

# DISCUSSION: POSSIBLE FUTURE PRIORITIES OF THE MANDATE OF THE UN SPECIAL RAPPORTEUR ON THE RIGHT TO PRIVACY

On 16 April 2021, the Geneva Human Rights Platform organized an informal meeting with NGOs and academics to discuss potential priorities of the next phase of the mandate of the Special Rapporteur on the right to privacy. The current mandate holder, Prof. Joe Cannataci (Malta), is finishing his second three-year term, and the Human Rights Council shall be nominating a successor. This is thus an important moment to collect the views and priorities of civil society, and to bring them to the attention of the next mandate holder.

## Introduction

The opening discussion highlighted issues of concern to the right to privacy mandate that could be followed up by the next occupant of the position. In particular, it was noted that the mandate might continue with its work relating to gender equality in the right to privacy, suggesting that this aspect required that gender equality is further embedded into privacy practices around the world. Work in this area could address concerns with respect to digital technologies and instances where online media and platforms for social interaction have amplified and intensified violations of people's privacy. Mention has also been made of the ongoing discussion of the right to privacy in the context of digitization by the Human Rights Council (HRC), in particular the resolution on the right to privacy in the digital age adopted by the HRC in 2019<sup>1</sup>.

Notwithstanding the importance of this resolution with regard to its support for the right to privacy in the face of ongoing mass surveillance activities by many States, the work of the Special Rapporteur (henceforth, SR, for brevity) might also seek to expand its purview to consider in

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<sup>1</sup> UN HRC, 'The right to privacy in the digital age: resolution' / adopted by the Human Rights Council on 26 September 2019, A/HRC/RES/42/15, see further: <https://digitallibrary.un.org/record/3837297?ln=en>.

greater depth the monitoring and profiling activities of a broader range of actors, including businesses, beyond the narrow scope to date that has thus far focused upon the review of governments' surveillance.

### **Background: reconsideration of prioritizing core elements of privacy?**

The importance of the right to privacy has been emphasized in respect of its role as a 'gateway right': privacy enables the enjoyment of many other interdependent rights, such as, the right to peaceful assembly and association, the right to freedom of movement, and the right to freedom of expression. Moreover, the work of the mandate and that of civil society on privacy has also underscored the connection of the right to other key human rights including the rights to equality and non-discrimination, highlighting therefore the need for more research and engagement on this topic. Indeed, due to the complexity of the nexus of privacy with other rights, it might be useful for the mandate to continue by conducting a mapping exercise that outline the various interdependencies of the rights, and how from both a theoretical and practical perspective the key issues might be tackled. This activity could also assist in establishing where scope exists to continue, or develop new collaborations, with other mandate holders and working groups under Special Procedures.

The fundamental importance of privacy as a standalone right is therefore also augmented by its function as an enabler of rights that are in many respects indivisible and closely aligned with the core of privacy, the essence of protecting the integrity and dignity of the individual. The exchange of views also underscored the need for the privacy mandate of Special Procedures to cooperate with other mandates on issues of shared concern. In this regard, the collaborative efforts of the current Special Rapporteur on the right to privacy with the Special Rapporteur on the right to peaceful assembly and association were highlighted as an example of a beneficial cooperation that facilitated the mandates addressing topics of mutual interest, and also underscored how innovations in digital technologies had created challenges that impacted a broad cross section of interdependent human rights.

Participants recalled that Article 17 of the ICCPR is broad in its scope, and that the evolution of digital technologies in the last decade in particular has further widened the scope of its interpretation. It should be noted that, whilst much of the discussion highlighted the online aspect of the right to privacy, and while the mandate itself was created in the light of revelation back in 2013 relating to, broadly, surveillance of the internet, cyber and telecommunications, it should be stressed that the ambit of the right extends beyond digital technologies. This point was further stressed with regard to emerging issues in connection with the right to health and the COVID-19 pandemic, insofar as while developments in contact tracing using smartphone devices and standards such as Bluetooth were relevant, it should not be forgotten that the issues around privacy were indeed much broader in this context. Concerns regarding health records and personal data pre-date the use of these nascent technologies, and due consideration must be given to scenarios where 'low tech' solutions are being implemented that could still place at risk the right to privacy i.e., where health data relating to identifiable individuals is collected, processed and retained using traditional storage methods such as paper files, for example.

