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THE WAR ON INTERNET PRIVACY

A STUDY OF THE EUROPEAN DATA PROTECTION LEGISLATION AND THE EUROPEAN PUBLIC DEBATE REGARDING PRIVACY ON THE INTERNET

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ENGLISH TITLE The war on Internet privacy – A study of the European data protection legislation and the European public debate regarding privacy on the Internet.

SVENSK TITEL Kampen om integriteten på nätet – En studie av den europeiska dataskyddslagstiftningen och den europeiska debatten om integritet på internet

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ABSTRACT The high amount of information circulating on the Internet and the consequent possibility to monitor this information has sparked a discussion regarding privacy on the Internet. In early 2012, the EU responded to this by presenting a major reform of its data protection legislation. It is the possible source of this reform that has been of interest in this study. With a discourse analysis guided by a combination of Laclau and Mouffe's discourse theory and a sociological theory of lawmaking, the possible existence of a connection between the European public debate regarding Internet privacy rights and the EU's proposed data protection legislation reform has been examined. The data gathered from EU documents, one British newspaper and one Swedish newspaper suggests that the EU's proposed reform has been influenced by public opinion. There are also indications that the public opinion has changed somewhat during the period after the EU presented the proposed reform, calling into question how effective the proposed reform will be and whether or not legislation can have a reversed effect on the public debate.

KEY WORDS privacy, data protection, legislation, discourse theory, sociological theory of lawmaking

NYCKELORD integritet, dataskydd, lagstiftning, diskursanalys, sociologisk teori om lagstiftning

"Having two identities for yourself is an example of a lack of integrity."
Mark Zuckerberg
Co-founder, chairman and CEO of Facebook
(Kirkpatrick 2010)

LIST OF ABBREVIATIONS

CoE	Chains of Equivalence
DPD	Data Protection Directive (Directive 95/46/EC)
FRA	Försvarets Radioanstalt
GCHQ	Government Communications Headquarters
LEK	Lag 2003:389 om elektronisk kommunikation
NSA	National Security Agency
P-C-S	Problem – Cause - Solution
SVT	Sveriges Television

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1. INTRODUCTION

Data protection in relation to privacy rights has long been an intensely discussed topic, which peaked somewhat during the later half of 2013 (see for example the introduction by Bélanger and Crossler 2011 and the discussion by Tzanou 2013). The PRISM scandal[1] revealed by The Guardian and Washington Post on June 6th 2013 (The Guardian 2013, Washington Post 2013) profoundly altered the general perception of the Internet as a place of endless anonymity. Considering the amount of personal, and what is often considered private, information that is being dispersed on the Internet on an everyday basis, it suddenly became apparent to the public at large that much of our online activity leaves breadcrumbs that can reveal a whole lot about who we are[2]. With all the possibilities that the Internet provides us with, we have come to not only use it for communication purposes but also to read news, shop, search for knowledge, arrange round the world travelling, watch movies and listen to music. These actions have led to an increasing flow of personal information from which we easily can tell who and what other Internet users are. Name, identification number, address and e-mail address are just some of the information we more than willingly give up in exchange for memberships in online communities and online shopping possibilities.

There are seemingly two conflicting interests that can be discerned; the increasing will to monitor and regulate the Internet and the possibility for people to go about their personal businesses on the Internet without the fear of being watched by unauthorized parties. As a response to this, the European Union has proposed a major reform of its data protection legislation. The reform, which was presented in the beginning of 2012, aims to strengthen individual rights and tackle challenges brought on by globalization and new technology. In European legislation, data protection was first addressed in the Directive 95/46/EC on the protection of individuals with regard

[1] The PRISM scandal refers to the surveillance scandal that was revealed in June 2013 when information about the existence of a mass electronic surveillance program used by the U.S. intelligence agency the National Security Agency (NSA), was leaked by an agency contractor named Edward Snowden (see the references to the Guardian 2013 and Washington Post 2013 for more information).

[2] In 2013, over 2.7 billion people were using the Internet (ITU 2013) and according to a Eurobarometer report, 74% of Europeans see disclosing personal information as ”an increasing part of modern life” (European Commission 2011).

to the processing of personal data and on the free movement of such data[3], which was the first EU legislation designed to protect personal electronic data. Needless to say, much has happened since the DPD was adopted in 1995 both technology-wise and with the Internet in particular (Brügger 2012). Thus, an update of the legislation seems very fitting. Furthermore, not only has technology developed greatly over the last decade, the current DPD has also been implemented differently across the Union's member states with different impact (see for example Poullet 2006 and Gilbert 2012).

With the proposed reform, the EU pushes for legislative changes that involve the tension between personal privacy and recent technological developments. Given the relative recentness of these legislative changes, I am interested in the foundation of this legal development. Cases regarding data protection and online privacy rights are being widely discussed, not least in the media (see for example The Telegraph 2013), which clearly depicts the complexity of the issue. Seeing that online privacy has been and still is such an important topic among legislators as well as in the public debate, I find it interesting to examine the relationship between the two. Is there a connection between the EU's proposed data protection legislation reform and the public debate regarding online privacy during the last years? And if there is, what can we tell from this? In order to better grasp the EU's attitude toward the balance between protecting privacy and simultaneously evade any negative aspects of complete anonymity in an online context, this study moves away from the currently predominant legal and political focus on the ongoing development in the European data protection legislation. Instead, I opt for a social science approach based on a sociological theory of lawmaking and discourse theory in order to critically analyze the relationship between the EU's attitude towards privacy on the Internet through their proposed data protection legislation reform and the public debate regarding the balance between privacy and surveillance.

[3] *The Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data* will hereafter be referred to as the Data Protection Directive or DPD.

1.1. PURPOSE OF THE STUDY AND RESEARCH QUESTIONS

The purpose of this study is to examine the possible existence of a connection between the European public debate regarding Internet privacy rights and the proposed data protection legislation reform that the EU presented in January 2012 and the subsequent why/why not of that connection. The focus lies on the discrepancies and/or similarities (one does not exclude the other) between the legislation and the public debate during the years prior and following the presentation of the data protection legislation reform in order to analyze the relationship between the legal aspect of the topic and also society's view. The following research questions are used to guide the study:

- How is the proposed EU data protection legislation reform discursively constructed?
- How is the public debate in Europe regarding online privacy rights discursively constructed during the periods of 2010-2011 and 2012-2013?
- Has the European public debate undergone any specific transformation during these periods and can any connection between the public debate and the proposed be discerned? Why/why not?

1.2. RELEVANCE OF THE STUDY

1.2.1. A QUESTION FOR THE FIELD OF SOCIOLOGY OF LAW

The field of sociology of law is interested in studying the law and society using theories and methods from the social sciences. The Norwegian sociologist of law Thomas Mathiesen (2005) has formulated three questions that form the fundamental base of sociology of law; to what extent does society affect the law and other legal factors, to what extent does the law and other legal factors affect society and lastly to what extent does an interaction between the law and other legal factors on the one hand and the law and other societal factors on the other hand, exist? Thus, sociology of law aims to examine and explain societal problems in the way legal and social norms interact and to what extent they correspond with each other. It is societal problems that are in focus but with emphasis on the relationship between legal and social norms.

With this in mind, the relevance of this study in relation to the field of sociology of law is connected to a societal problem that has emerged with the birth and rise of the Internet. It draws attention to a new area where existing rules lack authority. As will be presented in the next chapter[4], much of previous research regarding the Internet, regulation of the Internet, privacy on the Internet and regulation of privacy rights on the Internet, has approached the topic from a legal, political and even computer science perspective. Thus, there seems to be a knowledge gap, which is, as previously mentioned, why this study opts for a different tactic where a sociology of law approach is the key. The importance of understanding the social conditions in order to create functioning and effective legislation was highlighted early on by one of the founders of sociology of law, the Austro-Hungarian legal scholar Eugen Ehrlich. The area in which Ehrlich lived and worked was a place of high linguistic and cultural diversity (Littlefield 1964:2). This consequently had a great influence on Ehrlich's work where he observed how the Austro-Hungarian legal system in the Bukovina region was unable to satisfy the various needs of the region's diverse population, which led Ehrlich to the conclusion that social life is mainly guided by social norms, not legal norms and statues alone (Deflem 2008:91). Therefore, even though some social norms have not been recognized as legal propositions and consequently do not fall under the category of juristic law, these should still be regarded as "living law" (ibid.). Furthermore, Ehrlich noted that the whole of living law is vital in the development of juristic law, much more so than the impact juristic law has on social relations and cultural conditions (ibid.). In order for the legal norms (juristic law) to be effective, they must subsequently be consistent with the social norms (living law). Thus, legislation, official enforcement and coercion cannot on their own transform a rule into a law but it must have some support by social norms to have any significant impact on society (Banakar 2002:43).

Instead of focusing on what the proposed reform of the European data protection legislation means in terms of legal rights and responsibilities, this study is interested in the social norms regarding privacy, and by extension surveillance, on the Internet and how these compare to the proposed EU data protection legislation reform. This focus on a correlation of some sort between legal norms and social norms lies at the very heart of the field of sociology of law. Furthermore, with reference to Ehrlich's

[4] See chapter 2.2. Literature review for more information.

early claims regarding the need of living law's support of juristic law for it to be successful, this approach also places this study in a wider domain of usefulness outside the scientific area since it hopefully can give us some indication of how successful the proposed data protection legislation reform might be.

1.2.2. AN IMPORTANT QUESTION FOR SOCIETY AT LARGE

Continuing on the same track as the previous sub-chapter ended in, the utility of this study is not limited to the academic sphere since it also benefits society at large. The access to Internet is no longer a privilege restricted to scientific circles but have come to reach the status of a human right (Lucchi 2011). We use the Internet and we know how to use the Internet but we have very little knowledge of how to regulate the Internet. In order to find a way to (legally) regulate the online world, we need to acquire more knowledge about the online society as well as how the "real" world relate to the online society. Since close to 40 percent of the world's population is using the Internet (ITU 2013), the regulation and development of the Internet is most likely an important question for the majority of society. It is probably even safe to say that the use of Internet is now so widely spread that it affects the additional part of the population in one way or another, even though they do not use the Internet directly. Therefore, any study that may contribute to the understanding of the Internet society, how it interacts with the "real" world and the regulation of Internet, should be considered highly relevant outside the mere sphere of academia.

1.3. DELIMITATIONS OF THE STUDY

As with every research project, the researcher is more or less involuntarily forced to draw a line somewhere and this study is of course no exception. Thus, the limitations of this thesis are connected to the fact that it is a qualitative study with focus on EU law. Before presenting the arguments for limiting the study to EU law, I find that a short note on studying the law would be appropriate at this point. The law is not something "permanent" in that it never changes. Quite the opposite, as Vago (2009:163) points out, the law is created and developed in an infinite process. This

makes the law a rather complicated object to study. However, I find that studying the law is not a completely hopeless task since studying a part of the "process" that is law, may well offer important knowledge of the deeper functions of law. This study is not longitudinal by design and thus only offers a snapshot of this "process". However, as will be explained, the European data protection legislation is currently undergoing major changes and concentrating on this fixed part in the "process" can provide us with important information about the past, present and future relation between Internet, regulation and society.

The structure of this thesis is for several reasons inductive. Due to the complex nature of the problem, the objective of this thesis is not to argue for any absolute certain conclusions but to find a possible path to continue down. The limitation of the study to EU legislation can mainly be motivated by the predominant US heavy part of previous research in the area (see for example Bélanger & Crossler 2011). Also, the proposed reform of current data protection legislation presented by the European Commission indicates that there are significant movements in European data protection legislation that inevitably will affect not only the European society but most likely have global effects as well. Any change benefits from a wider discussion and thus, I find that limiting this study to European legislation is highly suitable considering the timing of the study compared to the ongoing changes in the area in question. As mentioned in the previous chapter, it should be noted that this study as a study within the field of sociology of law is distinctly social science oriented and the primary focus is therefore not on the legal contents of the objects that are being examined. Instead it is the meaning of the texts in a wider perspective, outside the mere sphere of law, law making and law-interpretation that is of interest. This is a conscious choice executed through the study's theoretical base and design. The product of this study will therefore not be a legal interpretation of the European online privacy rights legislation, but instead a wider analysis of the topic in relation to social theory.

1.4. DEFINTIONS IMPORTANT FOR THE STUDY

There are several concepts that are of special interest for this thesis and they are often used synonymously to one another. Thus, some clarifications regarding these concepts and how they are used for this particular study are in order.

1.4.1. INTERNET, CYBERSPACE, THE VIRTUAL WORLD, THE ONLINE WORLD

We tend to have many names for the things we love and the virtual world is no exception. For some point of departure for this thesis, the Oxford Dictionaries (2013) has defined the concepts of "Internet" and "cyberspace" as "a global computer network providing a variety of information and communication facilities, consisting of interconnected networks using standardized communication protocols" and "the notional environment in which communication over computer networks occurs". Furthermore, the concepts of "virtual"[5] and "online" are defined as "not physically existing as such but made by software to appear to do so" and "while connected to a computer or under computer control".

It is evident that all these words are in several ways related to each other all linked to the fact that they are all words used and born through the world of computing. With that said, one should not take for granted that the words are and can be used synonymously. However, to simplify the use of these concepts in this thesis, they are all strictly used with reference to the interaction that happens between individuals with the help of technological devices such as computers and smartphones, connected through computer networks, with the words *internet* and *online* used completely synonymously. Due to the fact that the material used in this study comes from different sources, I have not intentionally opted to use one concept over the other.

1.4.2. PRIVACY VERSUS ANONYMITY

Two other concepts whose definitions are easily confused are anonymity and privacy. Akdeniz (2002:224) notes that as a concept, anonymity is very much related to

[5] As in terms of computing.

privacy. Initially the meaning of the two words may seem to be the same but when examining the two further, one can distinguish some distinct differences. The most effective way of displaying this difference is by pointing to the difficulty of finding a balance between allowing users to private activities on the Internet and anonymous use of the Internet for criminal purposes (Daly 2013).

For example, a person can be very personal while at the same time being anonymous, or private while being known and one can also be both anonymous and private, or open and known at the same time. For example, a person who sends an anonymous letter to be published in the local newspaper, discussing a treatment for an illness he or she has. This is disclosure of personal information but the information is still anonymous, no one can know exactly whom the information concerns. For this reason, there is a significant separation between how these two concepts are used in this thesis. By *anonymous* it is meant if someone knows *who* you are and when using the concept of privacy I am referring to if someone knows *something* personal about you, with or without knowing whom you are. With this distinction, this study will only deal with the concept of privacy while allowing the topic of anonymousness to support the study in the periphery.

1.4.3. TRADITIONAL SURVEILLANCE VERSUS ELECTRONIC, DIGITAL SURVEILLANCE

Another concept important for this study is surveillance, more specifically electronic, digital surveillance. In relation to this, it should be noted that digital surveillance is different compared to traditional surveillance. What distinguishes these two types of surveillance from each other can for example be explained by pointing to the limitations of privacy legislation. Lessig (2008:201) notes that the legal restrictions of privacy legislation are largely complemented by the physical barriers of the world, such as locked doors and bolted windows of a home. The walls and closed windows of a house offer efficient protection from unwanted monitoring. Only under specific circumstances are different surveillance methods, for example wiretapping, legally allowed. However, when it comes to digital surveillance, the same kind of physical barriers simply do not exist, ultimately leaving privacy legislation short of any help from obvious barriers. Instead, the traffic flow of our Internet usage has little to no

palpable boundaries. Therefore, it is noted that a different set of restrictions for surveillance should be applied when it comes to the digital kind of surveillance (ibid:224).

In light of this short comment on the difference between traditional surveillance and digital surveillance, this difference in itself is not of direct interest for this study. Nonetheless, this distinction is useful when it comes to underlining the complexity of finding a balance between the will to regulate and monitor the Internet and safeguarding the privacy of the Internet users. Thus, this acknowledges the fact that the lack of physical barriers distinguishes the new electronic, digital surveillance from traditional surveillance, consequently making privacy legislation somewhat insufficient[6].

1.5. ORGANIZATION OF THE THESIS

The first chapter of this thesis presents the introductory core of the study including a short introduction to the topic and the purpose and the research questions that have been used to guide the study. This initial chapter also contains a short discussion regarding the relevance, delimitations and definitions of the study. Chapter 2 presents more in-depth information that is useful throughout the rest of the thesis; a few notes on how data protection is connected to privacy and a literature review where previous studies on regulating the online world, privacy and surveillance on the Internet and European data protection legislation are brought to attention and briefly discussed. In chapter 3 and chapter 4 the theoretical framework and methodological outlines of the study is presented. These parts describe the theoretical concepts and the practical procedure of how data has been collected in the study. Chapter 5 is the processing part of the thesis where the data is being presented and analyzed. The concluding part of the thesis is comprised of a discussion chapter (chapter 6) and a chapter with the conclusions (chapter 7), which connects the points from the analysis with the purpose and research questions, thus joining the last part of the thesis with the first. The final sub-chapter of the thesis contains a few pointers for future research based on the findings of this study.

[6] The legal shortcomings of privacy legislation in relation to electronic, digital surveillance is also acknowledged in the literature review, see chapter 2.2.2. Privacy and surveillance on the Internet.

2. BACKGROUND

2.1. THE CONNECTION BETWEEN PRIVACY AND DATA PROTECTION

When studying privacy rights it is important not to forget the legislative foundation regarding the right to privacy in the EU, which in fact is embedded in the core values of the EU. With the technological development during the last decades, privacy rights has become closely linked to data protection. However, this is not to say that data protection is the same as privacy rights, in fact it has been noted that they are not identical rights (Tzanou 2013:26). For this study, privacy rights and data protection are nonetheless seen as two interrelated rights. The reason for this is primarily based on the study's particular focus on privacy in an online context. In this sense, privacy relates to personal information and on the Internet such information is data. In this respect, it is suitable to include a presentation of the basic EU legislation that currently directs privacy rights and data protection. Here follows a very brief summary of the fundamental right to privacy as established by a number of documents and a short excerpt from the DPD to show how data protection is connected to privacy rights.

