Privacy & Pandemics: Responsible Uses of Technology and Health Data During Times of Crisis

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Position statement

The global COVID-19 crisis has brought unprecedented challenges as governments worldwide attempt to control the spread of the virus. Digital technologies play contrasting roles in this context. States have successfully implemented a wide range of digital technologies to limit the spread of COVID-19, including information, symptoms checker, telemedicine and contact tracing apps. However, as observed in some parts of the world, these technological tools may seriously affect our fundamental rights to privacy and data protection.

Several countries have found success in containing the COVID-19 pandemic with the extensive use of tracking applications having an important role, despite criticism surrounding the sacrificing of data privacy.[1] Examples of such countries include South Korea,[2] Singapore[3] and China.[4] Although certain European countries, such as Ireland, discussed their intention to follow some of these intrusive models,[5] the EU eventually adopted a different approach. EU data protection legislation prohibits the bulk collection, access and storage of health data and location data. What contact tracing apps can do is process proximity data, i.e. information about the likelihood of

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[1] Cho, H., Ippolito, D., & Yu, Y. W. (2020). Contact tracing mobile apps for COVID-19: Privacy considerations and related trade-offs. *arXiv preprint arXiv:2003.11511*, https://arxiv.org/pdf/2003.11511.pdf

[2] 'COVID-19: How Korea is using innovative technology and AI to flatten the curve' *ITU news* (2 April 2020) <https://news.itu.int/covid-19-how-korea-is-using-innovative-technology-and-ai-to-flatten-the-curve/> accessed 21 September 2020

[3] Vernon J Lee, Calvin J Chiew and, Wei Xin Khong, 'Interrupting transmission of COVID-19: lessons from containment efforts in Singapore' (2020) 27(3) Journal of Travel Medicine 1 <https://doi.org/10.1093/jtm/taaa039> accessed 21 September 2020

[4] Zaheer Allam, Gourav Dey and David S. Jones, 'Artificial Intelligence (AI) Provided Early Detection of the Coronavirus (COVID-19) in China and Will Influence Future Urban Health Policy Internationally' (2020) 1(2) AI 156 <https://doi.org/10.3390/ai1020009> accessed 21 September 2020

[5] Hugh O'Connell, ''We're following South Korean model in coronavirus fight' - Varadkar plays down talk of lockdown in Ireland' *The Irish Independent* (23 March 2020) <https://www.independent.ie/world-news/coronavirus/were-following-south-korean-model-in-coronavirus-fight-varadkar-plays-down-talk-of-lockdown-in-ireland-39067488.html> accessed 21 September 2020

virus transmission based on the epidemiological distance and duration of contact between two individuals.

Notwithstanding the different approach adopted in the EU, contact-tracing apps have generally been a failure due to their general take-up rate required to be effective, which resulted unrealistic to achieve, and general privacy concerns.[6] We argue that this shows that, even in countries where data privacy is not formally at risk, citizens may have a different perception of what they think as legally permissible or safe from a fundamental rights perspective. From a socio-legal perspective, this phenomenon can be regarded as a discrepancy between formal legality and legal reality.

The multidisciplinary research project PRIVATT - Assessing Irish Attitudes to Privacy in Times of Covid-19, funded by Science Foundation Ireland, seeks to investigate such discrepancy between formal legality and legal reality in relation to the use of digital technology during the current pandemic by examining the perceptions of Irish citizens as regards the use of digital technologies to limit the spread of Covid-19. PRIVATT aims to address the grand challenge of national importance faced by the Irish government and health authorities of not having enough information on how citizens react to the use of digital technologies as part of the process for long term control of COVID-19. We argue that analysing the population's attitudes towards privacy in these challenging times and understanding the efficiency versus the privacy trade-off of current technological solutions used in fighting COVID-19 represents a crucial step in deciding which technological solutions together with the appropriate regulations would be the most effective in Ireland. As the COVID-19 crisis unfolds, it is essential to have a better understanding of Irish public attitudes to privacy in order to provide context for private and public stakeholders to make informed decisions when adopting technological or data processing solutions in the next phases of fighting COVID-19.

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[6] Jack Horgan-Jones, 'Coronavirus: Proposed HSE app sparks concern over privacy' *The Irish Times* (23 April 2020) <https://www.irishtimes.com/news/ireland/irish-news/coronavirus-proposed-hse-app-sparks-concern-over-privacy-1.4235473> accessed 21 September 2020; Jack Horgan-Jones, 'Coronavirus: Privacy advocates say HSE planning a 'super app' *The Irish Times* (10 April 2020) <https://www.irishtimes.com/news/ireland/irish-news/coronavirus-privacy-advocates-say-hse-planning-a-super-app-1.4225992> accessed 21 September 2020

PRIVATT is an interdisciplinary research project responding to this challenge and comprising three elements: an online survey; a social media sentiment analysis, and a socio-legal analysis of technological privacy impacts. Through the adoption of an existing machine learning solution, PRIVATT surveys the Irish public in relation to their attitude towards privacy and analyses the collected data. A particularly novel aspect of PRIVATT is the combination of this traditional survey method with performing an opinion and sentiment analysis on ethically sourced data from multiple Irish social media channels (including historical data from the start of the crisis) in order to capture the Irish public's attitudes toward privacy in times of COVID-19.

Following the technical analysis, PRIVATT will examine the results of the survey and social media sentiment analysis from a socio-legal point of view. As well as comparing digital solutions implemented in Ireland with those of other countries, within and beyond the EU, the legal component of PRIVATT will analyse the efficiency versus privacy trade-off of the technological solutions adopted in Ireland to fight the spread of COVID-19. Through the adoption of a socio-legal approach, PRIVATT will assess to what extent people perceive the use of digital technology to fight the spread of COVID-19 as illegal or dangerous from a fundamental rights perspective, notwithstanding its formal legality. Accordingly, it will determine if and to what extent a discrepancy between formal legality and legal reality is emerging in relation to the use of digital technology to tackle the COVID-19 crisis. Through a legal-technical analysis of privacy trade-offs and technological solutions in light of the Irish public's attitudes to privacy, PRIVATT aims to provide specific recommendations to key public and private stakeholders on which technological solutions are best suited for Ireland when responding to the COVID-19 crisis in light of the population's perception of these technologies.