Discussion of the mandate for the right to privacy necessarily takes into consideration concerns regarding the resourcing of the work undertaken; as such, scoping of activities must consider how application of efforts can deliver meaningful results, where it must be recognized that an overly broad approach might deliver a trade-off in terms of the relevance and impact of the work eventually undertaken. As such, this debate highlights the underlying issue of facilitating activities the mandate wishes to undertake whilst acknowledging that addressing every issue or concern of interest raised by civil society and rights-holders would likely prove extremely challenging, given the constraints on resources and funding.

In discussing how the mandate of the right to privacy might evolve it was acknowledged too that, in essence, the investigatory role of the mandate to look at concerns relating to the mass surveillance of citizens' online activities across the global regions was borne of a certain political situation that had developed following the 9/11 attacks and responses thereafter aimed at countering terrorist activities across many jurisdictions. However, within the last decade we have seen a considerable change in terms of the capabilities and technological advancements that have delivered an ever-greater array of means by which monitoring and profiling of individuals online can take place. In the light of this evolution, it was therefore suggested that the mandate would need to appraise how best to address concerns relating to increased mass surveillance, while also bearing in mind that, to a certain extent, the development of digital technologies was taking place at a pace that rendered research complex, similar to 'hitting a moving target' in its innate difficulty.

### **Scope of the activities of the mandate**

To date, the mandate has also largely focused its country visits to countries in the Northern Hemisphere, thus reflecting a relatively limited outreach. As such, the next Special Rapporteur could seek to solicit invitations to visit the countries of the Global South, particularly bearing in mind the acceleration of digitization in societies across the globe and considering the growing importance of businesses across jurisdictions that are developing products and services whose use intersects with the right to privacy. In particular, it has been noted that in a growing number of jurisdictions the development of online marketplaces is providing challenges to citizens in respect of their capacity to manage their online identities and determine whether profiling might shape their access to certain services.

Despite the growth in businesses in different markets reflecting a growing divergence of commercial actors in many countries, it has nonetheless been noted that there still exists a very high concentration of businesses operating in the online sphere globally that have their headquarters in the US. Several participants welcomed the idea of a 'country visit' to Silicon Valley (in northern California). Views differ, however, as to whether the Special Rapporteur should retain a focus on the companies based in Silicon Valley or seek to broaden the scope of its interactions with more geographically diverse businesses. Comments were made as to the need to utilize more certain tools, such as communications, to reach out to businesses. To a certain extent, the question of broadening the scope of country visits to include in-person consultations with representatives from businesses across the regions is shaped largely by the willingness of States to offer invitations and facilitate such discussions.

The mandate could review its commitment of resources at any early stage, so as to ensure a balance is struck so as to ensure the most impact from the different activities in which it engages: including country visits, annual reports, communications, consultations on draft laws, urgent appeals, press statements, follow up reports — and, invariably, in this appraisal determine the overall utility of each of these procedures and types of interaction. Certain civil society organizations have also expressed the opinion that the mandate needs retain a focus on the most pressing issues impacting the enjoyment of the right to privacy, for fear that too broad an approach covering too great an array of issues and concerns, might risk watering down the actual impact of the SR's activities.

### **Connecting economic, social and cultural rights to privacy**

The potential scope of future activities for the SR on privacy might also be widened so as to incorporate review of the nexus of the right to privacy with economic, social and cultural rights. To date, this interconnection has been little explored. For example, the mandate might look at the development of online profiling tools that monitor web browsing activities: the use of such tools may covertly influence individuals' access to finance, mortgages, insurance and other social or financial products and services, which can adversely affect their life choices and, in turn, economic activities such as access to employment.

### **Efficacy: Importance of collaboration and cooperation to the mandate**

In addition to the mandate's work with NGOs and civil society, the next Special Rapporteur may also seek to further cement the close working ties already established within the UN system, including the Treaty Bodies. In addition, it is also noted that the mandate has to date worked very closely with UN offices in the regions, and in specific countries. These established links can facilitate the ongoing work of the mandate, and input and feedback on the evaluation of the impact of the mandate's work can also further facilitate the next steps toward determining priorities and allocating resources to the SR's activities going forward.

The current SR has also provided important input into discussions held by other mandates, including inter alia those of the Working Group on Human Rights and Business, and also contributing to the ongoing work of OHCHR in relation to the B-Tech project. In addition, the mandate has also to date played a role in informing discussion as to the role of the right to privacy in connection with economic development, and also with respect to the Sustainable Development Goals (SDGs). Further work conducted by the mandate might also look in more detail of specific SDGs that intersect with the right to privacy, for example SDG 16.9 on the provision of legal identity for all, including birth registration.

