

International Internet Policy

And Privacy Rights



By Humberto Espino

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Introduction

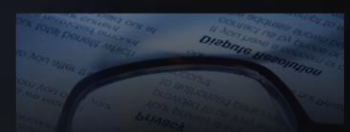
Policy and Governance

For many, the internet has become an essential part of our lives. And the matter of how the internet is governed is a critical point. Mueller clearly makes the argument for internet governance.

While the law at one time distinguished between traditional legal issues and "cyber" issues, the law is evolving to include many computer topics, often times with unique policies.

International internet law is a somewhat young area of the law, one which is in continual flux based on any number of events such as:

- International conflicts
- Privacy and surveillance issues
- Cybercrime and cyberwarfare
- And economic developments



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Despite the fact that countries deal with how best to regulate cyberlaw within their own borders, international internet law lacks comprehensive conventions and codes.

The Epic battle for control of Cyberspace and Privacy Rights



Traditional Power:

Organized Institutional Powers

[Government and Large Multinational Corp.]



Distributed Power:

Part Grassroots, Social – Part Good

Part Hackers, Criminal – Part Bad



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The Right to Privacy

The challenge of International Internet Policy and advocating for Privacy Rights is just like global trade and environment policy. The internet has become a point of international conflict between business, civil society and state politics.

However, while issues such as governance of the internet are unique and require specific discussion, one may look to traditional international legal topics for guidance on international internet law issues.

Constitution of United States of America : 4th Amendment



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Electronic communications and the right to privacy- "First case".

The constitution did not consider the possibility of stored digital content or electronic communications. When electronic communications first became widespread early in the 20th century, law enforcement agencies began to use wiretapping in their investigations without obtaining the warrants required for a physical search.

The resulting convictions led to court appeals before the US Congress to considered the question of electronic privacy. Consequently, the courts had to interpret if warrantless eavesdropping and wiretapping are covered by the Fourth Amendment.

The key question is whether wiretapping constitutes a form of "search and seizure".

Olmstead vs. United States (1928)

1968 Congress passed Title III of the Omnibus Crime Control and Safe Streets Act authorizing microphone surveillance or wiretapping for law enforcement purposes, and requiring a warrant prior, based on probable cause.



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Electronic communications and the right to privacy- "Email".

Many of our most personal communications and financial records are accessible through our emails.

Under the 1986 Electronic Communications Privacy Act - A warrant, is not needed for emails over 180 days old that are stored by a service provider such as Gmail. This data can be obtained from the service provider with only a subpoena.

Government agencies often use legal processes that allow for searches of electronic records such as emails without any notification to the individuals whose information has been searched.

In 2015, Google received 31,343 requests for information from the U.S. government, and the most common legal process used was a subpoena.

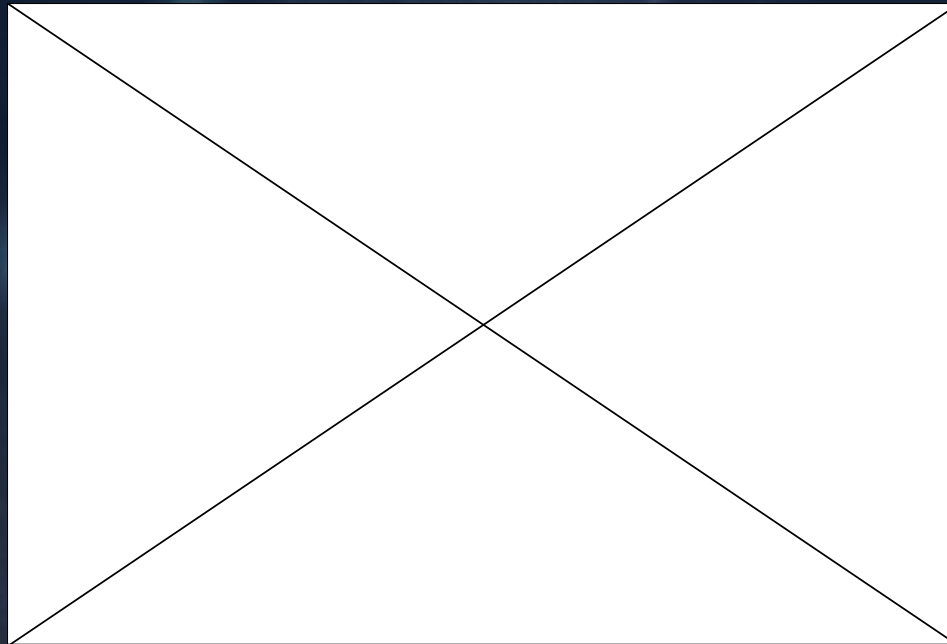
Between September 2014 and March 2016, Microsoft received 5,624 federal government demands for customer information or data.



