Enforcing digital privacy might be tough

By Marlisse Silver Sweeney, Columbia Journalism Review

Freedom from surveillance is shaping up to be a major human rights issue in the post-Snowden era. The UN human rights committee is calling for a review of how member states collect residents' data, and a Pew study last month found that most Americans are concerned with government and corporate data collection.

For journalists, recent events such as the FBI posing as the Associated Press and an Uber executive allegedly threatening to expose the personal lives of the people writing about the company underscore the importance of digital security in the 21 century, says legal scholar Nancy Leong.

But when it comes to finding what feels like a fundamental right for journalists and civilians alike within the Constitution, the issue isn't as simple as the inclinations of the public and UN resolutions. Though there is an argument to be made that digital privacy rights are enshrined in the supreme law of the land, legal scholar Mark Tushnet of Harvard Law says that idea is actually controversial. It stems from outdated doctrines and case-law that doesn't reflect modern realities.

A right to privacy was first found to exist within the Constitution in the abortion cases of the 1960s and 1970s, Tushnet explained in a recent phone interview.

In Roe v. Wade, Supreme Court Justice Harry Blackmun, writing for the court, said though "the Constitution does not explicitly mention any right of privacy," past decisions indicate a "right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the

Constitution.” To protect a woman’s reproductive privacy in this case, the Court relied on what Tushnet calls a “slew of constitutional provisions,” including the First, Fourth, and Fifth amendments.

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