2.1.1. CHARTER OF FUNDAMENTAL RIGHTS, THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS & TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

The right to privacy is established by Article 8 of the Charter of Fundamental rights of the European Union, Article 8 of the European Convention for the Protection of Human rights and Fundamental Freedoms as well as Article 16 of the Treaty on the Functioning of the European Union. Article 8 of the European Convention for the protection of Human rights and Fundamental Freedoms provides the individual's right to respect for private and family life and set the following directions;

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this

> right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

This shows that the EU regards personal privacy in relation to private life, family, home and correspondence as a fundamental human right. However, Article 8.2 notes that there are some exceptions to the right in Article 8.1. The individual right to privacy does not have priority over things such as the interest of national security, public safety and disorder and crime prevention. Furthermore, it is noted that these exceptions are only justified if they are "in accordance with the law" and "necessary in a democratic society".

2.1.2. DIRECTIVE 95/46/EC

Another important part of European privacy legislation is the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, or more commonly referred to as the Data Protection Directive (DPD). In addition to the Charter, the TFEU and the ECHR, the DPD protects the rights and freedoms of natural persons with particular emphasis on "their right to privacy with respect to the processing of personal data" (DPD Article 1.1). There are a few key concepts of the DPD that are defined in Article 2. "Personal data" is referred to as any information relating to a natural person or 'data subject', particularly information referring to a natural person's physical, physiological, mental, economic, cultural or social identity (DPD Article 2(a)). Next, the processing of personal data includes "any operation or set of operations which is performed upon personal data", for example collection, recording, organization or storage of this information (DPD Article 2(b)). In order for some data processing to be allowed, the DPD also includes a description of when data processing is legitimate. Article 6.1(b) notes that personal data can be "collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes". Article 7 of the DPD states that personal data may be processed if the 'data subject' has consented to this and also if this is necessary for the performance of certain

contracts, for compliance with certain legal obligations, to protect vital interests of the data subject, for the performance of a task carried out in the public interest or for the purposes of legitimate interests. It is also noted that processing information regarding a person's racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership and health or sex life is prohibited, of which extra restrictions apply (DPD Article 8). Thus, the DPD connects personal data to natural persons with some specific references.

2.2. LITERATURE REVIEW

In order to pinpoint the exact focus of this study, a systematic literature review was made. In doing so, yet another significant indication of the development of the Internet and the interest, academic as well as general, in the Internet was found. The amount of research devoted to this subject has increased drastically over the last two decades. When searching for literature, I started with direct searches in the Lund University Library using the key words *Internet* and *privacy*. The results depicted a significant development in the academic Internet discussion. Limiting the search to the years between 1967 and 1999 produced 3591 hits while expanding the search to include everything that had been published until 2013, generated over 14 000 hits. From my initial search using the previously mentioned key words "internet" and "privacy", more key words were added in order to narrow the search result.

After a number of searches the main key words that were used were *Internet, online, privacy, rights, legislation, law, EU, European Union.* In order to ensure only high quality research was included in the review, all searches were limited to peer-reviewed articles only. From the initial articles, more research was found through a kind of chain sampling where references in one article or report led to additional material. There are a number of important themes that can be summarized from this literature review, which point to the utility of this specific study. The following chapter includes a presentation of my findings, direct as well as indirect, from this systematic literature review.

2.2.1. REGULATING THE ONLINE WORLD

First, previous research has established that the online world and consequently any interaction going on there should not be seen as something separate from the rest of society. One cannot claim that what happens online, stays online or that it will not and does not influence the part of society that exists outside the cyberspace one (see for example McKenna and Bargh 1999, Christopherson 2007). This is also supported by David Nelken (2008) in his article about Eugen Ehrlich's living law and plural legalities. Here, Nelken (ibid:457) points out that "the Internet is not a world apart" but instead "the real and virtual worlds intersect". However, despite the fact that there is an important interaction between the online world and the "real" world and that these two worlds apparently are quite similar, the online world does not seem to share the same range of predetermined norms of conduct. Allen (1999) notes that the offline world has had centuries to develop rules and norms. Due to the rapid development of the virtual world, it is hopelessly left behind in the establishment of the same rules and norms. This in turn creates a complex situation where the rules and regulations valid in the rest of society cannot be directly transferred to this new part of society, which consequently leads to confusion. Another relatively early article by Diane Rowland published in 1999 discussed the regulation of cyberspace, concluding that "the law may only succeed in regulating Cyberspace when the social conditions pertaining in cybercommunities are acknowledged and understood". In a study conducted in connection to the implementation of the Swedish IPRED law[7], researchers at the department of sociology of law at Lund University measured changes in the strength of social norms regarding copyright and file-sharing (Svensson & Larsson 2012). One conclusion of the study was that the IPRED law in fact changed the participant's behavior regarding compliance. Svensson and Larsson (2012:1158) note, "[w]e know that behavioural change sometimes leads to changes in the social norm structures, even when the former has occurred as a result of enforcement strategies". A conclusion from this is that change in behavior (on the Internet) caused by regulation can have altering effects on social norms. With that said, the results of the study also showed no sudden change in social norm strength

[7] The name "IPRED law" is commonly used when referring to a number of changes made in the Swedish Copyright Act (Lag (1960:729) om upphovsrätt till litterära och konstnärliga verk) in order for Swedish legislation to comply with the EU Directive on the Enforcement of Intellectual Property Rights (2004/48/EC).

regarding illegal file sharing, despite regulation changes.

Considering the thoughts of the problematic situation with regulating the Internet, it is with more than a little trepidation another nebulous concept is added, namely the concept of privacy. Numerous studies have highlighted the problem of defining privacy (see for example Tzanou 2013, Thierer 2013). Balz and Hance (1996:220) called attention to the challenge of privacy in an online context as early as 1996, stating,

> Although legal privacy rights clearly obtain in the Internet context, the legal privacy rights of many national systems are themselves problematic, in that where they exist at all, the protection they offer is only partial and subject to multiple exceptions. Furthermore, their enforcement poses problems of a particular urgency, since a privacy right is one of the few things so surely and permanently lost in the case of an infringement. Enforcement of privacy rights is rendered yet more difficult in the context of the Internet by virtue of its highly decentralized nature.

However, despite the authors' distinct acknowledgement of the regulatory problems connected to Internet privacy, they conclude that "traditional bodies of law" still apply to the Internet. What is considered to be illegal behavior in the "real" world is still prohibited on the Internet. The obvious difficulties with translating traditional principles of law notwithstanding, the authors hope that these difficulties will be resolved by legislation and case law, concluding that until then,

> In almost every instance of legal doubt, however, self-regulation in the form of codes of conduct, acceptable use and site policies, contracts and the etiquette of the online community provides relatively clear indications of how to use the Internet productively and peacefully (Balz and Hance 1996:234).

The ideas of Balz and Hance very much agrees with the initial note on how the online world relate to the "real" world. If the online world is not a world apart from the "real" world then naturally, the same rules must apply. This however, diverges from the notion that it is highly difficult to directly transfer the rules and legislation of the "real" world to apply to the online world as well. It should be noted that the article by Balz and Hance was published in 1996 and two things should thus be considered. Much has happened in the area of technology in general and with the Internet in particular since 1996, the substantial increase in the number of Internet users is

enough evidence of that. Consequently, the regulation of Internet was merely in its initial stages at that point and in hindsight it is easy to claim that Balz and Hance's wish for legislation and case law to resolve any privacy issues with the Internet might have been slightly optimistic. Lastly, it is worth noting that the Balz and Hance article was published as relatively *early* as 1996, producing a pretty clear picture of how extensive the problem of regulating online privacy is since it has now been a central topic of discussion in the Internet regulation area for a good two decades.

2.2.2. PRIVACY AND SURVEILLANCE ON THE INTERNET

In his book *Code Version 2.0*[8]*,* Lawrence Lessig has identified two main threats to privacy created by the Internet, which is digital surveillance and aggregation of data. Due to the large amount of information that is constantly moving around on the Internet, including personal information such as email conversations and browsing history, Lessig (2008:223) points to the increasing capacity for example governments to "spy" on individual citizens. But the government monitoring its citizens surely cannot be something new? No, but Lessig (ibid:224) points out that before the entrance of digital technology, such surveillance depended largely on humans to do the actual surveillance, for example with wiretapping, making traditional legal limits applicable. With digital surveillance, the same legal limits are not equally effective[9]. Lessig (ibid) claims that the government will take advantage of whatever method and scope of surveillance that is possible.

Similar to Lessig's conclusion of the technological development's impact on general surveillance, Frank Bannister discusses the topic of Internet surveillance by focusing on risk balancing in his article *The panoptic state: Privacy, surveillance and the balance of risk* from 2005. Bannister notes that the issue of Internet surveillance is based on the balance between the threat of crime and the threat of violating personal privacy and assessing which threat is greater. This risk assessment is according to Bannister inaccurate and that the risk for crime is exaggerated, which consequently

[8] This is the second edition of Lessig's book *Code and other laws of cyberspace* (Lessig, Lawrence (1999) *Code and other laws of cyberspace.* New York, US: Basic Books, cop.).
[9] The difference between traditional surveillance and the new kind of electronic, digital surveillance is also acknowledged in chapter 1.4.3. Traditional surveillance versus electronic, digital surveillance.

leads to an incorrect picture of the need for surveillance. For example, the threat of terrorist attacks is used to argue for increased surveillance, which is simply accepted by citizens due to the fear of such attacks. Bannister (2005:68ff) notes that the general surveillance is at a stage of extension, much due to recent developments of the kind of technology that facilitates monitoring and tracing.

In his book *Towards a Surveillant Society – The Rise of Surveillance Systems in Europe* published as recently as 2013, Thomas Mathiesen follows the same line of thought as Bannister and connects the motivation of surveillance and surveillance systems to three so called "enemy images". These enemy images in relation to surveillance in Europe are addressed as terrorism, organized crime and controlling the EU's common external borders against third countries (Mathiesen 2013:61). Here it is noted that "an important part of the official aim for establishing the surveillance systems was the struggle against terrorism as well as what is called organized crime across the borders of the European States" (ibid.). However, Mathiesen continues the discussion by noting that the danger of terrorism is generally exaggerated and possibly a product constructed by mass media since the terrorism that does in fact exist is only slightly reduced by various surveillance systems (ibid:65ff). Instead these surveillance systems are most likely a threat to legal security as well as the protection of privacy (ibid.).

2.2.3. EUROPEAN DATA PROTECTION LEGISLATION

Along with the continued development of the Internet during the last two decades, the research concerning Internet privacy has not surprisingly increased as well. The borderless nature of the Internet has drawn attention to the differences in Internet privacy legislation and the resulting effects. Since the Data Protection Directive (Directive 95/46/EC) was adopted in 1995, an abundance of studies have been conducted with a considerable focus on the EU-U.S. relationship with the main conclusion that not only does the borderless nature of the online world calls for harmonized legislation across nation-states, but that Internet privacy legislation as established by the EU has effects outside the physical borders of the EU (see for example Vitale 2002, Hinde 2003, Baumer et al 2004). In an article from 2002,

Gerhard Steinke highlighted the fact that privacy of personal data is the main concern among Internet users. This matches the result from a public opinion survey on attitudes regarding data protection and electronic identity in the European Union from 2011. According to this survey, only a little over a quarter of social network users (26%) feel that they have complete control of their personal data (European Commission 2011:2). This number is even lower (18%) among online shoppers (ibid.). Furthermore, with a comparative approach, Steinke (2002) not only pointed to the previously mentioned effects of the Internet's disregard of national borders but concluded that the data privacy regulation is managed very differently in the United States and within the European Union. While self-regulation is emphasized in the U.S., the EU applies a more strict legal approach to Internet privacy legislation. Connecting this to the earlier thoughts of Balz and Hance (1996), it seems like the regulation of Internet privacy from a global standpoint had come halfway at the beginning of the 21st century, consisting of self-regulation as well as formal legislation and case law. Furthermore, Poullet (2006) discussed the Data Protection Directive ten years after its implementation and detected a couple of important things. First, it is noted that the EU member states have interpreted the DPD differently, which has resulted in differences in implementation and consequent lack of harmonization. Poullet (ibid:207) notes,

> Certain countries have, more or less, translated the European text as such or with only minor modifications, whereas others have deeply modified the structure, added new definitions or principles or sometimes adopted sectoral or specific legislation. All these considerations create problems for comparison between the different national regimes.

Another point is the effectiveness of the DPD, which Poullet noted was not very high. It seems like the data protection legislation is not concrete enough and many rules are too generally formulated to be effective and Poullet (ibid:208) states,

> Many members of the public find it ironic that legislation to enable them to protect themselves and control their environment is too difficult to understand.

The European Commission's proposed data protection reform has caused a new wave of discussions regarding data protection and Internet privacy. There is still a significant focus on the relationship between European and American data protection

legislation. If the proposed reform is accepted it will undoubtedly cause conflicts between the EU and the U.S. since parts of the proposed Regulation that would supersede the current Directive do not agree with U.S. legislation (Bennett 2012, Walker 2012, Mantelero 2013). Thus, despite the efforts with the proposed data protection reform, the lack of borders in the online world is still an issue. For example, Walker (2012) has noted that even though the right to be forgotten would provide citizens in the European Union with the possibility to have personal information removed from online databases, only a limited version of this right would be compatible with U.S. constitutional law. This would make the right to be forgotten in line with EU legislation somewhat insufficient in relation to U.S. actors. There have also been a number of studies focusing on what this reform will mean in terms of actual effects, with mixed results. De Hert and Papakonstantinou (2012) conclude that the proposed Regulation does indeed protect the individual right to data protection without interfering with the free movement of personal data and Gilbert (2012:34) agrees on the fact that the proposed reform will have positive effects on the individual right to privacy noting that "[a]ltogether, if the current provisions remain in the final draft, the new Regulation will increase the rights of the individuals and the powers of the data protection authorities". In contrast with these conclusions, Mantelero (2013) does not consider the proposed right to be forgotten to be a "revolutionary change" in relation to current legislation. Thus, there seems to be some conflicts in how to interpret the proposed reform. Despite their positive attitude to the proposed Regulation, De Hert and Papakonstantinou (2012) also conclude that the Regulation is seemingly not detailed enough to tackle the problems caused by the diverse implementation of the Directive. This can be related to the previously mentioned article by Poullet (2006) and the question is how effective the reform will be if it has already been highlighted as somewhat abstract in relation to what it is supposed to accomplish.

2.2.4. WHAT DOES PREVIOUS STUDIES IMPLY?

Previous research points to a number of things that are of importance for this study. First is the view of the online world as part of the "real" world. The unanimous decision to regard the online world as a part of society and not a world separate and

independent from the rest of society, acknowledge the fact that events online affect the offline world and vice versa. This however, raises the question of why regulating the Internet is so problematic. Why are traditional norms of conduct to a large extent ineffective when applied to the Internet? And if we cannot utilize already existing norms then how should we manage the question of regulation? These questions can both be connected to more general (and somewhat philosophical) questions of how the Internet is positioned in relation to human action. To what extent is the Internet a product of and affected by human action and in turn, what effect does this position have on human action?

Furthermore, there is the theme involving the vagueness that has been noted both in the current European data protection legislation and the proposed reform. The abstract rules and guidelines of the DPD have led to various interpretations and subsequent absence of harmonized legislation. In light of the proposed reform, there seem to be a discrepancy in the opinions regarding the meaning of this reform and this draws attention to underlying meanings of the proposed reform. Perhaps there is a deeper knowledge of the Internet regulation process that law and policy oriented studies fail to grasp. It should also be noted that one way of defining privacy in relation to Internet is the possibility to not have actions and communication via the Internet monitored or gathered for analysis, if such monitoring and gathering are not approved first. Drawing from the work of Lessig (2008) and Bannister (2005), privacy is thus the opposite of involuntary and to some extent uninformed surveillance.

3. THEORETICAL FRAMEWORK

The analytical structure of this study is based on a sociological theory of lawmaking and the theoretical foundation of discourse analysis, more specifically the discourse theory as utilized by Ernesto Laclau and Chantal Mouffe in their work *Hegemony and Socialist Strategy* first published in 1985.

3.1. LAWMAKING

Every year, thousands of new laws are being formed to work on local, national, international and supranational level. Despite their number, each law has its own unique history and purpose. Relevant in relation to the sociology of law as presented through Mathiesen's three fundamental questions[10] there are a number of important sociological theories of lawmaking and also a handful of sources of impetus for laws (Vago 2009:163). In this respect, laws are not something independent from society but instead a process where "*a* way of acting" eventually becomes "*the* way of acting" (ibid:178). Thus, the lawmaking process is a complex procedure that starts long before it reaches the crossroad that separates administrative from judicial lawmaking. In line with the purpose of this study, two things are of interest here; public opinion as an influence on the lawmaking process and mass media as a source of impetus for law.

3.1.1. INFLUENCES ON THE LAWMAKING PROCESS: PUBLIC OPINION

It has been noted that public opinion does influence the lawmaking process (Carp, Stidham & Manning in Vago 2009:180). This influence can take three different forms; direct, group and indirect influences, which consequently will guide lawmakers to certain decisions (Vago 2009:180). The first type of influence, direct influence, revolves around the rewards or sanctions for the lawmakers depending on whether or not they comply with a certain opinion. Rewards can for example be election votes or financial assistance or other types of endorsements (ibid.). As the name implies, group influence refer to the influence organized interest groups

[10] See chapter 1.2.1. A question for the field of sociology of law.

representing a special constituency can have on the lawmaking process. These groups include political parties, interest groups and citizen action groups that work to forward rules and regulations that are in accordance with their specific interests (ibid.). This way, public opinion becomes organized and made specific with the hopes of gaining an advantage when working for specific legislative changes. Lastly, there is the public opinion's indirect influence on the lawmaking process. When legislators act according to constituent preferences, regardless of whether or not they share these preferences, the lawmaking process is indirectly influenced (ibid.).

