

HEINONLINE

Citation:

Anita L. Allen, Gender and Privacy in Cyberspace, 52
Stan. L. Rev. 1175 (2000)

Provided by:

Seton Hall Law Rodino Library

Content downloaded/printed from [HeinOnline](#)

Thu Mar 28 14:07:26 2019

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[Copyright Information](#)



Use QR Code reader to send PDF
to your smartphone or tablet device

Gender and Privacy in Cyberspace

Anita L. Allen*

INTRODUCTION

UNEASY ACCESS: PRIVACY FOR WOMEN IN A FREE SOCIETY. By Anita L. Allen. Totowa, N.J.: Rowman & Littlefield, 1988. 226 pp. \$68.00.

A dozen years ago, I published a book about women's privacy, *Uneasy Access: Privacy for Women in a Free Society*. I have been invited to revisit critically the central themes of my book in light of the growth of the Internet and the World Wide Web.¹ In the preface to *Uneasy Access*, I observed that "[t]he felt need of recent generations to demarcate the limits of intervention into the privacy and private lives of women has done more than even the information technology boom to inspire analysis of privacy and the moral right to it."² My observation no longer holds true. Rather, since 1990, debates over information technology, communications, data protection, and the media have driven many of the most visible and novel efforts to understand privacy.³ These new debates have had little to do with gender.⁴

* Anita L. Allen, a.k.a. Anita Allen-Castellitto, Professor of Law, University of Pennsylvania School of Law. J.D. Harvard; Ph.D. University of Michigan. All Internet citations were current as of May 22, 2000. Copyright © 2000 by Anita L. Allen and the Board of Trustees of the Leland Stanford Junior University.

1. Web creator Tim Berners-Lee describes the advent of the Internet and the World Wide Web in a recent book. See generally TIM BERNERS-LEE & MARK FISCHETTI, *WEAVING THE WEB* (1999) [hereinafter BERNERS-LEE]. Part of Berners-Lee's book discusses the impact of his invention on privacy. See *id.* at 125-26, 143-55 (defining privacy as involving "the ability of each person to dictate what can and cannot be done with their own personal information").

2. P. ix.

3. See, e.g., *TECHNOLOGY AND PRIVACY: THE NEW LANDSCAPE* (Philip E. Agre & Marc Rotenberg eds., 1997) (collecting original essays that assess impact of technology on privacy and that also advance theoretical understandings of privacy itself).

4. But see PATRICIA WALLACE, *THE PSYCHOLOGY OF THE INTERNET* 208-32 (1999) (devoting a chapter to "Gender Issues on the Net"). See generally SHERRY TURKLE, *LIFE ON THE SCREEN: IDENTITY IN THE AGE OF THE INTERNET* (1995) [hereinafter TURKLE, *LIFE*] (describing several cases of gender-swapping in multi-user domains); Sarah Chester, *A Feminist Response to the Exon Bill*, 8 HASTINGS WOMEN'S L.J. 79 (1997) (discussing the implications of the Communications Decency Act for feminism and the future of the Internet); Catharine A. MacKinnon, *Vindication and Resistance: A Response to the Carnegie Mellon Study of Pornography in Cyberspace*, 83 GEO. L.J. 1959 (1995) (considering the implications of pornography on the Internet); Kim Bartel Sheehan, *An Investigation of Gender Differences in On-Line Privacy Concerns and Resultant Behaviors*, J. INTERACTIVE MARKETING, Autumn 1999, at 24 (discussing whether gender differences

The Internet and the Web were largely the inventions of men as well as government and private institutions managed by men.⁵ However, today both men and women are designing cyberspace, and both men and women are using it. Like men, women use cyberspace variously to build and enhance careers or businesses, to purchase consumer goods and services for themselves and their families, to magnify and challenge their political voices, to educate themselves and the general public, and to enhance their social lives.

Moreover, both men and women are vulnerable to unwelcome privacy invasions in cyberspace.⁶ Indeed, in major respects, men and women sail through cyberspace in the same leaky boat.⁷ (We can analogize cyberspace to a vast sea into which spills the private data of those who navigate its swelling waters.) For neither men nor woman can assume complete privacy in the email of the workplace, in their travels from Web site to Web site, in

are visible in attitudes and behavior regarding advertising and marketing practices); Sherry Turkle, *Second Class Citizens of Cyberspace*, WORLD PAPER, Aug. 1998, at 6 [hereinafter Turkle, *Second Class Citizens*] (discussing "virtual" gender-swapping).

5. See BERNERS-LEE, *supra* note 1, at 1-90 (describing the role of the Department of Defense, the National Science Foundation, and individuals in the creation of the Internet and the Web).

6. Many books and articles describe how Internet use can result in unwanted privacy losses. See generally, e.g., ANN CAVOUKIAN & DON TAPSCOTT, WHO KNOWS: SAFEGUARDING YOUR PRIVACY IN A NETWORKED WORLD (1997) (describing the impact of technology on privacy); LAW AND THE INTERNET: REGULATING CYBERSPACE (Lilian Edwards & Charlotte Waelde eds., 1997) (outlining laws pertaining to privacy, property, decency, and other offenses perpetrated online); LIBERATING CYBERSPACE: CIVIL LIBERTIES, HUMAN RIGHTS AND THE INTERNET (Liberty ed., 1999) (collecting essays on the development of the Internet, some of which focus explicitly on the privacy issue); THOMAS A. PETERS, COMPUTERIZED MONITORING AND ONLINE PRIVACY (1999) (identifying legal rights and interests infringed by observation and surveillance of employees, co-workers, and other computer users); PROTECTING PRIVACY (Basil S. Markesinis ed., 1999) (compiling essays on the protection of privacy); PETER P. SWIRE & ROBERT E. LITAN, NONE OF YOUR BUSINESS: WORLD DATA FLOWS, ELECTRONIC COMMERCE, AND THE EUROPEAN PRIVACY DIRECTIVE (1998) (examining the Directive and the possible effect it could have on the U.S. economy); CHARLES J. SYKES, THE END OF PRIVACY (1999) (examining the challenge to privacy in the Information Age and asking how to restore a culture that respects privacy); VISIONS OF PRIVACY: POLICY CHOICES FOR THE DIGITAL AGE (Colin J. Bennett & Rebecca Grant eds., 1999) (noting that the theme of the book is "whether the privacy solutions of the past are equal to the surveillance challenges of the future"); Jerry Kang, *Information Privacy in Cyberspace Transactions*, 50 STAN. L. REV. 1193 (1998) (focusing on the specific problem of personal data generated in cyberspace transactions); Erika S. Koster, *Zero Privacy: Personal Data on the Internet*, COMPUTER LAW., May 1999, at 7 (providing perspectives on the ways men and women are vulnerable to unwanted privacy losses on the Internet and what, if anything, should be done about it). Of course, men and women often knowingly sacrifice privacy to attain other goods. In fact, not everyone turns to the Internet and the Web for confidential or anonymous communications. On the contrary, some people approach the Internet and the Web as broadcast media for efficient social or professional networking, mass exposure, mass marketing, and mass advertising.

7. If men work, play, and shop online more than women do, men, in a sense, might be more vulnerable to privacy invasions than women. But their vulnerability in this instance would not have to do with their sex. If women are more active consumers of certain categories of consumer goods and health services, it is conceivable that private industries would wish to monitor and record their movement through cyberspace more closely than that of men. Data gathering of this type, however, would not necessarily constitute an affront to women as women.

their "anonymous" chat room conversations and bulletin board postings, or in the personal and financial data they disclose to companies with whom they do business online.⁸ Neither men nor women have access to the encryption tools some experts say they need to insure the security of personal communications.⁹

Too little privacy in cyberspace is something of a problem for anyone who wants privacy, whether male or female. But too much privacy in cyberspace can be a problem, too. Cyberspace privacy (including anonymity, confidentiality, secrecy, and encryption) can obscure the sources of tortious misconduct, criminality, incivility, surveillance, and threats to public health and safety.¹⁰ Since too little or too much privacy can be a problem for both men and women and their common communities, why focus on gender in cyberspace? A woman-centered perspective on privacy in cyberspace is vital because only with such a perspective can we begin to evaluate how the advent of the personal computer and global networking, conjoined with increased opportunity for women, has affected the privacy predicament that once typified many American women's lives.

In *Uneasy Access*, I set out the privacy predicament. Characterizing privacy as inaccessibility to others,¹¹ I argued that a traditional predicament of American women was too much of the *wrong* kinds of privacy.¹² Women often had too much privacy in the senses of imposed modesty, chastity, and domestic isolation and not enough privacy in the sense of adequate opportunities for individual modes of privacy and private choice.¹³ I suggested that

8. See generally CAVOUKIAN & TAPSCOTT, *supra* note 6 (emphasizing the difficulty in protecting privacy with the emergence of a networked world); LAURA J. GURAK, *PERSUASION AND PRIVACY IN CYBERSPACE* (1997) (telling the stories of "two online protests, which dealt with computers, privacy, and the shape of communication technology and society"); PETERS, *supra* note 6 (detailing how personal and financial information is passed to third parties via computer use); SYKES, *supra* note 6 (noting the challenges made to privacy as a result of modern technology).

9. Cf. BERNERS-LEE, *supra* note 1, at 149-51 (arguing that we are not able to use public key cryptography to achieve authenticity, confidentiality, integrity of messages, and nonrepudiability of messages because the federal government fears loss of control).

10. See RIGHTS AND RESPONSIBILITIES OF PARTICIPANTS IN NETWORKED COMMUNITIES 69-84 (Dorothy E. Denning & Herbert S. Lin eds., 1994) (identifying electronic vandalism and other computer-related crime); SYKES, *supra* note 6, at 25-58 (raising concerns about abuses that may result from "surveillance society"); WALLACE, *supra* note 4, at 110-32 (describing the prevalence and psychology of Internet incivility); David J. Phillips, *Cryptography, Secrets, and Structuring of Trust*, in TECHNOLOGY AND PRIVACY, *supra* note 3, at 243, 243-76 (describing security measures for protecting data from electronic vandalism and other unauthorized access). See generally JULIAN DIBBELL, *MY TINY LIFE* (1998) [hereinafter DIBBELL, *TINY*] (describing incivilities by Internet game players).

