## BEN SCOTT

Senior Advisor, Open Technology Institute at the New America Foundation; Program Director, European Digital Agenda, Stiftung Neue Verantwortung

**Nicolas Barré, Managing Director, Les Echos**

Thank you, Luc-François. I am turning to you, Ben, and with you we will go to Europe, but with an American perspective. You are based in Berlin and as we all know, Germany is a country where data protection and privacy is very high on the agenda, especially since the Snowden affair, so what can you tell us about all this?

**Ben Scott, Senior Advisor, Open Technology Institute at the New America Foundation; Program Director, European Digital Agenda, Stiftung Neue Verantwortung**

I am going to take a slightly different perspective on the topic of big data. I am going to make the case to you that the first killer app for big data did not belong to Google, and it did not belong to Amazon, the first killer app for big data belonged to the NSA. The first major foreign policy and international relations disruption caused by big data was triggered by Edward Snowden. The consequences of that disruption will not only affect the politics of international diplomacy; they will affect the development of international markets in technology.

Because big data is about power, it is about predictive analytics, it is about predictive analytics in business just as it is in signals intelligence. When we have a major disruption like the Snowden affair, what we have seen is a kind of infection. The distrust and scepticism that the public attaches to the NSA affair begins to bleed out into the market. In Germany where I live the NSA affair has very quickly become the Google affair. Ask yourself if the European Parliament is passing a resolution to break up Google without Edward Snowden. I think not. The relationship between these two phenomena is something we as foreign policy practitioners should study carefully.

Where are we, 18 months after the Snowden revelations? The last time I saw Thierry I gave a speech about Snowden, it was a week after the revelations. I predicted at that time that if Europe did not play a leadership role in changing the policies governing big data they would not change. 18 months after the Snowden revelations what we have seen is no result. I would submit that the most likely political outcome of the Snowden affair at this point is nothing. The most likely change in policy from Washington and London is nothing. That is incredibly frustrating to the advocates of human rights and civil liberties who have brought court cases in every major capital in the world. That is incredibly demoralising to a public in democratic societies that trusts its government to manage power responsibly, but it is not surprising. It is not surprising that Realpolitik would be a worthy opponent for idealism in the new realm of big data.

The question is, are the consequences as manageable as they appear? I think that most leaders in the White House, Downing Street and across Europe and much of Asia have decided that the consequences of the Snowden affair are politically manageable. In the short term the heat is fading. Most states have made a quiet accommodation, if they were not already accommodated to the realities of big data as the killer app of signals intelligence.

However, I would submit to you the long term consequences are quite serious and they are not in the interests of democratic governments. What message are we sending to the public if we do nothing to address a modernisation of privacy and security policy in the digital age? The message that we send to our own public, and I say this as an American, is, be sceptical of technology and be sceptical of government and when you see the two combined, be afraid. That is not a message that is in our interest in the long term, and it is unclear at this stage how we reverse it.

What message are we sending internationally?  I would submit to you that it is a worse message, and one with even more significant consequences.  That message is that Western governments do not stand by their principles, yet another example of us not practicing what we preach.  How will we justify our interventions in the world order as matters of principle and value if we allow our own moral compass to be relativised?  The long term consequences of these changes are significant, and yet the public impact of the Snowden affair when it comes to consumer markets appears to be negligible.

As you have just heard from my two esteemed colleagues, there is a booming market for big data.  You are all still carrying your mobile phones despite the fact that you know that they are beeping, blinking tracking devices.  You are all still using personal communications over digital networks.  Many of you, or at least your children, are documenting their lives on social networks.  You are all buying things on the Internet.  Few of you, I would wager, are bothering to use end to end encryption.  Why is that?  It is a vexing paradox.  It suggests that we are not as mad about the Snowden affair as we say we are, but I think that is misleading.  I think that is misleading because I think we do not give consumers enough credit.  Think for a moment why it is that people do not change their behaviour.  I can think of three reasons.  Reason number one, 'I do not know.  I have not read about the NSA and I do not understand how the Internet works and I do not see that the technology that I am using leaves a trackable record of everything I do'.  Reason number two, 'I know, but I do not care'.  These are the people who have decided the culture of exhibition on the Internet is something to be celebrated.  Or those who believe that because they personally have nothing to hide at the moment, they are willing to trade liberty for security.  Reason number three, 'I know what they are doing, I care, but what can I do about it?'

