

Chilling down in Norway

«Undue interference with individuals' privacy can both directly and indirectly limit the free development and exchange of ideas. ... An infringement upon one right can be both the cause and consequence of an infringement upon the other»

*Frank La Rue, the United Nations Special Rapporteur on Freedom of Expression and Opinion*¹

The Snowden case has shown that we must be aware that personal information which we leave behind on the Internet, may sooner or later become the subject of unexpected and, for many of us, also undesired attention. Our Facebook updates, Google searches, Twitter messages as well as whom we send text messages to or call, all become part of the gigantic digital haystack which is analysed to identify any suspicious patterns. But the intelligence services are not the only players eager for our data. Other public authorities, as well as commercial undertakings, would like to know as much as possible about us in order to improve and tailor their services and advertisements.

How are we affected by the fact that someone may be looking over our shoulder at any given time? People who know they are being watched, change their behaviour because the context is changed – the trust in the surroundings has changed. If we are uncertain of who has access to the information we leave behind, we are forced to take this uncertainty into consideration. We will start to reconsider what we write, what we do and who we have contact with.

This phenomenon is termed the «chilling effect». An important consequence of the chilling effect is that the freedom of expression is under pressure, which in turn may weaken the democracy if the citizens limit their participation in the open exchange of viewpoints. But the chilling effect also entails that the uncertainty regarding how our personal data will be used, may result in us avoiding ordinary everyday activities. We may, for example, decide not to borrow certain books at the library or call the psychologist out of fear of how this information may be used in the future.