11. See p. 15 ("[P]ersonal privacy is a condition of inaccessibility of the person, his or her mental states, or information about the person to the senses or surveillance devices of others."). The term "privacy" is also "used to refer to spheres of activity that are, or ought to be, free of governmental involvement." P. 33.

12. See pp. 180-81.

13. See *id.*

women are particularly vulnerable to privacy problems because they are perceived as inferiors, ancillaries, and safe targets and that women's privacy is sometimes probed by others who implicitly assume that daughters, pregnant women, mothers, and wives are more accountable for their private conduct than their male counterparts.¹⁴

Women's overall standing as equal participants in the family and in the economic and political life of our society has improved in recent decades. In this new environment, many women have the privacy that they want. They have experienced success in "overcoming inequitable social and economic patterns that substitute confinement to the private sphere for meaningful privacy."¹⁵ They have learned to "exploit[] individual privacy without sacrificing worthy ideals of affiliation and benevolent caretaking to self-centeredness."¹⁶ These egalitarian achievements in the final decades of the twentieth century could mean that women in the lately developed realm of cyberspace quite naturally enjoy the same privacy benefits that men enjoy and only suffer the privacy indignities that men also suffer.

However, women in cyberspace do not enjoy the same level and types of desirable privacy that men do. Women face special privacy problems in cyberspace because there, too, they are perceived as inferiors, ancillaries, and safe targets and held more accountable for their private conduct. In short, the complex gendered social norms of accessibility and inaccessibility found in the real world are also found in the cyberworld.¹⁷ That privacy may be a special problem for women in cyberspace is an especially disturbing possibility since "women may be more concerned than men about information-gathering and their privacy on-line."¹⁸ In Part I of this essay, I briefly review *Uneasy Access*, highlighting its central claims and contributions. In Part II, I provide some examples of women who have used cyberspace to attain certain objectives and discuss the role that privacy plays in the reaching of those

14. Pp. 141-46. An interesting example of a woman being accountable for her private life occurred recently in Japan, outraging feminists who detected a double standard. Ayumi Kuroda, a popular television anchor, lost her job when it was revealed that she had kept her divorce secret from the public for two years. See Howard W. French, *TV Star Loses Marriage, Privacy and Her Job Too*, N.Y. TIMES, Oct. 27, 1999, at A4.

15. P. 54.

16. *Id.*

17. Cf. Rebecca K. Lee, *Romantic and Electronic Stalking in a College Context*, 4 WM. & MARY J. WOMEN & L. 373, 404, 405-06 (1998).

Indeed, the Internet is proving itself to be a hostile place for women, where female abuse can be found everywhere, including: e-mail messages, chat rooms, and Usenet newsgroups. The atmosphere surrounding newsgroups (open electronic conferences) is charged with such high levels of sexual harassment and disrespect for women that many women are joining private mailing lists for cyberspace community and interaction.

Id.

18. Sheehan, *supra* note 4, at 27. Some opinion polls suggest that women are "highly concerned" about privacy threats and are somewhat more concerned about such threats than men. See *id.*

goals. I conclude that the privacy of women in cyberspace is more at risk than that of men.¹⁹ Some of the worst features of the real world are replicated in cyberspace, including disrespect for women and for the forms of privacy and intimacy women value.

Throughout *Uneasy Access*, I argued that women need and ought to have a right to meaningful forms of privacy and private choice. To that argument, I would now add that there is a need among women for privacy in cyberspace, too. I want to be careful not to overstate the sex-specific problem. Men online are vulnerable to privacy invasions just as women are. Moreover, some of the unique privacies of cyberspace work to women's advantage. Cyberspace is hardly heaven,²⁰ but it can serve the needs of women wishing to be left alone and of women seeking intimacy, commerce, and community with others.²¹

I. STILL UNEASY

Uneasy Access proceeded on the basis of egalitarian, liberal, and feminist principles. I framed the central privacy problem confronting American women with a slogan: Women have had too much of the wrong kinds of privacy.²² Women have had too much privacy, in the form of confinement in their homes and imposed standards of modesty and reserve; but they have had too little privacy in the form of opportunities for replenishing solitude and independent decisionmaking.²³ Until quite recently, many women in the United States were confined to the so-called "private sphere" of home and family in dependent domestic caretaking roles. Although these roles were sources of intimacy and joy, they were products of a social structure predi-

19. See, e.g., WALLACE, *supra* note 4, at 45 ("A[n] . . . administrator for a fantasy role-playing game on a Boston host showed me the system statistics that summarized the gender characteristics of registered players. Only about 25% were female-presenting, and they tended to receive more attention and chivalry in the form of hints and gifts, and occasionally received more harassment."). One male posing as a woman said, "I was shaken by how quickly uninvited male adoration could take on a violent edge." *Id.* (quoting Steve Silberman, a writer for *Wired* magazine).

20. But see MARGARET WERTHEIM, *THE PEARLY GATES OF CYBERSPACE* 21 (1999) ("[Cyberspace] is a repackaging of the old idea of Heaven . . . The perfect realm awaits us . . . beyond the network gateways . . ."); see also *id.* at 22 ("Cyberspace too [like the Christian Heaven] is potentially open to everyone: male and female . . . [T]here is something potentially positive for women and racial minorities here, because the biasing baggage of a gendered and colored body is hidden from view . . .").

21. See *id.* at 230 ("[T]he primary use of cyberspace is not for information-gathering but for social interaction and communication."); see also *id.* at 231 ("One of the great appeals of cyberspace is that it offers a collective immaterial arena not after death, but here and now on earth."). Wertheim argues that "cyberspace can serve as a metaphor for community, because human communities also are bound together by networks of relationships; the kinship networks of our families, the social networks of our friends, and the professional networks of our work associates." *Id.* at 299.

22. See p. 37.

23. See pp. 180-81.

cated on male domination and women's exclusion from most forms of civic, intellectual, and commercial leadership. Women who worked outside the home in education, business, industry, or the military were less isolated, but they, too, often found it hard to escape autonomy-limiting dependency and expectations of modesty and reserve. Moreover, women working outside the home were likely victims of privacy-invading sexual harassment on city streets and in the workplace.²⁴

Uneasy Access sought to identify meaningful, beneficial forms of individual privacy and private choice to which women could lay claim, consistent with the passion for and realities of community, family, and intimacy. The first two chapters of the book were devoted to engaging the small, analytically challenging philosophical literature concerning the definition and value of privacy. I urged that we think of privacy as modes of inaccessibility and noninterference and argued that privacy is potentially valuable for its capacity to enhance personhood and relationships. I also stressed the importance to women of participation in society as equals and up to their capacities.²⁵ The four remaining chapters of the book explored topical themes, chiefly, privacy in the home, privacy in public places, birth control, abortion, sexual harassment, rape victim publicity, pornography, and prostitution.²⁶

Today, privacy is more widely discussed among academics, policy analysts, and journalists²⁷ than it was when *Uneasy Access* was published in 1988. At that time, privacy was still an emerging concern. To be sure, federal and state lawmakers had been steadily expanding privacy protections for data and communications since the mid-1970s in response to threats posed by computer and surveillance technologies.²⁸ The federal courts were preparing for a fresh round of the abortion privacy debates and were being asked on behalf of employers and school administrators to consider less liberal interpretations of the "reasonable expectations of privacy" principle in Fourth Amendment cases.²⁹ Privacy concerns about the rights of homosexuals, sur-

24. See pp. 128-33.

25. See pp. 1-53.

26. See pp. 54-179.

27. See, e.g., AMITAI ETZIONI, *THE LIMITS OF PRIVACY* 1-2 (1999) (noting the current agitation about protecting privacy).

28. See MARC ROTENBERG, *THE PRIVACY LAW SOURCEBOOK* 1999, at 1-173 (1999) (identifying ten federal privacy statutes enacted between 1970 and 1988 and four additional privacy statutes enacted through 1999).

29. See generally *Rust v. Sullivan*, 500 U.S. 173 (1991) (holding that a federally funded program may bar abortion counseling, referral, and activities advocating abortion as a method of family planning); *Webster v. Reproductive Health Serv.*, 492 U.S. 490 (1989) (holding that state statute regulating abortion was constitutional). Although the Supreme Court did not reach decisions in these abortion cases until after 1988, the privacy issues and legal challenges arose prior to that year. For cases in which the U.S. Supreme Court considered exceptions or limitations to Fourth Amendment protections sought by employers or school administrators, see generally *National Treasury Employees Union v. Von Raab* 489 U.S. 656 (1989) (holding that mandatory employee urinalysis did not violate the Fourth Amendment); *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602

rogate mothers, and persons wanting to die were erupting nationally.³⁰ But privacy had less "buzz." Privacy was not so commonly talked or written about.

Uneasy Access was among the first books about privacy to appear from the academy. It was apparently the very first by an American philosopher and one of the first by an academic in law.³¹ Since the publication of *Uneasy Access* a number of philosophers have written books that devoted sustained attention to the meaning and value of privacy in its many, complex dimensions.³² That *Uneasy Access*, one of the first books to devote itself entirely to

(1989) (holding that employee drug and alcohol testing did not violate the Fourth Amendment); and *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (holding that a school search did not violate the Fourth Amendment).