3.1.2. SOURCES OF IMPETUS FOR LAW: THE MASS MEDIA

A key prerequisite for starting a lawmaking process is an impetus. What problems are most crucial at the moment? What legal changes are most acute? The answer to questions like this come from sources that in turn work as a catalyst for new laws. There are a number of, not mutually exclusive, sources; detached scholarly diagnosis, a "voice from the wilderness", protest activities, social movements, public-interest groups and the mass media. In relation to the purpose and the material included in this study, a closer look at the mass media seems in order. Vago (ibid:191) notes that the function of mass media is similar to that of interest groups. Different parts of the mass media have direct interests in different public policy areas, making mass media not only an important courier for public opinion but also a powerful actor with their own agendas. Mass media also functions as a channel to broadcast opinions that can shape policy (ibid:192). Furthermore, mass media and particularly news media can generate a wider awareness of an issue in a way that alerts the public, ultimately highlighting some issues as problematic for a wider audience. Vago (ibid.) goes on to point out that since "public opinion is an important precursor of change, the mass media can set the stage by making undesirable conditions visible to a sizeable segment of the public with unparalleled rapidity". Mass media can expose perceived injustices, thus making it a central player in forming public opinion. In relation to this, six essential processes for understanding how mass media can influence public opinion are being highlighted (ibid:193).

1. The mass media can *authenticate* factual nature of events.

2. The mass media can *validate* opinions through the confirmation by a well-known commentator or the possibility for individual persons to borrow words from said commentator in order to express his or hers view more effectively.
3. The mass media can *legitimize* off-limit behaviors and viewpoints, making it possible to bring topics that were previously only discussed in private to the public, for example legal rights for homosexuals.
4. The mass media can *symbolize* the specific individual experiences by translating this into specific opinions and actions and providing directing symbols.
5. The mass media can *focus* preferences, discontents and prejudices into lines of actions.
6. The mass media can organize persons, objects, activities and issues and *classify these into hierarchies*.

Additionally, individual parts of the mass media are highly influential making the mass media as a whole an incredibly powerful tool when it comes to putting pressure on lawmakers. Vago (ibid:193) points to both New York Times and Washington Post as influential newspapers that can either "make or brake" a legislator through their editorial pages, while also pointing out that an endorsement by a big newspaper can "greatly facilitate a candidate's chances for being elected". Lastly, mass media also provides an important channel for public opinion by providing a forum where common concerns can be discussed and highlighted by citizens (ibid:194). For example, "letters to the editor" can bring attention to recently developed issues before legislators do, push people to take a position, show that there are people concerned with an issue and also enlist the support of others.

3.1.3. ADDITIONAL INFLUENCES ON THE LAWMAKING PROCESS AND OTHER SOURCES OF IMPETUS FOR LAW

The importance of public opinion and the mass media in relation to the process of lawmaking aside, there are indeed other factors that need to be taken into consideration when studying the process of lawmaking. Additional influences on this process ranges from the work of interest groups to the contributions of the social sciences (Vago 2009:175ff). Interest groups bring attention to certain interests, effectively setting a process of development in motion. Examples of laws where interest groups have had a major influence are legislation regarding alcohol use, abortion bills and drug legislation (ibid.). Other sources of impetus for law include

influential works of scholars as well as authors, protest activity, social movements and public-interest groups (ibid:184ff). Thus, it should indeed be acknowledged that there are plenty of other sources that influence the process where the finished product is a new law. Nevertheless, the public debate as expressed through the mass media is still a powerful stimulus for new legislation. Considering the purpose of this study in combination with the fact that the subject matter in question has been and still is an important topic in the public debate, I definitely find it just to delimit the theoretical outline of this study to focusing solely on the public opinion through the mass media.

3.2. DISCOURSE ANALYSIS

3.2.1. A THEORETICAL INTRODUCTION TO DISCOURSE ANALYSIS

There are several ways of defining discourse analysis and together they depict the broad theoretical as well as methodological base that is discourse analysis. Esaiasson et al (2012:212) see discourse analysis by focusing on communication and its role in developing what we perceive as social reality, which much resembles the definition as the study of societal phenomena with focus on communication used by Bergström and Boréus (2005:305). The concept of discourse is in itself highly complex. Initially, Winther Jørgensen and Philips (2002:1) define discourse as "a particular way of talking about and understanding the world (or an aspect of the world)". Philips and Hardy (2002:2) note that "without discourse, there is no social reality, and without understanding discourse, we cannot understand our reality, our experiences, or ourselves". Departing from these definitions, discourse analysis is a way of studying social phenomena through language with the premise that language and expressions contribute to the creation and shaping of reality. Reality in itself and physical objects do exist but they only gain meaning through discourse (Winther Jørgensen & Philips 2002:9). This means that we create representations of reality through language, which are products of different social contexts.

These ideas place discourse analysis on a foundation built upon social constructionism, thus functioning as a theoretical gateway. Social constructionism is an umbrella term for theories about culture and society and it is structured around four fundamental principles as presented by Vivien Burr (ibid:4f). First, knowledge and

representations of the world should not be seen as objective truths since they are simply products of how we categorize the world, which outlines a critical view on knowledge as taken for granted. We are also historically and culturally embossed beings, which presents itself in that our understanding and representation of the world is historically and culturally specific and contingent. There is also a connection between knowledge and social processes since knowledge is created collectively and socially through social interaction through which truths and struggles over truth are produced. Finally, the last principle states that there is a link between knowledge and social action. In a particular context, some forms of action appear as natural while others seem unthinkable. In relation to this study, language in terms of texts is not seen as neutral communication. The expressions used to describe and understand a certain context is instead viewed as products of that context while they at the same time contribute to constituting that particular context. Ideas and expressions used in the material are simultaneously products and producers of a specific representation of reality. In accordance with this approach, the material included in this study enables an analysis of the social reality as constructed by the EU and through the public debate.

3.2.2. LACLAU AND MOUFFE'S DISCOURSE THEORY

The particular discourse analysis applied in this study is founded on the Anglo-Saxon version of discourse analysis as presented by Ernesto Laclau and Chantal Mouffe, sometimes simply referred to as discourse theory. Other theoretical approaches to discourse analysis were considered, such as critical discourse analysis or Foucault inspired discourse analysis. However, since this study is not primarily concerned with power constructions, power constellations or the deeper controlling structures of society, but more focused on the discursive construction of selected material, I considered Laclau and Mouffe's approach a much better fit for this study, as will be presented in the coming sections.

Laclau and Mouffe have given the concept of discourse a wide meaning, which means that it includes all social phenomena, discursive as well as non-discursive (Bergström & Boréus 2005:314f). First, it should be noted that Laclau and Mouffe's discourse

analysis has been influenced by several traditions. A fundamental thought of discourse theory is that the meaning of a term or phenomenon is never completely fixed but is always open for discussion, an idea that is heavily influenced by the Swiss linguist Ferdinand de Saussare and his separation between the actual word or "signifier" and the content of the word or the "signified" (ibid.). Instead the meaning of a term or a 'sign' is contingent and established through a struggle between discourses. This struggle is referred to as *antagonism* where the aim is to reach *hegemony,* a state where the struggle is over and the meaning of a sign is closed (Winther Jørgensen & Philips 2002:47). In this sense, the aim with discourse analysis "is to map out the processes in which we struggle about the way in which the meaning of signs is to be fixed, and the processes by which some fixations of meaning become so conventionalized that we think of them as natural" (ibid:25f).

In relation to this, Laclau and Mouffe introduce a number of theoretical concepts that can be used as analytical tools when examining discourses. A clearly defined sign (word or concept) in a particular discourse is called *moment* and its meaning is defined through the exclusion and subsequent reduction of other possible meanings, hence fixing the meaning of that sign through its relation to other signs (ibid:26ff). Signs whose meanings have not yet been clearly defined and thus have several potential meanings are called *elements*. At this point, Laclau and Mouffe explain discourse as the process of transforming elements to moments, subsequently fixing the meaning of the elements through excluding other possible meanings. The process of relating elements to each other in a certain way to give them meaning and therefore putting them in a particular discourse is called *articulation*. For example, a sign may be insignificant on its own but through articulation the sign can be related to other signs, which then forms the base of a certain discourse. In this sense, discourse can be defined as the "structured totality resulting from the articulatory practice" (Laclau & Mouffe in Winther Jørgensen & Philips 2002:26). A discourse fixes meaning through the reduction of possibilities, which means that a discourse is a temporary untangling of all the potential meanings of the elements (Winther Jørgensen & Philips 2002:26.).

Furthermore, a discourse is formed around certain privileged signs from which other signs derive their meaning and these signs are called *nodal points* (ibid:28f). On their own nodal points lack meaning and they can often have different meaning depending

on which discourse they are inserted in. Signs that are particularly open to definition because of how different discourses struggle to define them within their own premises, are called *floating signifiers* (ibid.). Thus, nodal points are floating signifiers but the difference between them is that a nodal point is an undisputed sign that gives meaning to other signs within a specific discourse while the term floating signifier refers to the struggle between different discourses to define a specific concept

The meanings that are excluded in the process of transforming elements into moments make up the *field of discursivity* and a discourse is constituted in relation to this since the exclusion of certain meanings creates a unity of meaning and establishes a *closure* (ibid:27). Finally we reach a place where the meaning of and the connection between all these theoretical concepts can be connected to the discourse theory's fundamental idea that meaning can never reach a finished or complete state. All possible meaning that a discourse has placed in the field of discursivity through exclusion also poses a threat to disrupt the meaning fixed by that particular discourse, meaning that there is always room for struggle or antagonism (ibid:29). The established closure is therefore only temporary and should not be seen as a permanent fixation since articulation always can reshape signs by fixing their meaning in new ways (ibid.).

3.2.3. CRITIQUE AGAINST DISCOURSE THEORY

Some critique has been directed at Laclau and Mouffe's discourse theory, which mainly revolves around the focus on the possibility of change in discourse theory. It is claimed that the result of Laclau and Mouffe's emphasis on contingency is that the significance of non-discursive constraints are being overlooked (Winther Jørgensen & Philips 2002:54ff). It is argued that not all individuals and groups have equal possibilities to rearticulate elements and therefore produce change. A discourse does not only rely on discursive constraints but structural conditions of class, ethnicity and gender, play a big part as well. These structural constraints are said to be overlooked due to discourse theory's major focus on contingency. However, according to Winther Jørgensen and Philips (ibid.), Laclau and Mouffe understand actors as how they are determined by discourses. This means that an actor's possibility of rearticulation is

dependent on the discourse, which can be constrained by functions such as class, ethnicity and gender. This study evades this critique against discourse theory mainly through the selection of sources and material for the data collection. By including texts from the EU as well as from the public debate, the analysis is never limited to one actor or group of actors and is thus not constrained by specific structural factors. The EU is constrained by its identity as an economic and political union and is therefore only presented with a certain possibility of rearticulation if it is to be taken seriously. The public debate is however, is not restricted by the same structural factors.

Furthermore, the ideas of Laclau and Mouffe can be criticized for being rather abstract and philosophical. They have produced a rather extensive set of theoretical concepts and it has been noted that Laclau and Mouffe themselves have not done much detailed analysis of empirical data and therefore do not provide a clear methodological process to follow (ibid:49). The guidelines or lack thereof luckily gives the researcher a large amount of freedom in terms of utilizing the method to fit the study in question. However, the very same freedom can also cause difficulties in the lack of precise guidelines and can therefore be quite challenging for the researcher. For this study, Bergström and Boréus (2005) and Winther Jørgensen and Philips (2002), which are the main references to discourse analysis in this study, are secondary sources to discourse theory. The decision to use these sources was made primarily due to the fact that they provide concrete guidance to how Laclau and Mouffe's discourse theory can be applied in practice. This provides great guidance when applying discourse theory to this study while simultaneously managing the critique against the abstract nature of discourse theory. It is for this particular reason that I chose not to include the primary source of Laclau and Mouffe's discourse theory but instead settled for two different secondary sources. Not only do these secondary sources thoroughly describe the theoretical foundation of discourse theory but they also offer practical directions, which I predicted would be crucial for a fruitful execution of the discourse analysis for a novice discourse analyst like myself.

3.3. MODEL OF ANALYSIS

Based on Laclau and Mouffe, the model of analysis that will be used in this study is based on the concepts nodal points, elements and chains of equivalence[11]. The CoE, which Laclau and Mouffe regards as the building blocks of discourses, are organized and formed through the articulation process that puts signs in relation to each other with the nodal point as the common denominator. Signs lack meaning on their own and only receive meaning through a system where the signs are fixed and separated from other signs (Bergström & Boréus 2005:317). A concept is only signified as that particular concept if it is combined with other concepts that carry a particular meaning, for example negative or positive, in relation to the main concept. Thus, CoE are a highly useful tool when trying to map how signs are related to and separated from each other. The CoE with the nodal points and elements identify the concepts that constitute the core of the discourse and also what these concepts are and what they are not. Departing from the theoretical framework and the purpose of this study, the following model of analysis has been constructed to guide the analysis.

Fig. 1: Model of analysis

What I am interested in is to analyze the existence of the arrows and the contents of the question marks. As have been presented in chapter 3.1. Lawmaking, laws are not something that originates out of thin air. Public opinion channeled through mass media presents a way to encourage and influence the lawmaking process. These

[11] Chains of equivalence will from now on be referred to as CoE.

theoretical ideas provide a scientific base for analyzing the relationship between the public debate and the EU data protection legislation or the arrows with the question marks to refer to the model in Fig. 1. The analytical tools from discourse theory work as simplifiers, which will structure the material through the identification of key points from the EU documents as well as from the public debate. The combination of the analytical tools from discourse theory and the theoretical premises of public opinion and mass media's influence on the lawmaking process will make it possible to trace the development and map potential similarities to make a comparison as to if and how law and society has interacted in the area in question.

As previously mentioned, the nodal points are 'special' signs with a key role in the discourse. In relation to this however, I must point out that nodal points are not necessarily a specific word or phrase that is frequently used in the material but more of a overarching concept that represents a general meaning within the material. The reason for point this out is so that the ensuing analysis can be correctly understood. For example, if the analysis presents 'home' as a nodal point it does not necessarily mean that the specific word 'home' appears frequently and with a key importance in the material. Instead it can also imply that the information in the material is organized in such a way that the concept of 'home' implicitly receives a particularly meaningful role in the material.

4. METHODOLOGY

4.1. CHOICE OF METHOD

Since this study is more focused on the deeper meaning of the proposed reform of the EU data protection legislation than providing generalizable explanations, a qualitative research strategy was chosen. A quantitative approach could have been possible, but the arguments against this option are twofold. First, studies presenting numbers and statistics regarding European data protection legislation and its relationship with the European society have already been conducted (see for example European Commission 2011). Studies providing more updated and more extensive hard data are always useful, however since the EU itself seems keen on maintaining a quantitative focus, the need for a qualitative approach is seemingly greater. In this respect, a study with a qualitative approach to European data protection will add knowledge from a different perspective, which could add valuable information that quantitative studies could never contribute with. Next, combining the information from previous research and other background material[12] with the theoretical framework chosen for this study and the accessible sources for data collection, a qualitative strategy is a far better approach.

The choice of method thus fell on discourse analysis as a type of content analysis. Svenning (2003:156) notes that today's society is a society of information where messages are thrown at us from every direction. Everywhere we look, intentionally or unintentionally we ingest distinct or hidden messages, which consequently shapes us. Similar to the arguments for a qualitative approach of this study, the arguments for using critical discourse analysis as method are twofold. First, considering how much information we are bombarded with by governments, organizations and the media, there is much material to work with. Furthermore, Svenning (ibid.) notes that even though the necessity of an increased understanding and mapping of the massive scope of information that surrounds us in our daily life is evident, the development of this method remains in many aspects stagnant. As a consequence, the literature on the subject of discourse analysis may soon be outdated. Thus, my hopes are that this thesis will not only contribute to the development of the theoretical base for this study

[12] See chapter 2. Background, for further information.

but to contribute to the methodological development as well, however small.

4.2. METHOD DESCRIPTION

4.2.1. SELECTION OF EMPIRICAL MATERIAL

Any communication that offers a solution to a problem is a good starting point for a study based on discourse analysis (Gill quoting Widdicombe in Bryman 2011:476). All documents presented in relation to the reform of the data protection legislation as proposed by the Commission are structured around a problem-solution structure. Material wise, discourse analysis does not separate material in relation to their scientific degree, which is also very fitting for this study since it focuses on different types of material. For the analysis of the proposed reform, two main documents were selected for analysis in relation to the purpose of the study and accessibility, the Explanatory memorandum in the proposed Regulation and Directive and the accompanying Communication. These documents were both found on the European Commission's (2012) webpage regarding the proposed data protection legislation reform.

A number of documents have been produced in order to present the proposed data protection reform[13], all containing a solution (revised data protection legislation) to a problem or problems (currently ineffective legislation). The reason for specifically selecting the explanatory memorandum instead of the entire Regulation and Directive documents is connected to time, content and the focus of the study. The proposed Regulation and Directive in full are both comprehensive and very ambitious documents. Due to the complex and time-consuming method of this study, the scope of a master's thesis simply does not offer enough time to go through the proposed Regulation and Directive complete with all the articles. However, the content of the explanatory memorandum, which is the opening text of the documents, contains a great amount of information on its own including detailed explanations of the Articles that the proposed Regulation and Directive are comprised of. The explicit focus on the initial part of the documents allows a deeper insight into the discussion since these parts of the documents contain explanations and not merely statements. Furthermore,

[13] See European Commission 2012 for further documents.

this study is not of pure legal nature but instead departs from a social science perspective on the discussions and arguments surrounding the proposed legal rules. Thus, I find that picking out the specific parts of the Regulation and Directive is much more in line with the purpose of this study. The Communication document was included in order to get a broader picture and an extended explanation to the proposed reform. The Communication document contains additional information about the why and how of the proposed reform and thus complements the information provided in the explanatory memorandums of the Regulation and the Directive.

The selection of sources and material for accessing data from the public debate was somewhat trickier than it was with the EU documents. The public debate regarding privacy on the Internet and surveillance has been carried out through several different types of media. Therefore the first step of selection was to choose which type of media and source that would be best suited for this study. At a first glance, blogs, micro-blogs and different discussion boards seemed highly interesting. However this idea was soon discarded when it became clear that a proper selection could not be done due to the overwhelming amount of data, at least within the scope of a master's thesis. After some consideration, I chose to turn to the media with specific interest in information that had been published online. This made the data easy to access and easy to manage. In the end, this information included different types of articles, for example debate articles as well as debate posts published on blogs run by the newspapers. To make things easier, all information will hereafter be referred to simply as "articles".

