Confidentiality and anonymity	121

4.5.2.	Freedom of expression	122
	Creation of a new category of communications: 'on-line	
	communications'	123
	Offences committed on the Internet	124
	Liability of actors on the Internet	126
	Protection of minors	128
	Creation of a Rating Commission of on-line communication	
	services	129
4.6.	Other and new constitutional rights	130
4.6.1.	The freedom to go about anonymously	130
4.6.2.	The legal value of electronic documents	130
4.6.3.	The right to communicate with the Administration by electronic	
	means	131
4.6.4.	E-voting .	131
4.7.	Conclusion	132
	References	133
Five	Constitutional Rights and New Technologies in Germany	
	– Thomas Hoeren and Anselm Rodenhausen	137
5.1.	Introduction	137
5.2.	History of digital constitutional rights and changes in the	
	constitutional system	138
5.3.	Privacy-related rights	138
	Privacy and data protection	138
	Current developments concerning privacy	139
	General appreciation of privacy versus security	140
	Video surveillance	141
	Application of GPS for criminal prosecution	142
	Consideration of privacy in relation to communication-related rights	142
	Publishing personal information by a search engine	143
	Personal information and pictures in computer games	144
	Current developments concerning data protection	144
	RFID	145
	Digital counterterrorism data base	146
5.3.2.	Inviolability of the home	146
	Electronic eavesdropping	147
5.3.3.	Inviolability of the body	148
	New technology for searching the body	149
	Biomedical sciences and biotechnology	150
5.4.	Communication-related rights	150
	Secrecy of communications	150
	Requesting information from mobile radio providers	152
5.4.2.	Freedom of expression	153

TABLE	TABLE OF CONTENTS	
5.4.3.	Freedom of assembly	154
5.5.	Conclusion	155
	References	156
Six	Constitutional Rights and New Technologies in the	
	Netherlands – Bert-Jaap Koops and Marga Groothuis	159
6.1.	Introduction	159
6.2.	History of digital constitutional rights	160
6.2.1.	Characteristics of the Constitution	160
6.2.2.	Digital constitutional rights	161
6.3.	Changes in the constitutional system	163
6.4.	Privacy-related rights	164
6.4.1.	Privacy and data protection	164
	The right to privacy	164
	Data protection	166
6.4.2.	Inviolability of the home	168
	Constitutional protection	168
	The home in relation to criminal investigation	171
6.4.3.	Inviolability of the body	172
	Constitutional protection	172
	The body in relation to criminal investigation	174
6.5.	Communication-related rights	176
6.5.1.	Secrecy of communications	176
	Constitutional protection	176
	The secrecy of communications in relation to criminal investigation	179
6.5.2.	Freedom of expression	180
	Constitutional protection	180
	Freedom of expression in a digital environment	181
	Liability of Internet Service Providers	183
	Search engines	184
	Weblogs	185
6.6.	Other and new constitutional rights	185
6.6.1.	Petition	185
6.6.2.	Association and assembly	186
6.6.3.	Anonymity	187
6.6.4.	Access to government information	188
6.6.5.	Internet and electronic voting	189
6.7.	Conclusion	190
	References	193

Seven	Constitutional Rights and New Technologies in Sweden	
	– Cecilia Magnusson Sjöberg	199
7.1.	Introduction	199
7.2.	History of digital constitutional rights	201
7.3.	Changes in the constitutional system	202
7.4.	Privacy-related rights	203
7.4.1.	Privacy and data protection	203
	Privacy protection versus freedom of expression	204
	Privacy protection versus right of access to official documents	206
7.4.2	Inviolability of home and body	208
7.5.	Communication-related rights	210
7.5.1.	Secrecy of communications	210
7.5.2.	Freedom of expression	212
7.6.	Other constitutional rights	215
7.6.1.	Access to official documents and the Swedish principle of openness	215
7.6.2.	Management of official documents	218
7.6.3.	Acts of law and other provisions	219
7.6.4.	Distribution of competence	221
7.7.	Conclusion	221
	References	223
Eight	Constitutional Rights and New Technologies in the	
	United States – Susan W. Brenner	225
8.1.	Introduction	225
8.2.	History and scope of digital constitutional rights	226
8.2.1.	History	226
8.2.2.	Scope	228
8.3.	Changes in the constitutional system	229
8.4.	Privacy-related rights	230
8.4.1.	Privacy and data protection	231
	Fourth Amendment: overview	231
	'Papers'	232
	Letters	233
	Wiretapping	234
	Traffic data	236
	Tracking devices	239
8.4.2.	Inviolability of the home	241
8.4.3.	Inviolability of the body	243
	Genetic testing	244
8.5.	Communication-related rights	246
8.5.1.	Secrecy of communications	246
	First Amendment	247
	Fifth Amendment	251

TABLE (OF CONTENTS	XIII
8.5.2.	Freedom of speech	256
8.6.	Other and new constitutional rights	258
8.7	Conclusion	259
	References	261
Nine	Conclusions and Recommendations — Paul De Hert,	
	Bert-Jaap Koops and Ronald Leenes	265
9.1.	General	265
9.2.	General constitutional characteristics and developments	265
9.2.1.	Little constitutional dynamics as a general trend	265
9.2.2.	The impact of international legal instruments	267
	Constitutional review	268
9.2.4.	Horizontal effect	269
9.3.	Privacy	269
9.3.1.	General	269
9.3.2.	Data protection	271
9.3.3.	Inviolability of the home	273
	Inviolability of the body	275
	Communication-related rights	276
	Secrecy of communications	276
	Traffic data and data retention	277
9.4.2.	Freedom of expression	278
	Other and new constitutional rights	281
	Right to anonymity	281
	Various	281
9.5.3.	Conclusion	283
9.6.	Conclusion	284
	References	285
Appen	dix:	
	pants to the Workshop Constitutional Rights and New Technologies,	
	ague, 1 December 2006	287
About	the authors	289
Index		293