30. See generally *Bowers v. Hardwick*, 478 U.S. 186 (1986) (holding that Georgia law criminalizing sodomy did not violate the fundamental rights of homosexuals); *In the Matter of Baby M*, 537 A.2d 1227 (N.J. 1988) (voiding surrogate mother contract notwithstanding constitutional privacy claims); *In the Matter of Quinlan*, 355 A.2d 647 (N.J. 1976) (holding that a person's right to die was a valuable incident of the right to privacy). Nancy Cruzan's case was igniting new interest in comatose patients' decisional privacy as it made its way through the courts, culminating in a 1990 Supreme Court decision. See generally *Cruzan v. Director, Mo. Dep't of Health*, 497 U.S. 261 (1990) (recognizing a liberty interest in refusing unwanted medical treatment).

31. A number of prominent philosophers published articles about particular aspects of privacy in the 1970s and 1980s. See generally, e.g., *PHILOSOPHICAL DIMENSIONS OF PRIVACY* (Ferdinand David Schoeman ed., 1984) (compiling articles that, for the most part, focus on the moral significance of privacy); *PRIVACY* (J. Roland Pennock & John W. Chapman eds., 1971) (collecting articles on privacy that do not focus on law and technology); Judith Jarvis Thomson, *The Right to Privacy*, 4 PHIL. & PUB. AFF. 295 (1975) (examining when the right to privacy has been violated). The Israeli jurist, Ruth Gavison, also published an important article in the 1980s. See generally Ruth Gavison, *Privacy and the Limits of Law*, 89 YALE L.J. 421 (1980) (noting that privacy is related to our concern over accessibility to others). In 1981, Jean Bethke Elshtain published a book that used the terms public and private "as a conceptual prism through which to see the story of women and politics from Plato to the present." See JEAN BETHKE ELSHTAIN, *PUBLIC MAN, PRIVATE WOMAN: WOMEN IN SOCIAL AND POLITICAL THOUGHT* at xiv (1981). Moral philosopher Sissela Bok published a book substantially about privacy in 1983, but she explicitly argued that privacy and secrecy are different concepts. See SISSELA BOK, *SECRETS: ON THE ETHICS OF CONCEALMENT AND REVELATION* 6, 10 (1983) (noting that privacy is an aspect of secrecy but that the two are not identical, "having defined secrecy as intentional concealment"). *Uneasy Access* was preceded by Harvard law professor Arthur Miller's book that examined the impact of technology on society and by Alan F. Westin's book that discussed the relationship between privacy and technology. See ARTHUR R. MILLER, *THE ASSAULT ON PRIVACY* 2 (1971) (exploring the ways in which information technology has changed basic patterns in daily life and evaluating the responses that have been made by the law, government, industry, and the like); ALAN F. WESTIN, *PRIVACY AND FREEDOM* 3 (1967) (examining "what [might] be done to protect privacy . . . [from the] forces of science, technology, environment, and society"); see also KIM LANE SCHEPPELE, *LEGAL SECRETS* 3 (1988) (examining "the way in which Anglo-American legal culture discusses and regulates secrets").

32. See generally, e.g., PATRICIA BOLING, *PRIVACY AND THE POLITICS OF INTIMATE LIFE* (1996) ("providing a new approach to public-and-private matters and to thinking about . . . concepts of private, public, and the political"); JUDITH WAGNER DECEW, *IN PURSUIT OF PRIVACY: LAW, ETHICS, AND THE RISE OF TECHNOLOGY* (1997) (examining privacy from both a legal and philosophical perspective and then discussing privacy in relation to feminism, sexuality and reproduction, drug testing, and technology); JULIE C. INNESS, *PRIVACY, INTIMACY, AND ISOLATION* (1992) (exploring whether privacy can be separated conceptually and morally from other interests, how

the philosophy and jurisprudence of privacy, was undertaken from a feminist perspective can be explained by the confluence of two factors. The first factor was the special interest a feminist in law or moral philosophy was bound to take in the assault on privacy jurisprudence that followed the Supreme Court's landmark reproductive rights decisions decriminalizing birth control and abortion.³³ The second factor was the special interest feminists in all fields were taking in the history of the public/private distinction, newly illuminated by a wave of women historians.³⁴ In this context, I became interested in issues of family privacy and women's reproductive privacy, both of which posed unique dilemmas for liberal government and its ideals. I became very interested as well in the notion that men and women inhabit "separate spheres" and that family homes, while "private," can also be oppressive.³⁵ My ultimate analysis of women's privacy took inspiration from the seminal work of the nineteenth-century writer Charlotte Perkins Gilman.³⁶ Unlike her more famous (to lawyers and judges anyway) contemporaries, Samuel Warren and Louis Brandeis,³⁷ Gilman clearly appreciated the differences a person's sex and class can make to the quality and quantity of privacy enjoyed in everyday life.³⁸ I also drew inspiration from contemporary feminist scholars, including Catharine Mackinnon,³⁹ Jean Elshtain,⁴⁰ and

privacy should be defined, and what value it should be given); FERDINAND DAVID SCHOEMAN, *PRIVACY AND SOCIAL FREEDOM* (1992) (examining privacy, social freedom, and human social nature).

33. See generally *Roe v. Wade*, 410 U.S. 113 (1973) (holding that prohibition of abortion without regard to the stage of pregnancy violated the Fourteenth Amendment); *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (holding that a Massachusetts law prohibiting the distribution of contraceptives except to married people violated the Fourteenth Amendment); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (holding that a Connecticut statute forbidding contraception violated the right of marital privacy).

34. See, e.g., CARROLL SMITH-ROSENBERG, *DISORDERLY CONDUCT: VISIONS OF GENDER IN VICTORIAN AMERICA* (1985) (collecting the author's essays to explicate the experiences and interactions of men and women from the early nineteenth century to the First World War).

35. At the time, feminists were emphasizing the problem of domesticity and the historic confinement of women to the private sphere or to the confining authority of lovers, husbands, and fathers. See generally, e.g., *id.*

36. See CHARLOTTE PERKINS GILMAN, *WOMEN AND ECONOMICS* 255, 258-60 (Carl N. Degler ed., Harper & Row 1966) (1898) (distinguishing family privacy from individual privacy).

37. See generally Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890) (arguing for a "right of privacy").

38. See Anita L. Allen & Erin Mack, *How Privacy Got Its Gender*, 10 N. ILL. U. L. REV. 441, 465-69 (1990) (comparing Gilman's work, *supra* note 36, to Warren and Brandeis's, *supra* note 37).

39. See CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 96 (1987) (arguing that "the logic of *Roe* . . . translates the ideology of the private sphere into the individual woman's legal right to privacy as a means of subordinating women's collective needs to the imperatives of male supremacy").

40. See ELSHTAIN, *supra* note 31, at 4 (using the terms public and private "as a conceptual prism through which to see the story of women and politics from Plato to the present").

Carol Gilligan,⁴¹ who wrote from the perspectives of law, political theory, and psychology about women, families, and reproductive choices.

Unfortunately, at the time I wrote *Uneasy Access*, I was only beginning to understand the full scope of the progressive feminist critiques of privacy and the public/private distinction. Some of my subsequent work has attempted to grapple with the expanding chorus of feminist privacy critics who dismiss privacy as a male value or a piece of untenable liberal ideology.⁴² Moreover, when I completed *Uneasy Access*, I was just beginning to understand the importance to legal feminists of what came to be called the sameness/difference debates.⁴³ The liberal orientation of my book seemed to align me with the "sameness" feminists who argued that the path to equality for women was through being treated the same as men.⁴⁴ Doubtlessly disappointing to some legal feminists, *Uneasy Access* failed to focus sharply on the theory of equality it presupposed or on the sameness/difference debates in relation to reproductive privacy or sexual harassment.

Despite these imperfections, *Uneasy Access* has had a modest impact and an afterlife.⁴⁵ The question presented here, though, is whether the analysis of

41. See generally CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982) (arguing that differences in women's psychology should be considered in a thorough study of human development).

42. See generally, e.g., Anita L. Allen, *The Jurispolitics of Privacy*, in RECONSTRUCTING POLITICAL THEORY 68 (Mary Lyndon Shanley & Uma Narayan eds., 1997) (exploring "the gendered ways in which the legal concept of privacy has been constructed in citizen-to-government and citizen-to-citizen contexts"); Anita Allen, *Privacy*, in A COMPANION TO FEMINIST PHILOSOPHY 456 (Alison M. Jaggar & Iris Marion Young eds., 1998) (reviewing formulations of privacy and their treatment by feminists); Anita L. Allen, *The Proposed Equal Protection Fix for Abortion Law*, 18 HARV. J.L. & PUB. POL'Y 419 (1995) (addressing the proposal to treat abortion rights under equal protection rather than privacy).

43. See, e.g., DEBORAH L. RHODE, *JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW* 305-21 (1989) (discussing feminists' differences over difference and sameness); Wendy W. Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*, 7 WOMEN'S RTS. L. REP. 175, 200 (1982) (asking if feminists were defending a separate female culture while trying to break down the barriers created by men's separate culture).

44. See Williams, *supra* note 43, at 200 ("I for one suspect a deep but sometimes nearly invisible set of complementarities, a yin-yang of sex-role assumptions and assignments so complex and interrelated that we cannot successfully dismantle any of it without seriously exploring the possibility of dismantling it all.")

