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Privacy, Reputation, and Trust:  
Some Implications for Data Protection

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**ABSTRACT:**

The present contribution analyses the connection between privacy and trust, with regard to data protection. In particular, it shows how the need to facilitate trust-based relationships may justify some limitations of privacy (in the sense of a right to self-determination over personal data), but may also provide some grounds for the protection of privacy.

**KEYWORDS:**

law, fundamental rights

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# Privacy, Reputation, and Trust: Some Implications for Data Protection\*

Giovanni Sartor

## 1 Privacy as self-determination over one's personal data

It has often been remarked that the right to privacy has greatly changed in the last decades, in connection with the development of information technologies: information privacy<sup>1</sup> can no longer be viewed as a legal barrier protecting the intimate space from unwanted intrusions; it has become a power of decision over one's own information (personal data),<sup>2</sup> the right to informational self-determination.<sup>3</sup> Such a right to informational self-determination seems to include one's power to:

- determine whether a personal datum can be collected (control over data collection);
- determine whether the datum can be transmitted (control over data circulation);
- determine the ways in which the datum can be used (control over data usage).

Moreover, even after agreeing to the treatment of one's own information, one has the power to:

- view the data (right of access);
- obtain the rectification of an incorrect datum or the integration of an incomplete datum (control over the adequacy of the data);
- obtain the deletion of a datum (control over the persistence of the data, right to oblivion).

Obviously, the regulation of data protection is not limited to the statement of the powers just listed. First of all, the right to informational self-determination is limited by legal provisions establishing that certain kinds of personal data can legitimately be processed—by certain subjects

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<sup>1</sup>I shall limit my analysis to information privacy, namely, privacy concerning personal information, without addressing the broader and much controversial idea of privacy as freedom of action in the private sphere, an idea which can be found in some US judicial decisions (like the famous abortion case *Roe v. Wade*, of 1973).

<sup>2</sup>For our purposes, we do not need to distinguish between information and data (though this distinction is important in some domains, like knowledge management). We shall rather use these terms interchangeably, as loosely synonymous.

<sup>3</sup>*Informationelle Selbstbestimmung*, in the words used by the German Constitutional Court in a famous decision of 1983, which upheld this right with regard to information gathered and processed by government agencies for a national census.

and for certain purposes—even without the consent of the person concerned.<sup>4</sup> Moreover, certain forms or contents may be required for consent to be legally valid (for instance, the declaration of consent may need to be in writing, or to concern a sufficiently delimited domain and purpose). Finally, even consent may be insufficient to make processing permissible, under certain conditions, for certain types of data, or for certain types of uses (for instance, an official authorisation may be required for processing sensitive data, and such processing may in any case be limited to specific aims).<sup>5</sup>

However, for our purposes it is useful to abstract from such limitations and qualifications—as well from the many issues concerning the foundations and the characterisation of the right to privacy in the information society<sup>6</sup>— and present the right to privacy as an absolute right, with regard to both its counterparts (as a right towards any other subject) and its content (as a right concerning any type of personal data). On the basis of an absolute protection of the right to informational self-determination, any treatment (collection, processing, communication, etc.) of a personal datum would be allowed only under the condition that the concerned person freely consents to the treatment.

## 2 Trust

By *trust* in a very generic sense, we usually mean one's expectation that another will act in a way that is advantageous to oneself, supplemented by one's availability to act upon such expectation, accepting the corresponding risks.<sup>7</sup>

In the last years attention has been devoted to the notion of trust, and its importance has often been stressed with regard to the conditions of the information society. Trust appears indeed to

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<sup>4</sup>As indicated in art. 8, par. 2, of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

<sup>5</sup>See art. 8, par. 2 (a), of Directive 95/46/EC, which enables national states to establish that the prohibition to process sensitive data may not be lifted by the data subject's consent.

<sup>6</sup>To do that we would need to examine the evolution of the debate on data protection, in connection with technological development, from the beginnings of informatisation (see for instance Westin 1967), to the diffusion of personal computing (see for instance Bing 1992), to the Internet age (see for instance Lessig 1999, Chap. 13).