Two different newspapers from two different EU countries were selected, The Daily Telegraph from the UK and Aftonbladet from Sweden. The choice of including two newspapers from two different EU countries was made in order to broaden the data collection. Even though two countries are far from representative of the EU, two countries still give a more solid base when discussing "the public debate in the EU" than if two newspaper from the same country were included. The particular choice of one Swedish and one British newspaper is directly linked to language limitations. Since Swedish and English are the two EU languages I know best, choosing newspapers published in these languages seems most fitting. There are however some

limitations with this choice, an issue that is returned to later in the thesis[14]. Furthermore, it should be noted that these two newspapers have different political orientation with the Daily Telegraph being centre-right conservative and Aftonbladet being left liberal. This too was a conscious choice to avoid critique connected to data sources being one-sided. After a few test searches I decided to make the selection of material based on three criteria.

1. The articles must be found through searches using the key word "internet" in some kind of combination with the additional key words "surveillance, privacy"/"övervakning, integritet".

2. The primary topic of the articles must be Internet privacy and/or Internet surveillance. Thus, articles that only briefly touch these topics are rated as non-relevant for this study.

3. The articles must have a tone of discussion to be included in the study. In other words, articles that are merely comprised of facts or information or news recaps about events related to Internet privacy and/or Internet surveillance are not included.

ORIGINAL SOURCE	TOTAL NUMBER OF HITS (LIMITED ACCORDING TO THE THIRD CRITERIA)	NUMBER OF ARTICLES RELEVANT AFTER INITIAL READ-THROUGH	PUBLISHED 2010-2011	PUBLISHED 2012-2013
Aftonbladet	64	13	3	10
The Daily Telegraph	22	15	9	6
Combined	86	28	12	16

Table 1: Selection of material.

[14] See chapter 7.2. The Future: Further research?

The articles found on Aftonbladet were easy to filter, both by subject and date of publication. The articles on the Daily Telegraph however proved to be harder to narrow down. There was no way to filter the articles in the same easy way as could be done on Aftonbladet's webpage, which forced me to select articles that had been published under blogs run by the Telegraph. After two initial read-throughs a total of 28 articles, 13 from Aftonbladet and 15 from the Daily Telegraph, were included in the study.

ORIGINAL SOURCE	**OFFICIAL NAME OF DOCUMENT**	**REFERENCE IN THIS STUDY**
European Commission	Explanatory memorandum in the *Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)* (COM/2012/11 final) and the *Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data* (COM/2012/10 final)	EC1/ the Explanatory memorandum
	Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions - Safeguarding Privacy in a Connected world, A European Data protection framework for the 21st Century, COM/2012/09 final	EC2/ the Communication
The Daily Telegraph	Articles published as blog entries online.	T1, T2, T3[15]...

[15] For complete list of articles included in the study, see headline *Internet articles* in the Bibliography.

Aftonbladet	Articles	A1, A2, A3[16]...

Table 2: List of material included in this study.

4.2.2. METHOD OF ANALYSIS

Considering purpose and material and theoretical framework of this study, the discourse analysis was inspired by the strategy of a content analysis in order to give the initial stages of the analysis some sort of structure. Denscombe (2003:221) has summarized the general procedure of a content analysis in six logical and straightforward steps. First, select what material that should be included in the study. Here it is noted that the selection should be clearly formulated. Next, the chosen material should be broken down into smaller components, for example single words, phrases or entire parts. The third step is to develop categories needed for analyzing the data. Here it is important to have a clear idea of what categories or questions that is relevant for the study and the use of "key words" associated with the theme may for example be useful. Then the smaller components of the text should be linked to the categories so that the units are coded according to the categories. The last steps of the process are to count the frequency of the smaller components and analyze the text by frequency of and relationships between the components.

At first glance, this process appears to be based in an exclusively quantitative approach. However, Denscombe (ibid.) notes that a content analysis can reveal several "hidden" aspects of a text, which can be completely independent from what the sender intended to communicate. To organize the categorization, I was inspired by Ulf Mörkenstam and used the analytical tool 'problem-cause-solution' or 'P-C-S' (Bergström & Boréus 2005:335ff). Thus, at the first stages of the analysis, the material was analyzed according to these questions:

- What problem(s) can be identified? (P)

[16] For complete list of articles included in the study, see headline *Internet articles* in the Bibliography.

- What cause(s) are said to be the source of the identified problem(s)? (C)
- What solution(s) are proposed in relation to the identified problem(s)? (S)

In combination with the analytical tool P-C-S, Denscombe's instructions provided concrete guidelines for the initial stage of the study. From this, the first step was to process the material and organize it according to the three questions posed above. This course of action made the material easier to process and simultaneously gave the presentation of the material a good structure. Additionally, by gathering data according to the P-C-S method, the risk of letting the analysis be affected by my own interpretations is highly reduced. The second part of the analysis was to create the CoE through the location of the nodal points and supporting elements. As previously discussed in chapter 3.3. Model of analysis, nodal points should not merely be seen as certain privileged signs that are used in their "raw form". During this step of identifying the categories or what Denscombe refers to as key words, some central topics within the discourse emerged, which ultimately were assigned the role as nodal points. In other words, it should be noted that what this study refers to as nodal points in the analysis is not necessarily one specific word in the literal sense but more a wide embracing concept that signifies central ideas in the material, hence the nodal points. Lastly, the methodological process of this study can be described as a rearrangement of the steps in the general procedure of a content analysis as presented by Denscombe. Thus, the working process of the analysis can be summarized in the following steps.

Part 1	Organize and present the material under the themes problem, cause and solution (producing overarching categories of the data).
Part 2	Identify key words and/or central topics (nodal points) within the structured material. Link these to other important words and/or topics (elements) within the material. The result of these links is the CoE.
Part 3	Place the CoE from the different sources of data in relation to each other by analyzing them with the help of the theoretical factors of influences on lawmaking and impetus for law

Table 3: Process of the analysis.

4.3. METHOD DISCUSSION

The method of discourse analysis is still somewhat controversial in the social sciences. This is mainly connected to the method's reputation of being too philosophical, which has caused critics to question the scientific value of the method (Bergström & Boréus 2005:305). Furthermore, Philips and Hardy (2002:11) do not only point out the labor-intensive and time-consuming aspects of discourse analysis but also that there is a shortage of literature on the method as well as a relatively low level of institutionalization of the method that can cause trouble for a researcher that still chooses this method. However, Philips and Hardy (ibid:13) continues by listing a number of advantages of discourse analysis of which I find two arguments particularly pertinent for this study.

First, it is noted that from the changes in society a variety of new topics of research have emerged that subsequently raise new challenges for researchers in for example categorizing and structuring new observations. Where traditional qualitative methods focus on the nature of these categories and quantitative methods aim to describe the relationship between categories, discourse analysis provides an opportunity to gain knowledge about what produced these categories and why they were produced (ibid.). Next, it is noted that traditional methods can be limited and that a "new" method such as discourse analysis can be used in order to see things that "have been obscured by the repeated application of traditional methods" or in other words "all ways of seeing are also ways of *not*[17] seeing" (ibid:16). Also, not only does discourse analysis bring the opportunity to view things from a different perspective but it can also notice aspects of society that usually are taken for granted and not given much attention (Esaiasson et al 2012:212). Thus, the aim with this part is to show that the major limits and disadvantages of using discourse analysis are known and have been thought over. Every method has its flaws, which should never be ignored but I find that the possibilities of discourse analysis in relation to the aim of this study outweigh any limits that may exist.

[17] Italics in original.

4.4. A FEW NOTES ON VALIDITY, RELIABILITY AND GENERALIZATION

In a scientific study, concepts such as validity, reliability and generalization are particularly important. Reliability refers to the trustworthiness of a study's data. This can be tested by replicating a study or part of a study and the results should be the same no matter who is conducting the study, in other words reliability concerns the consistency of a measure (Bryman & McNiff 2004:30). This consistency contains two questions, the internal consistency and consistency over time (ibid.). The internal consistency is concerned with the internal coherence of a scale, whether it includes just one idea or separate components while the consistency over time means that measurements must be done more than once (ibid.). Thus, if a measure has high reliability, it yields consistent results. Validity, on the other hand, refers to the possibility of controlling your study, mainly to be "sure that a measure really does reflect the concept to which it is supposed to be referring" (Bryman and McNiff 2004:29). In other words, without sufficient validity the test results have no meaning. Together, reliability and validity tells the quality of a study meaning that it is important for a study to both produce stable and consistent results (high reliability) and examine what it is allegedly aiming to examine (high validity).

Nevertheless, Trost (2007:65) notes that the use of these two terms mainly constitutes a building block in quantitative studies and is therefore not particularly suited for qualitative studies. Reliability and validity should instead be exchanged for a discussion regarding the *credibility* of the study, which is achieved by presenting a detailed method discussion where the researcher shows awareness of potential problems and demonstrate skill to manage these problems (ibid.). This chapter contains a thorough presentation of the methodological base of this study where I have explained and argued for all choices. Instead of avoiding possible shortages of the chosen method or worse, trying to hide them, they have been discussed in clearest possible manner. Svenning (2003:67ff) also notes that reliability and validity in relation to qualitative studies are heavily reliant on the concepts that are used in the study and the precision of these concepts. By using clearly defined concepts, the researcher can reduce the risk of misinterpretation and consequent confusion, which will increase a qualitative study's validity and reliability or, using Trost's word,

credibility. Apart from presenting a thorough chapter on the methodology of this study, I have discussed the theoretical concepts and analytical tools and translated them into instruments suitable for this particular study[18]. In this sense, validity in relation to this study could be defined as the ability to connect the analysis to the purpose and research questions of the study. As the chapters concerning this connection presents a great deal of reading, the summarizing conclusion in chapter 7.1. returns to the purpose and in a short and precise manner connects this to the procedures and findings of the study, effectively increasing the credibility and validity.

Another much used term in scientific studies is generalization. It deals with the possibility to apply the results produced by the study to the entire population of a particular society, all depending on the particular participants in each study. Similar to the relationship between reliability and validity and qualitative studies, Svenning (2003:68) notes that the aim of a qualitative study is not to produce generalizable data but to exemplify and illustrate. The aim of this study is to gain a deeper knowledge of the chosen topic and everything from the initial literature review to theoretical and methodological considerations have been made with this in mind. Therefore, the aim of this study is not to produce results of generalizable character and the possibility of generalizing the study's result is consequently regarded as irrelevant.

4.5. ETHICAL CONSIDERATIONS OF THE STUDY

According to Israel and Hay (2006:2), ethical behavior helps protect individuals, communities and environments while also offering the potential to increase the sum of good in the world. The majority of social science research is focused on describing abstract things such as experiences and interpretations and the researcher's ethical role in relation to this is usually discussed in terms of consent, harm and confidentiality. One of the fundamental principles of ethical research is that all participants must agree to research before being involved (ibid:60). Another important thing when it comes to research is the importance of avoiding harming others, even

[18] See chapter 3.3. Model of analysis and 4.2.2. Method of analysis for further discussion.

trying to avoid imposing the *risk* of harm on others (ibid:97). This is measured in finding the balance between what benefits and what risks that the study may produce. The matter of confidentiality in research involves the importance for the researcher to know which information that should be included in the study, and what information that should be excluded from the study (ibid:80). If data were to be collected through interviews, the researcher must make sure that the interviewee(s) agree to participate in the study, that the interview questions do not harm the participants by for example forcing them to relive bad memories and information about the participants' identities should be kept confidential if requested.

The empirical material of this study consists of official information from the European Union as well as data from the public debate collected through the media. The ethical issues of consent, harm and confidentiality have all been considered in relation to the selected material but since the documents have been produced independently from this study and are available to the public with unlimited access, the risk of breaching any issue of consent, harm or confidentiality is deemed to be close to nonexistent. Instead, the main ethical issue in this study is how I as the researcher approach and use the material. There is no risk for me to affect the actual production of the data since the selected material already exists. The challenge instead lies in how I work with the material to utilize it in relation to the purpose, theoretical framework and method of this study. This challenge is managed by making sure no information is cited out of the original context in which they were expressed. All information and citations that are used are systematically compared to what context they are being used in in the original documents to ensure minimum distortion possible. Furthermore, I once again stress the handiness of using the P-C-S method in relation to discourse theory since it greatly reduces the risk of my own interpretations affecting the analysis.

5. ANALYSIS

This chapter presents the analysis of the study, which is divided into three parts. First, the material is processed with the help of the analytical tool P-C-S as presented by Mörkenstam (Bergström & Boréus 2005:335ff) and is thus presented under the headlines Problem, Cause and Solution. In relation to presentation, the P-C-S method creates "problem images" from the data with reference to each source. This effectively makes the analysis easier to digest. The second part of the analysis revolves around constructing chains of equivalence (CoE) based on the initial presentation of the material. This will allow me to map the discursive structure of the material, which in turn will make it possible to methodically analyze the discourse between the problem images and also place the analysis in a broader, non-scientific context. In the third part, the relationship between the EU material and the material from the public debate will be analyzed by examining the discursive structure from the second part, putting the identified CoE in relation to each other and the theoretical factors of influences and impetus on lawmaking.

5.1. THE PROBLEM IMAGE CREATED THROUGH THE PROPOSED EU DATA PROTECTION LEGISLATION REFORM

5.1.1. DATA PROTECTION LEGISLATION REFORM: PROBLEM

The base for the proposed EU data protection legislation reform is unsurprisingly a problem that needs to be managed and reduced. The problem highlighted in the material is the difficulty of protecting personal data while also making continued development as well as a functioning market possible in today's society. As previously mentioned, the existing EU legislation on the protection of personal data was adopted in 1995 and while its objectives are still considered to be relevant, much has happened since the current legislation was implemented and the conditions and demands for an effective data protection legislation have consequently been altered. It is noted that even though the current legislation is still a vital piece of legislation, the existing rules need to be modernized to fit today's society. Therefore we need a strong

set of rules that are fully effective. The main problems with the current legislation in relation to the new demands are twofold. First, difference in the implementation of the current data protection legislation has not produced the legal harmonization necessary for a safe and sound environment for handling personal data. Furthermore, there is an inadequacy connected to the outdated character of the current data protection legislation, consequently making it incapable of ensuring the right to personal data protection.

> The current framework remains sound as far as its objectives and principles are concerned, but it has not prevented fragmentation in the way personal data protection is implemented across the Union, legal uncertainty and a widespread public perception that there are significant risks associated notably with online activity (EC1).
>
> Heavy criticism has been expressed regarding the current fragmentation of personal data protection in the Union, in particular by economic stakeholders who asked for increased legal certainty and harmonisation of the rules on the protection of personal data (EC1).
>
> /---/existing rules provide neither the degree of harmonisation required, nor the necessary efficiency to ensure the right to personal data protection (EC2).

Furthermore, the need for addressing this issue on a European level instead of leaving it for each member state to manage on their own, only enhances the problem further. It is noted that "Member States cannot alone reduce the problems in the current situation, particularly those due to the fragmentation in national legislations", and because of this "there is a specific need to establish a harmonised and coherent framework allowing for a smooth transfer of personal data across borders within the EU while ensuring effective protection for all individuals across the EU" (EC1). This implies that the current legislation is not harmonised and therefore is a threat to the safety of personal data and by extension also a threat to the individuals that own this information, when this kind of data crosses borders. What has been said so far is neatly summarized in the Communication,

> Despite the current Directive's objective to ensure an equivalent level of data protection within the EU, there is still considerable divergence in the rules across Member States. As a consequence, data controllers may have to deal with 27 different national laws and requirements. The result is a fragmented legal environment which has created legal uncertainty and uneven protection for individuals. This has caused

> unnecessary costs and administrative burdens for businesses and is a disincentive for enterprises operating in the Single Market that may want to expand their operations across borders (EC2).

In relation to this, it is noted that data protection regarded as a fundamental right and any problem of protecting personal data is also a threat to a fundamental right. Thus, regulation in this context is formed around data protection and the general message here is that data protection is a fundamental right. In regards to this, there are several statements that simply establish the data protection-fundamental right relationship as a fact. This right is initially drawn straight from the current DPD 95/46/EC and it is noted that,

> [the Directive] was adopted in 1995 with two objectives in mind: to protect the fundamental right to data protection and to guarantee the free flow of personal data between Member States (EC1).

> The right to the protection of personal data, enshrined in Article 8 of the Charter of Fundamental Rights, requires the same level of data protection throughout the Union. The absence of common EU rules would create the risk of different levels of protection in the Member States and create restrictions on cross-border flows of personal data between Member States with different standards (EC1).

The accompanying Communication document also emphasizes data protection as a fundamental right, taking support from important documents such as the TFEU. The right to privacy as defined by the Charter, the TFEU and the ECHR, is such a well-rooted right that the data protection legislation relates to it without further consideration.

> Data protection is a fundamental right in Europe, enshrined in Article 8 of the Charter of Fundamental Rights of the European Union, as well as in Article 16(1) of the Treaty on the Functioning of the European Union (TFEU), and needs to be protected accordingly (EC2).

This is further enhanced with a number of statements.

> /---/ the principle that everyone has the right to the protection of personal data concerning him or her (EC1).

> /---/ the Commission concluded that the EU needs a more comprehensive and

> coherent policy on the fundamental right to personal data protection (EC1).
>
> In this new digital environment, individuals have the right to enjoy effective control over their personal information. Data protection is a fundamental right in Europe/---/ (EC2).

As an extension of the background discussion of the problem that calls for a data protection legislation reform, the problem is connected to the actual effects of the current legislation's shortcomings. For example, it is maintained that personal data is vital for businesses but other aspects of this are added. Here the view on technology and all its possibilities is only regarded as beneficial in so far as it can be trusted.

> Building trust in the online environment is key to economic development. Lack of trust makes consumers hesitate to buy online and adopt new services. This risks slowing down the development of innovative uses of new technologies (EC1).
>
> Lack of confidence makes consumers hesitant to buy online and accept new services. Therefore, a high level of data protection is also crucial to enhance trust in online services and to fulfil the potential of the digital economy, thereby encouraging economic growth and the competitiveness of EU industries (EC2).
>
> /---/concerns about privacy are among the most frequent reasons for people not buying goods and services online. Given the contribution of the Information and Communication Technology (ICT) sector to overall productivity growth in Europe trust in such services is vital to stimulate growth in the EU economy and the competitiveness of European industry (EC2).

Since the current data protection legislation is outdated, it presents itself with rather comprehensive effects. It is a threat to individual's fundamental right to data protection, which in turn has negative consequences on society at large through the market sector.

