

The Digital Person
Technology and Privacy in the Information Age

By Daniel J. Solove
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Reviewed by Lori Powers
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Do we also exist in cyberspace? Do we have parallel digital identities that co-exist with our physical lives that are created by transactions we make on the Internet, the websites we visit, and third-parties such as government agencies and private businesses that collect information about us to be stored in giant databases to be used for such purposes as research, background checks, or marketing efforts. Daniel Solove explores these intriguing questions in his book *The Digital Person: Technology and Privacy in the Information Age*.

According to Solove, database companies compile “digital dossiers” of anybody living in the modern world by collecting information from an individual’s credit card purchases, monitoring websites visitation, and aggregating information collected by various government agencies and companies that track current and potential customer spending habits. Each of these activities taken alone may not cause an individual to be concerned about the information that he or she has knowingly or unknowingly given away to the impersonal database on the other side of the transaction. However, this individual’s carefree attitude would be markedly different if he or she knew that each piece of information he or she surrenders is compiled into a composite “digital dossier” that provides telling insights into his or her spending habits, viewing habits, and eventually into a comprehensive psychological profile that comes eerily close to who he or she really is in flesh and blood. Perhaps then, filling out those pervasive and seemingly innocuous

on-line surveys as a prerequisite to completing a purchase on the Internet would cause that person to pause and think about how that information is being used.

Solove covers the threats to individual privacy that living in the digital age has wrought. Instead of using the popular George Orwell's *1984* metaphor of "Big Brother" watching over us to illustrate the situation he describes, Solove instead analogizes the creation of these giant databases of information to Franz Kafka's *The Trial* where the protagonist, Joseph K., is arrested and put on trial for a crime but is never told what the crime is. As Solove describes, Joseph K. desperately tries to find answers about why he was arrested and to seek an acquittal from his crime but to no avail. He is subsequently arrested by two agents in the middle of the night and executed. Solove uses the metaphor of Joseph's powerlessness to describe the powerlessness we have regarding our personal information being stored in impersonal databases to be accessed, compiled, and collected by people we do not know and without knowing what is to be done with it. Solove carries the theme of powerlessness throughout the book.

An everyday example that he uses to support his point is the "list of favorites" that anyone who has purchased a book from Amazon has seen. When a consumer looks up a book to purchase, Amazon produces a list of other books that it believes the consumer would enjoy from information based on past purchases. The author acknowledges that this function is a benefit of living in the information age because usually these recommendations are on target with leading people to other books they will enjoy. But what if this information is not used for such harmless reasons as suggesting a book to read? Solove raises the possibility that the government can also access and use this same information to carry on a criminal investigation unbeknownst to the person by putting together a profile on whether this individual may or may not be a criminal because of the books and other items he or she has purchased online.

According to Solove, powerlessness arises when digital biographies are created about us from information collected from vast arrays of sources. Solove questions whether these bits and bytes accurately represent the person. Database marketers make judgments about us based on our gender, age, income level, age and zip code, among other things, without ever knowing us personally. Furthermore, a piece of information may be incorrect, forcing a person to take months out of his or her life to navigate through a confusing web of companies desperately trying to find the correct place or person to correct the mistake.¹ Besides the amount of time it could take to find the source of the error and the subsequent databases it could have spread to, the amount of frustration and stress experienced by this person to fix this problem could be immeasurable.

To illustrate the point an error in a database could cause, Solove mentions the plight of one woman who lost her job because the data broker wrongly indicated that she was a convicted drug dealer and shoplifter. The data broker in question was ChoicePoint, Inc., a company that has been in the news recently for a major breach of its database records by criminals stealing people's identities.² Solove also demonstrates how these "digital biography" mistakes can have a more far-reaching impact by highlighting another error in the ChoicePoint database. According to Solove, in 2000 ChoicePoint supplied Florida with a list of 8,000 ex-felons who would be ineligible to vote. However, many of them were guilty of misdemeanors rather than felonies and

¹ Daniel J. Solove, *The Digital Person: Technology and Privacy in the Information Age* 110 (New York University Press 2004). Besides correcting mistakes regarding personal information, a victim of identity theft can also spend an inordinate amount of time trying to fix the damage caused by this crime. *Id.* "According to estimates, a victim typically spends over two years and 200 hours to repair the damages that identity theft causes." *Id.*

² Harry R. Weber, *ChoicePoint Limits Small Business Sales*, available at http://www.boston.com/business/articles/2005/03/05/choicepoint_limits_small_business_sales/ (last visited March 6, 2005). ChoicePoint has been in the news recently because criminals posed as small business customers to get access to ChoicePoint's databases to get access to sensitive information in order to steal people's identities. *Id.* It is estimated that the personal information of 145,000 people may have been compromised and of those, 750 of them have been defrauded. *Id.*

were eligible to vote. Although the error was discovered before the election and the voters were put back on the voting rolls, some eligible voters may still have been turned away at the polls.

The stockpiles of information stored in databases magnifies the impact of identity theft. According to Solove, identity thieves not only steal people's digital information but also "pollute" their digital dossiers by adding false information. Innocent people's records become polluted with "unpaid debts, traffic violations, parking tickets, and arrests." Victims of identity theft may have difficulty getting a loan or mortgage or getting a job through no fault of their own. Furthermore, according to Solove, sometimes victims are arrested based on warrants for the crimes committed by the identity thieves.

These issues help to highlight Solove's main proposition that these databases filled with personal data can lead people to a sense of powerlessness because they have no idea what is inside their digital dossiers or how it is being handled. "[A]lthough people may be aware that dossiers are being assembled about them, they have no idea what information the dossiers contain or how the dossiers are being used. This reality leads to unease, vulnerability, and powerlessness – a deepening sense that one is at the mercy of others, or, perhaps even more alarming, at the mercy of a bureaucratic process that is arbitrary, irresponsible, opaque, and indifferent to people's dignity and welfare."³

But Solove does not believe that this situation is hopeless. Rather, he believes that we have the ability to stop the erosion of our privacy rights through the application of law. Solove uses examples to demonstrate that "privacy is not found but constructed." For example, he discusses how Congress made the decision to erect strict laws to protect the privacy of our mail. Similarly, Solove argues, that we must create a regulatory scheme to protect our personal information from misuse. Solove wants the benefits of the technology and the protection of

³ Solove, *supra* note 1, at 149.

privacy rights to coexist. He argues that the solution is not to eliminate new technology but is instead to put greater controls on the access and use of personal records. He believes that the government has a legitimate need to access information in certain circumstances, but that this need should be balanced against privacy rights. One of his solutions is to require the government to get a special court order when it wants to access an individual's personal records from a business data broker and that the law should give people more participation in how their personal data is used.

Although the material that Solove explains could have been extremely dense and hard to read, he is able to write about this topic in a way that a layperson not versed in technology could easily understand. His writing flows from sentence to sentence and from chapter to chapter, making his thesis and the steps to his argument clear to the reader, whether you agree with his conclusion or not. He highlights the effects of these unregulated massive databases of personal information by using personal stories that anybody can relate with.

The *Digital Person* is a provocative read. It makes you think about how much personal information there is about yourself on the web and how closely this "digital dossier" reflects who you really are. Solove successfully describes the sense of powerlessness a person has over this data and the impact its misuse has on people's lives. Nevertheless, he also maintains a sense of optimism about the future by proposing a solution to control the networks of information flow. Instead of succumbing to a sense of hopelessness, Solove believes that it is not too late to use the law to protect our privacy in today's information society.