

Information Privacy Seminar

Course Description and Syllabus

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I. Description

Today's headlines are filled with reports of new threats and invasions to privacy from governments, corporations, and individuals with control over our personal information. The government wiretaps computer and telephone networks to detect and fight crime and protect national security; corporations keep track of our interests and actions in order to sell targeted advertising; and individuals hack into computers and steal identities. All of these actors take advantage of new technology, and in particular massive databases and the Internet, to victimize more people more efficiently. How should policymakers react to these threats? Why does the public seem indifferent to most of these new threats? How do we strike the balance between privacy and security? In this seminar, we will explore all of these questions and more.

II. Course Summary

Timing. The seminar will meet every Tuesday in Room 330 from 2:30 to 4:10 PM. I will generally be available for office hours on Tuesday and Thursday mornings from 10:30 – 11:30 AM in Room 433 or at any other time by appointment. I also can be reached via e-mail at paul.ohm@colorado.edu.

Paper. Students are required to write a thirty to thirty-five page paper (reasonable font and margins; double-spaced).¹ The paper should represent an original work of scholarship that analyzes in an original and creative way one or more of the issues that we discuss in class. Each class addresses a topic that provides a potential starting point for papers. Although I will permit students to choose a paper topic outside of the issues covered in class (upon approval only), most students should choose a topic covered in class as a point of departure for the paper.

We will spend a portion of each of the first four classes discussing paper topics. During these sessions, we will survey potential topics and we will discuss strategies and sources for finding ideas.

Topics must be selected and submitted to me for approval by 5pm on Tuesday, September 23, 2008 (We will not be meeting on that date, to give you time to do additional research). Consistent with Law School rules, students must submit a first draft for review no later than 5pm, Friday, November 7, 2008. Other outlines and rough drafts may be submitted to me for review at any time prior to two weeks before the final due date. This is strongly encouraged; in my experience, close consultation with a supervising professor is the best way for a student to improve a paper (and a paper's grade.) Papers are due by 5pm on the last day of classes, Friday, December 5, 2008.

¹ Students enrolled in the class through the Interdisciplinary Telecommunications Program (ITP) will have slightly different requirements, which will be described in an addendum to the syllabus.

To recap, the key deadlines for the paper are:

Tuesday, September 23, 2008	Paper Topics Due by 5pm
Friday, November 7, 2008	First Drafts Due by 5pm
Friday, November 21, 2008	Last Day to Submit Outlines or Rough Drafts for Review
Friday, December 5, 2008	Final Papers Due by 5pm

Participation. Students are required to take an active role in classroom discussions. As in any seminar, very little material will be presented through lecture, and every student must contribute to the conversation. Classroom participation may account for as many as five points—plus or minus—in the final grade.

In addition to taking an active role in weekly in-class discussions, students must publish responses to two weeks' worth of reading. A response can take one of two forms: (1) a response memo, approximately two pages, double-spaced; or (2) a "podcast"—glorified techspeak for a digital recording of your voice—approximately five minutes long. In either format, a student response should provide commentary about some of the reading for the upcoming week. Responses should be posted to the class website **no later than Noon, the day before class**. In addition, all students are expected to have read or listened to each week's student responses before coming to class.

At the second class, on Tuesday, September 2, 2008, students will be asked to sign up for their two weeks of responses, to ensure that student responses are spread throughout the semester. Students need not decide whether to write a memo or record a podcast in advance.

So long as student responses reflect conscientious and thoughtful efforts to complete the assignments, they will not be graded for their relative merit. Conversely, students who fail to submit their responses or who complete the task with evidently little thought or preparation will lose up to two points from their final grade. This is in addition to the possible five point bonus or penalty for general class participation.

Directions for posting response memos and response podcasts will be made available at the class website: paulohm.com/classes/infopriv08 before the start of the third class.

Reading. The required books for the class are Solove, Rotenberg & Schwartz, *Privacy, Information & Technology* (Aspen, 2006) [*hereinafter* SRS] and Schwartz & Solove, *Information Privacy: Statutes & Regulations*, (Aspen, 2008). In addition, supplemental reading has been posted below, but these assignments are subject to modification. Please be sure to check the class website before every class. Starting with week three, supplemental reading will be posted at least two weeks in advance.

Other Resources. Professor Dan Solove maintains an exhaustive list of resources about information privacy at <http://docs.law.gwu.edu/facweb/dsolove/Information-Privacy-Law/resources.htm>. This page is a gold mine of resources from which you can research paper topics.

Solove's resource page lists many blogs on which information privacy is often discussed. I will highlight in particular:

Dan Solove's group blog, *Concurring Opinions*: concurringopinions.com.
Orin Kerr's group blog: volokh.com. (Only Professor Kerr blogs regularly about privacy.)
Bruce Schneier, a noted computer security expert: schneier.com/blog

Two blogs worth reading which Solove does not cite are:

Ed Felten, a noted computer scientist: freedom-to-tinker.org.
Google's Public Policy Blog: <http://googlepublicpolicy.blogspot.com/>.

