THE FEDERMANN
CYBER SECURITY CENTER
Cyber Law Program

Online Surveillance Law in Israel

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February 2019

Online Surveillance Law in Israel

Scope: Online Surveillance by government agencies

- Who?
  - Military bodies
  - Domestic Security Services
  - Non-military intelligence services
  - Cybersecurity agencies
  - Police and law enforcement agencies
  - Other government agencies
- How?
- When?
- Why?
- What?
- Where?

Online Surveillance Law in Israel

Scope: Online Surveillance by government agencies

- **Who**?
- **How**?
  - Interception
  - Stored data Acquisition
  - Cyber measures
  - Targeted/ Mass Surveillance
- **When?**
  - Past (stored data acquisition)
  - Present (real time interception)
  - Future (Predictive processing)
- **Why**?
- **What**?
- **Where?**

Online Surveillance Law in Israel

Scope: Online Surveillance by government agencies

- **Who**?
- **How**?
- **When?**
- **Why**?
  - National Security
  - Law Enforcement
  - Cybersecurity
  - Public Health
  - Economic well being
- **What**?
- **Where?**

Privacy vs. Security

- **The need for online surveillance**
- **Competing interests**
  - Privacy
  - Freedom of speech
  - Freedom of association
  - Autonomy
  - Equality
  - Cybersecurity

Privacy vs. Security

- Statutory framework for Online Surveillance
  - Balancing interests
  - Rule of Law
  - Limiting Intelligence creep / Abuse of power
  - Efficacy and clarity
  - Basis for oversight

Israeli Privacy Law: Constitutional framework

Basic Law: Human dignity and Liberty

Art. 7

(a**) All persons have the right to privacy and to intimacy.**
(b) There shall be no entry into the private premises of a person who has not consented thereto.
(c) No search shall be conducted on the private premises of a person, nor in the body or personal effects.
(d) **There shall be no violation of the confidentiality of conversation, or of the writings or records of a person.**

Art. 8

There shall be no violation of rights under this Basic Law except by a law befitting the values of the State of Israel, enacted for a **proper purpose**, and to **an extent no greater than is required.**

Israeli Privacy Law: Statutory framework

Privacy Protection Act, 5741-1981

Art. 1

No person shall infringe the privacy of another without his consent.

Art. 2

An infringement of privacy constitutes one of the following:
(2) eavesdropping in a manner prohibited under the Law;
(5) copying the contents of a letter or other scripts not intended for publication... without the permission of the addressee or the writer domain.

- **Data protection provisions (Chapter 2)**

Israeli Privacy Law: Statutory framework

Privacy Protection Act, 5741-1981

Art. 19: Exemption

(b) A Security Authority or a person employed by it or acting on its behalf shall bear no responsibility under this Law for an infringement reasonably committed within the scope of their functions and for the purpose of performance thereof

(c) "Security Authority", for purpose of this section - any of the following:
(1) the Israel Police;
(2) the Intelligence Branch of the General Staff of the Israel Defense Forces, and the Military Police;
(3) the Israeli Security Service; (ISA)
(4) the Institute for Intelligence and Special Assignments. (Mossad)
(5) The Witness Protection Authority

Israeli Online Surveillance Laws

Purpose / Data type	Law Enforcement	National Security
Content	Wiretap Act	Wiretap Act
Metadata	Metadata Act	ISA act

Israeli Online Surveillance Law: the Wiretap Act 1979

- **What is wiretapping? Art. 1**

"Eavesdropping" - Using a device to record, copy or listen to the Communications of a person.
"Wiretapping" - Eavesdropping Communications without the consent of any of its parties.
"Communications" - aurally or by telecom, including but not limited to telephony, mobile telephony, radio, facsimile, telex, telprinter or inter-computer communications.