5.1.2. DATA PROTECTION LEGISLATION REFORM: CAUSE

So what is the underlying cause of the problem with the data protection legislation? The citations so far have held hints about this and a strong connection between the identified problem and the rapid technological development is detected throughout the entire material. Here, technology is discussed and used in relation to the changes it

has brought with it, thus effectively displaying the approach to the relationship between technology and society. The importance of the technology concept is distinct and without technology such as the Internet, the problems forming this discussion would not have occurred and there would not be any base for studying this topic at all. The comprehensive change caused by the technological development during the last couple of decades is identified as a basic source for the insufficiency of the current data protection legislation.

> Rapid technological developments have brought new challenges for the protection of personal data. The scale of data sharing and collecting has increased dramatically. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life (EC1).
>
> The rapid pace of technological change and globalisation have profoundly transformed the way in which an ever-increasing volume of personal data is collected, accessed, used and transferred (EC2).
>
> During the consultations on the comprehensive approach, a large majority of stakeholders agreed that the general principles remain valid but that there is a need to adapt the current framework in order to better respond to challenges posed by the rapid development of new technologies (particularly online) and increasing globalisation, while maintaining the technological neutrality of the legal framework (EC1).

Thus, the source of the problem lies in the changes brought on by the rapid technological development. The material continues to refer to these changes by explicitly mentioning and describing some of the changes. For example, one is the increased connectivity in today's society, which is largely facilitated by technology. This connectivity allows us to have nearly unlimited possibilities of communication. We can keep our friends and family updated of our every move in the blink of an eye through for example so called social networks, regardless of physical boundaries. Adding to the communication aspect of technological changes, other tasks such as information storage and information searching have never been easier. The technological development has brought us new and much more efficient ways of acquiring knowledge and also spreading knowledge to the entire society, all without being too complicated to handle. Other newly invented technologies such as cloud

computing has facilitated storing of information on remote servers in a way that is highly efficient, both economically and time wise. Building on the previous citation, it is noted that,

> New ways of sharing information through social networks and storing large amounts of data remotely have become part of life for many of Europe's 250 million internet users. At the same time, personal data has become an asset for many businesses. Collecting, aggregating and analysing the data of potential customers is often an important part of their economic activities (EC2).
>
> In today's globalised world, personal data is being transferred across an increasing number of virtual and geographical borders and stored on servers in multiple countries. More companies are offering cloud computing services, which allow customers to access and store data on remote servers (EC2).

The connection between technology, change, communication and information also acknowledges how the material connects the technology concept to the many technologies, physical as well as virtual, linked to the progress of the Internet. Furthermore, technology, change and personal data are discussed in relation to the influence this has had on market opportunities. The technological development is noted to have "transformed both the economy and social life" (EC1). Here, the ever-increasing flow of personal data in Internet-based applications as a result of the technological development is considered to have provided businesses with new ways of using data.

> These difficulties are also due to the sheer volume of data collected everyday, and the fact that users are often not fully aware that their data is being collected (EC2).

In relation to changes, the impacts of technology are seemingly approached with positive attitude. The discussion does not display a guarded approach to technology, and if not a positive then at least a neutral approach to the impacts of technology and how technology has contributed to constructive changes. Before continuing on it should be noted that technology concept is seemingly used and discussed as an umbrella term for the technology and technological devices connected to the Internet. This seems fitting considering the context of the material and can even be categorized as such a fundamentally accepted perception that it is taken for granted. In regard to this, it is appropriate to pick apart the broad concept of technology through the text

before continuing on. A repetition of the citations below further shows how the technology concept is clarified by its connection to other concepts such as "social networks", "internet", "virtual" and "cloud computing".

> New ways of sharing information through social networks and storing large amounts of data remotely have become part of life for many of Europe's 250 million internet users (EC2).
>
> In today's globalised world, personal data is being transferred across an increasing number of virtual and geographical borders and stored on servers in multiple countries. More companies are offering cloud computing services, which allow customers to access and store data on remote servers (EC2).

Before moving on, it seems appropriate to make a quick comment on the connection between the identified problem and its causes. The main problem revolves around the inadequacy of the current EU data protection legislation. This can be split into different problem areas, such as lack of harmonization, but it all stems from one problem – legislation with either lack of effects or not the desired effects. The cause of this problem is connected to the vast technological development from the last couple of decades. Due to changed circumstances, the legislation has become outdated. The law has simply not been able to keep up with the changes in society.

5.1.3. DATA PROTECTION LEGISLATION REFORM: SOLUTION

The challenges brought on by the technological development are evidently connected to regulation, which yet again previous citations have hinted. Thus, the 'solution' to this problem goes via legislation and it is built on the premise that ensuring trust through legal certainty in relation to the use of technology will solve the problem. The focus firstly lies on individuals' fundamental right to data protection and in order to secure this, legal rules need to be updated to fit the demands of today's society. In relation to the problems and causes that have previously been highlighted it is noted that the aim of the reform is "to build a modern, strong, consistent and comprehensive data protection framework" which is supposed to reinforce individual's fundamental right to data protection (EC2). Drawing on the challenging aspects of technology and data protection, it is concluded that even though the current Data Protection Directive

is still a vital piece of legislation, the current rules need to be modernized to fit today's society and in turn we need a strong set of rules that are fully effective. It is developed in a line that explains the productive effects of the relation between personal data and data protection as a fundamental right. In this sense, data needs to be protected since the high level of mobility allows data to be transferred across national borders, both inside the EU area as well as to third countries, to a much greater extent than before. It is noted that through regulation, there are rewarding possibilities with the increasing flow and use of personal data and thus, technology and regulation is connected to the positive aspects of a functioning regulation.

> This is why it is time to build a stronger and more coherent data protection framework in the EU, backed by strong enforcement that will allow the digital economy to develop across the internal market, put individuals in control of their own data and reinforce legal and practical certainty for economic operators and public authorities (EC1).

To manage the situation with legal fragmentation due to diverse implementation of the current data protection legislation, a Regulation is deemed to be the most fitting option. This is meant to "provide greater legal certainty by introducing a harmonised set of core rules" with two main goals, "improving the protection of fundamental rights of individuals and contributing and contributing to the functioning of the Internal Market" (EC1). It is concluded that,

> The new EU Regulation will ensure a robust protection of the fundamental right to data protection throughout the European Union and strengthen the functioning of the Single Market (EC2).

Two things should be noted in relation to this. As previously mentioned, this suggests that the problem of data protection should be solved through legislation. Also, it suggests that the problem in question is regarded as something that *should* be and likely *needs* to be regulated and controlled. Furthermore, the proposed 'solution' indicates that the problem in itself is seemingly presented from two different (but not necessarily mutually exclusive) perspectives. This is indicated through the mentioning of the fundamental rights of individuals and the functioning of the Single Market. Here, the 'solution' is continuously placed in relation to the possibilities on the one

hand and the need on the other. The necessity of the 'solution' is put in relation to the need to protect individuals' rights.

> The aim of the new legislative acts proposed by the Commission is to strengthen rights, to give people efficient and operational means to make sure they are fully informed about what happens to their personal data and to enable them to exercise their rights more effectively (EC2).
>
> The reform will first of all benefit individuals by strengthening their data protection rights and their trust in the digital environment (EC2).

There is an even greater focus on the possibilities. The aim to simplify the legal environment for businesses and the wish to benefit from the result is obvious. For example, it is noted that the reform "is expected to stimulate the development of the digital economy across the EU's Single Market and beyond/---/" (EC2). The economic aspects of the problem, cause and solution are thus noticeable and the need and possibilities of the market seems to be a great influence on how the solution is designed. The following citations provide detailed descriptions of how the 'solution' is connected to concepts such as "asset", "businesses" and "the Single Market".

> The new rules will also give EU companies an advantage in global competition. Under the reformed regulatory framework, they will be able to assure their customers that valuable personal information will be treated with the necessary care and diligence. Trust in a coherent EU regulatory regime will be a key asset for service providers and an incentive for investors looking for optimal conditions when locating services (EC2).
>
> Modern, coherent rules across the EU are needed for data to flow freely from one Member State to another. Businesses need clear and uniform rules that provide legal certainty and minimise the administrative burden. This is essential if the Single Market is to function and to stimulate economic growth, create new jobs and foster innovation. A modernisation of the EU's data protection rules, which strengthens their internal market dimension, ensures a high level of data protection for individuals, and promotes legal certainty, clarity and consistency, therefore plays a central role in the European Commission's Stockholm Action Plan, in the Digital Agenda for Europe and, more broadly, for the EU's growth strategy Europe 2020 (EC2).
>
> A strong, clear and uniform legislative framework at EU level will help to unleash the potential of the Digital Single Market and foster economic growth, innovation and job creation. A Regulation will do away with the fragmentation of legal regimes across 27 Member States and remove barriers to market entry, a factor of particular importance to micro, small and medium-sized enterprises (EC2).

Another way of putting it is that technology in relation to personal data needs to be regulated and if this is done 'correctly', it produces possibilities for development. Regulation is needed in order for technology and society to continue to develop. Therefore, the EU data protection legislation reform is proposed as a way to avoid the limiting effects of not updating legislation related to the Internet.

5.2. THE PROBLEM IMAGE CREATED THROUGH THE PUBLIC DEBATE 2010-2011

5.2.1. PUBLIC DEBATE 2010-2011: PROBLEM

The problem image created through the public debate during the years of 2010 to 2011 runs along the same lines and thus have some similarities with the problem image presented through the EU documents. At this point however, the issue is put in relation to two problem categories, surveillance and user confusion. There are claims that privacy on the Internet is in danger due to the increasing amount of different forms of surveillance through different channels. It is noted that privacy on the Internet is under attack (A1, A2, A3), supported by comments such as "it is not an exaggeration to claim that there is a war going on against privacy" (A1, my translation) and that there are many actors including national as well as EU actors, that "work to minimize citizens' right to privacy" (ibid, my translation).

In relation to user confusion there are two top companies that are frequently mentioned in relation to this, Google and Facebook (T1-T8). Here it is basically pointed out that a big part of the difficulty with privacy on the Internet is the problematic situation with privacy policies. One article notes that "[t]his kind of confusion is understandable given the complexity of Facebook's privacy settings" (T4). It goes on to note that,

> [Facebook] hide behind lists because people's abstractions allow them to share more. When people think 'friends-of-friends' they don't think about all of the types of people that their friends might link to; they think of the people that their friends would bring to a dinner party if they were to host it. When they think of everyone, they think of individual people who might have an interest in them, not 3rd party

> services who want to monetize or redistribute their data. Users have no sense of how their data is being used/---/ (T4).

Another article also points to some of the confusion Google has caused, for example through the launching of new services such as Google Buzz, noting that "[s]ome users were annoyed at what they saw as an invasion of privacy and many more were confused as to how much of their information had been made public" (T7). Other users "feared that their private information had been exposed and some people found themselves 'connected' to people that they had no desire to befriend" (T8). Jumping back to Facebook, they have also made moves that have been argued to be attempts to make people share more information or make information that has already been shared even more public. Due to invitations to reconsider privacy settings, some users "had adopted more public settings inadvertently" (T8).

Furthermore it is noted that even the service providers have a hard time knowing what to do about the issue with privacy policies. First, it is noted that service providers tend to have a different view on privacy and how to manage the privacy of their users. For example, one article notes that Google's "attitude towards our private data is a cause for concern, not least because Google tends to make its services 'opt-out', rather than 'opt-in'/---/. While Google is honest about wanting to "get right up to the creepy line", it would also suit them if that line could be pushed ever further back" (T2). It is discussed whether comments such as Google policy being "to get right up to the creepy line and not cross it" (T2) might be norm changing by pushing back privacy norms (T3).

> All of these organisations are signing up to an ongoing discussion about how personal information, often collected almost unintentionally as a result of normal business and social activity, should be handled. Who should have access to it, how should it be stored, who does it benefit and who controls it, they ask (T1).

To add an extra spin to the problem, it is also noted that the struggle over privacy and personal data has more than one dimension to it since technology companies also fight among themselves to get access to our information. It is noted that companies, in this case Facebook and Google,

> can be criticised for the way they have handled user data in the past and both companies can claim to be acting in the best interests of their users this time. It's far from a clear-cut situation. However, what it does illustrate is that the battle to control our data is not just being fought between us and the technology companies we use, but also between those companies themselves (T6).

In short, the problem is that "[t]he protection of privacy is a serious challenge for the internet" (T9). The problem image created in the 2010-2011 public debate revolves around the threat against Internet privacy on the one hand and on the other hand, the confusion Internet privacy causes.

5.2.2. PUBLIC DEBATE 2010-2011: CAUSE

An overarching message that runs through the public debate regarding the cause of the problem of Internet privacy is that our conception of privacy has changed and is changing along with the development of the Internet. One article notes, in relation to Google, that

> Google's mission is to "organise the world's information and make it universally accessible and useful". With such a goal it makes perfect sense to send camera cars around the world photographing everything they can find. The result is an astonishingly detailed map of the world around us, which can be used for all kinds of things, from satnav to just satisfying curiosity. The price of such a useful tool could well be our privacy. As more and more data accumulates on the internet about all of us, the question of privacy becomes unavoidable. It is no longer worth debating whether the internet will change our conception of privacy – it already has (T7).

Departing from this, the cause of the problem with the alleged attack on Internet privacy is then addressed again by pointing to the two categories of surveillance and user confusion. Firstly, the debate argues that the prospect of preserving a high amount of Internet privacy is highly reduced in favor of services and products with other main interests, for example to fight criminal activity. Here, it is noted that the legislation and by extension, the legislators and the growing number of laws is the cause behind the problems of preserving privacy possibilities on the Internet.

> The Data Retention Directive means that service providers are forced to store information about when, where and to whom you have called, texted or emailed, to support the fight against criminal activity (A1, my translation).

> The FRA law[19] was accepted and is now a privacy violation that affects all of us (A2, my translation).
>
> If the Data Retention Directive is implemented, information about who, when and where we call will be stored. There is also a risk that searches on Google will be stored for two years (A2, my translation).
>
> There is currently a campaign in the European Parliament for the Data Retention Directive to cover searches through search engines, such as Google. /---/ Who communicates with who, when and from what location this happens will be stored (A3, my translation).

Thus, the public debate narrows down the cause to the fact that laws are being accepted in order to fight crime and therefore allowing new kinds of data surveillance. It is legislation that for different reasons prohibits anonymous use of the Internet that violates our privacy. On a side note, it is worth mentioning that the public debate in relation to legislation puts no direct blame on the service providers or technology companies. Furthermore, the claim is that user confusion as the second problem category is caused by the lack of concrete principles to follow when it comes to Internet privacy. Service providers and technology companies such as Google, Mozilla, AOL and eBay have discussed issues surrounding Internet privacy and personal data, but it is questioned what those discussions bring and the fact that privacy on the Internet is still problematic.

> This is a fine aim and I can't find a single thing that I can point to and criticise, but I can't help feeling that this is a rather pointless exercise. Perhaps all of the discussion is taking place in private, and there's a wonderful set of concrete principles coming that will make us all feel much better and more secure about the digital presences we all project into the world, but right now all I can see is a list of names of companies who all know that people aren't particularly happy about having their data stored, mapped, searched, indexed and sold. I can't see very much from anyone apart from Google about what they're going to do about it (T1).

In the end, the problem is connected to the fact that there is a huge amount of confusion surrounding Internet privacy where no actor seems able to tell how it should or even should not be managed. Users have no idea how their data is being

[19] The FRA law is an informal name commonly used when referring to a number of changes made in the Swedish Defence Intelligence Act, the Electronic Communications Act, the Secrecy Act and an entire new law regulating the national signals intelligence, according to the proposals made in the Government's proposition 2006/07:63 – En anpassad försvarsunderrättelseverksamhet.

handled or used and service providers do little or nothing to assist in the matter.

> It's a battle over choice and informed consent. It's unfolding because people are being duped, tricked, coerced, and confused into doing things where they don't understand the consequences. Facebook keeps saying that it gives users choices, but that is completely unfair. It gives users the illusion of choice and hides the details away from them 'for their own good' (T4).

5.2.3. PUBLIC DEBATE 2010-2011: SOLUTION

Yet again, the public debate organizes the solution to the Internet privacy discussion along the lines of surveillance and user confusion. The solution to the legislation problem, which favors surveillance over privacy goes via the citizens and thus through politics. In relation to legislation such as the Data Retention Directive for example, one article concludes that "a comprehensive force is now required in order to counteract the implementation of the Directive and its expansion on EU-level" (A1, my translation) and that "we all have to work together to stop the data retention" (ibid, my translation). The message is that if privacy on the Internet is to be saved, we must put some effort into saving it by making our political choices accordingly. Other articles note that,

> Everyone regardless of gender, sexual orientation, skin color, origin, disabilities, age or political view have the right to communicate and search for information without restriction and insight. The Internet needs to be saved and the Pirate Party is ready (A2, my translation).

> The current political term has meant far too many laws that have been a disadvantage to our privacy. Lets make sure the next term does not continue on the same track, but instead changes course to work in favor of our right to privacy (A3, my translation).

Furthermore, when it comes to the problem of user confusion the message is just as clear. The topics around which the solution is attached to vary somewhat between the articles but the overarching point is that the focus should lie on the users. Clearer policies and regulations with the users in mind, the sense to listen to the users and a mindset that does not include misleading, intentionally or unintentionally, the users is the key points that are asked for.

> If Facebook wanted radical transparency, they could communicate to users every single person and entity who can see their content. They could notify then when the content is accessed by a partner (T4).
>
> /---/it's still vitally important that people understand what personal data they are giving, how that data is being used and how they can opt-out of a service should they wish to (T7).
>
> It is doing so because savvy website owners are providing content, services and products that are relevant and valuable to users. This is not guesswork; data-driven decision-making in business improves efficiency and profits, and gives users an experience they want. Asking the entire UK website community to use pop-up windows and tying them up in red tape is not what they want (T9).

Additionally, one article further points to the central role the service providers play in this process, noting that,

> Boyd urged technology companies to think carefully before changing the privacy rules of their services. She concluded: "Neither privacy nor publicity is dead but technology is going to continue to make a mess of both." (T8).