Ongoing initiatives that seek to further connect the human rights to achievement of sustainable development also offer further opportunities for the mandate to influence the outcomes of these debates.

### **Surveillance activities by the State and its agencies**

A great deal of focus is currently placed on two particular concerns, namely: activities of non-State entities such as businesses, and their role in developing services that rely on large-scale data

collection, processing and retention models that interfere with the right to privacy; and also following developments in respect of the use of surveillance by intelligence services across jurisdictions. The latter activity may or may not also engage business enterprises: regardless, the continued ubiquity of such monitoring, and its impact on individuals and groups alike, warrants continued review by the mandate. Concerns regarding extensive access by governments and public authorities to personal data retained by entities in the private sector, and with respect to certain businesses developing software and other digital technologies (e.g. facial recognition technologies, profiling capabilities, covert surveillance) which are increasingly being adopted and utilized by states.

### **Governance: public authorities and procurement**

In addition to the other areas in which States' agencies and institutions are engaged, the domain of public procurement is also one which the mandate could also review, so as to discern how activities led by public authorities might adversely impact the right to privacy. For example, decisions made in respect of public procurement of software for education programmes in schools can have a direct impact on the enjoyment of the right to privacy for pupils.

Furthermore, the extent to which pupils may be able to protect their privacy using privacy enhancing technologies (PETs) might also be heavily influenced by their financial means, such that students from families with lower incomes are less able to exercise choices and control of the access granted their parties to their personal data as they attend school. Other areas of public life, including transportation, public health, social welfare services, etc. might also be reviewed by the mandate for their increasing interconnection with the right to privacy.

### **National and regional frameworks for the export of surveillance technologies**

The Special Rapporteur on the right to privacy might also further explore the developments taking place in the domain of surveillance technology exports. Work in this sphere has already taken place with regard to discussion held at the regional level in Europe, and the growing use of invasive monitoring capabilities using targeted deployment of software onto the personal devices of human rights defenders, journalists, politicians, and other citizens might be further investigated.

### **Regulatory and legislative measures**

Discussion of the role of the mandate in engaging with regional bodies has also further highlighted the positive progress made by the SR in assisting the development of legal frameworks to protect the right to privacy. In this respect, the work of the SR in providing input to deliberations on the modernized version of the landmark instrument Convention 108 was highlighted as an example of valuable cooperation.<sup>2</sup>

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<sup>2</sup> See further, for example: COE, Convention 108+ : the modernised version of a landmark instrument, 18 May 2018, Available at: <https://www.coe.int/en/web/data-protection/-/modernisation-of-convention-108>. COE, Convention 108 + Convention for the protection of individuals with regard to the processing of personal data, Available at: [www.coe.int/dataprotection](http://www.coe.int/dataprotection). N.B. This document is also available at:

The current Special Rapporteur has also contributed successfully toward discussions conducted in other fora, including for example the OSCE and OECD, regarding the ongoing development of both broader guidance and legal frameworks pertaining to the protection and the promotion of the right to privacy. Growing concerns regarding the impact of data breaches and other cybersecurity-related incidents will also play an influential role in the debate over privacy and, for example, whether the practices of certain businesses with regard to the provision of encryption, strike the right balance with the needs of law enforcement and the intelligence to prevent and investigate serious crimes such as human trafficking, the smuggling of licit substances and child exploitation.

Further work in this regard might also review the nature of transnational data requests made of businesses retaining personal data, and whether further steps could be taken to develop greater oversight of existing solutions and mechanisms.

Much of the work of the mandate thus far has been the review of developments by States in their laws and regulatory mechanisms pertaining to the right to privacy, its promotion, and the provision of safeguards to ensure sufficient protection for its enjoyment by all. This oversight and role in reviewing the scope of legislative changes, enactment and enforcement will likely remain a core function of the mandate. Furthermore, monitoring of the availability of remedies for those subject to interferences in their right to privacy, and the suitability of such measures to address such grievances, should continue as a key aspect of the work of the Special Rapporteur. The work of the Rapporteur might also look at the availability of remedies in jurisdictions for non-residents and non-citizens, as these persons might not be afforded access to a suitable remedy where their rights are infringed upon.