- **Art. 2 - General Prohibition against wiretapping**
  - Illegal wiretapping
  - Misuse of communications acquired by Wiretapping
  - illegal placement of wiretap devices

Israeli Online Surveillance Law: the Wiretap Act

Wiretapping for Law enforcement Purposes

Art. 6

(a) The president of a district court, or an authorized vice president of district court, may, subject to an application made by an authorized police officer, order a wiretap, provided that he has been convinced, while taking into account the extent of the infringement upon privacy that, it is necessary for the detection, investigation or prevention of Serious Crime, for the detection and apprehension of such offenders, or for an investigation for the forfeiture related to a Serious Crime.

Art. 7 (Emergency wiretap)

(a) If the General Police Commissioner is convinced that in order to prevent Serious Crime or to detect its culprits, an immediate wiretap is necessary, and its authorization pursuant to art. 6 cannot be timely obtained, he may authorized it in writing...for a period not exceeding 48 hours.

Israeli Online Surveillance Law: the Wiretap Act

Wiretapping for National Security Purposes

- **Art. 4**

(a) A minister, subject to a written application by a head of a Security Authority, may, if he has been convinced, while taking in to account the extent of infringement upon privacy, that it is necessary for national security purposes, to issue a written order for a wiretap.

- **Art. 5 (Emergency wiretap)**

(a) If a head of a Security Authority is convinced that national security requires an immediate wiretap, and its authorization pursuant to art. 4, 4a or 9a(a)(1) cannot be timely obtained, he may authorized it in writing...for a period not exceeding 48 hours.

Israeli Online Surveillance Law: the Wiretap Act

Additional Provisions

- Counterintelligence
- Listening in on the privileged
- Art. 8 public exemptions
- use as evidence

Israeli Online Surveillance Law: Metadata Act

- **Art. 3**

The court may, pursuant to an application of an authorized police officer or a representative of another Investigatory Authority to issue an order thereto to obtain communication data from a telecommunication licensee's database...if convinced that it is necessary for the following purposes, and provided that obtaining such data will not infringe upon an individual's privacy beyond the necessary extent:

(1) Life saving;
(2) Detection, investigation or prevention of criminal; offences;
(3) Detection of offenders and their prosecution;
(4) forfeiture.

- **Emergency Procedure**
- **User ID national database**
- **HCJ 3809/08 ACRI v. Israeli Police : no bulk collection**

Israeli Online Surveillance Law: ISA Act

- **Art. 11**

(b) The Prime Minister may prescribe by rules that categories of information found in the databases of a license holder as specified in the rules are required by the Service for the purpose of fulfilling its functions under this Law and that the license holder must transmit information of these categories to the Service.

(c) Use of information found in a database as stated in subsection (b) shall be made under a permit from the Head of the Service, after he has been convinced that this was required by the Service to fulfill its functions under this Law; the license shall specify particulars, wherever possible, about the information required, the purpose for which it is required and the particulars of the database in which it is found; the permit shall be for the period fixed in it which shall not be in excess of six months, although the Head of the Service may renew it under the provisions of this subsection.

Israeli Online Surveillance Law: Telecommunication Law

- **Art. 13**

(b) The Prime Minister, in consultation with the Minister, pursuant to the request of the Defense Minister, the Internal Defense Minister, ISA or the Mossad, made under considerations of national security or public safety....may order the licensee...in the following matters:

:

(2) Installing a device, technologically configuring a device....including providing access to a device, to the extent it is required for the performance of the security forces duties or executing their lawful powers.

:

(4) information relating to an order given by the Prime Minister under this article is secret...

Israeli Online Surveillance Law: Oversight mechanisms

- Internal oversight?
- Executive oversight
- Parliamentary oversight
- Judicial review
- NGOs?

Israeli Online Surveillance Law: INCD draft bill

- Detection and Identification Array
- Purpose Limitation
- Focus on data with cybersecurity significance
- Privacy by design

Israeli Online Surveillance Law: Summary

- **Who?**
- **How?**
- **When?**
- **Why?**
- **What?**
- **Where?**

Israeli Online Surveillance Law: Call for reform

- Data retention
- Mass surveillance
- OSINT/WEBINT
- Equipment interference
- Transparency
- Oversight

Thank you!

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