45. For example, Chapters 3 and 4 of the book have been reprinted as chapters in anthologies. See generally Anita L. Allen, *Privacy at Home: The Twofold Problem*, in REVISIONING THE POLITICAL: FEMINIST RECONSTRUCTIONS OF TRADITIONAL CONCEPTS IN WESTERN POLITICAL THEORY 193 (Nancy J. Hirschmann & Christine Di Stefano eds., 1996) (pointing out that "women face the problem of overcoming inequitable social and economic patterns that substitute confinement to the private sphere for meaningful privacy" and that "women face the problem of enjoying and exploiting individual privacy without sacrificing worthy ideals of affiliation and benevolent caretaking to self-centeredness"); Anita L. Allen, *Privacy and Reproductive Liberty*, in "NAGGING" QUESTIONS: FEMINIST ETHICS IN EVERYDAY LIFE 193 (Dana E. Bushnell ed., 1995) (identifying "the most important forms of privacy at stake in the quest for basic reproductive liberties" and explaining "why respect for these forms of privacy should be deemed a major impetus toward policies that maximize women's choices"). See also TECHNOLOGY AND PRIVACY, *supra* note 3, at 1 (describing *Uneasy Access* as a "foundational analysis of privacy" that was "admirably undertaken").

women's privacy I undertook twelve years ago has continuing relevance in the age of the Internet and the Web. I believe that it does. *Uneasy Access* was published prior to the emergence of the Internet and the Web as pervasive tools of communication and research. It also preceded the human genome project, confessional talk shows, reality TV, cell phones, computerized medical records, aggressive investigative journalism, the Clinton/Lewinsky scandal,⁴⁶ and many other phenomena that have made concerns about privacy everyday occurrences. Perspectives first developed in *Uneasy Access* can nonetheless help illuminate privacy issues arising for women in the new environment of cyberspace. These issues are about too much privacy as well as too little privacy.

To talk about women and privacy in cyberspace requires revisiting traditional feminist concerns about objectification, subordination, violence, and isolation.⁴⁷ Cyberspace replicates the traditional spaces in which women dwell and therefore is open to the same criticisms.⁴⁸ Those who worry about the perils women face behind closed doors in the real world will find analogous perils facing women in cyberspace⁴⁹ Rape, sexual harassment, prying, eavesdropping, emotional injury, and accidents happen in cyberspace and as a consequence of interaction that commences in cyberspace. Cyberspace is not hermetically sealed. For example, sexual predators invite real contact. In neither the real nor the virtual domain are the privacies of anonymity, confidentiality, identity, seclusion, and personal autonomy unqualified goods. They are conditional.

To talk about women and privacy in cyberspace will ultimately take us beyond traditional feminist concerns. We need to confront the implications of the ability to interact as one or more persons of the opposite sex or as sexless personae. I believe that we also need to be open to the moral task of approving and disapproving the ways in which women voluntarily use the Internet and the Web to enhance or abrogate their privacy. What are arguably excesses of voluntary concealment and exposure made possible by technology point to a need (barely visible when I wrote *Uneasy Access*) for liberal privacy theorists and policymakers to confront basic questions within political theory about whether in a liberal society there can be such a thing as wanting, as well as having, too little privacy. *Uneasy Access* assumed that, if

46. See generally ANDREW MORTON, *MONICA'S STORY* (1999) (recounting the Clinton scandal from Monica Lewinsky's point of view).

47. See generally Maggie Canon, *Life in the Big City*, MACUSER, May 1995, at 17 (describing the gender imbalance and sexual predation found on the Internet).

48. For all the inventiveness of multi-user domain fantasy games, the action of one of the best known takes place in a house: the traditional situs of a woman's life. See generally DIBBELL, TINY, *supra* note 10 (discussing the world of LambdaMOO).

49. See, e.g., Dibbell, *A Rape in Cyberspace*, INDEP. (London), Jan. 24, 1999, at 13 [hereinafter Dibbell, *Rape*] (describing "ghostly" acts of sexual violence committed by a fictive character in a multi-user domain).

women could get real privacy, they would want it. Recent experience in cyberspace suggests, though, that some women, who finally have the ability to demand real privacy and intimacy, are opting for less rather than more of it, using their freedom to abrogate privacy. Hence the question posed by writer Margaret Talbot: "Is it possible to invade your own privacy?"⁵⁰

It is very unclear how much privacy typical women (if there are "typical" women) really want. Women were probably among those outraged at the mere suggestion that amazon.com might sell general data about their reading habits;⁵¹ worried that new banking laws would allow firms to aggregate information about their customers to enhance marketing of financial products;⁵² fearful that medical privacy safeguards proposed by the President might leave us vulnerable;⁵³ and disappointed that the United States has so far declined to adopt data protection laws comparable to those adopted by the European Community.⁵⁴ But as the examples below will show, some women voluntarily make themselves highly accessible to others on the Internet and the Web. As liberals, we can criticize but must tolerate. Can we do nothing more? Can a liberal society do nothing more?

II. ACCESSIBILITY IN CYBERSPACE

Women currently operate in cyberspace for reasons of convenience and pleasure as well as necessity. For some women, the use of cyberspace is not a choice. It is required by their business or employment. In the future, as more business and commerce move to the Internet and the Web, women's success as economic players may well depend on their ability to negotiate cyberspace. Ideally, these future negotiations will be civil and safe. Today, travelers in cyberspace can move about in highly accessible modes, which are sometimes risky, and in highly inaccessible modes, which may be more

50. Margaret Talbot, *Candid Camera*, NEW REPUBLIC, Oct. 26, 1998, available in LEXIS, News Library.

51. See David F. Gallagher, *Amazon Moves to Ease Worry About Privacy of Customers*, N.Y. TIMES, Aug. 30, 1999, at C1 (describing the controversy created by "purchase circles").

52. See *Privacy in Financial Dealings*, N.Y. TIMES, Nov. 3, 1999, at A24 (calling the financial services bill "a bad deal for consumer privacy" because it "places no restrictions on the kind of detailed personal information . . . that can be swapped among affiliated companies").

53. See Robert Pear, *Rules on Privacy of Patient Data Stir Hot Debate*, N.Y. TIMES, Oct. 30, 1999, at A1 (describing President Clinton's proposed rules for safeguarding medical records and the debate over the proposals); Robert Pear, *Clinton to Unveil Rules to Protect Medical Privacy*, N.Y. TIMES, Oct. 27, 1999, at A1 (noting that the President's proposal might "take away some of the power that patients have traditionally had to decide when and if their records are released to third parties") (quoting Dr. Paul S. Appelbaum, vice-president of the American Psychiatric Association).

54. See Colin J. Bennett, *Convergence Revisited: Toward a Global Policy for the Protection of Personal Data*, in TECHNOLOGY AND PRIVACY, *supra* note 3, at 99, 106-14 (describing European data protection standards and American exceptionalism); Edmund L. Andrews, *European Law Aims to Protect Privacy of Data*, N.Y. TIMES, Oct. 26, 1998, at A1 (describing European Union law prohibiting buying and selling of personal data).

appealing but risky as well. Women participate in cyberspace in both highly accessible modes and highly inaccessible modes.

First, women operate in cyberspace in highly accessible modes. These women are significantly identified, revealed, or disrobed. For these women, former conventions of modesty and reserve (described in *Uneasy Access*⁵⁵) have been fully abrogated in favor of historic levels of publicity and exposure. While some of the women who bare it all on the Internet are objects of exploitation rather than agents, others are pleasure seekers, entrepreneurs, artists, and educators—persons not easily construed as subordinated victims of pornographers and the male entertainment industry.⁵⁶

Second, women operate in cyberspace highly inaccessibly, with their names, gender, and other identifying personal traits obscured, their messages encrypted or protected, and their bodies shielded from view.⁵⁷ They do not enjoy perfect privacy, of course, nor would they want to. The very purpose of the Internet and the Web is to increase the accessibility of persons and information. Moreover, traveling in cyberspace makes the computer user vulnerable to tracking and tracing by government, big business, and employers. Still, optional conditions of relative inaccessibility protect key aspects of computer users' identities from unwanted disclosure to others. Women in cyberspace can engage in selective concealment. For the women who want it, cyberspace affords a level of privacy, anonymity, confidentiality, and security never before available for women who interact on a regular basis with numerous others.⁵⁸

The woman who shops in the local mall is vulnerable to privacy-invading leering, social overtures, and sexual harassment. The woman who shops from her home or office in cyberspace is vulnerable to data collectors, but is blessedly free of unwanted pick-up attempts and other vulgar distractions. Some women operate deceptively in cyberspace as virtual males or as androgynous beings to avoid unwanted encounters.⁵⁹ Cyberspace permits

55. See pp. 19-21 (discussing modesty and reserve).

56. See generally WALLACE, *supra* note 4, at 157-70 (discussing and classifying commercial and noncommercial pornography (photos, sex acts, reading materials)).

57. But see WALLACE, *supra* note 4, at 22, 24.

On the Internet, gender is more easily deciphered than age simply because so many people sign their messages, or use nicknames that suggest male or female. . . .

....

In the social neighborhoods of the Internet the pressure to reveal age and gender is high because these two features are so fundamental to the initial impression. . . . [P]eople do not probe others about race with the same kind of direct boldness they inquire about age, gender, or location.

Id.

58. But see Lisa Guernsey, *The Web Discovers Its Voice*, N.Y. TIMES, Oct. 21, 1999, at D1 (describing new voice-chat software that allows participants in chat rooms to hear one another's actual voices, thus diminishing anonymity and the ability of women and men to hide their sexes).

59. See WALLACE, *supra* note 4, at 47.

women to interact with others as men, under the pretense of being men, forcing a distinction between *gender* in cyberspace and *women* in cyberspace. Women interacting as men may find it easier to avoid and brush off unwanted overtures.⁶⁰ Of course, women pretending to be men may fail to be masculine, and men pretending to be women may fail to be feminine, further complicating how we ought to understand the impact of sex and gender on privacy in cyberspace.⁶¹

Concrete examples of actual and represented women operating in cyberspace will help to clarify the contrast I have sketched between the highly accessible and the highly inaccessible modes in which women travel in cyberspace and the implications of each. I begin with women operating voluntarily in the exposed, accessible mode. For better and sometimes for worse, in my opinion, these women repudiate expectations of female modesty, chastity, and domestic seclusion.

Oddly, the online community is far more generous toward women who pretend to be men, and it is rare for Internet users to show outrage at this gender deception. How much women do this is not really known, though MUD [multi-user domain] administrators report that women gender-swap far less frequently than men [do]. More commonly, women choose gender-neutral names, especially to avoid online harassment.