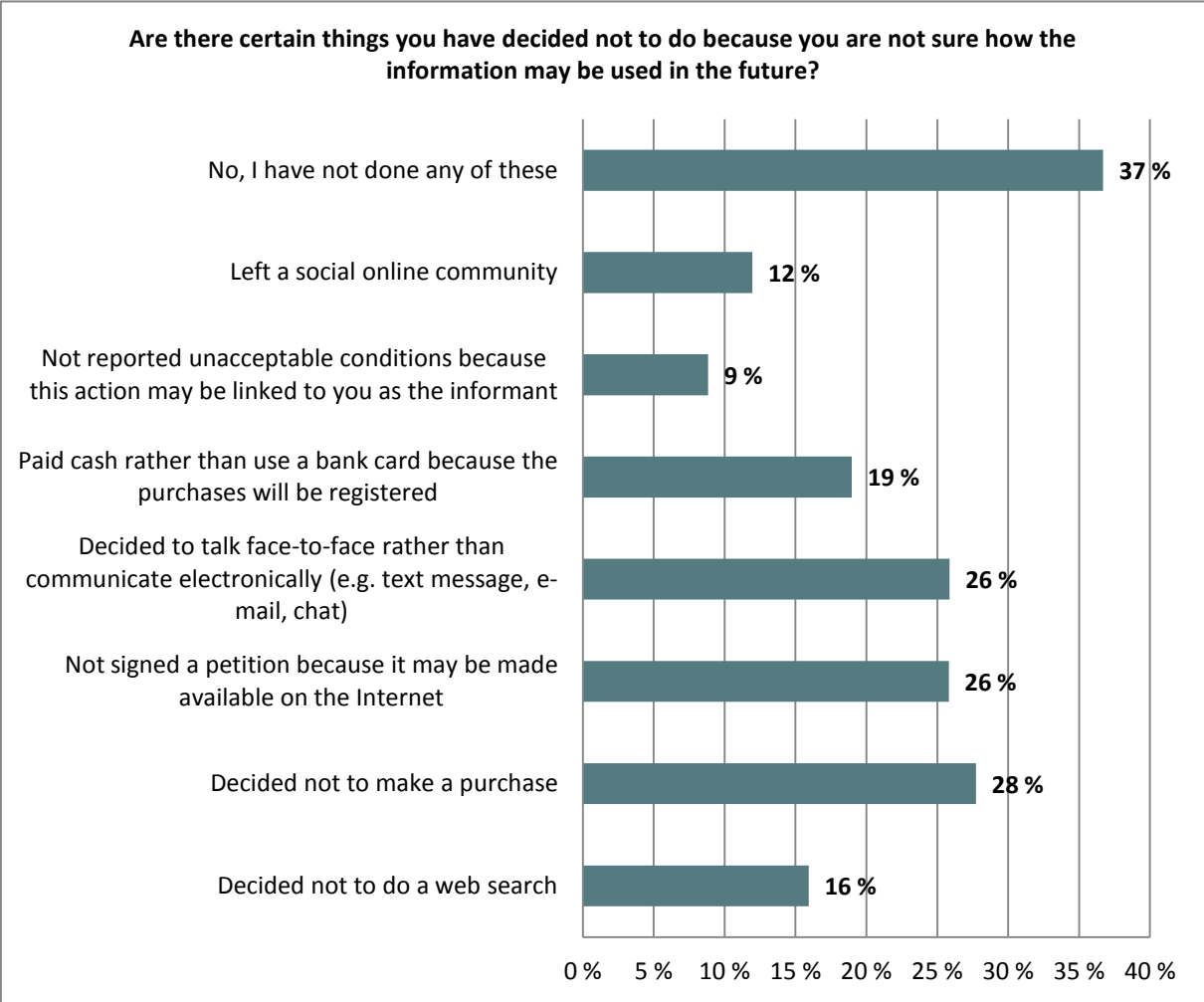
CHALLENGING TO MEASURE

Measuring the scope of the chilling effect on the society is a challenging task. It is possible to count how many people have purchased a specific book, become members of an association or clicked "Like" for an article on the Internet. But quantifying *the absence of actions* is far more difficult, however. How many *decided not to* buy that specific book, become a member of that association or click the Like button, for example. There may also be a chilling effect without us necessarily being aware of it ourselves. We may gradually change our habits in an unconscious response to the uncertainty regarding how the information trail we leave behind, will be used.

We have attempted to gain an impression of whether there is a general tendency towards a chilling effect, by asking people whether they have decided not to do something because they were not sure of how the information may be used in the future. In this survey, the chilling effect was not linked specifically to surveillance carried out by the authorities. We left it open as to *who* may be the potential user of the information. We also wanted to use the privacy survey to determine whether the Snowden revelations in particular, have had a chilling effect in Norway, and have therefore asked questions directly related to this case.

¹ <http://rt.com/news/communication-surveillance-violates-human-rights-285>

INDICATIONS OF CHILLING EFFECT IN NORWAY



The figures in the survey indicate a tendency towards a general chilling effect in Norway². The results show that a significant share of the population has avoided certain activities because they have been uncertain regarding the potential future uses of the information. It is worth noting that as many as 26 per cent have decided not to sign a petition and that 16 per cent have decided not to do certain web searches. By comparison, 16 per cent stated that they had decided not to web searches regarding certain subjects in a survey in the USA³. The US survey, however, was aimed exclusively at writers, a group of people which probably has reflected more than most people on how the trail left behind may be used by others. The fact that an equal percentage has replied the same in our survey, aimed at the general population, is therefore more astounding. This entails that a considerable share of ordinary citizens censor themselves because they are uncertain regarding how the information may be used in the future.

² It is difficult, however, to draw any hard and fast conclusions regarding whether the figures indicate a weak or strong tendency when we do not have any directly comparable figures.

³ <http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/11/21/survey-1-in-6-writershaveselfcensoredbecauseofnsasurveillance.html>

The uncertainty regarding what the information may actually be used for, may encompass many factors. The fact that people state that they have decided not to do certain things, is not necessarily only due to uncertainty regarding how the authorities may use the information. It may also be due to uncertainty regarding how the information may be used in a potential future hiring process, in a marketing context or by an insurance company. We have probably become more aware of the fact that the digital trail we leave behind will not always disappear, and that the information may show up in new and unexpected contexts. All petitions and proclamations we have signed over the years may, when compiled, paint a clear picture of us.

