# DATA PRIVACY COLLOQUIUM: TECHNOLOGYâ€™S CUTTING EDGE: TEMPEST, TOOLBOX, AND PRIVACY

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Washington, D.C. - Icy weather and clogged by-ways threw a stiff challenge in the path of attendees and speakers for DIALOGUE ON DIVERSITY'S sixth annual privacy colloquium program January 22nd at the Microsoft Innovation and Policy Center in Washington. Commercial internet expert S. Jenell Trigg wrestled with eight inches of snow to extricate her car from a snow-drifted driveway and motor in from the Maryland exurbs. James. C. Pyles, very much the dean of U.S. privacy experts, similarly made the arduous trek from the neighboring city of Annapolis.

"Privacy in the IT era is one of our major signature issues," remarked Ma. Cristina Caballero, President/CEO of Dialogue on Diversity, a leading organization of Latina and other women entrepreneurs. "It is significant in our entrepreneurship conference and our health care programs later in the year, and it is always front and center in the January colloquium, scheduled to coincide with the national observance of Data Privacy Day." The colloquium program was hosted by sponsoring Microsoft in its Innovation and Policy Center at 901 K Street, N.W., whose Director for External Affairs, Suhail Khan, welcomed guests in remarks at the midday session.

S. Jenell Trigg, Chair of the Intellectual Property and New Technology Practice Group in Washington's Lerman Senter law offices, was joined by Cora Han, the articulate Senior Attorney, Office of Privacy and Identity Theft at the FTC in a review of the state of commercial data collection in the US., a tightening network of information, aggregated, sorted, and linked, much of it "personal" – with regard to a good chunk of the population, (leaving aside only those who have scrupulously kept their fingers off computer keyboards). Many people, Ms. Trigg stated, have not got their heads around the notion that the bits and pieces of information left with a scattering of online merchants, organizations, opposite parties in ordinary correspondence, etc. are linked and can be drawn up "instantaneously" by commercial content producers. The effects are in many ways benign– you get advertisements you can use, and newly flourishing niche businesses are brought into the market. It is disquieting, they agreed, that such an intimate profile of millions of person exists, subject to exploitation for good or for evil.

James Pyles joined Mary Crimmins, a long-time researcher in the technical aspects of the dense problematic of electronic medical records (EHR), in a spirited discussion of the uses of these records, the interest of patients (and possible future patients) in shielding portions of this personal information, some of it dangerous or embarrassing, from certain medical persons in certain circumstances. The means for carrying out these delicate tasks have occupied IT experts in designing sufficiently subtle, inevitably complex systems, seeking always to escape the countervailing dangers of the use of so-called "segmented" bodies of records. Mr. Pyles discussed in some detail the quandaries that one meets with in assembling universal public health records when independent minded persons decline to involve themselves in the medical treatment apparatus. The pervasive problem in technology advances: does the ability to do something, argue for its propriety.

The complications of the social media networks were laid out by three experts, Marsali Hancock, advocate for the special concerns of students in the face of these networks, Jennifer Hanley, of Families Online Safety Institute, and Gautam Hans, of the Center for Democracy and Technology, a principal think tank in this field.

The colloquium culminated with detailed expositions of the impact of governmental information collecting activity, basically by way of various forms of surveillance under national security rationales. Khalia Barnes of Electronic Privacy Information Center (EPIC), a top privacy research and advocacy group, highlighted some of the novel, some of the conventional means of penetrating the reticences of citizens. She laid out chapter and verse on the skirting of the 1974 federal Privacy Act by such agencies as the FBI, DOD, and DHS. One of the novel collection mechanisms has come with the now common installation by car manufacturers of "black-box"-like gadgetry on the chassis of their products, making of your car a veritable "broadcasting" station laying down a record of one's speed, twists and turns, destinations, times of movement, and a variety of other points of interest. Katherine Stern, of Constitution Project, offered a careful

disquisition on the refinements that have shaped the concept of privacy in a history of legal development.  She drew attention to the now famous GPS decision in the Supreme Court disallowing attachment of a tiny tracking device on the underside of the car of a drug suspect, and tracking his every movement for the space of a month.  Justice Scalia in the majority opinion relied mainly on a theory of trespass in the impact on the car as property, while concurring opinions, especially that of Justice Sotomayor, relying as well on the expectation of privacy theory in 4th amendment law, drew on the account of the changed world of contemporary IT as turning much of the reasonable-expectation logic on its head.

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