Gender-swapping . . . could be considered fanciful role-playing, or it could be classified as outright lying.

Id.

60. See TURKLE, LIFE, *supra* note 4, at 210-23 (describing several cases of gender-swapping in multi-user domains and its effect on the participants); see also Turkle, *Second Class Citizens*, *supra* note 4.

>From my earliest effort to construct an online persona, I learned that being a virtual man might be more comfortable than being a virtual woman.

....

... Not only was I approached less frequently [in a multi-user domain], but I found it easier to respond to an unwanted overture with aplomb . . .

... As a woman I have a hard time deflecting a request for conversation by asserting my own agenda. As a MUD male, doing so seemed more natural.

By enabling people to experience the opposite sex, gender switching online teaches new lessons about the way gender shapes our expectations of others and ourselves.

... When a man goes online as a woman, he soon finds it difficult to maintain this fiction. To pass as a woman for any length of time requires understanding how gender inflects speech, manner, the interpretation of experience. Women attempting to pass as men face the same kind of challenge. . . .

....

... We can use [our online personae] to become more aware of what we project into everyday life. This means that we can use the virtual to reflect constructively on the real. Indeed, in my experience, life in cyberspace can provide very serious play. We take it lightly at our risk.

Id.

61. See WERTHEIM, *supra* note 20, at 239 ("The concept of gender, while not wholly up for grabs, is at least partially decoupled from the rigid restrictions so often foisted on us by the form of our physical bodies."); see also Turkle, *Second Class Citizens*, *supra* note 4.

A. Patti's Webcast Mastectomy

I begin with Patti, the woman who permitted the Health Network, an affiliate of the FOX Entertainment Group, to broadcast live her double mastectomy over the World Wide Web.⁶² Patti is a nurse with a family history of breast cancer. She underwent surgery to remove and reconstruct her breasts on October 20, 1999 at St. Mary Medical Center in Langhorne, Pennsylvania. Her breasts contained numerous calcifications, a small cancer, and a precancerous lesion.⁶³ Her decision to be at the center of the historic broadcast was striking for several reasons. First, medical matters are among those people generally cloak in confidentiality and privacy.⁶⁴ Patient and consumer advocates generally argue for major normative and legislative safeguards to protect medical information privacy.⁶⁵ Patti's decision implies a more complex stance toward medical privacy than the traditional one. Second, breast cancer and the removal of the breast were, until quite recently, regarded as a disease which one did not speak about at all or only obliquely. Patti's decision to have her surgery take place live on the Web signals the end of shame and secrecy about breast cancer. Third, women's breasts, especially the nipple and areola have been long regarded as parts of the human body that ought to be concealed from public view; indeed, laws prohibit public disclosure of women's breasts in all but a few artistic and profane settings.⁶⁶ Patti's decision and others' support and encouragement suggest a new attitude toward women's bodies.

Here we have a woman who did not regard the fact of her surgery as a matter for strict confidence; who was not ashamed to reveal to strangers that

62. See *As Part of Breast Cancer Awareness Month, the Health Network Will Webcast Live Mastectomy and Breast Reconstruction Surgery*, PR NEWswire, Oct. 13, 1999 [hereinafter *Webcast Mastectomy*], available in LEXIS, News Library.

63. See *id.*

64. See generally Lawrence O. Gostin, *Health Information Privacy*, 80 CORNELL L. REV. 451 (1995) (discussing the tension between (1) broad collection and use of health data and (2) privacy).

65. See, e.g., GEORGE J. ANNAS, *THE RIGHTS OF PATIENTS* 175-91 (1989) (arguing that medical privacy rules exist because "health care providers must often know the most personal and possibly embarrassing details of the patient's life in order to help"); ETZIONI, *supra* note 27, at 139-82 (arguing that medical privacy was "unnecessarily compromised without serving any important common good"). See generally GENETIC SECRETS (Mark A. Rothstein ed., 1997) (collecting articles assessing the need for privacy protection for genetic and health information); Gostin, *supra* note 64 (noting that current law neither protects privacy adequately nor ensures fair information practices).

66. A North Carolina statute governing public decency defines the public exposure of the nipple of the breast as unlawful but excepts breast feeding. See *State v. Ely*, 501 S.E.2d 656, 659 (N.C. 1998) (referencing 1993 N.C. Sess. Laws 586, 587); cf. *Settoon v. St. Paul Fire & Marine Ins. Co.*, 331 So. 2d 73, 75 (La. Ct. App. 1976) (describing allegation that a physician invaded privacy of a patient when he entered her hospital room as she breast fed her newborn). Earlier laws did not necessarily except breast feeding since the "breast-feeding of a baby in a public place is considered by many as being 'offensive to . . . modesty,' vulgar and indecent." *Burns v. State*, 512 S.W.2d 928, 936 (Ark. 1974).

she had breast cancer and that her breasts had been removed hoping to cure it; and who was unafraid to disclose her breasts in public despite the taboo. Patti's case is striking proof that the condition of imposed privacy described in *Uneasy Access* is a thing of the past. Patti is plainly not a woman confined by domestic roles and conventions of modesty and concealment.⁶⁷ Her abrogation of privacy, modesty, and shame for the sake of educating the public about an important public health problem is something many feminists would applaud.⁶⁸ Patti rejected forms of privacy and modesty that hurt and isolate women. Under the old privacy regime condemned in *Uneasy Access*, women could rarely feel comfortable sharing and obtaining detailed knowledge of their bodies. Under the new privacy regime, health privacy is optional. A woman can choose when to elect privacy, when publicity.⁶⁹ To elect tasteful publicity for so noble a cause as women's public health education may be something we should all praise. Patti is even more remarkable than the artist Matuschka whose photographic self-portrait appeared on the cover of the *New York Times Magazine*. Matuschka bared her chest to the camera to reveal the disfiguring scar of a mastectomy that she believed was probably unnecessary to cure her cancer.⁶⁹

But it is one thing to laud the new regime when the privacy it makes optional is privacy that is dangerous to our health. It is something else to laud the new regime when the privacy it makes optional is the privacy moral philosophers say is critical to well-being, dignified personhood, and intimacy.⁷⁰

B. *Elizabeth Begat Sean—on the Internet*

More than a year before Patti's mastectomy appeared on the Internet, Elizabeth, a middle-aged married mother of three, gave birth on the Network. Like Patti, Elizabeth said she allowed the broadcast because she wanted to educate others. Writer Ellen Goodman characterized the birth as a blow to privacy, albeit a voluntary blow: "As private space shrinks, the public's hunger for authenticity grows. As the hunger grows, the deeper we invade

67. See *Webcast Mastectomy*, *supra* note 62 ("My reason for publicly doing this is to educate and empower women and give them courage to make the big decisions associated with breast cancer." (quoting Patti)).

68. Men have choices, too. Former U.S. Senator Robert Dole chose to be public about his use of Viagra to fight sexual dysfunction; actor Michael J. Fox chose to be public about Parkinson's disease. See Donna Britt, *Would We Really Value Open Leaders?*, WASH. POST, Aug. 20, 1999, at B1 (referring to Dole's speaking publicly about his erectile dysfunction and Viagra use as an example of openness among public officials); Lloyd Grove & Beth Berselli, *The Reliable Source*, WASH. POST, Sept. 28, 1999, at C3 (describing interview with Fox regarding his disease).

69. See Susan Ferraro, *The Anguished Politics of Breast Cancer*, N.Y. TIMES, Aug. 15, 1993, § 6 (Magazine) at 25 (photograph on cover of issue).

70. See pp. 43-48, 52-53; see also BOLING, *supra* note 32, at 33; DECEW, *supra* note 32, at 171; INNESS, *supra* note 32, at 4-23; PHILOSOPHICAL DIMENSIONS OF PRIVACY, *supra* note 31, at 34, 156, 203, 223, 265, 290, 300, 403.

private life to find something real, and the shallower it gets."⁷¹ Goodman's concern is that the appetite for other people's private lives may lead to the end of private life as more and more people publicize otherwise private acts to a community of strangers. One could argue that Goodman's concern is raised more sharply by Elizabeth's case than Patti's. Childbirth, but not breast surgery, has developed into a joyous family experience, commonly observed by and shared with spouses, children, and parents. Some journalists condemned Elizabeth for making her newborn child into a kind of "Truman" and his birth into a kind of "Truman Show."⁷² Indeed, Elizabeth may have been self-deceived about the educational impact of her Internet delivery. How babies are born is not something about which the general public is especially ignorant. Nor is there a stigma attached to a married woman's childbirth that needs to be overcome by greater exposure. Elizabeth was more entertaining than educating.⁷³

Once childbirth was a deeply private act shrouded by conventions of privacy. This part of our past is well illustrated by the famous case *DeMay v. Roberts*,⁷⁴ in which a married couple successfully sued the physician who came to their tiny house on a dark, stormy night to deliver their child. The doctor's mistake was to bring along an "unprofessional unmarried young man" who observed the delivery.⁷⁵ Women are no longer burdened with the nineteenth century's expectations of modesty in childbirth. Yet childbirth is understood by many to be an intimate family experience from which strangers should be excluded.⁷⁶ Perhaps there is no real harm in having *one* of one's four children in front of the world, Elizabeth may have reasoned. Privacy? Been there, done that.

C. *All Day, All Night Jenni*

Jenni owns a Web site open to all comers for a small fee.⁷⁷ Jenni has several cameras trained on the rooms of her home to allow visitors to observe

71. Ellen Goodman, *'Miracle' Is Diminished on Internet*, DES MOINES REG., June 23, 1998, at 9.

72. See, e.g., *id.*; Richard Roeper, *The World Has Many Truman Burbanks*, DALLAS MORNING NEWS, June 20, 1998, at 27A (discussing Elizabeth's case as part of "a growing subculture of people who are living in a kind of Truman Show of their own making—the key difference being that these human beings are volunteering to live in a fishbowl").