In the mainstream media, the New York Times (particularly Saul Hansell), Washington Post (particularly Ellen Nakashima), and Cnet.com (particularly Declan McCullagh) publish many stories about information privacy.

Grading. The grade that each student receives for his or her paper will provide the primary basis for his or her grade in the seminar. However, as detailed above, classroom participation and the mandatory presentation or responses will also play a role. Strong participation will increase a final grade by up to five points. (e.g. from 88 to 93). Poor participation will decrease a grade by up to five points. Insufficient responses or poor presentations will be considered poor participation.

III. Week-by-week Syllabus

*** About the Reading**

There are three types of reading in this class: (1) pages from the class textbook, SOLOVE, ROTENBERG & SCHWARTZ, *PRIVACY, INFORMATION, AND TECHNOLOGY* (SRS below); (2) statutes, most available in SCHWARTZ & SOLOVE, *INFORMATION PRIVACY: STATUTES & REGULATIONS*; and (3) articles.

A note about my expectations: Because this is a seminar, I do not expect you to read the material with the same depth that you do the material in your other law school classes. Still, I do expect you to at least skim everything that is assigned. Skimming is acceptable especially for the law review articles. For example, never feel obligated to read footnotes in these articles. Note that sometimes I will assign entire articles and sometimes I will assign excerpts. Be sure to consult the class website (paulohm.com) before every class to find the exact pages assigned.

Tuesday, August 26, 2008

Week 1: Introduction to Information Privacy

In the first week, we will discuss the themes of the course. What is privacy? Is it reducible to a core concept and set of theories or is it instead a complex of different ideas and values? How does information privacy, in particular, differ from other types of privacy such as decisional privacy? How are people harmed from insufficient privacy? Can too much privacy result in harms? How has privacy evolved through history in this country, and what types of laws govern privacy today?

Readings:

SRS 1-55.

A. Privacy from/and the Government

Tuesday, September 2, 2008

Week 2: The Fourth Amendment

In week two, we will explore how the Fourth Amendment to the U.S. Constitution restricts government access to information, and in particular, to information held by third parties. Should a provision enacted in the eighteenth century govern twenty-first century technology? What are the limits and strengths of the reasonable expectation of privacy test? What is the third-party rule, and should it extend to stored e-mail messages?

Readings:

SRS 57-83.

Orin Kerr, *The Case for the Third Party Doctrine*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1138128 (forthcoming Michigan Law Review) (skip Part III: "The Third-Party Doctrine and *ex ante* Clarity").

Warshak v. United States, 490 F.3d 455 (6th Cir. 2007) (skip Parts III.A, III.C, and III.D—in other words, read Parts I, II, III.B, and IV) (Note: This opinion was vacated on ripeness grounds by the 6th Circuit sitting *en banc*, 535 F.3d 521 (6th Cir. 2008); You needn't read the *en banc* opinion, which avoids all of the hardest issues, unless you are curious.).

Tuesday, September 9, 2008

**Week 3: National Security and Government Data Mining
(Responses from Andrews and Burns)**

This week, we will consider the related questions of national security and data mining. How do the rules for government access to information differ in the national security and law enforcement contexts? Do these distinctions make sense? What is the government trying to accomplish through the NSA Wiretapping program, and what sort of oversight should be required? What is data mining, and is it effective? How can national security programs be evaluated by the courts, Congress, and the public given the need to keep methods and sources secret?

Readings:

SRS 103-107.

Excerpt from Chris Slobogin, *Government Data Mining and the Fourth Amendment*, 75 U. CHI. L. REV. 317 (2008).

Excerpt from Fred Cate, *Government Data Mining: The Need for a Legal Framework*, 43 HARV. CIV. RIGHTS-CIV. LIBERTIES L. REV. 435 (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1151435.

Excerpt from Orin Kerr, *Updating the Foreign Intelligence Surveillance Act*, 75 U. CHI. L. REV. 225 (2008).

Tuesday, September 16, 2008

**Week 4: Government Recordkeeping and Databases
(Tin, Quinn, De Dios, and Reid)**

Readings:

SRS 133-75.

Excerpt from Dan Solove, *Privacy and Power: Computer Databases and Metaphors for Information Privacy*, 53 STAN. L. REV. 1393 (2001)(skip Parts II.B, II.C, IV.A, and IV.B).

Skim the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a.

Douglas Kysar, *Foreward: Making Sense of Information for Environmental Protection*, 86 TEX. L. REV. 1347 (2008).