<sup>7</sup>Many different notions of trust exist in the literature, but we do not need to commit ourselves to any one of such notions. Some authors have proposed strong concepts of trust, like Fukuyama 1995, 26, according to whom: "Trust is the expectation that arises within a community of regular, honest, and cooperative behaviour, based on commonly shared norms, on the part of other members of the community." A normative concept of trust is also defended, for instance, by Herzberg 1988, 319, according to whom "unlike reliance, the grammar of trust involves a perspective of justice: trust can only concern that which one person can rightfully demand of another." The idea that trust relationships have a component which is irreducible to rational expectation is also developed by Baier 1986, who views trust (as opposed to mere reliance) as based upon the (truster's belief in the) trustee's good will towards the truster. Others have proposed more neutral ideas. For instance, a notion of trust as encapsulated interest is proposed by Harding 1991 (who views the truster's expectation as being based upon the assumption that it is in the trustee's interest to take care of the truster's interest, such trustee's interest not necessarily having a moral or altruistic nature). Another non-normative view of trust is developed by Castelfranchi and Falcone 2005, according to whom there is trust whenever all of the following conditions obtain: (a) the truster has a certain goal, (b) the truster believes that the trustee is both capable and willing to achieve this goal, (c) the truster depends upon the trustee for the achievement of the goal, and (d) the truster believes that the goal will be achieved thanks to the cooperation of the trustee. For instance, according to the latter view, I trust my contractual counterpart when I believe that he or she is capable and available to perform, I depend on him or her for such performance (after the execution of the contract, making a new one, with a different partner, would be difficult and costly), and finally I believe that the counterpart will actually accomplish the performance.

be the precondition of many social relations: without trust one would not enter into any risky relationship (namely, any relationship such that the potential risks are greater than the possible gains), and thus one would avoid most meaningful social contacts, both in the economical and in the personal dimension. How could we face social life if we did not trust our fellows, if we did not expect, up to a certain extent, that they will behave properly, in line with our expectations (that doctors will cure us, that sellers will deliver their merchandise, and so on). Similarly, we would not make use of technological systems and of the corresponding socio-technical infrastructures unless we had some trust in their proper functioning, and in the correctness and loyalty of their administrators.<sup>8</sup>

For our purposes it is useful to refer to the distinction, originally proposed by Luhmann 1988, between two species of trust, which we may call *confiding* and *active trust*.<sup>9</sup> According to Luhmann, confiding is a merely passive attitude (we conduct our lives in the expectation that certain negative events will not take place: that a certain level of public security will be maintained, that the judiciary will decide cases with some rationality and impartiality, that money will not suddenly lose all its worth). Active trust, instead, presupposes a decision, namely, the choice to expose oneself to a risk toward the counterpart, in the expectation that the counterpart will not disappoint such expectation.<sup>10</sup> Such a choice happens for instance when a client enters a contract (in the expectation that the chosen provider will perform) or when partners establish a commercial company (each one expecting that each other will be both able and willing to contribute to the company, having a loyal and cooperative attitude), but also when one enters into a friendly or even an affectionate relationship, or when one confers (or contributes to confer) political representation. The preservation of confidence is certainly an important objective: confidence is the psychological counterpart of security and a necessary precondition of well being within any social framework. However, active trust (in the sense just specified) is even more important, since the decision to rely upon is an necessary precondition of many kinds of cooperative social action.<sup>11</sup> If we were to abstain from relying on others, we would need to renounce many social contacts: economical exchanges, communications, social relationships would dwindle.

It has been observed that trust can emerge in various ways: it may depend on the special

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<sup>8</sup>For an interdisciplinary discussion of trust, see Gambetta 1990.

<sup>9</sup>To distinguish these two attitudes, Luhmann uses the words “confidence” and “trust” tout court. We speak of *active trust* to denote the second attitude, in order to avoid terminological confusion, while continuing to use term “trust” to subsume both ideas.