### **Engaging businesses: the private sector's role in safeguarding privacy**

The mandate has in part looked at concerns relating to the role of businesses in the protection and promotion of the right to privacy, and it has been suggested that further work in this realm might aim to strengthen ties with key commercial stakeholders in this regard. Discussion of the efforts thus far has highlighted differing opinions with respect to the impact of dialogue and engagement with the larger technology companies, for example this developing products and services relating to online communication and social media. In essence, views differ as to whether the mandate can engage in dissuasion with companies that delivers tangible results in terms of measurable changes in policies and activities on the part of these businesses that would have a meaningful impact on the enjoyment of the right.

Perspectives differ as to whether certain enterprises are engaged in discussion for the purpose of stalling progress on key issues relating to privacy or, in contrast, whether they actually intend to consider taking action and changing their approach so as to better ensure that they better fulfill their own responsibilities to promote and protect human rights, and that they also do more to leverage their capabilities and influence to ensure that users of their products and services have all their human rights, including the right to privacy, better respected. In the light of this debate, it

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[https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/LIBE/DV/2018/09-10/Convention\\_108\\_EN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2018/09-10/Convention_108_EN.pdf)

should be further noted that views also diverge as to how engagement with businesses can be made more effective, with certain commentators suggesting that the discussion with commercial actors was necessarily one that would need to adopt a much longer-term approach than was perhaps fully appreciated by all stakeholders. On the other hand, others have argued that the mandate must be careful not to entertain discussions that might prove fruitless or waste resources (where actors essentially partake in dialogue merely to stall activities and give only lip service, or the appearance of meaningful involvement, in rectifying problems and providing possible remedies for those whose right to privacy has been violated). In this regard, the difference of opinions on this topic to an extent reflects a divergence in opinion as to whether certain businesses in effect act in bad faith, failing to purposefully admit that their participation in consultations provides a screen for ongoing business activities that are at odds with the protection and promotion of the right to privacy.

The debate as to the role of businesses also underscores a breadth of different opinions amongst experts as to whether the 'soft responsibilities' of businesses can effectively be promoted and, to a certain extent, reliably enforced. Questions remain as to whether the mandate might devote more resources to further strengthening this notion and elucidating the scope of such responsibilities.

Despite concerns regarding the effectiveness of interventions of the mandate with businesses, it has also been noted that these activities are but one means by which to influence and seek change. In other fora, for example the Human Rights Council, discussion has in turn focused on the need for greater engagement between States and businesses, underscoring how States' responsibilities to promote and protect the right to privacy requires positive steps on the part of governments to enter into dialogue with companies to ensure that both violations and broader concerns pertaining to the rights are actively addressed.

However, the extent to which different States are able to effect change and shape the decisions and activities of businesses has also been questioned, as it has been noted that very often the larger businesses developing online services now wield considerable power and influence in many jurisdictions across the regions. Indeed, in this respect it has also been highlighted that such businesses continue to increase their spending on lobbying activities of governments, are able to deploy considerable resources to ensure that their interests are protected from perceived encroachments on their activities by legislation and any extension of regulatory oversight.

Discussion in this regard has also underscored the need for States to engage in a meaningful way with businesses proactively, in advance of the development and implementation of new products and services that could possibly challenge enjoyment of the right to privacy; in this regard, then, the mandate might look to ascertain what means were at its disposal to promote the involvement of all relevant stakeholders, including NGOs and civil society, so as best to ensure that such ventures proved as productive as possible, bearing in mind that future consultations would need to ensure that all rights holders, especially those from both marginalized groups, and those with limited means to access online services, could also be involved and consulted. The UN Special Rapporteur may also consider further improving the visibility of the mandate by participating in a greater number of multi-stakeholder fora and conferences to improve engagement with all the

relevant actors including rights holders, businesses, NGOs, civil society organizations, and States.<sup>3</sup>

The mandate might also possibly consider engaging with newly established fora that consider the review of decisions made by companies on social media content, for example the Oversight Board (that considers complaints brought by Facebook users concerning content-related decisions taken by the company).

### **Beyond GAFAM<sup>4</sup>: appreciating the role of all industry sectors**

The work of the mandate could also look more deeply into the role of other tech companies, besides the 'Big 5', as well as businesses beyond social media platforms e.g., Online communication tools and software providers (which to date have formed much of the focus of the mandate's engagement with technology companies) to include greater interaction and discussion with hardware developers and telecommunications companies. It has been suggested that a more holistic approach that encompasses the different roles played by a wide variety of enterprises in the delivery of digital products and services is crucial for the work of the Special Rapporteur's mandate to appraise the impacts of emerging threats to the right to privacy. Again, in this respect the obvious complexity of the initial task of scoping the activities and determine the role of different actors might necessitate an initial scoping and planning exercise to evaluate how to proceed.