5.3. THE PROBLEM IMAGE CREATED THROUGH THE PUBLIC DEBATE 2012-2013

5.3.1. PUBLIC DEBATE 2012-2013: PROBLEM

During the years of 2012 to 2013, the public debate took the discussion a step further with a growing emphasis on the increasing lack of privacy on the Internet and its connection to new types of and more prevalent surveillance. The problem image that is created in the public debate during these years seems to originate from the same underlying topics as the debate during the previous years, but has now been shaped with the force of more concrete accusations. First on a more general level, it is noted that “on the Internet, you can get more information than you really want” (A5, my translation) and that “once you have popped up on the Internet, it is nearly impossible to erase yourself” (ibid, my translation). The more specific angle of the problem that the public debate focuses on is that our privacy is threatened due to the increasing amount of surveillance and the following conflicts. The prevalence and scope of monitoring is growing and it seems to have set the standard (A11, T10, T12, T13). The message is clear throughout the debate and as one article notes, “2013 was the

year privacy died" (A11, my translation). The main part of the discussion is based on this problem outline. One article simply states that "[o]ur everyday life has become more controlled, costing us our privacy and the structure of law and order" (A4, my translation) and other articles follow suit.

> There is a lot of surveillance and registration of people conducted by Swedish actors and we are all exposed to this on a daily basis. FRA[20] scans all electronic communication that crosses the nation's borders, including your emails and your Internet surfing, building sociograms with information which is then happily shared with the American counterpart, the NSA (A6, my translation).

> The American equivalent of FRA has monitored millions of private communication on the Internet. /---/ We have seen a similar development in Sweden. Since 2009, you have to be aware of the fact that when you email your boyfriend or girlfriend, a copy of your email is gathered in government computers to be automatically searched and possibly read. Regardless of whether or not you are suspected of any crime. /---/ We no longer have the right to communicate anonymously with others. Sharing secrets through messages is now only a memory in the era of digitalization. Journalists can no longer guarantee the safety of their sources. /---/We live in a world of mass-surveillance. /---/Our basic democratic rights are being violated (A9, my translation).

> Many have suspected that the personal information companies have access to can be used or abused without their knowledge. This lack of trust affects citizens' trust in the constitutional state (A10, my translation).

> The problem with the mass-collection of sensitive information is that sooner or later it can be abused. /---/ Since modern technology allows mapping of things such as ethnicity, sexual orientation or religious or political views in a relatively easy fashion, it does raises question about what else is being registered (A12, my translation).

In relation to this, it is noted that the problem may run deeper than merely the threat against privacy through the act of surveillance. It is also pointed out that society has undergone an alarming change, where surveillance has become more and more accepted. We consequently expect more surveillance and by extension, intentionally or unintentionally, allow it to increase. The message of the natural state of choosing surveillance over privacy runs deep with one article noting that even "[t]he Swedish minister for foreign affairs claims that government surveillance is harmless, since it is so discrete" (A8, my translation). Surveillance and registration has sadly become the

[20] FRA is short for Försvarets Radioanstalt which is the Swedish National Defence Radio Establishment.

standard order (A6) and it is noted that,

> The authorities have, with good intentions, reduced our freedom in a number of areas since 9/11. We hardly react when we hear news about someone reading our email, monitoring our phone calls and storing our browsing history on the Internet (A12, my translation).

> Seriously, when I saw the outcry over Government plans to gain access to telephone, email and internet, my initial reaction was: "You mean they can't do that already?". I assumed, somewhat stupidly, that everything we said, typed or viewed was routinely monitored, and then filtered by some giant, super-secret computer tucked away in a heavily guarded subterranean basement of GCHQ[21]/---/ (T13).

Another part of the problem seems to be questions as to how privacy and surveillance should be managed. Questions have been raised regarding governments monitoring its own citizens with a kind of "internal surveillance" and thus not focusing solely on communication outside the nation's borders (T11). In other words, it is unclear as to what kind of surveillance should be allowed (T15). One article notes,

> The critique against FRA has never been about the monitoring of foreign nations. Instead, the problem is the mass-surveillance within Sweden, and of Swedes. Intentional or through so called excess information that is collected while searching for other information (A13, my translation).

Lastly, it should be noted that the problem image during this period is still partly created through the discussion involving Google and Facebook (A5, A7, A11, T10, T14). Even though the attention is not as substantial as previous years, it is still an indication of the connection between the topic of privacy and the technological development.

5.3.2. PUBLIC DEBATE 2012-2013: CAUSE

Similar to the public debate from the earlier years, the cause of the problem or rather problems is said to be a combination of strengthened legislation in support of

[21] GCHQ is short for Government Communications Headquarters which is a British intelligence agency responsible for providing signals intelligence to the British government and armed forces.

surveillance and the insufficient or even the lack of legislation aimed at protecting individual privacy. However, it should first be noted that unlike the public debate from previous years, the cause of the major problems during the period of 2012-2013 is connected to the fact that there are actually concrete events of surveillance scandals and privacy violations. It is noted that "[n]ow yet another violation against out fundamental right to privacy has been made. Another public scandal and a new blow to people's trust in the protection of personal information" (A10, my translation) and another article concludes that,

> /---/that there has been a legitimate controversy both here and in the United States about the extent of invasive intelligence gathering of data on the general population: what has, in effect, been an exercise in the mass surveillance of private individuals on a scale that is unprecedented in human history (T15).

As previously mentioned, the problem is connected to the strengthening of legislation to support surveillance. The politicians are blamed for favoring policies, acts and bills that will allow the monitoring to increase while neglecting to protect the privacy of the citizens (A12). The same connection between the choice of surveillance over privacy and legislation is found in several other places.

> It is somewhat ironic that the Swedish Parliament just yesterday, accepted the so called Data Retention Directive. This is how the western part of the world has faced terrorism during the decade since al-Qaeda attacked the World Trade Center in New York. With growing justifications for the military, police and national security (A4, my translation).

> The agreement included a longstanding cooperation within the signals intelligence area, with the aim to incorporate technology that is used for surveillance and support in order to protect national security or to defend the nation against terrorist attacks and other threats against national security (A7, my translation).

> The actor with the most information has the most power. /---/ This has been expressed through the FRA law, the implementation of the Data Retention Directive, the hardening of LEK[22] and the systematic weakening of the principle of public access to official records (A8, my translation).

> The excuse is the need to pursue terrorists. /---/ And the explanation is the need to pursue terrorists. The threat of terrorism is used to reduce our most fundamental

[22] LEK is an acronym for Lag (2003:389) om elektronisk kommunikation, which is the Swedish Electronic Communciations Act.

> rights. /---/ That is the consequence of the FRA law (A9, my translation).

> The Government's proposed internet surveillance Bill – popularly known as the Snoopers' Charter – has already run into a storm of criticism. /---/ Some, such as Fraser Nelson, argue that it'll be more use at catching criminals than terrorists, and the Government should say so. Others say that it sends us plummeting off the moral high ground when it comes to lecturing China, Iran et al over denying their citizens' freedom of online expression (T12).

Furthermore, the public debate does not only blame the politicians and legislators but seems to point a few fingers back at ourselves. The change in our approach to surveillance that has cost us our privacy can be put in relation to the fact that we have created this constant need for information and ultimately built a world where surveillance has become comparatively easy (A11). It is noted that companies such as Facebook and Google now owns a gold mine with information about our private life (A5). Another article supports this claim, noting that,

> /---/many of us are giving up too much information about ourselves, too freely. For many internet users, the amount of information the state holds about them pales in comparison to the stash of personal data placed in the hands of Google, Facebook and Twitter. It's surveillance we've submitted to willingly and contribute to (T14).

Finally, similar to the public debate from earlier years, the cause of the problem seems to be connected to a fundamental confusion related to the insufficient state of Internet privacy legislation. One article concludes in relation to the amount of government surveillance with military function that "[i]t is difficult to know since everything is classified and the usual rules for law and order do not apply" (A13, my translation). Moreover, with reference to the highly discussed mass surveillance incident during this period, another article points out that it is noted that it is "not concluded that what is happening...is necessarily unlawful" (T15).

To summarize, the cause is said to be a combination of many things with the increasing legislation supporting surveillance in some way as the leading factor. Consequently, privacy protecting legislation and policies have suffered with confusion as a result. The public debate holds politicians and legislators responsible but adds a slight warning for the society in general to consider as well.

5.3.3. PUBLIC DEBATE 2012-2013: SOLUTION

Departing from how the public debate outlines the problem and the cause of the problem, the solution continues along the same track. There is an open irritation over the apparent support of surveillance legislation while privacy preserving legislation is bleeding. The demand is supported by the need for people to "gain more control over their personal information" (A10, my translation) with "an increased right to have information deleted and transferred" (ibid.). Following this statement, it is clear that it is considered that the solution lies in our voices. We need to protest in order to work for and protect our privacy while also asking more questions about how and why our data is being used. More discussion and raising the important questions seem to be the working solution. In one article it is noted that "[t]he SVT's[23] disclosure will hopefully start a debate regarding the balance between security and the protection of our privacy" (A13, my translation) while another concludes "[w]e should all be asking more questions about how our information is used and how much we should give up" (T14). Another article simply states that "[i]f enough people says stop with enough force it will affect the political world" (A12, my translation). Other citations draws on more philosophical approaches but supports the arguments just the same.

> But we must seriously question our growing willingness to so freely share information online or face giving up freedoms simply for the love of convenience (T14).

> To maintain the spirit of private freedom and the the (sic) principles of civil rights as we have understood them in democratic societies, there is going to have to be some serious philosphical thinking about the ramifications of modern technology (T15).

There is also some direct critique against the problem of favoring surveillance friendly legislation over privacy protecting ones. The leading message is that increased surveillance does no good or at least not as much good that it is worth the price of our privacy. It is stated that "[t]here is little evidence that mass-surveillance contributes as much to our safety that it is worth the expense of our privacy" (A12, my translation). The safety aspect is central in the problem-solution discussion with privacy, surveillance and safety as the building blocks.

[23] SVT is short for Sveriges Television, Sweden's Television, which is the Swedish national public TV broadcaster.

> But increasing surveillance and control did not allow these terrorists to be discovered in time. That puts us in front of a new choice. We have to either find new methods that actually work. Or use even more surveillance and control (A4, my translation).

> But terrorism is no valid excuse to violate our rights as citizens. /---/ We need a change when it comes to the view on our right to privacy. /---/ Instead of letting an excessively big fear of violent crime direct legislation, we need to prioritize the respect for the privacy of the citizens. We need to prioritize law and order and democratic values over an implied efficiency. /---/However, there is only one way of ending the current trend of mass-surveillance. We need to put pressure on the politicians where it hurts. They need to risk losing their jobs. /---/ It is up to the citizens to make the choice (A9, my translation).

As a conclusion, the politicians are served with a heavy punch.

> /---/it is decided in closed rooms to which regular citizens do not have access. This is how it will be until the politicians understand that privacy is a lifelong commitment and not just a political decoration used prior to coming elections (A6, my translation).

5.4. CHAINS OF EQUIVALENCE

This chapter contains the second part of the analysis where the analytical tools of discourse theory are used to break down the texts into smaller components. As the material has been systematically reviewed with the structure from a content analysis organized with the P-C-S strategy as utilized by Ulf Mörkenstam, a few distinct CoE can be identified. The presentation of the CoE is separated between the EU documents and the public debate.

5.4.1. EU'S PROPOSED DATA PROTECTION LEGISLATION REFORM

From the EU documents, two main chains are developed along branches following the themes of the changes and challenges that technology has brought with it. Speaking in terms of discourse theory, **technology** is regarded as a nodal point but also a floating signifier. It is the technology concept that the material is organized around and from which other concepts gain meaning. In this regard, technology is seen as both something affecting as well as something that can be affected. This produces two overarching chains, one with a more positive undertone and one with a more negative

undertone. Thus, these chains imply that the material does not contain a unified view of technology. However, it should also be noted that they are not completely separate from each other either. They are connected in that the technology has brought a change that requires regulation, which in turn has the possibility to encourage more change. Nevertheless, they are also completely different in what they separately represent in the documents.

The chain that follows the change theme is developed along the causes that this change amounts to. The mentioning of *globalization* shows that the technology change is not a separate occurrence but part of a bigger process that stretches outside the sphere of technology. For example, the Internet has changed our view of "geography". On the Internet there are little to no national borders, which is one of the great benefits of the Internet. The "scope" of the world has shrunken dramatically and the borders that has organized people before simply does not have the same meaning on the Internet. This has created a digital environment where a huge amount of information can be processed, accessed and moved in a manner that was not possible earlier. Thus, the first CoE with a more positive undertone is organized in the following order.

Technology – Development – Globalization – Personal data – Connectivity - Possibilities

The second overarching chain follows the line of discussion regarding what is now required seeing that regulating privacy in an online context has turned out to be somewhat of a challenge. In this chain, technology is articulated as something quite demanding and that needs to be regulated. Compared to the previous chain, this chain draws on the discussions along the lines of problem and solution. Technology has complicated the *protection of personal data*, consequently making *legislation insufficient* in relation to data protection as a *fundamental right*. In turn, this connects technology to *risks*, which serves a contra productive condition for continued *development*. The second CoE has a more negative undertone and is organized according to this order.

Technology – Data protection – Fundamental right – Insufficient legislation – Risks- Negative for development

In order to describe the overarching chains, some signs can be deconstructed further. For instance, the *personal data* sign can be clarified by its connection to a number of other signs. Here the signs *collection, sharing, access, using, storing, searching* and *transfer* are gathered in relation to the technology and personal data signs, which shows the change technology has had on the flow of data. Also in the chain with a more positive undertone, the *connectivity* sign can be deconstructed further. It gathers the signs *Internet*, *social networks*, *cloud computing, online, tablet, smartphone, laptop* and *virtual*. The result is a very descriptive chain that clearly shows the more physical content of the technology concept. Connecting this to the overarching chain, the signs articulated in relation to technology and connectivity indicate that the EU point to for example the Internet as something positive. Here it is worth noting that these two chains are heavily related, maybe even more so in their deconstructed state.

In the second chain, the one with a more negative undertone, the *insufficient legislation* sign can also be deconstructed. The signs *legal fragmentation, legal uncertainty, lack of harmonization* and *lack of protection* are collected around the insufficient legislation sign. The *negative for development* sign can also be clarified by its connection to *slowing economic growth* and *counteract innovation.* These deconstructions further enhance the negative tone of the second overarching CoE by clarifying how the material organizes several phrases in relation to the meaning of these concepts. Thus, technology is also articulated along a more negative line, which follows the connection to regulation.

5.4.1. THE PUBLIC DEBATE 2010-2011

There are a number of signs that are central in the public debate's discourse during the period of 2010 to 2011 and they are in many ways organized according to the same themes of change and challenge as the EU's discourse. Following the previously acknowledged surveillance and user confusion categories, two nodal points are identified. Departing from the sign **surveillance** as the nodal point, it produces two contrasting chains that follow the theme of change. The chain with a more negative

undertone is organized with the signs *privacy damaging legislation* and *minimizing rights.* Here surveillance is presented as something undesirable since it depends on legislation that harms our privacy and thus violates our rights. The second chain on the other hand has a more positive undertone and gathers the signs *combating criminal activity* and *useful tool*. The chain depicts surveillance as something positive by connecting it to signs that are generally viewed as good such as working to decrease crime while utilizing its usefulness. This shows that the public debate during this period is founded on two distinct approaches to surveillance in relation to privacy on the Internet. Now it should be noted that there is no struggle over how to define surveillance since the material strongly leans on the chain with a more negative undertone while using the second chain to depict what surveillance could or perhaps rather should be. An interesting observation in relation to the two chains is how they are positioned in relation to a more general view on actors. The chain with a more negative undertone originates from a keen view on preserving the individual's rights. The other chain that has a positive undertone is constructed more based on the necessary rights of the state(s). Thus, the presentation of surveillance is pretty closed and even though the two chains when put in relation to each other show opposite views on surveillance, the chains are at the same time not completely separated from each other. They do however emphasize different values of surveillance that the debate brings forth.

Surveillance – Privacy damaging legislation – Minimizing rights

Surveillance – Combating criminal activity – Useful tool

Furthermore, a second nodal point has been identified within the material, which is **the user**. Since the user is a strong sign in relation to everything that is connected to the Internet it naturally has a solid role in the discussion about privacy on the Internet. Similar to the discussion about surveillance, the definition of the user is also rather closed. The first chain has a more neutral or a hint of negative undertone to it and connects the user to the signs *technology companies, private information, personal information, privacy settings, privacy policies, confusion, cheating* and *lack of communication.* As previously shown during the analysis, the material puts a lot of blame on the technology companies. The possibly negative undertone therefore

originates from how the user is articulated in relation to technology companies in combination with other more negatively charged signs such as privacy policies and confusion and cheating. Thus, in this chain the user is constructed as a vulnerable group with little protection. The second chain is not a strict contrast to the first chain since it too has a rather neutral stance. This chain further enhances the meaning of the first chain by gathering signs that describe what the meaning of the user could be. Here the user is connected to *data use, control, choice, communication* and *understanding.* Compared to the other chain, this chain gives the user more power. The problem of user confusion that guides the first chain towards a more negative undertone is put in contrast to the influential user that has control, understands what can be done and what needs to be done and makes active choices. The problem of confusion is to be dealt with through letting the users take charge over their situation.

The user – Technology companies – Private information – Personal information – Privacy settings – Privacy policies – Confusion – Cheating - Lack of Communication

The user – Data use – Control – Choice – Communication – Understanding

5.4.2. THE PUBLIC DEBATE 2012-2013

The public debate during the period 2012-2013 is likely the most harshly articulated of the three units that have been analyzed. In a way the debate still follows the previously mentioned themes of change and challenge. It is somewhat more complicated to identify the nodal point/s during this period. This is probably a result from the fact that the two nodal points and accompanying chains that can be identified are very much linked to each other. **Surveillance** is still a strong topic during this period with the addition of the nodal point **legislation**. Beginning with surveillance there are a number of signs related to this with two completely separate meaning. A significantly negative attitude towards surveillance is expressed throughout most of the material. An obviously negative chain gathers the signs *information registration, monitoring communication, rights violation, abuse, lack of trust, reduced freedom* and *invasive gathering of data.* This chain stresses the risks and negative consequences of surveillance in relation to privacy. Surveillance through registration, monitoring and

gathering of the information we put on the Internet is naturally presented as harmful to our privacy. No one even tries to disguise the apparent frustration towards the effects of the increasing surveillance and it is obvious that the dissatisfaction is meant to be heard. When examining the second chain it should be noted that these two chains are probably the most different chains in the entire material. Opposite the rights violating surveillance stands the good and helpful surveillance, which the debaters use to both describe what good surveillance could do. Here, surveillance is linked to the signs *supporting order, security*, *counteract terrorism* and *power.* In this sense, surveillance is to be regarded as something that can help us maintain balance and peace by preventing criminal activity such as terrorism. This is a good point to comment on the entrance of the terrorism sign, which is a very important sign during this period in the public debate. The terrorist sign is used to motivate the increasing use of surveillance technology by pointing to the dangers of terrorism. A quick conclusion so far is that surveillance is highlighted in two different ways, with the simple assumption that we can either counteract terrorism or keep our freedom intact and having both at the same time is not presented as a viable possibility.