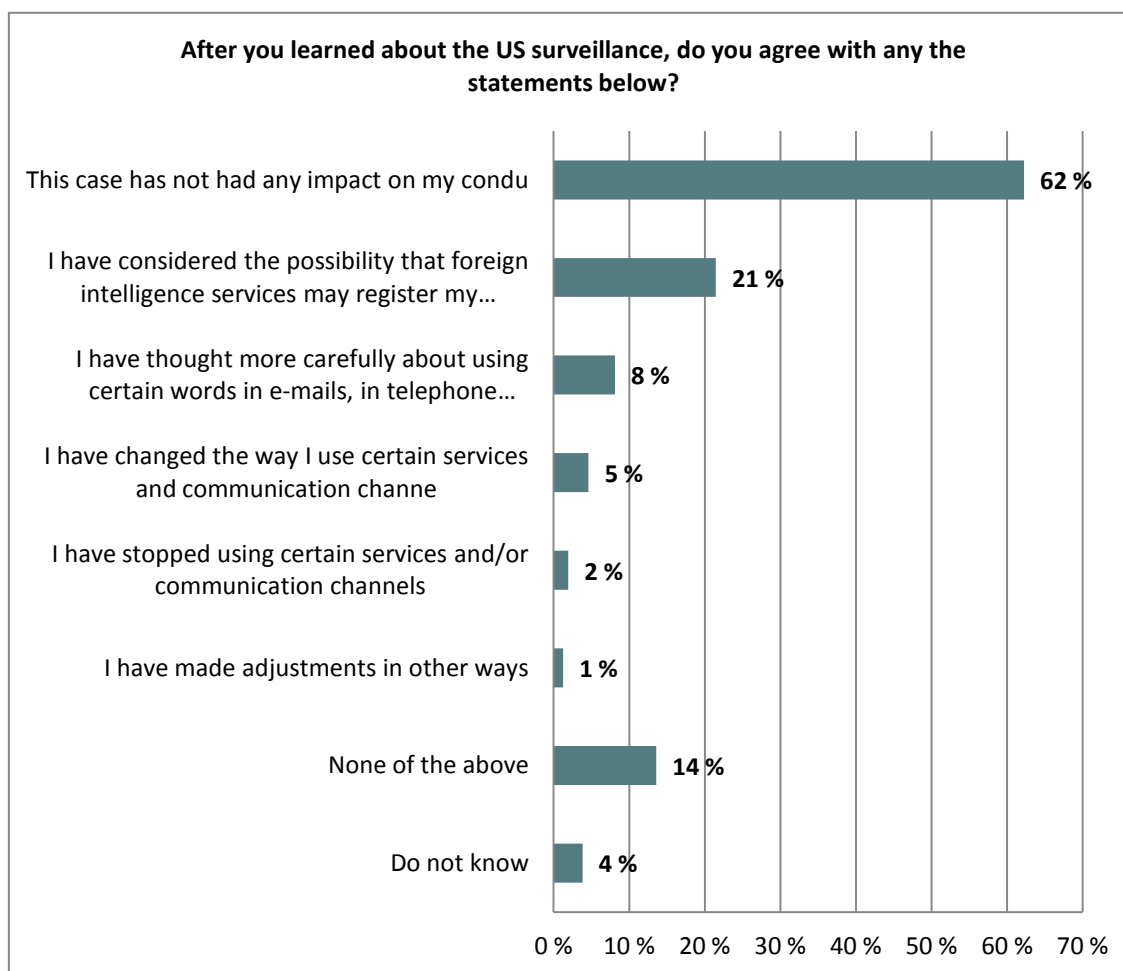
Exercising self-censorship is a natural part of being on the Internet. To be conscious of how you express yourself and appear, is a type of "self-censorship" which takes place both on and outside the Internet. But if there is a development where an increasing number of people decide not to report unacceptable conditions or sign petitions regarding important issues because they are uncertain how the information may be used in the future, the consequences may prove serious. This may ultimately affect the very basis for an open and well-functioning democracy.