73. Of course, Elizabeth did not want the media to use her last name. See Roeper, *supra* note 72 ("Privacy concerns, don't you know?").

74. 9 N.W. 146 (Mich. 1881).

75. *Id.* at 148.

76. See, e.g., *Knight v. Penobscot Bay Med. Ctr.*, 420 A.2d 915, 916-17 (Me. 1980) (describing allegation that privacy rights had been invaded when nurse's husband viewed plaintiff's wife deliver a baby).

77. See *JenniCam* <<http://www.jennicam.com>>. The initial screen of the Web site reads like a dictionary entry which defines jennicam as "a real-time look into the real life of a young woman"

her in real time living her life. Jenni's life is on view most of each day, so that her fans may watch her perform the activities one ordinarily performs in the privacy of one's home: hygiene, socializing, rest, avocations, and so on.⁷⁸ Like Patti, Jenni has made decisions that represent a sharp break with the past and its expectations of domestic privacy and female modesty. Too much of the wrong kind of privacy? Not for Jenni. She understands that she could live what we ordinarily think of as a truly private home life, but she does not want to. She has chosen to give up privacy in order to earn a bit of money, expand the creative potential of the Web, and gain notoriety. Jenni has decided to profit by overturning traditional privacy norms, even though those norms are generally thought to work to persons' and the political community's advantage.

Citizens of the city of Baltimore and certain other locales find that cameras follow them as they roam downtown city streets.⁷⁹ The purpose of the cameras is to deter and detect crime. U.S. corporations treat personal consumer data as a mere commodity to be aggressively collected, bought, and sold.⁸⁰ The purpose of the "data" market is to enable us to satisfy our preferences efficiently. Jenni reflects pop culture's irreverent, even retaliatory, indifference to privacy. She does to herself what the government and the corporate sector have done to her—lowered expectations of privacy in the conduct of daily life.

Some feminists would applaud Jenni no less loudly than they would applaud Patti. But there is a difference. Jenni's Web site services prurient interests. Visitors pay to see something that social traditions say they are not supposed to see: the body of a strange woman. Jenni's use of the cyberworld is playful and inventive, but it also replicates the condition of women in the real world—women are objects or commodities, and they are available on demand to men with "needs." If Patti is a teacher, Jenni is a call girl.

and "an undramatized photographic diary for public viewing esp. via [I]nternet." *Id.* The site claims that cameras show the bedrooms, living room, and dining room of Jenni's home and promises a roving camera soon. JenniCam membership costs fifteen dollars for a twelve-month subscription. Nonmembers can visit the JenniCam gallery, a sample of images showing photographs of Jenni's feet, eyes, nude back, and torso, plus photographs of Jenni bathing, caressing a lover in bed, entertaining a gathering of friends, and working at her desk. *See id.* Jenni's real name is Jennifer Ringley. She first started the site in 1995 while she was attending Dickinson College in Pennsylvania. *See* L.A. Lorek, *Privacy Now Public with Netcams*, HOUSTON CHRON., July 24, 1998, at 5.

78. *See* JenniCam, *supra* note 77.

79. *See* Bill Straub, *New Crime Deterrent: Cameras*, HOUSTON CHRON., Mar. 3, 1996, at 1 (describing Baltimore's Video Patrol Program).

80. *See, e.g.*, Jeffrey L. Seglin, *The Right Thing*, N.Y. TIMES, Mar. 19, 2000, § 3, at 4 (discussing the criticism that an Internet advertising and consumer data tracking firm faced when it said that it would start to "link[] its trove of heretofore anonymous data about people's Internet activities with the real names, addresses[,] and profiles of consumers in a database it had acquired").

Jenni is not the only person living in front of a Webcam.⁸¹ Other women with sites catering to voyeurs include Ana Voog, an artist and musician who has broadcast herself having sex with a boyfriend;⁸² Carla Cole, host of an Internet talk show called CyberLove;⁸³ the girls on the Dolls' House, four young women in their late teens and early twenties who agreed to twenty-four-hour surveillance in exchange for living rent free for six months;⁸⁴ and college coeds such as Trixie, viewable on the Internet site Voyeur Dorm,⁸⁵ and Lisa Baley, viewable on a similar site.⁸⁶

D. *Great Teats, Great Gametes*

Ron's girls take the general problem of cyberspace accessibility and feminism raised by Jenni to a new level. Ron Harris, who has worked as a photographer for Playboy television, sells access to erotic photographs of beautiful young women over the Internet.⁸⁷ (He also sells access to photos of attractive young men.) One of his Web sites purports to auction the eggs of his models to the highest bidder. Something of a market in women's eggs has arisen in recent years, symbolized by the New England couple who, in 1999, offered \$50,000 to an Ivy League donor meeting certain race, height, and SAT requirements.⁸⁸ Whether Ron's models are really interested in egg selling is another matter. But the claim that they are has increased interest in

81. "Webcam Central, at www.cam-central.com, . . . lists more than 1,000 Webcams around the world." Lorek, *supra* note 77.

82. See Rick Marin & Ray Sawhill, *And Now, the Human Show*, NEWSWEEK, June 1, 1998, at 64 (noting that Ana was inspired by JenniCam).

83. See *Charity Surf*, GUARDIAN (London), Oct. 14, 1999, at 6 ("The Carlazone has been added to The Sync webzine at <http://thesync.com/carlazone/>, where you can also find the Jenni Show (by Jennifer Ringley of JenniCam fame) and a selection of geeky movies.").

84. See Vanessa Thorpe, *Every Move You Make, I'll be Watching*, INDEP. (London), Aug. 31, 1998, at 12 (noting that the Dolls' House was regarded by Bravo, a raunchy cable television channel, "as the next logical step after the immense popularity of . . . GirlCam, which . . . earned the Bravo Web site around 100,000 hits on its launch day").

85. See Steve Huettel, *Voyeur Dorm Is Test of Cyberlaw*, ST. PETERSBURG TIMES, Apr. 26, 1999, at 1B ("Trixie, wrapped in a towel, reaches into a dresser, then walks out of view.").

86. See Malcolm J. Venable, *See Me, Hear Me, Record Me*, RICHMOND TIMES DISP., Sept. 9, 1999, at D16 (listing sites such as hereandnow.net, webdorm.com, and realcollegelife.com).

87. See Ann Gerhart & John Schwartz, *The Donor Egg Scheme Hatched on the Web*, WASH. POST, Oct. 26, 1999, at C1 ("According to Network Solutions Inc. in Herndon, the domain names for ronsangels.com and 14 erotic sites are all linked to the California-based Harris, 66. He has been operating his sex sites for about three years . . ."); see also *Ron's Angels* <<http://www.ronsangels.com>>. The initial screen is a photograph of the face of a brown-haired, blue-eyed young woman, with the captions "come up to beauty" and "egg auction." The site also offers a sperm auction for beautiful, healthy intelligent men. The egg auction accepts starting bids of \$15,000 to \$150,000 (U.S.). See *id.*

88. See *Infertile Pair Takes Academic Approach*, B. GLOBE, Feb. 28, 1999, at B5 (reporting on a couple who offered \$50,000 for an egg donor who was at least 5'10" in height and who scored at least a 1400 on the Scholastic Aptitude Test via advertisements at Yale, Harvard, Princeton, University of Pennsylvania, Stanford, MIT, and California Institute of Technology).

his site. The more interest, the more hits; the more hits, the more advertising dollars; the more advertising dollars, the more profits. Ron becomes rich.

Ron's models trade some of their privacy for cash and exposure that may lead to jobs and more cash. This trade does not involve a *pervasive* intrusion into the model's private lives. In fact, Ron's models enjoy quite a bit of anonymity. However, they must provide a significant amount of data about themselves (physical traits, intelligence, medical history) as a practical requirement of inviting the general public to submit bids for their eggs. These women are exposed on an auction block, their progeny offered to the highest bidder. Ron's Web site symbolizes the optional character of women's reproductive privacy. It is their liberty to sell their beauty gene-pumped gametes or keep them for personal use.

E. *An Old Girl's Network*

Many people use the Web to meet real people with whom they hope to establish relationships in the real world. Although it is possible to conceal one's gender and sexual orientation online and benefit from interactions genderlessly and asexually, to do so defeats the purpose of some online activities such as finding sexual partners. It was for this reason that naval officer Timothy R. McVeigh (no relation to the man convicted of bombing the federal building in Oklahoma City) disclosed his sex and sexual orientation to America Online administrators.⁸⁹ The Web is a meeting place. The social aspirations of some who use the Web are in sync with the freedom of private association generally cherished in the United States. Web-to-real-world encounters can be mostly benign, as in the case of 85 Broads's exclusive, members only Web site.⁹⁰ They can also be potentially dangerous, as illustrated by a syphilis outbreak among a group of people who met through the Internet⁹¹ and Patrick Naughton's disturbing case of alleged attempted child molestation.⁹²

89. See Philip Shenon, *Navy Case Combines Gay Rights and On-Line Privacy*, N.Y. TIMES, Jan. 17, 1998, at A6 (reporting on naval officer dismissed from the military after America Online revealed to navy investigators that his user profile indicated that he was gay.).

90. See Reed Abelson, *A Network of Their Own: From an Exclusive Address, a Group for Women Only*, N.Y. TIMES, Oct. 27, 1999, at C1 (reporting on 85 Broads, from its inception to its status today).

91. See *Syphilis Outbreak Leaves Trail Through Cyberspace*, CHI. TRIB., Aug. 25 1999, § 1, at 12 (reporting on an outbreak of syphilis among a group of men who participated in the same chat room).