Surveillance – Information registration – Monitoring communication – Rights violation – Abuse – Lack of trust – Reduced freedom – Invasive gathering of data

Surveillance – Supporting order – Security – Counteract terrorism – Power

The second nodal point is **legislation**. This sign is closely linked to the surveillance sign consequently positioning the chains close to the surveillance chains. The first chain gathers the signs *increased surveillance* and *neglects privacy,* articulating legislation in a rather negative way. At this point, legislation is presented as the reason to the increasing amount of surveillance and blaming it for how privacy is being neglected in favor of surveillance. In contrast to this chain, legislation is also connected to the signs *safety* and *tool against crime*. Legislation is regarded as a creator of safety with the production of tools that can be and are used to suppress criminal activity. Examining the surveillance chains and the legislation chains the connection between them are fairly clear. Instead of representing two dominant aspects of the debate, they depict two chapters of the same part. This is most apparent

when cross-referencing certain signs such as *safety* and *security* or *tool against crime* and *counteracts terrorism.*

Legislation – Increased Surveillance – Neglects privacy

Legislation – Safety – Tool against crime

5.5. COLLECTED ANALYSIS OF THE DISCOURSES THROUGH THE CHAINS OF EQUIVALENCE IN RELATION TO THE LAWMAKING PROCESS

At first glance, there is little to no apparent discursive connection between the EU's propose data protection legislation reform and the public debate. The EU documents are constructed around **technology** as a nodal point. The discursive construction is far from simple with a seemingly antagonistic approach to technology as it is presented in an equally positive and negative position in relation to online privacy. Laclau and Mouffe claim that a discourse is a part of a discussion or material where the meaning of a sign is closed and thus taken for granted as true. Since there are different meanings connected to technology in the EU material, I cannot view the technology discourse as one discourse but rather as two struggling discourses. Along the themes of change and challenge, the antagonism creates two discourses representing the changing technology and the challenging technology. Privacy in any form is never directly associated with technology in the material but instead draws meaning from other signs such as personal data, data protection and fundamental right, which when put in the context of the discussion puts the pieces together. The discourse analysis point to a major indecisiveness as to what technology really is in relation to privacy on the Internet. On the one hand, we find the "good" technology that causes development and brings possibilities. On the opposite side stands the "bad" technology that needs to be managed through regulation and that poses risks and consequently harms development.

Meanwhile, the public debate during the specific periods is focused on a few specific nodal points **the user, surveillance** and **legislation**. Unlike the EU material, there is

no apparent struggle over the definition of these concepts within the public debate. The material from the period 2010-2011 is organized around two nodal points, **surveillance** and **the user**. The meaning of these nodal points is presented by pointing out what they are and what they are not. The material is very much organized around the recent technological development since without it this discussion would not even have occurred. The closure around the user sign shows the complicated situation the common Internet user has been put in in relation to privacy on the Internet. The part of the discussion regarding surveillance in a way also point to the consequence of technology, for example through its connection to the sign *useful tool*. Similar to the public debate during the previous period, there is no apparent struggle in the public debate during the period 2012-2013 and the material is yet again organized around two nodal points, **surveillance** and **legislation**. The discussion around these nodal points remains rather closed with a clear emphasis on the more negative aspects of surveillance as well as legislation.

Looking at this heavily simplified image of the data, there seems to be no direct link between the public debate and the EU documents. It is only when the chains are analyzed further and on some parts picked apart even more that a few connection points emerge. First, the user discourse in the debate during the period 2010-2011 revolves very much around the technological aspects of privacy on the Internet with reference to for example privacy settings. Also, the surveillance discourse during the same period draws attention to the problematic situation with legislation regarding privacy on the Internet. Furthermore, when looking at the nodal points in the public debate from the period 2012-2013 there is no extreme change compared to the previous period. Yet again, it is only when the signs are placed in relation to each other through the chains that subtle differences and some similarities appear. The surveillance discourse during the 2012-2013 period is very much colored by its negative influence on privacy and paints a much more concrete image of surveillance than during the previous period. This change can be described in the way that the discourse on surveillance has broken free from the earlier topics and has turned into a strong and independent discourse during the 2012-2013 period. The way the debate was organized during the 2010-2011 has instead arranged itself under the legislation discourse during the 2012-2013 period, where both the previous user focused perspective and privacy neglecting legislation perspective has been gathered.

Placing this in relation to the two antagonistic technology chains of the EU documents, this does in fact point to some similarities between the public debate prior to the presentation of EU's proposed data protection legislation reform and the documents concerning the proposed reform. It is mainly the technological aspects of the user discourse during the 2010-2011 period that resonates well with the structure of the technology discourses in the EU documents. It seems as though the legislators have taken the user oriented perspective into consideration and thus tried to build a legislation that focuses on the needs and complications regarding privacy for the common Internet user. In relation to the six processes that can facilitate the understanding of the relationship between mass media, public opinion and legislation, it is most likely a mixture of the second, third, fourth and fifth processes[24] that has had the greatest effects.

Considering how the focus on the user seems to have influenced the proposed reform the mass media has probably worked well as a *validator* while also providing a *symbol* for the problem in question. The focus on the users could imply that this is how the problem has been brought to attention and with the help of mass media the importance of the problem has been highlighted, thus providing a confirmation of the problem. At the same time, the media has helped translating individual perceptions of the problem to a more generalized view that is easier for the overall population to relate to. Furthermore, the mass media can have worked as *legitimizer* for criticizing the old data protection legislation and also condemning governmental rights to surveillance. This might not be as bold as debating about legal rights for homosexuals but critiquing states' risk assessments and risk balance when sub-topics included terrorism and fighting crime means that the mass media can work as a big support for individuals. Consequently, the mass media also helps to *focus* the details of the problem and ultimately organizing whatever actions that can be taken.

[24] See chapter 3.1.2. Sources of impetus for law: The mass media for more information.

6. DISCUSSION

The purpose of this study has been to map and analyze how the topic of privacy on the Internet is discursively constructed by the EU and in the European public debate. As the analysis in chapter 5 showed, a number of nodal points and subsequent attitudes toward privacy on the Internet have been identified in the material gathered from the EU and the public debate. With the slight risk of oversimplification, an overarching organization of the discussion that seems to run through the entire material regardless of the source is the division of the themes change and challenge, which in many ways reflects how complex this topic is.

Before continuing on with the discussion regarding the discourses, there are a few notes concerning the theoretical framework and methodological base of this study that should be highlighted first. The negative aspects of using discourse analysis as method based on discourse theory have been discussed earlier in chapter 4.3. Method discussion. Despite being as well prepared as could be of the possible shortcomings of using discourse analysis, I would say that the level of abstractness connected to discourse theory and discourse analysis as a method still caused certain difficulties. It did take a lot of time and much patience to grasp the theoretical base of discourse theory and the subsequent understanding of how to utilize this for this particular study. However when that obstacle was finally overcome, it proved to be very easy to stay on course and work according to the purpose of the study. The analytical tools provided from discourse theory in combination with the structure provided by the P-C-S method and the basic outline of a content analysis allowed me to stay neutral at all times and work with the material as objectively as possible. The P-C-S method helped organizing the material in a way that made it possible to put different types of material in relation to each other without losing focus. It should however be pointed out that I have a distinct feeling that the P-C-S method was most effective due to the varying type of the material included in this study. In other words, if only one type of material, for example EU documents *or* debate articles from *one* specific newspaper, had been included in the study I believe that the P-C-S method might have felt rather redundant.

At this point it is also suitable to make a short remark regarding the level of the discourse analysis this study is built on. Discourses are partially constructed by the researcher depending on the material that is included in the study. Therefore a discourse analysis can be performed with different level of detail. As have been pointed out earlier in this thesis[25], discourse analysis is known for being arduous and time-consuming, which naturally delimited the analysis. Due to the fairly short amount of time that is within the scope of a master's thesis, the discourse analysis of this study is relatively limited in terms of details. I therefore deliberately chose to place the analysis on a rather overarching level. With more time and resources the analysis could have identified more details of the discourse, ultimately presenting a different base for my discussion. With that said, this does not necessarily mean that a more detailed analysis would in any way lead to better, more useful or more "real" conclusions. To get to the conclusion/s the product of the analysis must be processed. In the end it is not the level of detail so much as how it is being used that matters. But the process of using the product could likely be easier with the provision of more details.

In the early stages of this study I struggled with deciding how the material should be approached, if it were to be handled as one discourse or as several discourses. After a few initial read-throughs, different topics and some antagonistic features started to appear. It thus became evident that the material contained several discourses running parallel with each other, organized along several nodal points depending on the source (the EU or the public debate in different stages). What complicated things was the fact that the material in itself dealt with one huge over-arching "discourse", the discourse on privacy on the Internet. This issue was managed by not viewing the major discourse regarding privacy on the Internet as a discourse in the literal sense of this study. Instead this was viewed as more of a discussion that is discursively constructed through different sub-categories that consequently make up the discourses. Interestingly enough, this corresponds well with one of the fundamental ideas of discourse theory. The discursive struggles and closures that have been identified are indeed merely temporary and only held together by the distinctive realities (in this case these realities are created depending on the source of the material) they exist in.

[25] See chapter 4.3. Method discussion.

Now when approaching the end of the study, I have come to think that narrowing down the study even further by putting the discourses in relation to a few clear sub-topics would have facilitated the analysis even further. In hindsight I could easily have limited the study to focusing on how privacy is discussed in relation to adjoining topics such as service providers like Google and Facebook and unauthorized governmental surveillance.

In line with the purpose and design of this study, the discussion will be organized similar to the analysis, starting with discussing the nodal points from the documents regarding the proposed EU data protection legislation reform followed by discussing the European public debate. Lastly the discussion is completed with a joint part where the relationship between the EU and the European public debate will be dealt with. On a general level, four nodal points with varying relationship to each other have been identified; technology, surveillance and the user and surveillance and the legislation, illustrating how the material is discursively constructed.

6.1. EU'S PROPOSED DATA PROTECTION LEGISLATION REFORM: THE DISCOURSES ON TECHNOLOGY

The first research question used to guide this study was how the proposed EU data protection legislation reform is discursively constructed. As the analysis has shown, the selected EU documents is clearly organized in relation to the nodal point **technology**. The EU's inability to fix the meaning of technology could to some extent be linked to the complicated relationship between the online world and the "real" world, providing more background information to the dilemma. The EU's determination to regulate online privacy through data protection agrees with the idea that the online world is not a world separate from the "real" world. The rapid technological development with the Internet as one of its many products has left any behavior and business connected to the Internet largely unregulated. Consequently, the task of regulating privacy on the Internet has become highly complex. The way the EU puts technology in the position of a nodal point in the material points to an awareness of the fact that a direct transfer of existing privacy rules and regulations

that are valid in relation to "real world privacy issues" is not a realistic option, following the ideas of Christina Allen (1999).

This understanding of technology as something different and changing becomes even more apparent when looking at the chains that deconstruct the signs *personal data* and, especially, *connectivity*. New innovations such as the *Internet, social networks* and *cloud computing* are linked to technology and thus sending a powerful message that this is something entirely new that needs regulation. Balz and Hance (1996) have previously highlighted the regulatory problems connected to privacy and the discursive construction of the EU's proposed data protection legislation reform both forwards and questions their ideas. Again, the Internet or the "online world" is not and should not be regarded as a world separate from the "real world". Thus, Balz and Hance also claim that traditional privacy legislation should be applicable to the Internet as well and whatever difficulties that may occur should be solved through self-regulation. In regard to this, the EU material shows a different solution. The very fact that the EU addresses this issue by presenting a proposal for legislation is in itself an indication of a move away from a self-regulatory approach to the issue. How the material is discursively constructed only adds to this argument. The connection between technology and the sign *insufficient legislation* for example, points in a direction where existing privacy legislation is insufficient and self-regulation is deemed inadequate. Furthermore this also highlights the fact that this is *European* legislation. As Steinke (2002) has pointed out earlier, there are some differences between the EU and the U.S. in how privacy on the Internet is regulated, with the EU adopting a more strict legal approach to the issue. The proposed EU data protection legislation reform that has been of interest in this study indeed attests to this.

As a quick side comment to the connection between the technology sign and the development and globalization sign and also the deconstruction of the *insufficient legislation* sign with particular emphasis on its connection to signs regarding development, economic growth and innovation, it is noted that this connection could open up for further discussions relevant to other theoretical fields as well. For example, there are several interesting theoretical foundations for developing the discussion regarding globalization, which could ultimately lead to many noteworthy conclusions. However interesting it would be to grab the opportunity and elaborate

such discussions further, there is unfortunately neither the time nor the space to so in this thesis nor is it relevant in relation to the purpose and aim of this particular study. This would instead be a fitting starting point for future studies that could build on the basic findings from this study.

6.2. THE EUROPEAN PUBLIC DEBATE: THE DISCOURSES ON SURVEILLANCE, THE USER AND LEGISLATION

In line with the socio-legal nature of this study, I was also interested in how the European public debate regarding privacy on the Internet was discursively constructed. To make a comparative design possible, the first period of interest was between the years of 2010 and 2011. This part of the material matches to a large degree the discussion regarding the balance between privacy and surveillance on the Internet carried out in previous research. Lessig's (2008) note that the two main threats against privacy on the Internet is digital surveillance and aggregation of data definitely runs along the themes of the two nodal points of surveillance and the user. With signs such as *privacy settings* and *privacy policies*, the emphasis on the user forwards the idea that the increasing amount of (largely unprotected) information dispersed on the Internet makes it easy to spy on us. Furthermore, the link between surveillance and the signs *privacy neglecting legislation* and *minimizing rights* also promotes Lessig's claim that with digital surveillance, the same legal limits as with "regular" surveillance is not completely applicable.

Lastly, the European public debate regarding privacy on the Internet during the period 2012-2013 was also of interest in this study. With the link to signs such as *information registration, monitoring communication* and *invasive gathering of data,* this period of the debate further forwards the issues previously raised by Lessig (2008). The material clearly points to the negative aspects of surveillance in relation to privacy. However during this period the discussion regarding surveillance is expanded and more concretely described in relation to apparent threats such as terrorism and other types of crime. Nevertheless, there is little room for any positive approaches toward surveillance. Both under surveillance and legislation, positive

signs such as *security, counteract terrorism, safety* and *tool against crime*, are not enough to justify the threat against individual privacy.

In addition to Lessig (2008), this also promotes the discussions raised by Frank Bannister (2005) as well as Thomas Mathiesen (2013) on the balance between privacy and surveillance. The discursive construction during this period presents an approach where the risks or threats of crime are not high enough to neglect personal privacy. Bannister's conclusion that using the threat of terrorist attacks as an argument for increased surveillance based on a risk assessment is applicable here, where the material supports a direct rejection of the threat of crime over the threat against privacy. The importance of terrorism in this period of the material also corresponds with the enemy images discussed by Mathiesen. Surveillance systems are motivated by referring to three enemy images, including terrorism and organized crime with the conclusion that the danger of terrorism is generally exaggerated. Yet again, it is very easy to draw parallels between the thoughts from earlier research and the result from the discourse analysis in this study. One of the simplest examples of this is the closure around legislation as something that allows increased surveillance in favor of general safety.

Lastly, I want to highlight a few things in relation to the change in focus in the public debate from the period 2010-2011 to the period after the EU presented the proposed reform, 2012-2013. As was pointed out in chapter 5.5, the EU's proposed data protection legislation reform does seem to be based on social norms as expressed through the public debate. The slight change in the public debate can be developed into two subsequent discussions. First there is the question of where this change has originated. A sociology of law approach could postulate that the EU's proposed reform (i.e. the most recent legal norms) has influenced the social norms as presented through the public debate, thus creating a circular process where social norms first affected legal norms which then affected social norms. Moreover, this raises questions as to how successful the EU's proposed data protection legislation reform will be since the social norms seemingly has developed further. In line with a sociology of law approach, legislation can only be effective in so far as it matches social norms. Since the social norms has apparently changed it calls into question whether or not the EU's proposed reform will have the desired effects.

6.3. A FINAL NOTE ON THE PUBLIC DEBATE AND ITS INFLUENCE ON THE LAWMAKING PROCESS

As the analysis in chapter 5.5. Collected analysis of the discourses through the chains of equivalence in relation to the lawmaking process has pointed out, there is a slight, but nevertheless existing relationship between the public debate and the EU documents that have been included in this study. From a sociology of law perspective, I find it highly interesting to consider using the six essential processes for understanding how mass media can influence legislation through public opinion in a reversed manner, thus being able to analyze how legislation affects the public debate with the points of authentication, validation, legitimization, symbolizing, focusing and classification. Considering the previous emphasis on the power of individual parts of mass media when it comes to putting pressure on lawmakers, I do believe that with some minor alterations, this sociological theory of lawmaking could be used to gain more knowledge of the reversed process when law affects public opinion and the mass media. The analysis in this study points to a slight change in the public debate after the EU's proposed data protection reform was presented, suggesting that there are new terms of the debate about privacy on the Internet that most likely is relevant for a functioning data protection legislation.

