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The Right to Attentional Privacy

Introduction

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What does a judge presiding over her court, a researcher working in an astronomical observatory[1, and a monk observing monastic silence have in common? The answer is that they are all members of a small group of adults who go about their day without being continuously distracted by a smartphone, although admittedly on account of varied individual commitments and institutional constraints. Unlike this unusual group, most of us spend our day in a continuous state of technology induced distraction. Claudia Roda notes, ?the advent of information and communication technologies has dramatically shifted the balance between the availability of information and the ability of humans to process information.?[2 We have migrated, albeit not seamlessly, from an age where information was scarce to an age where attention is scarce.[3 Scarcity of attention has led to a slew of warnings from both experts and regulators about the addictive and distractive nature of technologies.[4

Against the backdrop of this growing recognition of the importance of human attention and technology's adverse impact on it, this paper seeks to formulate an ethical response to the challenges posed by the rise of the attention economy. In this paper, I highlight the vital role played by attention in preserving individual autonomy. I seek to protect this scarce human resource through a right to attentional privacy. Privacy has been traditionally understood in informational context. This paper's chief contribution lies in articulation of a dual conception of right to attentional privacy, which keeps intrusive, immersive, persuasive, and addictive technologies at bay. I begin by defining attention and then provide a brief account of previous attempts at formulating a freedom or right to attention. I then highlight the techno-commercial practices adopted by Big Tech firms to harvest attention by configuring an individual's choice environment through hypernudges[5 and deploying supernormal stimuli[6 to divert an individual's attention towards artificial target of advertisements.[7. I analyze the various forms of intrusive and addictive technologies before formulating a dual conception of positive and negative right to attentional privacy.

[1 Wayne Drash and Evelio Contreras, America's Quietest Town where Cell Phones are Banned, CNN (2015), https://edition.cnn.com/interactive/2015/07/us/quiet-town-american-story/; Dan Levin, No Cell Signal, No Wi-Fi, No Problem. Growing Up Inside America's ?Quiet Zone' N.Y. Times (Mar. 6, 2020), https://www.nytimes.com/2020/03/06/us/green-bank-west-virginia-quiet-zone.html.

[2 Claudia Roda, Introduction, in Human Attention in Digital Environments 1, 1 (Claudia Roda ed., 2011).

[3 See Michael H. Goldhaber, The Attention Economy and the Net, First Monday (Apr. 1997), https://firstmonday.org/ojs/index.php/fm/article/view/519/440/.

[4 See Bernadka Dubicka & Louise Theodosiou, Royal College of Psychiatrists, CR225: Technology Use and the Mental Health of Children and Young People (2020); Digital, Culture, Media & Sport Committee, House of Commons, Immersive and addictive technologies (2019).

[5 Karen Yeung, ?Hypernudge': Big Data as a mode of regulation by design, 20 (1) Information, Communication & Society 118, 122 (2017).

[6 Niko Tinbergen, The Herring Gull's World: A Study of the Social Behavior of Birds 206-208 (Revised Ed. 1960).

[7 Yogi Hale Hendlin, I Am a Fake Loop: The Effects of Advertising-Based Artificial Selection, 12 Biosemiotics 131, 145 (2019).

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