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Electronic communications and the right to privacy-
“Corporate”.



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Natural Laws of the Internet – It's Origin

The internet was founded under the premises of freedom and independence, where self-governing of virtual communities can resolve all problems via consensus or by freedom of association.

- Censorship was impossible
- Anonymity was easy
- Police were not looking at Cybercrime
- Internet was fundamentally international
- Freedom spread through the world



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Natural Laws of the Internet – Today

The internet's origin, the utopian vision has passed. Today the battle between traditional powers and distributed powers for control of Cyberspace and Privacy Rights is bigger than ever.

- Media Political Originations and Government
- Crowdfunding | Crowdsourcing
- Marketing | Entertainment
- eBay became the norm
- Facebook and Twitter helped to topple Governments
- Made the traditional power more powerful



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The Right to Privacy - Bordered Internet Governance vs Global Internet Governance

Global Internet Governance: Mueller contemplates a new global institution that could take the form of internet governance for today's globally connected information infrastructure.

However, one of the many challenges of a global cyberspace is that is bound to existing nation-centered institutional arrangements in communication, state sovereignty, and information policy.



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The Right to Privacy - Bordered Internet Governance vs Global Internet Governance

Bordered Internet Governance: This truly makes a difficult quandary, on one hand you have the globalization of everything: economy, institutions, markets, international agreements, science, education etc....and on the hand, governments whom are retreating back to protectionism and are acting to restrain globalization by creating assertions of state power over the internet in the name of national security and economic stability.



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Google definition of private privacy

pri·va·cy
/'prɪvəsi/ ⓘ

noun
noun: privacy

the state or condition of being free from being observed or disturbed by other people.
"she returned to the privacy of her own home"
synonyms: **seclusion, solitude, isolation**, freedom from disturbance, freedom from interference
"protecting one's privacy"

- the state of being free from public attention.
"a law to restrict newspapers' freedom to invade people's privacy"

Use over time for: privacy

Mentions



1800 1850 1900 1950 2010

Show less

Feedback

[Privacy | Define Privacy at Dictionary.com](#)
www.dictionary.com/browse/privacy ▼

Please leave the room and give me some privacy. 2. ... freedom from damaging publicity, public scrutiny, secret surveillance, or unauthorized disclosure of one's personal data or information, as by a government, corporation, or individual: Ordinary citizens have a qualified right to privacy.



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Privacy Rights and the Internet of Things –

In the Internet of Things, everything around you is collecting private data.

In its recent report entitled "Internet of Things: Privacy & Security in a Connected World," the Federal Trade Commission found that fewer than 10,000 households, which adds up to a relatively small number of devices, can together generate a whopping 150 million discrete data points – daily.

The International Data Corporation estimates that by 2020, the Internet of Things will comprise no less than 50 billion devices and 212 billion sensors, generating 44 zettabytes of information. (A zettabyte is 10^{21} bytes)



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Privacy Rights and the Internet of Things –

Privacy is not just about the ability to close our door to the outside world. It also includes individual control over information held, and things said in databases about ourselves.

For instance, a major privacy principle behind the Fair Credit Reporting Act is the principle that an individual has a right to the accuracy of information held about them when it has important consequences with regard to their privacy rights.

This principle is widely referred to as the “data integrity” or “accuracy” principle.



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Automobiles have joined the IoT in recent years.

France's data protection authority (CNIL) has recently released a "compliance package", providing guidelines for how to treat personal data gathered by connected cars.



The Federal Trade Commission of the United States

Recently a report was released by the FTC which provides guidance for companies and manufacturers on how they can build privacy and security measures into their devices.



European Commission – Article 29 Data Protection Plan

Suggests to IoT developers: Users must be able to access, view and remove the data you collect from them. Users should be able to disconnect their IoT devices when they want to do so.



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The Right to Privacy and the Corporate World

Privacy factored into Internet policy - Two trends fueling immediate change

- The rise of cloud computing

Users no longer have control of the data.

[EMAIL | PHOTOS | CONTACTS | DOCUMENTS]

Google – Apple – Microsoft – Facebook ...

