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(Un-)Lawful Interception - Tapping the Man-Machine?

This abstract draws upon a conflict between fundamental rights, investigational needs and a rapid change in technology which itself leads to a new anthropological view of human beings.

In the past years there has been great effort of Law Enforcement Agencies in Germany and other countries to adapt their legal and technical abilities to the rapid progress in information technologies and its usage by those prosecuted. Lawrence Lessigs (2000) statement „code is law“ appears to be more actual than ever.

Especially counter terrorism is the main issue why new competencies were given to authorities that not only allowed wiretapping VoIP but also clandestine online raids on the whole system. These new competencies led to conflicts in relation to civil rights and their constitutional allegations.

Consequently the German constitutional court in 2008 created the „Computer Fundamental Right“ when it decided on the usage of spyware by the „Verfassungsschutz“ (intelligence service). Thus authorities should take strict care of fundamental rights that can easily and directly be violated by massive intrusions related to data of private and intimate quality.

However latest disclosures of the NGO „Chaos Computer Club (CCC)“ in Germany have shown that the spyware used does not meet constitutional allegations at all.

In this context and with respect to the increasing media and technology convergence a relatively new field of science called „cyborg anthropology“ is worth a closer look. According to the researchers any external prosthetic device, e.g. smartphones, can be seen as an „exobrain“ that turns the user into a cyborg.

This paper approaches to combine law and anthropology: To what extent have humans become cyborgs? And if so, should its impact on law be examined?

What does this mean for the work of law enforcement agencies? What does it mean for judges who have to decide in advance about regulatory action?