The work of the Special Rapporteur on the right to privacy has also evidenced the need for the mandate to prove visible in its interactions with businesses, even while some of the mandates' discussions might take place in private, discretely, due to, for example, the wishes of certain companies to protect proprietary information or prevent disclosure of trade secrets. As such, the mandate needs to consider the requirement to balance its more overt ambassadorial role with the requirement to engage 'off the record' in discussions with actors in the business sector.

Indeed, in essence, there exists a certain tension in terms of allocating resources to emerging threats to the right to privacy, particularly those that stem from the ever-expanding capacities of digital technologies (e.g. emotion recognition technologies, deepfakes, social scoring systems), with the need to still consider and the alleviation of challenges presented by 'lower tech' or more traditional methods and tools that can encroach on privacy, for example covert surveillance conducted by law enforcement officers tailing a person of interest. This concern to an extent highlights the gap in expectations and priorities of activists and advocates working on securing the right to privacy in different jurisdictions, where the means at the disposal of agencies and public authorities may vary considerably. It has been suggested that the emphasis on digital technologies and their use for surveillance has resulted in the mandate overlooking concerns in

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<sup>3</sup> Note: A number of different fora were mentioned as being particularly relevant for the participation of the UN SR on the right to privacy, *inter alia*: RightsCon, Freedom Online Conference, Internet Governance Forum, CPDP Conference.

<sup>4</sup> Popular acronym for a grouping of 'Big 5' technology companies: Google, Apple, Facebook, Amazon and Microsoft. See further, for example: EU Parliament, Influence of the five biggest US tech companies (GAFAM) on people in European Member States, 13 January 2021, Available at: [https://www.europarl.europa.eu/doceo/document/E-9-2021-000153\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2021-000153_EN.html).

countries where well-established, less technology-dependent means is routinely deployed; and yet their use can still nonetheless have a significant impact and interfere with the right to privacy.

Engagement with business enterprises by the Special Rapporteur might also possibly explore and evaluate whether certain business models that rely significantly on capturing and processing personal data might be overly invasive and constitute an interference with the right to privacy, given that access to certain online services is made conditional upon the disproportionate use of personal data without giving people a genuine choice and treating personal data as a tradeable commodity. The SR might engage with researchers and academics, in conjunction with the representatives of relevant business entities, to investigate other possibilities to deliver services that are not reliant upon monetizing personal data of users to deliver profit.

### **Role in oversight of legal frameworks, oversight bodies and of draft instruments**

The incumbent in the role of Special Rapporteur engaged in development of a framework, the 'Draft Legal Instrument on Government-led Surveillance and Privacy', to address concerns relating to mass surveillance and the activities of governments, public authorities, intelligence agencies and businesses in monitoring the activities of citizens, which could interfere with their enjoyment of the right to privacy.

Questions remain as to whether the mandate might continue with such work, with some civil society organizations suggesting that this resource-intensive exercise may not in the long term yield results with sufficient positive impact, based on the belief that it will be difficult for such an instrument to gain much take-up and therefore have a lasting effect. As such, the role of the mandate with respect to developing standards and facilitating the development of norms is still subject to a great deal of ongoing discussion. In this respect too, it should be noted that the conversation amongst civil society organizations continues to deliberate how best the right to privacy mandate can continue with discussions with NGOs productively, given the increasing range of issues the Special Rapporteur must consider. At an early juncture, therefore, the mandate holder may need to appraise how best to continue with outreach activities and ensure the most effective modalities for engagement with civil society and rights holders are developed and maintained.

In terms of priorities, the mandate's review of laws and policy can continue in appraising the adequacy of existing legal frameworks to protect the right to privacy; the transparency of such policies and legislative provisions, and the extent to which the safeguards they afford rights holders are sufficient in the light of emerging technologies that may present new risks.

### **Impact of the COVID-19 pandemic on the right to privacy**

In many ways, the overall impact of the coronavirus pandemic has been to accelerate the pace of digitization. While much of the discussion in relation to the use of digital technologies has to date focused on the integration of new connected and online tools into fields such as health, education and transportation, it has been suggested that the Special Rapporteur should not overlook the use of traditional or 'lower tech' means and modes of operation in spheres that can also intersect with the right to privacy. For example, health data are very often stored in a format that does not create an electronic record, but privacy concerns are nonetheless still very relevant. As a whole, the

pandemic has had a major impact on the enjoyment of the right to privacy insofar as many governments have brought in legislation to address key challenges brought about by COVID-19 that has often thrown into question whether the requisite safeguards are in place to protect rights holders. Moreover, the current mandate holder, and indeed many other mandates under Special Procedures, has already voiced concerns in this regard.