92. Patrick Naughton was executive vice-president of Infoseek Corporation and overseer of the Walt Disney Company's online operation, Go Network, until he was arrested and charged with interstate travel with the intention of having sex with a minor, a thirteen-year-old girl with whom he had arranged a rendezvous in Santa Monica, California. The criminal complaint alleged that, using the name "hotscattle," the executive posted lewd messages in an Internet chat room routinely used by adult men seeking minor girls with whom to have sex. He was detected when he traveled to

The Internet and the Web present the opportunity for women to "network" among themselves in the interests of business, politics, culture, and social life. Oxygen.com and ivillage.com represent consumer friendly attempts to bring women of diverse backgrounds and interests a wealth of goods, services, and online experiences designed specifically for women. Estronet.com and chickclick.com have similar aspirations,⁹³ though the emphasis is entertainment and the tenor is decidedly more "hip" and less mainstream. Other Web sites aim at more selective audiences of women.

85broads.com is an exclusive Web site for women formerly associated with Goldman, Sachs, many of whom are now successful businesswomen in other venues.⁹⁴ 85 Broads, the organization that sponsors the Web site, is the brain child of Janet Tiebout Hanson who left Goldman, Sachs after fourteen years to found Milestone Capital management, a Yonkers, New York-based firm with nearly \$3 billion under management.⁹⁵ The organization is, in essence, a private networking tool that enables business and professional women alumnae of Goldman, Sachs a way of exchanging information. As described in the *New York Times*, 85 Broads "is an attempt to replicate some of the aspects of the traditional old boys' network, in which phone calls are always taken and people are quick to make referrals."⁹⁶ Member Noreen Harrington was quoted as saying: "Women haven't networked as well as they should—or can. . . . We're not always our best asset."⁹⁷

F. *A Young Girl's Peril*

The accessibility of women in cyberspace has malignant potential. An apparent teenage girl meets an apparent adult man over the Internet. They chat it up for a time, discuss having sex, and then plan an encounter. The cautious adult expresses concerns about getting into trouble with law enforcement authorities. The girl makes it clear that she is willing to back out of the plan to meet. The man encourages her to meet as planned. They set up a meeting. The man flies down to Los Angeles from Seattle to meet a thirteen-year-old girl. When he arrives at the appointed spot, he is arrested. His cyberspace girlfriend was really a bunch of cops looking to snare child molesters.⁹⁸

California to meet the thirteen-year-old girl who turned out to be an FBI agent. See *Infoseek Executive Is Charged with Seeking Sex from Minor*, N.Y. TIMES, Sept. 21, 1999, at C10.

94. For more on EstroNet and ChickClick, see Lily Burana, *Mad About the Grrls*, TIME, June 15, 1998, at 66.

95. See Abelson, *supra* note 90.

96. See *id.*

97. *Id.*

98. *Id.* (quoting Harrington).

99. See *Infoseek Executive*, *supra* note 92 (discussing Naughton incident).

Real teenagers, though, have used the privacy of the Internet and private time at home on the computer to form relationships with adult men. These men have exploited the privacy and, above all, the anonymity of the Internet to conceal dangerous intentions. Patrick Naughton, arrested in California last fall, was an Internet savvy man whose passion for illicit sex undermined his career and reputation.⁹⁹ The anonymity of the Internet allows all of us to live duplicitous lives, more easily and potentially more successfully than in the past. Parents may feel happy to know their daughters are safe at home in their rooms, never guessing that they are cyberdating forbidden adult men with a taste for pornography, statutory rape, or worse. This example makes two points about privacy that feminist critiques of privacy have often made. First, homes are not safe havens for women and children. Now, thanks to the increasing ubiquitous home personal computer and the Internet, grown men living thousand of miles of away potentially engage our children in precocious sexuality previously limited to fathers, stepfathers, grandfathers, uncles and brothers with rights of physical access to our homes. Second, privacy itself is not an unqualified good. Sex criminals use privacy to conceal perfidy and violence against children. We have to be able to penetrate the wall of privacy with which people surround themselves in order to protect the vulnerable. The same technology that allows me "good" privacy (to read about health matters) allows me the "bad" kind, too, the kind that affords me the opportunity to form relations and gather information with which to commit heinous crimes.

G. *Carrie's Feet: Stargazing, Fetishism, and Pornography*

Many women voluntarily place still or moving images of themselves on the Internet. They want to be more accessible to others in that way. Sometimes the images appear for the benefit of friends and families; sometimes there is a serious effort to reach mass audiences. They are part of a mutually reinforcing culture of unashamed exhibitionism and voyeurism.¹⁰⁰ Jenni, Ana, and the other Webcam women who present themselves for inspection do so for a variety of reasons, including artistic expression, profit, and entertainment.¹⁰¹ Sexually titillating Webcam sites are part of the Internet's thriving "adult entertainment" industry. It is more common for a man to own

99. *See id.*

100. *See generally* Clay Calvert, *The Voyeurism Value in First Amendment Jurisprudence*, 17 CARDOZO ARTS & ENT. L.J. 273 (1999) (arguing that voyeurism now joins news, religion, and political expression as a constitutional value).

101. *See* Michael Harvey, *Internet Invades the Bedroom*, DAILY MAIL (London), Jan. 19, 1998, at 29 ("I don't see it as art. But nor do I see myself as a bimbo. I think it is supposed to be titillating but I'm not going to sit there and be pornographic all day." (quoting Kate Bird, candidate for the Girlcam Web site, sponsored by the satellite and cable television channel Bravo)); Joan Smith, *What's the Problem with Women?*, GUARDIAN (London), Feb. 20, 1998, at 2 (describing women artists and models who are reclaiming their bodies by selectively exposing them).

or operate a sex site.¹⁰² Female entrepreneurs in the industry have included Ciaty McPherson, a former topless dancer and human-resources manager, who launched her own porn Web site, juicymango.com.¹⁰³ Another woman, former model and exotic dancer Danni Ashe, owns a multimillion-dollar sex site, Danni's Hard Drive.¹⁰⁴

Of particular concern is the fact that men and women who do not want their images to appear on the Internet or the Web have them there anyway. Unwanted accessibility to others of a woman's name or likeness is a serious privacy concern. Nonconsensual visual images of ordinary people appear in cyberspace by virtue of thousands of Webcams trained on public places. Celebrities appear, unwittingly, on paparazzi sites such as Frank Monte's Spy7. Spy7's newest site features SpyGirl (a.k.a. Justine Ski) during the day and NiteLifeCam at night, both of which prowl Manhattan looking mainly for clubbing film stars and other celebrities to film covertly for Internet broadcast.¹⁰⁵

Carrie Kei Heim, a member of the University of Pennsylvania School of Law's class of 2001, was a child actor. She appeared in a number of commercial television programs and popular films, including the Disney company's *Parent Trap II*.¹⁰⁶ Although Carrie decided to give up Hollywood for the Ivy League and the practice of law, her past will not let her go. It does not bother her that her films are available on television and videocassette. It does not even bother her that fans continue to seek her out; she maintains a Web site for fans who want information about her evolving career. What bothers her is that still pictures featuring her bare feet have been excerpted from her films, appropriated by an organization called "The Young Foot Lover's Adoration Society" (TYFLAS) and placed on its Web site.¹⁰⁷

TYFLAS's site does not appear to be pornographic. It might be described, though, as fetishistic. The individual images that can be viewed by nonpaying visitors to the site are dozens of the sort of cute photos of pretty girls with bare feet that might appear on a parent's desk at work or in a children's summer clothing catalogue. On a page entitled "Kid Feet for the Connoisseur," one sees three columns of photographs, a column for each of

102. See Michael Saunders, *Web's Red-Light District Shines in Technology, Profits*, B. GLOBE, May 4, 1998, at C7 (describing a woman-owned site as one of "the few adult sites that are owned and operated by a woman").

103. See Jack Boulware, *Web Rouser: Former Lusty Lady Dancer Ciaty McPherson Struggles to Make a Living on the Oversexed Internet*, S.F. WKLY., Mar. 31, 1999 (describing McPherson's experiences as a porn-site operator), available in LEXIS, News Library.

104. See Saunders, *supra* note 102 (reporting on Ashe's business).

105. See Anthony Haden, *Tales and Wonder*, OBSERVER, June 28, 1998, at 5 (reporting on the voyeuristic Spy7).

106. PARENT TRAP II (Disney 1986).

107. Interview with Carrie Kei Heim, former child actor, in Philadelphia, Penn. (Dec. 8, 1999); see also TYFLAS <<http://www.tyflas.org>> (displaying photos of children's feet).

three age groups: three to six years, seven to ten years, and eleven to fourteen years. One or more girls' feet figure prominently in most of the photographs, including one in which a girl demonstrates her flexibility by placing her own big toe into her mouth. Carrie's feet appear in a members-only section of the site called "Little Feet on the Big Screen."¹⁰⁸ Celebrities face another problem, one that Carrie has not faced thus far: realistic digitally altered images that make it appear as though one is seeing a nude or sexual image of a well-known person.¹⁰⁹

Appropriation of a person's name, likeness, or identity has long been defined as an invasion of privacy. It was, in fact, the basis of the first privacy tort that American courts recognized.¹¹⁰ While people who knowingly appear in films intended for mass distribution consent to a loss of privacy, many performers feel that unauthorized uses of their images, voices, and other repositories of personal identity are privacy invasions nonetheless. Tracy Moore, a Massachusetts woman who had been paid \$750 a week by NTL Communications, Inc. to perform live simulated sex shows over the Internet, sued the company for continuing to distribute (without her authorization) sexually suggestive photographs of her after she stopped performing.¹¹¹

What is so bad about having a photograph of you posted on the Internet? First of all, it might invite unsavory attention. The prominent New York firm Davis, Polk & Wardwell was forced to remove photos of its lawyers from its Web site when female attorneys began receiving emails from strangers who commented on their physical appearances.¹¹² In the case of adult entertainer Moore, having photos of her sex acts on the Internet led to sexual harassment online and at work and eventually cost her, a twenty-five-year-old single mother, her job.¹¹³ In child actor Carrie Heim's case, the injuries thus far have been dignitarian only. It is highly offensive to her that she has been made into an object of fetishism, worldwide, on the Web.