- Increasingly new devices are tightly controlled by vendors

[iPhone | iPad | Android Dev | Kindle | Chromebook]

New OS's such as Windows and Apple are moving in this direction [subscription based]



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The Right to Privacy and the Corporate World

Privacy factored into Internet policy - Giving more control of our data

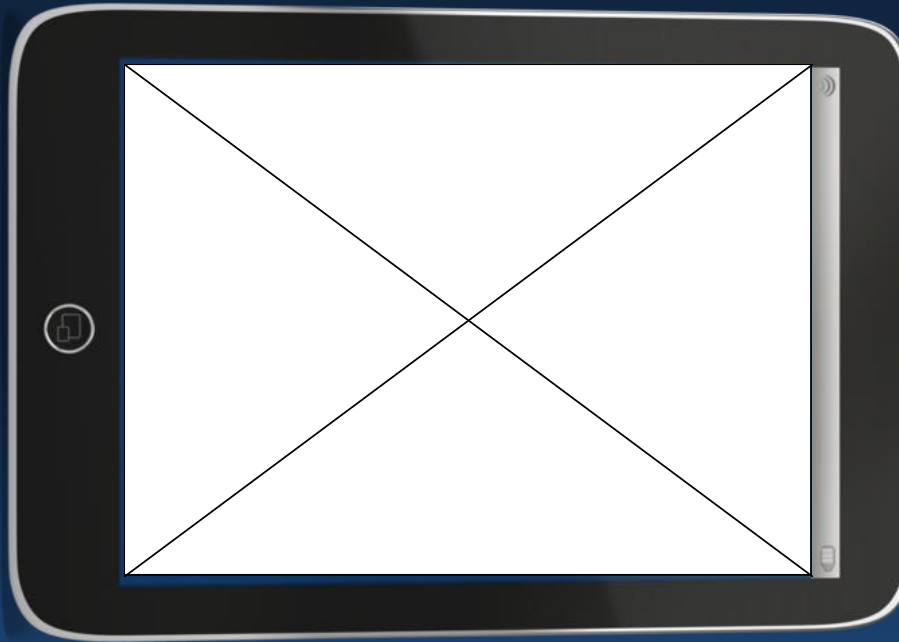
Increased corporate power = Less user control

The principle Net neutrality is that Internet service providers and governments regulating the Internet should treat all data on the Internet the same, not discriminating or charging differentially by user, content, website, platform, application, type of attached equipment, or mode of communication.



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The Right to Privacy and the Government

Government power is also increasing on the Internet

- More Government surveillance then ever before
- We now know NSA is eavesdropping on the entire planet (Edward Snowden)
- There is more censorship and more propaganda
- More Governments controlling what users can and can't do in the Internet
- Totalitarian Governments are embracing the Internet as means of control



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The Right to Privacy – Governments and Global Corporations

“The Public-Private Surveillance Partnership”

For both Corporate and Government side, traditional power on the internet is huge and in many cases “interests” are aligning –

Surveillance is the business model of the Internet AND Business of Surveillance gives governments data access to data it couldn't otherwise

This type of arrangements cripple all International Privacy Policy efforts.



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So what happens to the Right to Privacy?

Today it is much easier to spy on everyone for the sake of keeping nations safe. Yet, for those with the “know how” they continue to brake international laws and treaties making cybercrime pervasive.

- Whistleblowers can do more damage
- Dissident movements like Anonymous are more disruptive
- Cybercriminals can rob more people faster, then real-world criminals
- Digital pirates can make more copies of more movies more quickly then their Analog ancestors
- Russia spying our politics
- Government vs. terrorist



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So what happens to the Right to Privacy?

For the rest of us, we are stuck in the middle. We have no choice but to accept the default configurations options on devices, accept “terms of service” of software , accept NSA spying on us, or the occasional loss of our data for some inexplicable reason.

Privacy Rights get trampled as institutional power gets stronger to protect against the bad part of distributed power.

However, how do we keep our society safe without the stifle of freedom, liberty, and positive social change?



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So what happens to the Right to Privacy?

The checking of powers – International Internet Law

- There are real concerns of whether private information stored in secured databases is really private.
- Scandals such as Wikileaks and the Panama Papers are becoming more common.
- Companies store information all over the world, information often travels through many jurisdictions before reaching the end user.
- Governments pressuring ISPs to police the data that travels their networks while ISPs and privacy organizations are pushing back.

These are some of the topics that international internet privacy legislation is attempting to regulate.



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Regulatory Groups - International Internet Law

The Internet Governance Forum (IGF):

Established in 2006 by the World Summit on the Information Society (WSIS) . Its UN mandate gives it the authority to serve as a neutral space for all actors and facilitates a common understanding of how to maximize internet opportunities and address risks and challenges that arise.

