Reclaiming informational privacy under government mass surveillance: An assessment of the u.s. Federal courts cases

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Abstrak

This article seeks to discuss the impact on privacy of personal information when the state couple big data technology with public measures to conduct massive metadata surveillance without targeting specific persons or having a specific purpose to surveil. Methodologically, this article employs constitutional law and comparative legal analysis to critically examine litigation in the U.S. triggered by government mass surveillance and establishes a conceptual category of "government mass surveillance," which exhibit several elements. This is followed by an examination of the theoretical development and practical experience drawn from several seminal cases of the U.S. Federal Courts. This article found that the treasure trove of litigation in the U.S. Federal Courts have significantly changed people's perceptions and presumptions of privacy. The 2013 Snowden disclosures profoundly revealed that the federal judiciary of the U.S. is confronted by the inherent defects and deficiencies embedded in the theoretical framework of "reasonable expectations of privacy" and "third-party doctrine," which was established in the 1980s and based on the dichotomy of the public / private domain. This article further introduces the "mosaic theory" as a supplementary interpretative approach and evaluates its enlightening significance. This article concludes that the rigorous debate between the U.S. federal court's judgment and American legal scholarship not only outlines the difficulty and urgency of reclaiming informational privacy in the era of big data, but also dictates a paradigm shift in our expectation of informational privacy toward a less standardized and more flexible interpretation. These insightful lessons should inform Taiwanese courts as they respond to prevailing issues presented by government mass surveillance.