As discussed in chapter 1.3. Delimitations of the study, the law is not something fixed but rather a constant process of change, which makes it equally fascinating and frustrating to study. The snapshot of the legal process that this study has presented highlights the complexity of the relationship between legal and social norms. Connecting this to the first question regarding legal norms' possible influence on social norms in a circular process combined with the results from this study, I would say that there should be a way to create a model that can be used to determine the level or amount of social change needed to initiate a legal change. Such a model could be applied in a circular manner depending on a study's point of departure, social norms or legal norms. Needless to say, this would provide us with an extremely useful tool in our effort to understand the intricate relationship between law and, or perhaps rather *in*, society. This reversed process of utilizing the sociological theory of lawmaking could most likely benefit the development of the model I discussed in the end of the last sub-chapter. Such a model should be designed to work with other

sociological theories of lawmaking[26] and perhaps even making it possible to create a multi-level model where several influences on the lawmaking process are dealt with. This would make the model extremely versatile and valuable, theoretically as well as practically.

[26] For example Vago (2009:175ff) mentions interest groups' influence on the lawmaking process and other sources of impetus for law such as protest activity and social movements.

7. CONCLUSION

7.1. SUMMARIZING CONCLUSION

In light of recent events with the reform of the European data protection legislation and the increasing opportunities of monitoring the Internet, the purpose of this study has been to examine the possible existence of a connection between the European public debate regarding privacy rights on the Internet and the proposed data protection legislation reform that the EU has presented and the subsequent why/why not of such a connection. The discursive construction in the European public debate as well as in the EU material has been analyzed and discussed in the two previous chapters, chapter 5 and 6. An initial discourse analysis based on discourse theory as presented by Laclau and Mouffe shows that the EU's proposed data protection reform is discursively constructed with technology as a nodal point and simultaneous floating signifier, indicating a discursive struggle within the EU material. The public debate during the periods of 2010-2011 and 2012-2013 is constructed around the signs surveillance and the user and surveillance and legislation as nodal points. The apparent antagonism from the EU documents is not shared with the material from the public debate, which on the contrary is surprisingly closed.

The last part of the analysis, guided by a sociological theory of lawmaking focused on public opinion as an influence on the lawmaking process and mass media as an impetus for law, points to the public debate's ability to influence legislation. The main change within the public debate during these two periods is the move away from the user-oriented approach in the discussion with an advantage for the surveillance discourse. During the 2010-2011 period in the public debate, the user discourse was given much space which have influenced the EU legislation, where the technology heavy discourse is much connected to how this would affect the individual Internet users. The user-oriented perspective has been taken into consideration with a focus on the complicated situation with Internet users' privacy. With the analytical tools provided by the chosen sociological theory of lawmaking it is concluded that the mass media is able to function as a validator, symbol-provider, legitimizer and focus-giver. This has given the public debate sufficient power to influence the outline of the EU's proposed data protection legislation reform.

7.2. THE FUTURE: FURTHER RESEARCH?

As with many other studies, this study has most likely raised more new questions than it has answered. It has been built on analyzing material from the EU as well as from the European public debate. Material from the media from two different EU countries, Sweden and the United Kingdom, were chosen in order to better support the reference to the *European* public debate. With the consideration of accessibility and timeframe and my own shortcomings as a researcher when it comes to language, Sweden and the UK are not the two most diverse EU countries. For future research, it would thus be highly interesting to expand the design from this study to cover material from the public debate in several other EU countries. The utility of such a study is mainly twofold. First, it may strengthen and/or readjust the arguments from this study while simultaneously presenting an opportunity to study the process of passing down EU legislation to individual member states. Second, such a study would consequently also offer a chance to expand the comparative nature of this study to not only cover an analysis of the relationship between the EU and the member states but also the relationship between individual member states. For example, an interesting question to focus on could be whether the public debate in some EU member states seems to have more power to influence not only EU legislation but other EU member states as well. This question would automatically draw attention to broader issues such as legal pluralism and what countries' laws dictate the legal reality of other countries. Furthermore, this is not something that is only relevant to the study of data protection legislation and privacy but an approach that should be suitable for any kind of sociology of law study that focuses on the EU and the legal aspects of the EU. Considering the value of the results of such a study, it would most likely also benefit other areas such as economics and political science. (For example, cost (in)effectiveness of legislation and the influence and relationship between different states.)

Returning quickly to the short comment made in chapter 6.1. EU's proposed data protection legislation reform, it deserves to be underlined a final time that some of the discursive connections identified in this study could be discussed further in relation to other theoretical bases. The technology-development-globalization connection gives

great substance for studying the relationship between technology and legislation by examining it from a globalization perspective. Also, the note on development, economic growth and innovation opens up an interesting possibility of discussing technology and legislation in relation to a theoretical base such as neoliberalism.

As previously mentioned, the discourse theory as presented by Laclau and Mouffe has proved to be highly useful for mapping information from different types of material and I would go as far as to claim that in combination with the P-C-S method it could be successfully used on any kind of material. However studying texts and written material can certainly be performed in an almost endless number of ways. Depending on the purpose and the design of the study, I find that the theoretical base of critical discourse analysis, narrative analysis and argumentation theory would also be highly interesting for future legal studies in general and for future sociology of law studies in particular.

Finally, it should be pointed out that the EU's proposed data protection legislation reform has not been passed yet. Thus, at this point there is no way of knowing or even a possibility to study the actual consequence of this "new" legislation on Internet privacy. It would therefore be highly interesting to continue building on this study a few years after the implementation of the new legislation in order to determine the successfulness of the reform and also to get a more complete view of how legislation and society through the public debate relate to each other. This would definitely be a good springboard for developing the model that was discussed in chapter 6.3. ultimately presenting a good foundation for answering questions regarding what potential social change certain legal changes might lead to and the level of social change that precede legal change.

BIBLIOGRAPHY

Akdeniz, Yaman (2002) Anonymity, Democracy, and Cyberspace. *Social Research,* Vol. 69, No. 1, pp. 223-237.

Allen, Christina (1999) Internet Anonymity in Contexts. *Information Society,* Vol. 15, No. 2, pp. 145-146.

Balz, Suzan Dionne & Hance, Olivier (1996) Privacy and the Internet: Intrusion, surveillance and personal data. *International Review of Law, Computers & Technology,* Vol. 10, No. 2, pp. 219-234.

Banakar, Reza (2002) Sociological Jurisprudence. In: Banakar, Reza & Travers, Max (Ed.), *An Introduction to Law and Social Theory,* pp.33-49. Oxford, UK: Hart Publishing.

Baumer, David L, Earp, Julia & Poindexter, J. C. (2004) Internet privacy law: A comparison between the United States and the European Union. *Computers & Security*, Vol. 23, No. 5, pp. 400-412.

Bélanger, France & Crossler, Robert E. (2011) Privacy in the digital age: A review of Information Privacy Research in Information Systems. *MIS Quarterly,* Vol. 35, No. 4, pp. 1017-1041.

Brügger, Niels (2012) When the Present Web is Later the Past: Web Historiography, Digital History, and Internet Studies. *Historical Social Research,* Vol. 37, No. 4, pp. 102-117.

Christopherson, Kimberly M. (2007) The positive and negative implications of anonymity in Internet social interactions: "On the Internet, Nobody Knows You're a Dog". *Computers in Human Behavior,* Vol. 23, No. 6, pp. 3038-3056.

Daly, Maureen (2013) Is there an entitlement to anonymity? A European and international analysis. *European Intellectual Property Review,* Vol. 35, No. 4, pp. 198-211.

Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*. Cambridge, UK: Cambridge University Press.

De Hert, Paul & Papakonstantinou, Vagelis (2012) The proposed data protection Regulation replacing Directive 95/46/EC: A sound system for the protection of individuals. *Computer Law & Security Review,* Vol. 28, No. 2, pp. 130-142.

Gilbert, Francoise (2012) Proposed EU data protection regulation: The good, the bad and the unknown. *Journal of Internet Law,* Vol. 15, No. 10, pp. 1- 34.

Hinde, Stephen (2003) Privacy legislation: A comparison of the US and European approaches. *Computers and Security,* Vol. 22, No. 5, pp. 378-387.

Kirkpatrick, David (2010) *The Facebook Effect: The Inside Story of the Company that is connecting the world.* New York, USA: Simon & Schuster.

Laclau, Ernesto & Mouffe, Chantal (1985) *Hegemony and Socialist Strategy.* London, UK: Verso.

Lessig, Lawrence (2008) Code: And Other Laws of Cyberspace, Version 2.0. New York, US: Basic Books [Electronic version].

Lucchi, Nicola (2011) Access to Network Services and Protection of Constitutional rights: Recognizing the Essential Role of Internet Access for the Freedom of Expression. *Cardozo Journal of International and Comparative Law,* Vol. 19, No. 3, pp. 645-678.

Mantelero, Alessandro (2013) The EU Proposal for a general data protection regulation and the roots of the 'right to be forgotten'. *Computer Law & Security Review,* Vol. 29, No. 3, pp. 229-235.

Mathiesen, Thomas (2013) *Towards a surveillant society: the rise of surveillance systems in Europe.* London, UK: Waterside.

Mathiesen, Thomas (2005) *Rättsväsendet i samhället*. Lund, Sweden: Studentlitteratur.

McKenna, Katelyn Y. A. & Bargh, John A. (1999) Causes and consequences of social interaction on the Internet: A Conceptual Framework. *Media Psychology,* Vol. 1, No. 3, pp. 249-269.

Nelken, David (2008) Eugen Ehrlich, Living Law and Plural Legalities. *Theoretical Inquiries in Law,* Vol. 9, No. 2, pp. 443-472.

Poullet, Yves (2006) EU Data protection policy. The Directive 95/46/EC: Ten years after. *Computer Law and Security Report,* Vol. 22, No. 3, pp. 206-217.

Rowland, Diane (1998) Cyberspace – A contemporary Utopia? *The Journal of Information, Law and Technology,* No. 3.

Steinke, Gerhard (2002) Data privacy approaches from US and EU perspectives. *Telematics and Informatics,* Vol. 19, No. 2, pp. 193-200.

Svensson, Måns & Larsson, Stefan (2012) Intellectual Property Law Compliance in Europe: Illegal File sharing and the Role of Social Norms. *New Media and Society,* Vol. 14, No. 7, pp. 1147-1163.

Thierer, Adam (2013) The pursuit of privacy in a world where information control is failing. *Harvard Journal of Law & Public Policy,* Vol. 36, No. 2, pp. 409-455.

Tzanou, Maria (2013) Is Data protection the same as privacy? An analysis of telecommunications' metadata retention measures. *Journal of Internet Law,* Vol. 17, No. 3, pp. 21-34.

Vago, Steven (2009) *Law & Society.* London, UK: Pearson Education LTD.

Vitale, Angela (2002) The EU Privacy directive and the resulting safety harbor: The Negative Effects on U.S. legislation concerning privacy on the Internet. *Vanderbilt Journal of Transnational Law,* Vol. 35, No. 1, pp. 321-358.

Walker, Robert Kirk (2012) The right to be forgotten. *Hastings Law Journal,* Vol. 64, No. 1, pp. 257-286.

OFFICIAL DOCUMENTS AND LEGISLATION

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

European Convention on Human Rights

European Commission (2012) Explanatory memorandum in the *Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)*, COM/2013/11 final

European Commission (2012) *Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions - Safeguarding Privacy in a Connected world, A European Data protection framework for the 21st Century*, COM/2012/09 final

ELECTRONIC SOURCES

All electronic sources were verified May 15, 2014.

European Commission (2011) *Special Eurobarometer 359 – Attitudes on Data Protection and Electronic Identity in the European Union Report,* retrieved October 10th 2013 from http://ec.europa.eu/public_opinion/archives/ebs/ebs_359_en.pdf

European Commission (2012) *Commission proposes a comprehensive reform of the data protection rules,* viewed September 15th at http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm

ITU International Telecommunications Union (2013) *The World in 2013: ICT Facts and Figures,* retrieved September 15th 2013 from http://www.itu.int/en/ITU-D/Statistics/Documents/facts/ICTFactsFigures2013-e.pdf

Oxford Dictionaries (2013) Definitions and information of the concepts of "Internet" and "cyberspace", viewed September 20th 2013 at http://oxforddictionaries.com

The Guardian (2013) *NSA Prism program taps in to user data of Apple, Google and others,* published June 6th 2013, viewed November 30th 2013 at http://www.theguardian.com/world/2013/jun/06/us-tech-giants-nsa-data

The Telegraph (2013) *EU judges to hear Google 'right to be forgotten' case,* viewed October 8th 2013 at http://www.telegraph.co.uk/technology/google/9895279/EU-judges-to-hear-Google-right-to-be-forgotten-case.html

Washington Post (2013) *U.S., British intelligence mining data from nine U.S. Internet companies in broad secret program,* published June 6th 2013, viewed November 30th 2013 at http://www.washingtonpost.com/investigations/us-intelligence-mining-data-from-nine-us-internet-companies-in-broad-secret-program/2013/06/06/3a0c0da8-cebf-11e2-8845-d970ccb04497_story.html

INTERNET ARTICLES

The Daily Telegraph

T1
Douglas, Ian – News of data privacy day goes largely unnoticed
http://blogs.telegraph.co.uk/technology/iandouglas/100004607/news-of-data-privacy-day-goes-largely-unnoticed/

T2
Richmond, Shane – Eric Schmidt: Google gets close to 'the creepy line'
http://blogs.telegraph.co.uk/technology/shanerichmond/100005766/eric-schmidt-getting-close-to-the-creepy-line/

T3
Richmond, Shane – Eric Schmidt: If you don't like street view, move house
http://blogs.telegraph.co.uk/technology/shanerichmond/100005899/eric-schmidt-if-you-dont-like-street-view-move-house/

T4
Richmond, Shane – Facebook must stop tricking its users, says Danah Boyd
http://blogs.telegraph.co.uk/technology/shanerichmond/100005181/facebook-must-stop-tricking-its-users-says-danah-boyd/

T5
Richmond, Shane – Germans blur their homes on Google street view. But why?
http://blogs.telegraph.co.uk/technology/shanerichmond/100005975/germans-blur-their-homes-on-google-street-view-but-why/

T6
Richmond, Shane – Google and Facebook are fighting to control your data
http://blogs.telegraph.co.uk/technology/shanerichmond/100005989/google-and-facebook-are-fighting-to-control-your-data/

T7
Richmond, Shane – Privacy is not a beta, Google
http://blogs.telegraph.co.uk/technology/shanerichmond/100004963/privacy-is-not-a-beta-google/

T8
Richmond, Shane – SXSW 2010: Google and Facebook failed on privacy, says Danah Boyd
http://blogs.telegraph.co.uk/technology/shanerichmond/100004756/sxsw-2010-google-and-facebook-failed-on-privacy-says-danah-boyd/

T9
Jackson, Rob – Euro red tape and Government dithering is about to crush Britain's digital economy
http://blogs.telegraph.co.uk/technology/robjackson/100007033/euro-red-tape-and-government-dithering-is-about-to-crush-britains-digital-economy/

T10

Jackson, Rob – Google Analytics: if the EU turns nasty, it could cripple UK businesses
http://blogs.telegraph.co.uk/technology/robjackson/100008189/google-analytics-if-the-eu-turns-nasty-it-could-cripple-uk-businesses/

T11
Foxton, Willard – If dangerous Islamists are viewing porn, do we really mind the NSA blackmailing them?
http://blogs.telegraph.co.uk/technology/willardfoxton2/100011589/if-dangerous-islamists-are-viewing-porn-do-we-really-mind-the-nsa-blackmailing-them/

T12
Colville, Robert – Snooping Bill: Is the Government sinister, spendthrift, or both?
http://blogs.telegraph.co.uk/news/robertcolvile/100166324/snooping-bill-is-the-government-sinister-or-spendthrift-or-both/

T13
Hodges, Dan – In defence of Big Brother: I want more snooping, not less
http://blogs.telegraph.co.uk/news/danhodges/100149400/in-defence-of-big-brother-i-want-more-snooping-not-less/

T14
Wright, Mic – For once, Julian Assange is right. Global digital surveillance is a reality – and it's happening to you, not just people who post offensive tweets
http://blogs.telegraph.co.uk/technology/micwright/100008375/for-once-julian-assange-is-right-global-digital-surveillance-is-a-reality-and-its-happening-to-you-not-just-people-who-post-offensive-tweets/

T15
Daley, Janet – Should the state be allowed to collect everyone's data?
http://blogs.telegraph.co.uk/news/janetdaley/100249929/should-the-state-be-allowed-to-collect-everyones-data/

Aftonbladet

A1
Andersson, Magnus, Svensson, Gun & Jensen, Mary X – Datalagringen – ett krig mot integriteten
http://www.aftonbladet.se/debatt/article12341161.ab

A2
Troberg, Anna – Hoten mot ett fritt internet hotar även hbt-rörelsen
http://www.aftonbladet.se/debatt/debattamnen/internet/article12406011.ab

A3
Sundin, Mathias – Integriteten hotad – av datadirektiv
http://www.aftonbladet.se/debatt/article12331234.ab

A4
Lindberg, Anders – Men terrorn slår till igen
http://www.aftonbladet.se/ledare/ledarkronika/anderslindberg/article14560758.ab

A5

Franchell, Eva – Vad ska Facebook göra med Lena Ph:s hjärta?
http://www.aftonbladet.se/ledare/ledarkronika/evafranchell/article15024888.ab

A6
Troberg, Anna – Övervakning ett olyckligt normaltillstånd i Sverige
http://www.aftonbladet.se/debatt/article17531317.ab

A7
Ferm, Maria – Deltar Sverige i USA:s övervakning av nätet?
http://www.aftonbladet.se/debatt/debattamnen/internet/article17419364.ab

A8
Troberg, Anna – Fegt att inte ta upp USA:s övervakning
http://www.aftonbladet.se/debatt/debattamnen/varlden/article17405069.ab

A9
Wester, Torbjörn – Sverige bakom EU:s datalagringsdirektiv
http://www.aftonbladet.se/debatt/article16941300.ab

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Reding, Viviane – USA:s övervakning av européer är en skandal
http://www.aftonbladet.se/debatt/debattamnen/internet/article17016486.ab

A11
Kielos, Katrine – Det är vi som är skurken
http://www.aftonbladet.se/ledare/ledarkronika/katrinekielos/article18093580.ab

A12
Lindberg, Anders – Din integritet är inte viktig för politikerna
http://www.aftonbladet.se/ledare/ledarkronika/anderslindberg/article17903515.ab

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Lindberg, Anders – Spionerar FRA på oss också?
http://www.aftonbladet.se/ledare/ledarkronika/anderslindberg/article17966757.ab