<sup>10</sup>Luhmann 1988 characterises as follows the distinction between confidence and active trust: “The normal case is that of confidence. You are confident that your expectations will not be disappointed: that politicians will try to avoid war, that cars will not break down or suddenly leave the street and hit you on your Sunday afternoon walk. You cannot live without forming expectations with respect to contingent events and you have to neglect, more or less, the possibility of disappointment. . . . Trust, on the other hand, requires a previous engagement on your part. It presupposes a situation of risk. You may or may not buy a used car which turns out to be a ‘lemon’. . . . You can avoid taking the risk, but only if you are willing to waive the associated advantages. . . . The distinction between confidence and trust thus depends on perception and attribution. If you do not consider alternatives (every morning you leave the house without a weapon!), you are in a situation of confidence. If you choose one action in preference to others in spite of the possibility of being disappointed by the action of others, you define the situation as one of trust. . . . Moreover, trust is only possible in a situation where the possible damage may be greater than the advantage you seek . . . . Trust is only required if a bad outcome would make you regret your action.”

<sup>11</sup>Loss of confidence and loss of trust are distinguished as follows by Luhmann 1988: “The lack of confidence will lead to feelings of alienation, and eventually to retreat into smaller worlds of purely local importance to new forms of “ethnogenesis”, to a fashionable longing for an independent if modest living, to fundamentalist attitudes or other forms of retotalizing milieux and “life-worlds”. . . . The lack of trust, on the other hand, simply withdraws activities. It reduces the range of possibilities for rational action. It prevents, for example, early medication. It prevents, above all, capital investment under conditions of uncertainty and risk.”



history of one's interaction with one's counterpart, it may be connected to the fact that such a counterpart plays a certain professional role (consider for instance trust toward a doctor, a lawyer, or an accountant), that he or she belongs to a particular group or organisation. In any case, trusted expectations must not be disappointed too much: those who are too often let down, with consequences too negative, will less likely give trust in the future.

In this regard the connection between law and reliance becomes particularly relevant (see Memmo, Sartor and Quadri 2003), a connection which can take different shapes. Sometimes the law can provide an alternative to trust: legal protection is required because trust is lacking, there being no chance of obtaining spontaneous cooperation.<sup>12</sup> Moreover a heavily regulated environment may hinder the formation of trust-based relationships: I (being, for instance, a contractor, or a client of a public administration) do not expect that you (the other contractor, or the public official) will provide an adequate solution to my problem, taking into account my interests and needs; I know that I cannot delegate to you the care of such interests and needs, since you are focused only on complying with a set of detailed regulations, and I cannot expect anything more from you.

However, the thesis that there is a necessary conflict between law and trust can be contested by considering that in various circumstances the law can provide us with reasons for relying upon others (whatever further reasons, moral or not, we have for such a reliance). In fact, even if we endorsed a strongly normative notion of trust—namely, if we required, for an expectation to be qualified as trust, that it have a moral component, or that it assume an altruistic attitude by the trustee—it would remain true that the truster must also: (a) predict that the trustee will behave according to truster's expectation and (b) accept the risk of being disappointed. In both regards, the law can contribute to the rational formation of a trust attitude. On the one hand, legal penalties increases the chance that the trustee behave according to the truster's expectations (by adding the threat of punishment to the internal motivations of the the trustee and possibly also by appealing to an additional internal motivation of hers, namely, her endorsement of the obligation to comply with the law). On the other hand the law may diminish the expected losses of the disappointed truster (for instance, by providing the truster with compensation, or by enabling him to withdraw from a contract, as is the case in on-line sales, or by ensuring him the same result which he would have obtained if the trusted-to-happn situation had obtained).

In conclusion, the law can facilitate the choice to rely on one's counterpart, both by increasing the chance that reliance-based expectations are complied with and by diminishing the negative consequences of the violation of such expectations: by protecting the truster's expectations the law favours reliance (and thus it facilitates the formation of trust-based interactions).

### **3 Reputation**

Though trust can be based upon many different sources (social conventions, legal rules, professional ethics, the history of personal relationships, and so on), such sources are often unable to provide sufficient warrant: social rules are weak, especially between parties who are distant in space and culture (as in Internet contracts); legal proceedings are uncertain and costly, and they can entail negative consequences for those who start them; professional ethics give dubious indi-

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<sup>12</sup>For the thesis that trust and law are mutually alternative, see for instance Fukuyama 1995, 27, according to whom in individualistic societies the legal system—that is, “a system of formal rules and regulations, which have to be negotiated, agreed to, litigated, and enforced, sometimes by coercive means”—substitutes trust, but this substitution entails high “transaction costs” (like the cost of drafting very detailed contracts, and of litigating them).

cations, which are not always complied with; personal contacts may be superficial and unlikely to be repeated. In such cases rational reliance seems to require information about the individual counterpart one is interacting with, and in particular it may require reference to his or her social consideration, that is, to reputation. Such information may be useful, for instance, when we have to make an important purchase, of objects which are not familiar to us (a car, a financial product . . .), to entrust a professional (a doctor, a lawyer . . .) with a difficult and risky task, or to choose the counterpart with whom to execute an important contract.