Tuesday, September 23, 2008:

NO CLASS

*** Tuesday, September 23, 2008: Paper Topics due by 5pm**

B. Privacy from/and Private Actors

Tuesday, September 30, 2008:

Week 5: Privacy Torts

(Larson, Cook, Fitzgerald, McLauthlin, and Sharman)

Readings:

SRS 1-26 (reassigned from week one)

Other Readings TBA.

Tuesday, October 7, 2008:

**Week 6: Internet Providers
(Quinn, Looijen, Swanson, and Holland)**

Readings:

SRS 209-229

Randy Picker, *Competition and Privacy in Web 2.0 and the Cloud*,
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1151985.

Excerpt from Paul Ohm, *The Rise and Fall of Invasive ISP Surveillance* (forthcoming 2009).

James Grimmelmann, *The Google Dilemma*, available at
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1160320 (forthcoming 2008).

Tuesday, October 14, 2008:

**Week 7: Spammers, Phishers, Hackers, Identity Thieves, and Trolls
(Tin, Carriere, Reid, and Looijen)**

Readings:

SRS 249-256.

Excerpt from DAN SOLOVE, *THE FUTURE OF REPUTATION: GOSSIP, RUMOR, AND PRIVACY ON THE INTERNET* (2007).

Mattathias Schwartz, *The Trolls Among Us*, N.Y. TIMES MAG. at MM24, Aug. 3, 2008, available at <http://www.nytimes.com/2008/08/03/magazine/03trolls-t.html?ref=magazine>.

Excerpt from Lior Strahilevitz, "How's My Driving?" for Everyone (and Everything), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1028875 (forthcoming Northwestern Law Review).

Tuesday, October 21, 2008

**Week 8: Financial and Health Privacy
(Cook, Fitzgerald, Burns, Latif, and Sharman)**

Readings:

SRS 256-268.

Peter Swire, *The Surprising Virtues of the New Financial Privacy Law*, 86 MINN. L. REV. 1263 (2002).

Richard Epstein, *HIPAA on Privacy: Its Unintended and Intended Consequences*, 23 CATO J. 13 (2002), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=305326.

Anita Allen, *Face to Face With 'It': And Other Neglected Contexts of Health Privacy*, 151 PROCEEDINGS OF THE AM. PHIL. SOC'Y 300 (2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1016213.

C. "Regulating" Privacy

Tuesday, October 28, 2008

**Week 9: Consent, Self-Regulation, and the Market
(Larson, Carriere, Andrews, and Swanson)**

Readings:

SRS 284-309

Lorrie Cranor, *Web Privacy with P3P*, Chapter One, available at <http://p3pbook.com/ch01.pdf>.

Alessandro Acquisti and Jens Grossklags, *What Can Behavioral Economics Teach Us About Privacy?*, (book chapter) (2007), available at <http://www.heinz.cmu.edu/~acquisti/papers/Acquisti-Grossklags-Chapter-Etrics.pdf>.

Other readings TBA.

Tuesday, November 4, 2008

Week 10: Encryption and Anonymity (Lab Class in Engineering)

Readings:

SRS 309-316.

Excerpt from Paul Ohm, Good Enough Privacy, 2008 U. Chi. L.F. ____.

Latanya Sweeney, *k-Anonymity: a model for protecting privacy*, 10 International Journal on Uncertainty, Fuzziness and Knowledge-based Systems 557 (2002), available at <http://privacy.cs.cmu.edu/people/sweeney/kanonymity.pdf>.

*** Friday, November 7, 2008: First Drafts of Paper Due by 5pm**

Tuesday, November 11, 2008

**Week 11: Privacy and the First Amendment
(De Dios, McLauthlin, Holland, and Latif)**

Readings:

Excerpt from Neil M. Richard, *Intellectual Privacy*,
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1108268 (forthcoming Texas Law Review).

Excerpt from Katherine J. Strandburg, *Freedom of Association in a Networked World: First Amendment Regulation of Relational Surveillance*,
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1136624 (forthcoming Boston College Law Review).

Excerpt from Dan Solove, *The First Amendment as Criminal Procedure*, 84 N.Y.U.L. REV. 112 (2007),
available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=924900.

Tuesday, November 18, 2008

Week 12: International Privacy

Readings:

Excerpt from Fred Cate, *The Changing Face of Privacy Protection in the European Union and the United States*, 33 IND. L. REV. 173 (1999), available at
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=933090.

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (The EU Privacy Directive), available at
http://www.cdt.org/privacy/eudirective/EU_Directive_.html.

Other readings TBA.

*** Friday, November 21, 2008: Last chance to submit drafts or outlines for Professor's comments.**

Tuesday, November 25, 2008

NO CLASS: Fall Break

Tuesday, December 2, 2008

Week 13: Student Choice

We will discuss a topic selected by the students.

*** Friday, December 5, 2008: Final Papers Due by 5pm.**