Key questions the mandate will need to address will be that of consent, and the extent to which citizens are both able to make informed choices regarding the collection, processing and retention of their personal data in connection with health outcomes, and also in respect of their ability to choose to decline services or enrolment in programmes that might otherwise be deemed mandatory. As such, it is anticipated that the future Special Rapporteur for the right to privacy will for the short term, at the very least, likely need to continue monitoring the evolution of efforts to contain the spread of COVID-19 globally and review the impact of States' responses vis-à-vis the enjoyment of the right to privacy.

Indeed, the extent of the impact of measures introduced across the global by States in connection with COVID-19 is such that an assessment could form the basis of a thematic report by the Special Rapporteur.

### **Review of methodologies, approach to evaluation conducted by the mandate**

Discussion around the possible scope of the activities and engagement of the mandate has extended to the efficacy and impact of the undertakings of the Special Rapporteur. It has been suggested that sufficient planning of activities and pre-activity appraisal might consider the potential results of activities, in order to ascertain how best resources might be deployed. Certain privacy advocates have suggested that a narrower remit might allow the mandate to more actively focus in on key challenges and avoid over stretching resources and diluting the influence of the mandate on shaping change and realizing tangible, meaningful results in promoting and protecting the right to privacy.

The Special Rapporteur might consider at the initial stages of the new mandate term developing a gap analysis-type review, to determine where lacunae exist, and how the work of the mandate might seek to areas of concern.

The proliferation of efforts in multiple jurisdictions and regions to develop programmes to shape the application of existing standards, and to contribute towards developing norms and legal frameworks governing the protection of privacy, might in the medium-term lead to a duplication of efforts and lessen the overall impact of activities to achieve change. The mandate might therefore initially air on the side of caution with regard to committing to engage in all the opportunities presented to it and seek to ascertain through a cursory review of the respective initiatives which initiatives might offer the best opportunities for the mandate to participate and have the greatest impact.

### **Key challenges to anticipate**

The nature of the advancement of digital technologies in particular presents challenges for the ongoing work of the UN SR on the right to privacy, insofar as the mandate must to some extent

pre-empt the possible impact of new capabilities that may challenge privacy in ways that are very novel or little researched. To an extent, this issue reflects the concern of addressing the 'moving targets' of ongoing technological developments in the digital sphere. Examples of emerging technologies that may warrant particular focus in the immediate future are behaviometrics, social credit scoring, predictive profiling, and emotion recognition. During the tenure of the current Special Rapporteur much progress has been made in developing guidance on ethical considerations of the use of machine learning and artificial intelligence (AI). However, it is suggested by many civil society organizations and academic researchers operating in the human rights sphere that such approaches may risk divergence from human rights norms, particularly as in certain frameworks an ethics-based approach lacks the requisite rigor in terms of embedding key rights principles in the assessment of the possible harms that a technology's use might inhere. As such, the future work of the Special Rapporteur, it has been suggested, could in part seek to address these concerns and support the ongoing work of projects seeking to strengthen the human rights-based approach to risk assessment and compliance, particularly with respect to those initiatives that have successfully partnered with technology companies, and are in the process of piloting methodologies that can shape the design and deployment of privacy-respecting products and services.

### **Other developments and technologies for possible review**

Whilst the advancement of technological prowess continues at ever greater pace, rendering the determination of which new capabilities present the greatest challenge and potential risk to the right to privacy, nonetheless certain priorities for assessment and evaluation might usefully be established at an early juncture in the work of the new SR's mandate.

Possible technologies for review/specific focus:

- Biometrics (e.g. inter alia, voice recognition, facial recognition, emotion recognition), and developments in behaviometrics (e.g. gait recognition, finger touch pressure) and ongoing advancements in authentication and other security-related processes
- Deepfakes
- Social and credit scoring
- Profiling (and 'performance assessment' of individuals using automated decision-making)
- Border control (and, more broadly, surveillance of migrants)
- Predictive policing
- AI systems development, including the development of audits and logs to evaluate their performance
- Dating apps
- Gaming apps
- Smart cities infrastructure and public services
- Encryption
- Rights of children vis-à-vis online services and applications targeting young users