By *reputation* we mean both the evaluative opinion that people (the public in general or certain sections of it) have of a particular person, and the social mechanism which produces such an opinion. One's reputation usually refers to specific attitudes and capacities, which may concern both one's capacity to adequately perform certain actions (for instance, the technical competence of a professional) and one's propensity to act thus, and to do so in an appropriate way (through cooperation, reciprocity, respect of existing conventions and of other people's interests). Reputation results from shared beliefs, which spread in a society as a consequence of complex social interactions: individuals form opinions concerning a certain person (on the basis of personal experience or of certain indexes), they convey such opinions (person *X* is . . .) or their beliefs about others' opinions (it is said that person *X* is . . .), these opinions and beliefs are adopted by others and further conveyed (see for instance Conte and Paolucci 2003).

The mechanism of reputation has a double social relevance.

Firstly, it provides a cognitive basis for our decisions to trust: we often choose to rely upon a certain person (and thus to face the risks which are entailed by our reliance and by our subsequent determinations), based on the positive reputation of this person. To the extent that reputation provides useful indications (to the extent that people having a good reputation actually tend to behave competently and properly), it appears to be an important mechanism of social cognition: as the invisible hand of the market assigns prices to things (beyond the usage-value they have for particular individuals), so the invisible judge of reputation confers its evaluation upon persons (beyond the view that the concerned person has of himself or herself, and beyond the opinion that any specific individual has of that person). The link between reputation and trust is particularly important in the global space of the Internet: in deciding whether to trust, for example, commercial partners with whom we never had contacts in the past (and with whom we are unlikely to have contacts in the future), we cannot rely on personal experience, but we must count on other people's experience or on the reputation which our partners enjoy. And we can perceive reputation through the judgments and evaluations of others, but also through computer technologies combining such judgments and evaluations. For instance, many e-commerce sites not only allow individual buyers to express their evaluations on products and vendors, but also combine individual evaluations in global ratings.

The second function of reputation we need to mention here is its ability to elicit certain actions, namely, those actions whose perception (by others) may determine the kind of reputation one desires (obviously, this may only happen when such actions can be detected by others, and when such detection, or the conclusions which are derived from it, can be communicated). In particular, a person having a positive reputation can be the object of others' reliance, and thus can be invited to enter those relationships (for instance, contracts) which are based upon reliance, and can obtain the benefits which ensue from such relationships. Thus one, in order to foster one's own positive reputation—namely, the reputation of being a subject capable and willing to behave in appropriate ways—may be induced to behave in such ways, and to do so consistently.

## **4 Privacy versus reputation-based trust**

Privacy, as self-determination over one's own personal data, seems to conflict with reliance based upon reputation. In fact, an absolute right to self-determination over one's own data—enabling one to determine, according to one's own interests and choices, what information others can collect and process—seems to impair the correct formation of reputation: if one is the master of one's own personal information, one can block the circulation of all negative information regarding oneself. And if reliable reputation is not available, others will tend not to develop trust in the individuals concerned.<sup>13</sup>

The consideration of the connection between privacy, reliance, and reputation has led some authors to a very negative view of privacy. For instance, Richard Posner has affirmed that privacy does not deserve a specific legal protection:

All that privacy means in the information context . . . is that people want to control what is known about them by other people. They want to conceal facts about themselves that are embarrassing or discreditable . . . Often this involves concealing information that would cause potential transacting partners to refuse to transact with them or to demand better terms as a condition of doing so. Such concealment is a species of fraud (Posner's blog 8 may 2005, see also Posner 1983).