The Global Commission on Internet Governance:

This is a two year working group conducting and supporting independent research on internet-related dimensions of global public policy. Key issues to be addressed by the commission include governance legitimacy and regulation, innovation, online rights and systemic risk.



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Regulatory Groups - International Internet Law

Internet Corporation for Assignment of Names and Numbers: ICANN is primarily known for coordinating the internet's Domain Name System (DNS). ICANN is a not-for-profit corporation organized under California law in 1998, and originally operated under a Memorandum of Understanding with the U.S. Department of Commerce (DOC).

Following two years of talks between ICANN and the DOC, ICANN submitted a proposal to the National Telecommunications and Information Administration in April, 2016 to end direct U.S. government oversight control and replace it with global multi-stakeholder oversight.



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Regulatory Groups - International Internet Law

United Nations Commission on International Trade Law (UNCITRAL):

Promotes the progressive harmonization and unification of international trade law by preparing and promoting the use and adoption of legislative and non-legislative instruments in a number of key areas of commercial law.

Those areas include dispute resolution, international contract practices, transport, insolvency, electronic commerce, international payments, secured transactions, procurement and sales of goods.



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Agreements- International Internet Law

Cyberspace Agreement:

The internet is a shared network of computers, spread across the globe. It is an international space that may not be subject to any sovereignty.

Looking to previous instances of jurisdictional practices concerning similar, albeit physical, common spaces may guide developing regulations for this new cyber space.



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Agreements- International Internet Law

Three international spaces for future policies concerning the internet:

1- The Law of the Sea Convention defines the rights and responsibilities of nations with respect to their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources.

2- Antarctic Treaty sets aside Antarctica for peaceful purposes to be used as a scientific preserve. the treaty bans military activity on that continent and permits consultative states to conduct inspections

3- Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies This treaty cements the idea that spaces may be available to all members of the international community and cannot be appropriated.



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Agreements- International Internet Law

General Data Protection Regulation replacing EC No. 95/46 Directive on Data Protection in 2016:

The European Directive on Data Protection regulates the processing of personal data and limits the transmission of such data.

Passed in 1995, the directive indicates that personal data should not be processed at all, except when certain conditions are met. These conditions fall into three categories:

Transparency | Legitimate Purpose | Proportionality



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Agreements- International Internet Law

European Convention on Human Rights (ECHR):

Articles 8 and 10 from the ECHR have been used by many courts to bring state jurisdictions in line with the ECHR as a whole.

- Article 8, the right to the protection of personal information .
- Article 10, the right to the freedom of expression and the public's right to receive information.

Case C-131/12 Right to Be Forgotten

A Spanish citizen lodged a complaint with the National Data Protection Agency claiming a newspaper and Google infringed on his right to privacy by producing search results of a previous legal case that had been resolved.



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Agreements- International Internet Law

Convention on Cybercrime

The Convention on Cybercrime is the first and only multilateral treaty to address computer-related crime and evidence gathering.

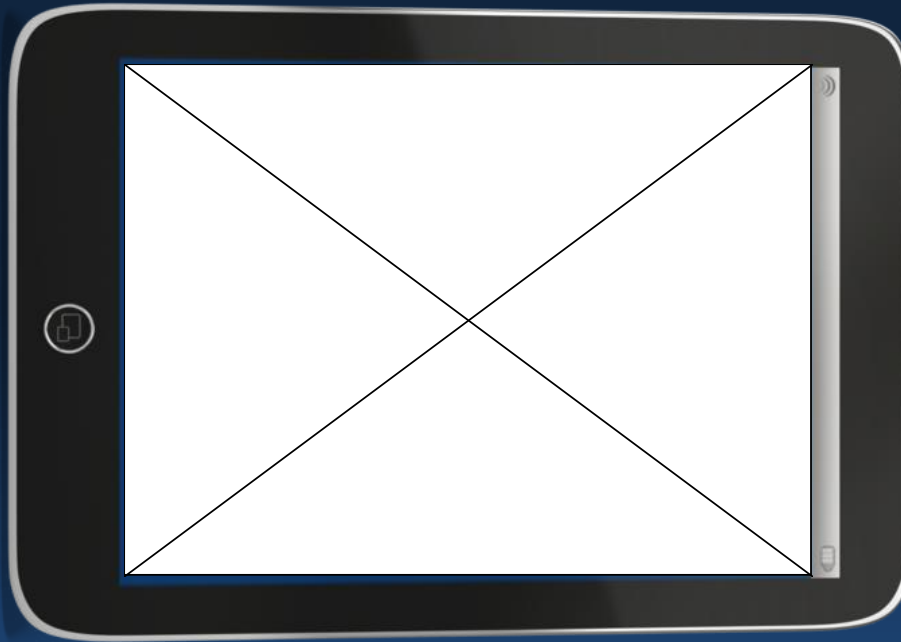
The Convention entered into force in July, 2004. It imposes three necessary obligations:

