

## Marc Rotenberg: interview

Marc Rotenberg  
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ANON interviews, Mr. Marc Rotenberg  
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ANON: Before you joined the Anonymity Project, what sorts of topics were you researching?

MARC ROTENBERG: We are involved with a wide range of projects at EPIC. We look at developments in law, technology, and public policy, both in North America and around the world that we believe may impact on privacy and other human rights. We are interested, for example, in the development of profiling and monitoring technologies in the United States, the ongoing international debate about the collection the transfer of personal information, and various cases in the Courts that seek to protect privacy interests. One of our cases, *Hiibel v. Nevada*, considers whether the police may compel the disclosure of identification.

ANON: Did you think of that work as being related to the broad sets of issues surrounding anonymity/identity/authentication?

MARC ROTENBERG: Anonymity and identity are oftentimes the key issue in many emerging privacy questions. As a legal matter, privacy issues arose only once personally identifiable information is collected. As a technological matter, the privacy issue is joined when actual identification is produced. In both domains, the privacy analysis begins with identification.

ANON: What sort of research activities are you involved with on the Anonymity Project?

MARC ROTENBERG: We are involved with several aspects of the Anonymity Project. As the Track Leader for Law and Policy, I am particularly interested in emerging legal doctrines both in North America and elsewhere that consider the role of identity and anonymity. EPIC also runs an outstanding program for law school students and others who are interested in learning more about public interest law in the age of the Internet. We look forward to the participation of many Ottawa students in the Internet Public Interest Opportunities Program (IPIOP). And we will be working closely with the project developing practical tools, including a glossary of key privacy terms and a users guide to the Canadian open government laws.

ANON: How do you feel your research contributes to the anonymity project as whole in comparison with your research track?

MARC ROTENBERG: I believe our track will provide useful research for specific legal and policy materials, including cases in the courts and considerations of the Parliament on legislative matters. More broadly, I hope our work will contribute to a broader understanding of the role of anonymity in the ethical and social realms.

ANON: Why do you think that interdisciplinary collaboration is especially important to the study of anonymity?

MARC ROTENBERG: Collaboration across disciplines will be the key to the success of this project. Both the courts and the technologists recognize that there must be a better understanding of the intersection of these two critical domains. This has become clear in almost every public policy discussion. EPIC, in particular, has filed many briefs in US courts, bringing attention to important technological

considerations that courts should consider. In similar fashion, we help technologists understand the significance of legal norms and legal principles in the design of information systems.

Anonymity, because it is the leading edge of the privacy debate, benefits enormously from cross-disciplinary analysis.

ANON: What do you see as the biggest threats to privacy today?

MARC ROTENBERG: I am particularly interested in how technologies of surveillance are constructed. Unlike laws that can sunset, be repealed, or amended, technology has permanence and those technologies created during times of public concern may be particularly problematic. The emerging architecture of surveillance poses an enormous challenge to democratic surveillance.

ANON: EPIC is celebrating its tenth anniversary this year. What do you think have been your biggest accomplishments in the fight for online privacy, and how has your work changed over the last ten years?

MARC ROTENBERG: We've had a lot of successes over the years. We helped stop the Clipper chip, the unique Processor Serial Number, and Total Information Awareness, but I'm most proud of the innovative legal strategies we have pursued and the arguments we have put forward in legal briefs. We established successful new doctrines for privacy claims before the Federal Trade Commission. Our Freedom of Information Act litigation both produced important disclosures of government documents and established significant legal precedence, including the favorable fee status for non-commercial requesters. And our amicus briefs set out novel theories for the courts to consider as they explored the intersection of law and technology.

ANON: How can the current architecture of the internet inhibit or enhance technologies that preserve anonymity and technologies that authenticate?

MARC ROTENBERG: I'm fond of the analogy to solar energy -- perhaps some day it will be fusion energy -- because it reminds us that technology invariably presents policy choices. We can, for example, develop systems of energy production that place heavy demands on the environment or we can develop systems that produce energy without imposing significant social costs.

We need a similar approach to Internet-based transaction &ndash; one that enables the use of new technology, encourages productivity and innovation, but does so with minimal harm to privacy. It may take a long time to find robust solutions, but this is clearly the goal. And as with industrialization, we should anticipate that the challenge will be ongoing, and that we will need to find partial solutions at every step along the way.

ANON: What influence, if any, does international law have on privacy laws in N.A.?

MARC ROTENBERG: The evolution of the Safe Harbor agreement between the United States and Europe demonstrated the vitality of international privacy norms. Those arrangements closely mirrored the OECD Privacy Guidelines that were adopted by countries from North America, Europe, and East Asia more than 20 years ago. Legal scholars have also noted a "ratcheting up" effect that had raised the standard of privacy protection in North America as firms here seek to enter European markets and comply with European privacy laws.

ANON: As the executive director of a public interest organization, what role do you think public interest groups can play in lobbying government? How does EPIC "watch over" the U.S. government to protect a citizen's civil liberties?

MARC ROTENBERG: I've never seen our role as that of a lobbyist. We are not simply pushing on one side or the other of a particular legislative debate. We try to promote a more informed public dialogue and more educated decision making by bringing expertise to emerging policy issues. Our web site is a critical public resource in the policy world. If you run a search of many of the issues we pursue -- "privacy," "Patriot Act," "Total Information Awareness," -- you will see that the EPIC web site is frequently listed first on Google.

Similarly, our Freedom of Information Act work and our publications make available more information to the public and to decision makers than might otherwise be available. FOIA has helped us provide to the Congress critical documents that revealed flaws in several hi-tech surveillance programs. Our annual Privacy and Human Rights survey is an invaluable resource for governments around the world that are trying to understand how best to respond to emerging privacy challenges.

Informing the public about the full range of options is one of our central missions.

ANON: How can the ATI User's guide that EPIC is working on in conjunction with CIPPIC, IPC/Ontario and Stephanie Perrin be used by citizens and everyday people interested in privacy advocacy?

MARC ROTENBERG: Freedom of Information laws provide an enormous opportunity to learn about the activities of governments but there is a lot of work involved and a lot of expertise is required to become an effective user of an open government statute. We hope that EPIC's own success with the Freedom of Information Act in the United States and our publication of a very popular open government litigation manual will provide a good model for the ATI Users Guide.

ANON: How will the ANONOPEDIA (consumer glossary of privacy concepts/materials) synthesize/accommodate the varying views on privacy and related concepts?

MARC ROTENBERG: We hope this project will provide an authoritative glossary of key privacy terms and concepts for the non-specialist. There is too much jargon in this field and too many acronyms. We need to promote discourse that is inclusive and straight forward. Among Orwell's many contributions to politics was the very strong belief that effective political debate requires the use of simple terms that are widely understood. We will honour Orwell's memory if the ANONOPEDIA meets this test

ANON: How challenging is it to create a common glossary of terms?

MARC ROTENBERG: I think it will be a great opportunity to synthesize the best insights and to bridge multiple disciplines. But the product will only be a success if it is useful to the non-specialist.

[Learn more about Marc Rotenberg](#)