According to this view, privacy—and in particular, the right to informational self-determination—gives a legal protection to deception (through selective disclosure). Not only is one allowed to abstain from communicating relevant facts about oneself (at least up to the point where silence violates good faith), but data protection prohibits others from collecting, processing and communicating such data, even if the data were obtained without the activity of the person concerned. Thus, privacy gives one the possibility to manipulate one's social image and consequently one's reputation, by blocking the circulation of negative data, even when such data are true.

The subject of the connection between privacy, deception and reputation is viewed in a similar way by Nock 1993, who observes that trust is often based upon reputation, and that privacy impedes the formation of trust since it makes it more difficult to know the reputation of others, which is a precondition for relying upon strangers.<sup>14</sup>

On the view just presented, the right to information self-determination would impair the formation of a reliable reputation, and thus would impair the formation of reputation-based trust. Moreover, the legal protection of privacy would represent a paternalistic intervention which (as public intervention in the markets) threatens to impair the autonomous functioning of an impersonal social mechanism. Thus, privacy protection would have a double noxious effect: on the one hand it would enable the individual to manipulate his or her social image, and on the other hand it would impede the autonomous formation of social opinions, on the basis of all available data.

The views which we have just presented can be countered with various objections (as presented, for instance, by Solove 2004).

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<sup>13</sup>Enabling the circulation of relevant information not only is in the interest of candidate trusters, but is also in the interest of candidate trustees, since potential trusters will be more likely to trust when they believe to have sufficient information about their counterparts. Thus, allowing candidate trusters to access adequate information (or at least putatively adequate information) about candidate trustees is an advantage for all candidate trustees beforehand, as a prerequisite for being trusted upon, and thus as a prerequisite for doing business, though this can determine a disadvantage for some of the them in retrospect, when a piece of negative personal information is propagated.

<sup>14</sup>For further considerations on the costs of privacy, see for instance Walker 2000.

First of all, as many authors have observed (like Rodotà 1995), privacy protection contributes to certain important legal values, which can outweigh the need to favour reliance: protecting freedom, intimacy, and dignity; ensuring the possibility to change and improve; preventing discriminations, and so on.

Secondly, we need to consider that the mechanism of reputation, despite having in principle a cognitive value, does not always work correctly. The legal issues we need to address with regard to the function of reputation are similar to the legal issues we have to face with regard to markets (and different lawyers will take very different attitudes according to their ideology and personal opinions): how to ensure the best functioning of a fundamental instrument of social cognition,<sup>15</sup> while avoiding that this mechanism, abandoned to itself, endangers individuals and communities, and also calls into question its own functioning. Just as monopolies, but also fraud and information distortion can impair the functioning of markets, so monopolies on the provision and circulation of information (for instance, in the media), but also the manipulation of information, can disturb the functioning of reputation.<sup>16</sup>

Moreover, reputation can often result from irrational attitudes. This happens when prejudice (stigmatisation) is present: from certain features of a person (belonging to an ethnic or racial group, having certain sexual orientations, having had certain diseases, holding certain religious or political views) we erroneously draw certain negative conclusions concerning other aspects of that person (capacity to work, competence, honesty, and so on), and thus we make choices which damage that person (for instance, denying him or her a job). Negative evaluations, then, spread in society exactly according to the mechanism of reputation (given that others have a negative opinion about a certain person, I too adopt such a negative opinion, and thus I contribute to creating the basis for other people to form a negative opinion about the same person). When prejudice and stigmatisation are present, reputation can fail as a cognitive mechanism. To prevent such failure or to diminish its impact, legal limitations on the free circulation of personal information may be opportune.

Also when prejudice is not at issue, the rationality of reputation can be endangered by the scarcity of the available time and by the necessity of forming opinions on the basis of limited data. The right to control one's personal data enables one to prevent misunderstandings that can be determined by access to partial information about oneself: one can limit access to one's data to those people who are able to put such data in context, thanks to a sufficient knowledge of oneself, or one can impose adequate ways of providing context for the data.

This problem is particularly pressing today, in the era of the so-called information overload.<sup>17</sup> Being unable to process all the information that is accessible to us, we end up evaluating others according to a casual or even biased selection of such information, for instance, according to a few top ranked documents we retrieve through a search engine. This may lead us to negative

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<sup>15</sup>The market can indeed be viewed as a cognitive mechanism clustering into prices information about needs and production costs, thus ensuring an efficient deployment of resources (see for example Hayek 1973).

