Unpacking Encryption Rights

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Both the expanding circle of users of online communications technologies, and the advancements in data processing methods and techniques in the past decades, served to usher in a new era of unprecedented abundance of information available to intelligence agencies practicing mass online surveillance. In recent years users of online devices, platforms and services had grown more aware of such mass collection practices, inter alia due to the revelations made by Snowden and their aftermath. The demand for increased privacy protection measures prompted more and more online service providers to introduce advanced encryption methods to their platforms and devices, constraining online surveillance efforts by law enforcement and intelligence agencies worldwide.

Against this backdrop, the debate on cryptography regulation held in the 1990s (the 'crypto wars') has re-emerged. National security and police agencies, arguing that they are 'going dark', gradually losing access to more and more sources that are now protected by encryption, call for regulation requiring online service providers to enable them access to encrypted sources by ways of 'golden keys', 'back doors' or 'ghosts'.

The encryption-related debates, such as the aforementioned 'going dark' debate, as well as the compelled decryption and government hacking debates, raised calls for increased protection of the right to encrypt. This research project aims to analytically unpack the general concept of 'encryption rights' to specific encryption-related rights, freedoms and duties; to examine the protected interests by these different encryption rights, and their legal grounding.

This mapping of specific encryption rights serves to elucidate the existing debates by enabling a more accurate discourse, which pays attention to a wide array of protected interests, such as cybersecurity interests. The analytic framework developed in this project may provide academics and policy makers alike a nuanced approach to encryption-related dilemmas and policies, perhaps eventually contributing to more proportional solutions.