CHILLING EFFECT POST-SNOWDEN?

Are there any indications of a chilling effect in Norway as a *direct* consequence of the Snowden revelations? In the United States, the Electronic Frontiers Foundation has brought action against the NSA on behalf of 22 organisations which are of the opinion that they have experienced a chilling effect as a direct consequence of the NSA's surveillance⁴.

The percentage is probably primarily a reflection of how difficult it is to change your digital habits even though you are uncomfortable with how the intelligence services work. Further, most people will assume that the surveillance is aimed at groups which they are not part of nor in contact with – they do not feel that they themselves are impacted on a personal level. And this is in spite of the fact that the Snowden revelations have shown that today's intelligence authorities actually do collect data on most people, not just certain groups. There are probably also many people who think that even if the authorities do check all their data, it does not matter, because they have nothing to hide anyway. Norwegians in general are also very trustful of the authorities. People are confident that the intelligence services will not misuse the information collected, and thus that it will be safe to continue as before.

⁴ <https://www EFF.org/press/releases/eff-files-22-firsthand-accounts-how-nsa-surveillance-chilled-right-association>



Our survey shows that the Snowden case has not had any strong chilling effect on Norwegian citizens. Six out of ten stated that this specific case has not had any impact on their conduct. And this was in spite of the fact that the majority of those questioned were of the opinion that the surveillance was either unacceptable or worrisome. There may be several reasons for this.

However, eight per cent of those asked thought things through more carefully before using certain words in their correspondence and in web searches. In other words, there are indications of a weak chilling effect following the Snowden case. If we break it down into age groups, the chilling effect is significantly stronger in the age group 15–29 years. Eight per cent of the people in the youngest age group have changed their use of certain services, compared with an average of five per cent in the older age groups. The fact that more young people have changed their communication habits, is probably due to this age group comprising the most active and versatile users of digital services. Their lives are to great extent lived on the Internet, and they may therefore feel more exposed and vulnerable to the comprehensive surveillance than older people.

LOSS OF TRUST AND CONFIDENCE IN THE INTERNET?

Could the Snowden revelations lead to us being less trustful of the Internet, and as a consequence reduce our use of the Internet? In the United States, several Internet services have shut down their operations after the Snowden revelations, for example Lavabit and Silent Circle, two providers of encrypted e-mail services. Lavabit stated that the shutting down of the services was because they did not want to «become complicit in crimes against the American people»⁵.

Groklaw, a heavily used web forum dedicated to legal debates, shut down its services last summer because the founder of the website was not comfortable with exposing the participants in the forum to the authorities'

⁵ <http://www.theguardian.com/technology/2013/aug/08/lavabit-email-shut-down-edward-snowden>

surveillance⁶. The closing down of Groklaw and corresponding companies is referred to as examples of the so-called chilling effect.



The Norwegian company Jottacloud, which provides cloud services, experienced an enormous influx of customers following the Snowden case. Right after the story broke, the owners stated that they guaranteed that they would never disclose stored information to authorities or other players without a court order⁷. As a result, they gained many new customers, including from the United States.

Loss of trust and confidence in the Internet as a channel and arena for exchange of viewpoints will not only have negative consequences for a thriving and active democracy, but will also entail serious consequences for the digital economy. Over time, we may end up with many users, both companies and private individuals, who do not want to use e-trade solutions, for example, because they know that each and every transaction will be indexed and traced by the authorities in various different countries. European businesses in particular may decide not to use US cloud computing services in order to protect the privacy of their customers.

THE CONSEQUENCES OF SURVEILLANCE

Suppose Norwegian and foreign intelligence services monitor and store all Norwegian citizens' electronic communications and use of the Internet. Will it matter to people? Openness is the new dance craze – we share everything with everybody on the Internet no matter what. And besides, if we have nothing to hide, there is nothing to worry about, right?