<sup>16</sup>Posner's unconditioned acceptance of the mechanism of reputation is indeed related to his faith in the market. He rebuts the argument that the communication of certain private information (for instance, about ethnicity, political opinions, or sexual preferences) may determine odious discrimination, by observing that "in a diverse, decentralised and competitive society, irrational shunning will be weeded out over time" (Posner 1983, 235). This can be expected to happen because when one (for instance, an employer) discriminates one's counterpart (a potential employee) on the basis of aspects which are irrelevant to the counterpart's performance, one would sustain higher costs than one's competitors and would be pushed out of the market. For similar observations, see Von Mises 1985.

<sup>17</sup>This aspect is emphasised by Rosen 2000, who says that "[p]rivacy protects us from being misdefined and judged out of context in a world of short attention spans, a world in which information can easily be confused with knowledge."

judgments (and consequent decisions) which would be unjustified on the basis of a larger body of information.<sup>18</sup> Moreover, our inability to check the correctness of most of the information we retrieve may lead us to form our judgments on a certain person on the basis of erroneous or outdated information.

Thus, in some cases here is no conflict, but rather a useful synergy between informational self-determination and correct formation of reputation: the data subject—by correcting his or her data, supplementing them with further information, requiring an adequate form for their communication, or even excluding those who would be unable to understand the data (by putting the data in context)—can contribute to the correctness of his or her social image, and thus to the cognitive function of the process through which reputation is formed. In these cases, the individual interest in a positive reputation converges with the social interest in a reputation corresponding to fact.

However, in other cases, the individual interest in a positive reputation and the social interest in a cognitively correct reputation do not coincide: one tries to obtain positive reputation by giving false or partial information about oneself and by blocking the circulation of true information which would impair one's social image. Under such circumstances, the balancing of the conflicting interests can lead us to subordinate the individual interest to the social one (or rather to subordinate the interest of the data subject to the individual interests of his or her counterparts). In particular, the need to enable the correct formation of a reputation so as to favour reputation-based reliance plays a fundamental role both in the economy (when we need to rely on contractual counterparts) and in politics (where we need to rely on the persons who are entrusted with public tasks, and in particular on our political representatives).

Accordingly, the circulation of personal information has a significance that goes beyond those who need particular pieces of information, being involved in specific economic transactions or political debates. For instance, the circulation of information about politicians also advantages people who do not directly take part in debates and are unaware of specific facts, but only perceive the aggregate results (the reputation) that are associated with a certain politician. The same holds in the economic domain, with regard to professional abilities or financial conditions. Thus, there is a justification for collecting and circulating certain kinds of personal data (besides concerns for freedom of speech),<sup>19</sup> namely, the need that informed evaluations be accomplished, and that a widespread social opinion (a reputation) emerge. The emergence of such an opinion can support reliance by individuals, but also may elicit the competent and correct behaviour of the person concerned, so as to prevent the formation of a negative reputation.

Obviously, our arguments supporting the circulation of certain personal data only apply to data which are relevant for determining whether to rely upon somebody in a specific domain, namely, data which are relevant for the assessment of the risks inhering in a particular relationship

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<sup>18</sup>The Italian data-protection Authority (Garante per la la protezione dei dati) has recently decided a case related to information overload (see Newsletter 21-27 march 2005). The Italian Authority on competition and on markets (Autorità garante della concorrenza e del mercato) had made accessible on the Internet (where it was indexed by search engines) two old decisions where a particular company was punished for misleading advertising. That company claimed that its reputation had seriously, and unduly, been damaged, since such decisions were the first documents to come up whenever one made an Internet search using the name of the company. The data-protection Authority recognised that claim, ordering that old decisions of the Authority for competition and markets should be made publicly accessibly only through queries initiated within the site of that authority (not through general search engines).

<sup>19</sup>For reasons of space, and in order to focus on the idea of trust, I shall not address here the very important issue of the conflict between privacy and freedom of speech. This has the advantage of allowing me to avoid addressing the vast literature on freedom of speech (see for instance Sadurski 1999).