108. See *TYFLAS*, *supra* note 107.

109. See Tom Maurstad, *Stars Do Battle in Celebrity Skin Game*, DALLAS MORNING NEWS, Dec. 13, 1998, at E6 (discussing celebrity life in the Electronic Age).

110. See generally, e.g., *Pavesich v. New England Life Ins. Co.*, 50 S.E. 68 (Ga. 1905) (discussing at length the right of privacy).

111. See Michael C. McDermott, *Stoughton Firm Sued for Showing Sex Videos*, PATRIOT LEDGER (Quincy, Mass.), Jan. 26, 1998, at 15C (reporting on Moore's suit against NTL).

112. See Anna Snider, *Davis Polk Removes Photos from Web Site*, N.Y. L.J., Feb. 22, 1999, at 1.

113. See McDermott, *supra* note 111.

H. *Virtual Privacy and Community*

Women have traditionally written letters and kept diaries chronicling their lives and insights.¹¹⁴ Some women, including academics and intellectuals, regularly use cyberspace communications that continue this tradition in a new, electronic format. Personal computers have replaced pen-and-ink and typewriters; email messages have replaced the letters that have kept many women linked to intimate friends.¹¹⁵

Some women seek in cyberspace forms of community life to which they do not otherwise have access. They can meet new friends and interact with strangers. The women who participate in cybercommunities through games, fantasy, or chat rooms may have no interest at all in forming relationships with the people who belong to their cybercommunities. In fact, some women only participate in such communities because they can adopt fictive alter-egos that can interact with other people's fictive alter-egos, and so face-to-face contact would defeat the purpose of participation.¹¹⁶

But even with fictive alter-egos, women are not always free from harm. The women who participate in cybercommunities are vulnerable to psychological harm and abuse stemming from the way their fictive alter-egos are treated. The thesis that the virtual reality of cyberspace replicates some of the worst features of the real world is suggested by an incident Julian Dibbell described as "A Rape in Cyberspace."¹¹⁷ Mr. Dibbell is a participant in a dynamic, interactive textual fantasy world, LambdaMoo.¹¹⁸ The people who

114. See p. 78 ("The diaries and letters of women are valued windows through which the mores of bygone eras can be understood.")

115. Unfortunately, the privacy of computer diaries and email is compromised by employer control of email and computer hardware and by legal rules that make computer files and email discoverable and subject to subpoena—as Monica Lewinsky discovered. See generally Morton, *supra* note 46 (describing independent counsel's investigation of her personal computer and email).

116. We may wonder at people who devote substantial amounts of time to fantasy on the computer rather than to intimacy with people in the real world. Women with children and traditional marriages may, in fact, be foreclosed from such participation or may be subject to special criticism if they choose to allocate their time so as to include fantasy.

117. See Dibbell, *Rape*, *supra* note 49; see also, DIBBELL, TINY, *supra* note 10, at 11-30.

118. See Dibbell, *Rape*, *supra* note 49.

LambdaMoo was a Mud [multi-user domain]. Or to be more precise, it was a subspecies of Mud known as a Moo, which is short for "Mud, Object Oriented." All of which means that it was a kind of database designed to give users the vivid impression of moving through a physical space that in reality exists only as words filed away on a hard drive. When users log in to LambdaMoo, the programme immediately presents them with a brief textual description of one of the rooms in the database's fictional mansion. If the user wants to leave this room, she can enter a command to move in a particular direction and the database will replace the original description with one corresponding to the new room. . . .

. . . Characters may not leave a room in a given direction, for instance, unless the room subprogram contains an "exit" at that compass point. If a character "says" or "does something" (as directed by its user-owner via the "say" or the "emote" command), only users whose characters are also in that room will see the output describing the statement or action. . . . LambdaMoosers are allowed freedom to create—they can describe their characters any way they like,

participate in this collective fantasy imagine that the fictional characters they create online inhabit a sprawling, busy, rustic mansion in Palo Alto, California. A few years ago, male university students participating in the game created a character called Mr. Bungle. Using their skills at programming, they caused Mr. Bungle—a “fat, oleaginous, Bisquick-faced clown”—to commit acts of a sadistic sexual nature against fellow virtual inhabitants of LambdaMoo.¹¹⁹ One of his victims was a fictional woman, Moondreamer. The creation of a Haverford, Pennsylvania, woman, Moondreamer was forced to have sex with several men and women in LambdaMoo and then to “violate herself with a piece of cutlery.”¹²⁰ Although the woman behind Moonbeamer was never physically endangered, any notion she may have had that cybercommunities are psychological and emotional safe havens was abruptly shattered.

CONCLUSION

The “Virtual Woman” is an Internet-savvy advice columnist whose advice is not unlike that dished out by “Dear Abby.” But when the “Virtual Woman” advises divorce, she can also suggest a Web site through which one can obtain a divorce lawyer or learn about mediation.¹²¹ Try to find the “Virtual Woman” on the Web, though, and you might end up visiting a hardcore sex site of the same name by mistake.¹²² Cyberspace is a little unpredictable that way. Visit the SmartGirl Web site, not for encounters with young female devotees of physics and literature, but for pink ribbons, hearts, and rainbows world offered up by adults seeking to probe the minds of teenage consumers.¹²³ A woman interested in fantasy entertainment might have

they can make rooms of their own and decorate them, and they can build new objects almost at will.

Id. LambdaMoo was founded by Pavel Curtis and was one of the first popular multi-user domains. See Turkle, *Second Class Citizens*, *supra* note 4.

119. Dibbell, *Rape*, *supra* note 49.

120. *Id.*

121. See *The Virtual Woman: A Woman's Weekly Guide to Cyberspace*, KNIGHT RIDDER/TRIB. NEWS SERV., Jan. 13, 1999 (“If your issues with your husband are irreconcilable . . . then turn to Lawyers.Com.”), available in LEXIS, News Library. Questions posed to the Virtual Woman include how to keep sexy email away from the boss’s prying eyes and how to get rid of a husband who is a jerk. The Virtual Woman directs readers to www.vvwm.com, “the Web’s largest search directory of topics for women online.” *Id.*

122. See *Unfaithful: Never Get Caught* <<http://www.virtualwoman.com>>.

123. See Jay Dougherty, *Privacy on the Internet: Are You Being Watched?*, DEUTSCHE PRESSE-AGENTUR, Aug. 7, 1998 (noting the site’s statement “where girls like you find out what’s hot and what’s not”), available in LEXIS, News Library. A perky feminine, pink, blue, and yellow colored site, with the trademark “smart girls decide for themselves,” SmartGirl is clearly aimed at young girls with a taste for hearts, rainbows, and snowflakes. It offers several categories of information and activity: issues to discuss, reviews, love and friendship, chat space. Under issues to discuss, topics that girls may chat about include parents and family, school, health, death, and harassment. In the love and friendship realm, girls are invited to “read other people’s love letters” and

been drawn to Madeleine's Mind, but the premise of the game is markedly sexist—Madeleine is a woman *imprisoned* by evil, and the criminals are in search of her genius *father's* secret research, which is apparently locked in her mind, but about which she is *clueless*.¹²⁴ Stereotypes of women, both positive and negative, are part and parcel of the representations of women on the Web. With the gender stereotypes come problems of privacy invasion and abrogation.

The problems are bound to get harder before they get easier, as computers shrink in size, gain added portability and "concealability," incorporate camera and video capabilities, and acquire more users.¹²⁵ Technologists are hard at work developing wearable computers.¹²⁶ In the near future, a woman sitting in a coffee shop in Paris may find that live video images of her are being Webcast all over the world, simply because someone equipped with a wearable computer thinks she's a "babe."

Professor Lawrence Lessig has stated that the architecture of cyberspace is political, and we have to make a choice about it.¹²⁷ But what are the chances that we will select adequate privacy norms for the land that only recently "has changed from a playground for like-minded libertarians to a workplace and social space for millions"?¹²⁸ For anyone with a role in choosing the norms that will frame our collective lives in cyberspace, *Uneasy Access* has a relevance that transcends its vintage. To the architects and critics of cyberspace *Uneasy Access* offers a message well-illustrated by attention to gender: Privacy is often important, but there can be too much as well as too little privacy; subordinating as well as equalizing forms of privacy; fairly distributed, as well as unfairly distributed privacy; privacy used for good, as well as privacy used for evil; privacy that moves a people forward, and privacy that moves a people backwards.

to "submit your own love letters" as well as to seek advice from "Ask Arielle." See *SmartGirl* <<http://www.smartgirl.com>>.

124. See JOHN GEIRLAND & EVA SONESEH-KEDAR, *DIGITAL BABYLON* 89-91 (1999) (describing Madeleine, a fictional woman ("being held against [her] will"), who is the central character in a computer game its creators at Digital Planet hoped would revolutionize the concept of interactive Web entertainment).

125. For the future and technology of such "wearable" computing, see Steve Mann, *An Historical Account of the 'WearComp' and 'WearCam' Inventions Developed for Applications in 'Personal Imaging'* <<http://www.wearcam.org/historical/index.html>>.

126. I attended the Second Annual Wearable Computers Conference in 1998. I was seated at lunch next to a graduate student wearing a pair of ordinary-looking eyeglasses through which he could view the Internet. After a quick glance at my name tag, he proudly announced that with the scant information it contained, he could instantly access the resources of the Internet to research personal data. "I can tell you where you live," he said.

127. See LAWRENCE LESSIG, *CODE AND OTHER LAWS OF CYBERSPACE* 96, 103, 119 (1999).

128. Amy Harmon, *The Law Where There is No Land*, N.Y. TIMES, Mar. 16, 1998, at D1.