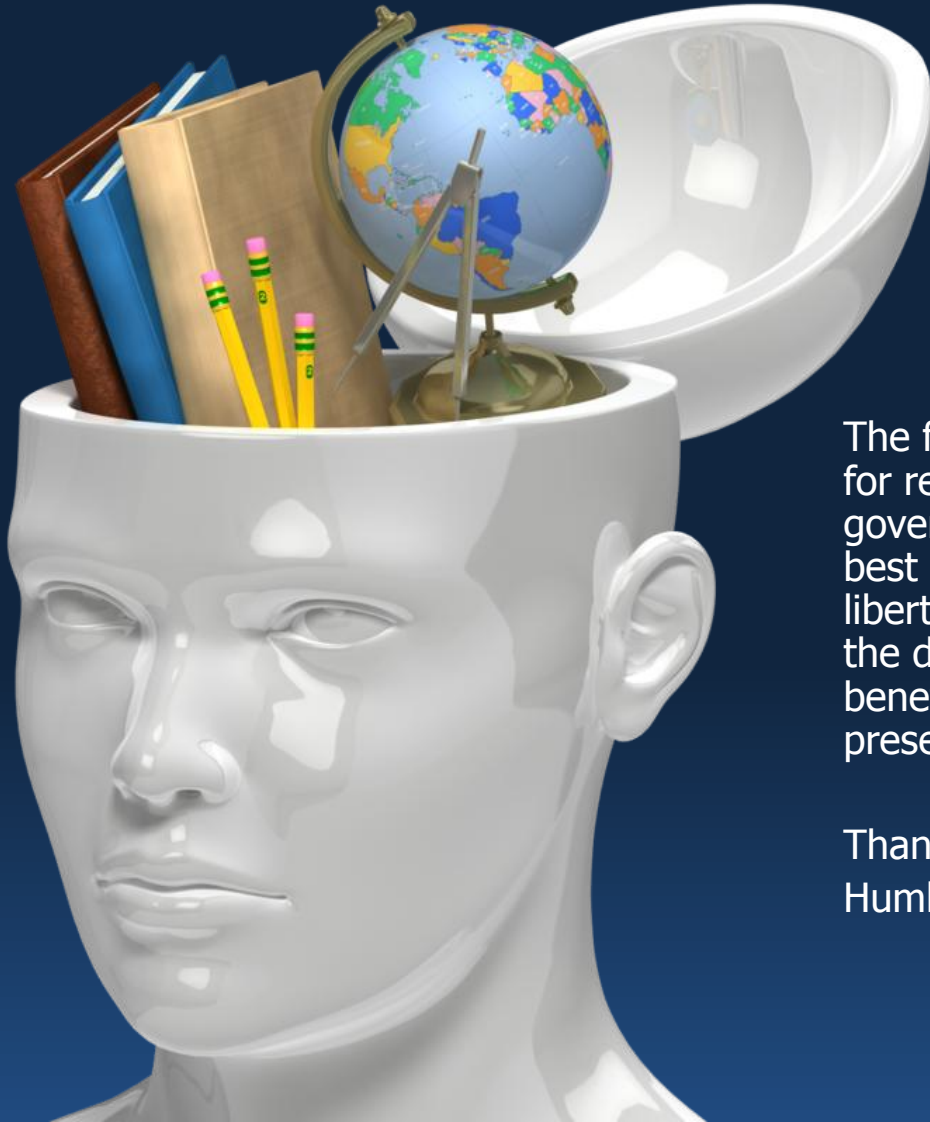
- 1 - Enact legislation criminalizing certain conduct related to computer systems.
- 2- Create investigative procedures and ensure their availability to domestic law enforcement authorities to investigate cybercrime offenses, including procedures to obtain electronic evidence in all of its forms.
- 3- Create a regime of broad international cooperation, including assistance in extradition of fugitives.



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The future of the Internet should not be only for revenue generator or to be harness by governments to forge control. It should act in best interest of a global society: freedom, liberty, and positive social change. Empowering the distributed is one of the most important benefits of the Internet, and it must be preserved.

Thank you,
Humberto Espino.



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