Forty-five per cent of the population stated that even if all electronic communications and activities on the Internet were the subject of surveillance, they would continue as before. The fact that so many people state that such massive surveillance will be of no consequence for them, is probably mainly due to Norwegians' high level of trust and confidence in the authorities. As stated above, we Norwegians feel certain that the authorities will not use the information collected for purposes we consider improper, even if the surveillance covers us as well.

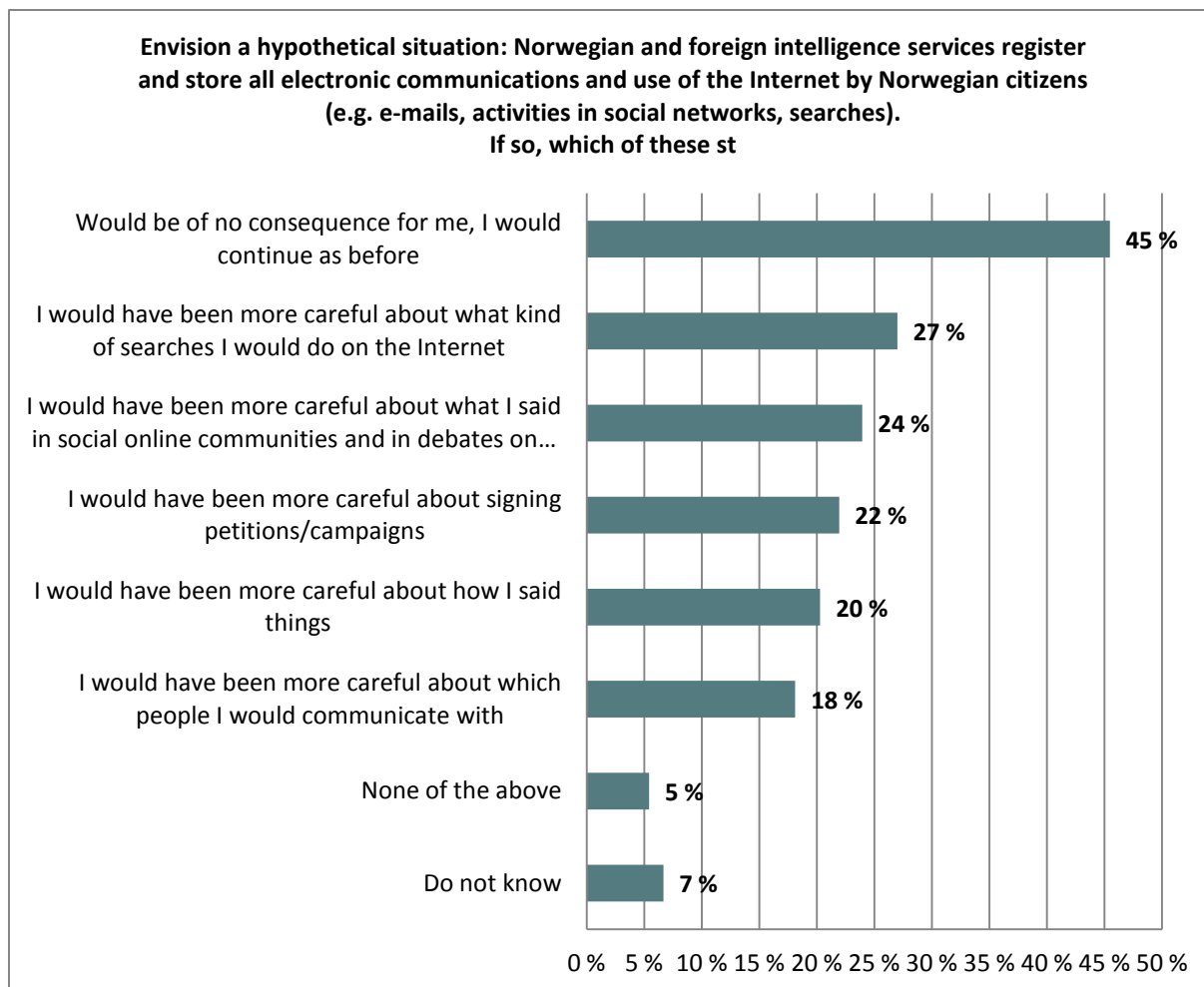
However, the fact that people do not adjust their behaviour, does not indicate that they are indifferent, or feel that it is OK to be subjected to surveillance. As shown above, our survey indicated that 72 per cent of those who completed the survey, indicated concern after having heard of the Snowden revelations. It is a far cry, however, from *expressing* that one is uncomfortable, to this uncomfortableness resulting in an actual change of one's everyday conduct – in other words; for the uncomfortableness to result in a chilling effect. Cognitive research has shown that people have trouble envisioning that information provided in a specific context, may be used for other and incompatible purposes in the future⁸. We simply lack the ability to fully comprehend this issue.