(information on the competence and financial solidity of a businessperson, the prudence and the honesty of a politician, and so on); such arguments cannot be extended to personal information having no possible impact on such risks.<sup>20</sup>

In other domains of human life, like those pertaining to affective relationship, sexual preferences, ethnic origins, political opinions (of a person who does not have, nor aims to have any public function) the protection of personal data is not limited by the need to enable the formation of reliance based upon reputation (or in any case based upon the knowledge of personal information which was not provided by the concerned person, nor directly obtained through interaction with such person or with people belonging to his or her milieu). In such domains, the right to informational self-determination can find a broader recognition and restrain others from processing, communicating and distributing one's personal data (at least when such operations take place in the framework of professional activities, or anyway in a large scale, for instance, through publication on a web site).

It seems that considerations pertaining to reputation and trust can contribute to provide a rationale for some aspects of data protection, offering some indications on how to explain, justify, and circumscribe the limitations of the right to informational self-determination.

No man is an island (as the poet John Donne said): on the one hand one interacts with the others, and decides whom to rely upon according to one's own personal experience, but also according to the social image and reputation of the others; on the other hand one develops one's own personality and morality by confronting one's social image, by matching one's actions with shared rules and judgments, and by linking one's views of oneself with one's reputation.<sup>21</sup> This is, however, a very delicate dialectical interaction between individual and community, an interaction that usually works properly only within the restricted circle of the persons having frequent and direct contacts with the individual in question. Within this circle one can effectively contribute to the formation of one's social image, though not having the power of unilaterally determining it (not even by imposing silence over the aspects of one's personality which could have a negative impact on one's reputation): the person in question by correcting possible misunderstanding, or offering his or her reasons, has a fair chance to induce his or her partners to reconsider their opinions. Beyond such circle, on the contrary, the burden to take care of one's social image, in all its aspects, even the most intimate ones, risks becoming unbearable, especially when one does not have the means for intervening efficaciously. Such a burden is much heavier today, when each personal datum can be eternally preserved in electronic memories and can be made accessible to everybody over the World Wide Web.

Finally, we need to observe that informational self-determination, while being an obstacle to

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<sup>20</sup>According to Nagel 1998, privacy protection should also include people having a public role, in particular through active involvement in politics. The fact that the public "feels entitled to know the most intimate details of the life of any public figure" impairs participation in the public sphere, since "[m]any people cannot take that kind of exposure": the fear of exposure to the public can induce a person having the best skills and qualities for a public office, but having held in the past some minor deviant behaviour (or even just presenting some eccentric trait), to withdraw in the private sphere, renouncing to engage in active politics. For a discussion of this thesis, and for bibliographical reference, see Solove 2004, par. 4.

<sup>21</sup>From this viewpoint, gossip seems to play a positive social function (though individual freedom may be impaired by social sanctions against deviating behaviour, an aspect stressed already by Mill 1974). More generally, gossip may be beneficial to individual autonomy since it provides us with information on the "experiments of living" of others (to use an expression of Mill 1974), from which we can draw indications for our own choices. For some considerations on the value of gossip, see Zimmw1983, who argues against upholding the "public disclosure" tort in US law, a tort, which, following the suggestion of 1890, gives one a cause of action when another widely discloses one's private matter that is "highly offensive to a reasonable person" and "is not of legitimate concern to the public." On the merit of gossip, as pertaining to the exercise of freedom of speech, see recently 2004.

reputation-based trust, can favour reliance in a different respect, that is, by diminishing the risks which are related to certain social contacts. If one has no control over one's personal data, one must add to the risks inherent in a certain social relationship (for instance, the risk that a physician should behave negligently or incompetently) a further risk: the possible damage deriving from the improper use or transmission of personal data. An effective protection of privacy reduces such risks and thus facilitates reliance by the person who must provide personal data in order to start a certain interaction. Consequently, it may facilitate the choice to establish such an interaction (for instance, the choice to let oneself be cured for a illness which carries a serious social stigma).

## **5 Conclusion**

In the present paper I have only sketched some provisional ideas on the connection between privacy (as informational self-determination). on the one hand, and trust and reputation, on the other hand. It seems to me that this line of inquiry deserves to be developed further, in order that we can better understand the impact of data protection on social relationships, and can provide legal solutions duly taking into account all the interests at stake.

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