The Pew Internet Research Centre recently did a poll of Americans and asked questions that give us some insights as to where people fall on this scale.  They report that 5% of Americans have not heard of the Snowden affair.  I do not know what cave they have been living in.  They also report that 91% of Americans believe they have lost control of the data they post on the Internet.  A further 80% believe it is troubling that government monitors their communications.  Therefore, I suggest that this means most people fit into category number three: 'I know what is happening, I do not like it, but what can I do about this?  I cannot rip technology out of my life; it has become too far integrated.  However, neither do I trust that government is going to protect my privacy and so I am in a paradox and so I continue on a day to day basis because I see no better options'.  I call this normative cynicism.

Think about the shift in public perceptions of the Internet that has taken us to normative cynicism.  Think about where we were just three years ago with the Arab Spring.  The papers were full of headlines about Twitter revolutions.  Now these were exaggerated and largely untrue, but nonetheless there was a deeply held conviction that the Internet was a liberatory technology, a decentralised communications infrastructure that lowered the barriers to entry to markets of commerce and ideas.  Now think about where we are - normative cynicism.  We have in three years shifted from a liberatory technology to a perception that the Internet is a technology of social control and political manipulation.  This is a Hobbesian view of the Internet.  Three years from liberatory Twitter revolutions to normative cynicism.

This is bad for three reasons.  One, over the long term it means the loss of faith in the principles of democratic government at home and abroad.  If we do nothing to restore legitimacy in the way power operates online, we will live to regret it.  Two, it means a loss of faith in technology.  While I do not mean you are going to throw your mobile phone in the trash can when you finished hearing my speech, I mean you are going to be hesitant or more hesitant to adopt the next generation of technologies.  It will slow the pace of innovation, something that is in none of our interests.  More importantly, perhaps, it will interfere with what I call the banality of the technology revolution.  The power of the Internet as a soft power asset in the world is not the Twitter revolution, or the creation of the European Google.  The power of the Internet in the world is the cumulative effect of day to day access to information and communication networks and markets for billions of people.  Slowing that technological development is something we should do very cautiously.

What can be done?  What we have to do is to restore trust.  We have to convince people that the Internet offers more benefits than risks.  Not just today, but tomorrow and in 15 years and to do that we need to establish legitimacy at least for democratic governments and their conduct online.  It is not that people want to remove power from the Internet altogether; that would be neither wise nor desirable.  People want to know that power is being applied on the Internet in a legitimate way.  That there are rules controlling what can be done and what cannot be done and there is some transparency in how those rules are applied.  This is a modernisation of privacy and security policy which I believe

Western governments should lead together through an agenda based on common interests and not on retaliation or economic protectionism.

I think we begin not by asking the hardest questions, like, can we harmonise international surveillance policy in accordance with human rights treaties?  If we ask that question first we will get nowhere in a hurry, which is what has happened in the last 18 months.  To solve this problem of legitimacy we must begin with the easy questions.  We must begin with ideas of common interest that unite at the very least democratic governments.  Here are three ideas.  One, transparency.  People are not upset that law enforcement and intelligence are doing their jobs to protect public safety and national security, they would just like to know a little bit more about how that happens.  We can increase transparency without damaging the effectiveness of our services and we can harmonise our transparency policies so that traditional allies have faith in one another or at least more than they do right now.  Second, industrial espionage.  The United States government says they do not do it.  There is very little in the Snowden documents that suggests that they do.  If they do not do it, and most democratic governments profess they do not do it, why not make a multilateral treaty that outlaws it?  Why not conduct an international campaign to establish rules and oversights and sanction for those who do conduct industrial espionage over the Internet?  Common interests that begin to lead us towards an agenda of legitimacy.

Finally, and most importantly, to connect back to market developments, the most important issue to solve in the short term is the question of extraterritorial access to data.  By this I mean something simple, can the United States government go to Google and get your data as a non US citizen located outside of the United States?  The great asymmetry of the technology market is the huge advantage of American signals intelligence, because American law says any company incorporated in the United States is required to hand over data no matter where it is in the world and no matter who it belongs to.  That is what is most problematic frankly to European countries, that is what is disrupting the transatlantic alliance, that is what is standing in the way of data privacy advocates' support for TTIP.  We need to solve the problem politically.  You cannot solve that problem in the market.  You cannot ask companies to adjudicate how they are going to respond to conflicting laws where they are breaking the law in either the country where they are incorporated or the country where they are doing business.  This is a political problem and it is a political problem that can be solved.

On this basis we begin to construct a modernised agenda for privacy and security policy so that big data is once more considered a progressive technology, a liberatory technology, an exciting idea, whether it is in the hands of the private sector or in the hands of the public sector.  We move away from this notion of the Hobbesian Internet, which is not consistent with either American or any other democratic nation's foreign policy.  Thank you very much.