Although many state that they will continue as before in spite of extensive surveillance, there is a considerable share, however, who states that the surveillance will affect their communication habits.

⁶ <http://gigaom.com/2013/08/20/through-a-prism-darkly-fear-of-nsa-surveillance-is-having-a-chilling-effect-on-the-open-web/>

⁷ <http://e24.no/digital/snowden-saken-ga-kundeboom-for-norsk-nettsky/21106285>

⁸ <http://www.coll.mpg.de/publications/3258>



The survey clearly indicates that massive *surveillance by the authorities* would have a chilling effect. Almost three out of ten would be more careful with their web searches, while almost two out of ten would be more careful with which people they would stay in contact with. These are high percentages, which show that comprehensive surveillance by the authorities would have a dramatic impact on the framework conditions for a free and open democracy.

ARE THE WARNING LIGHTS FLASHING NOW?

Security and privacy are often pitted against each other. But rather than viewing them as concepts in conflict with each other, it should be recognised that the opposite is true; they are mutually dependent on each other. Both values are necessary if we are to have a well-functioning democratic society. Safeguarding of trust is a key factor in this respect. Increasingly invasive surveillance may result in loss of trust and confidence in the authorities with a chilling effect as a consequence. If the authorities were to lose the trust of the population, efficient administration would become difficult. In a climate characterised by little trust, it will also prove challenging for the intelligence services to do an efficient job – as the people no longer will side with the authorities in the struggle to safeguard common values. A surveillance burden which is too heavy will result in loss of both privacy and security⁹.

Our survey shows that the Snowden case has had a weak chilling effect on Norwegian citizens. Although only eight per cent of the population stated that they had curbed their communication, this is still a figure which should be

⁹ van der Hilst, Rozemarijn: "Putting Privacy to the Test: How Counter-Terrorism Technology is Challenging Article 8 of the European Convention on Human Rights", University of Oslo, 2013, Oslo

taken seriously. In the age group 15 to 29 years, however, more than one out of ten stated they had thought more carefully about using certain terms and phrases in communications or web searches. An important precondition for an open and free democracy is that *no one* must fear the consequences of expressing themselves.

It is difficult to measure the chilling effect, and there are almost no figures to compare with. How high do the chilling effect figures have to be before the warnings lights really start to flash? Due to a lack of historical data, we do not know whether the tendency towards a chilling effect is on the rise. We do know, however, that more and more information is collected about us, and that there is a dramatic increase in the capacity to store and analyse such information. Both authorities and commercial undertakings would like to know as much as possible about us. In the times ahead, it will probably prove more and more challenging for each of us to maintain an overview of which parties have information about us and for what purposes it is used. In order to prevent this from resulting in a stronger and stronger chilling effect, it is essential that both the authorities and commercial players safeguard the trust and confidence of the people. If not, the alternative may be a chilling effect which will impact negatively on the society we want and are trying to protect.