

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 track our interests and actions to sell us 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 Monday in Room 411 from 2:30 to 4:30 PM. I will generally be available for office hours on Monday and Wednesday mornings from 11:00 AM – Noon 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 10,000 – 15,000 word (including footnotes) paper.¹ The paper should represent an original work of scholarship which analyzes in an original and creative way one or more of the issues that we discuss in class. Each week, we will address a topic that provides a potential starting point for papers. Although I will permit students to choose a topic from beyond the issues covered in class (upon approval only), most students will probably 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 Monday, September 20, 2010. Students must submit a first draft for review no later than 5pm, Friday, November 5, 2010. Other outlines and rough drafts may be submitted to me for review at any time prior to eight days 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 second-to-last day of classes, Thursday, December 2, 2010.

¹ For those used to thinking in pages instead of words, if we assume 250 to 400 words per page (double-spaced lines) we end up with a lower bound of 25 pages and an upper bound of 60 pages, depending on your word processing settings.

To recap, the key deadlines for the paper are:

Monday, September 20, 2010	Paper Topics Due by 5pm
Friday, November 5, 2010	First Drafts Due by 5pm
Wednesday, November 24, 2010	Last Day to Submit Outlines or Rough Drafts for Review
Thursday, December 2, 2010	Final Papers Due by 5pm

Participation. Students are required to take an active role in classroom discussions. 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 Monday, August 30, 2010, 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/infopriv10 before the start of the third class.

Conference. On Friday, December 3, 2010, the last day of classes for the fall semester, all students are required to attend two hours of the all-day Silicon Flatirons conference, "Privacy and the Press," which will take place in the Wittemyer Courtroom. These two hours will substitute for the classes skipped on September 6th (Labor Day) and October 25th. Attendance is mandatory, so if you can't make it, please let me know as soon as possible.

In addition to attending the conference, all students must submit two questions for the panelists in advance of the conference. This is a mandatory participation assignment which will factor into the five point bonus or penalty for general class participation.

Reading. The required book for the class is Solove and Schwartz, *Privacy, Information & Technology* (Aspen 2d ed. 2008) [*hereinafter* S&S]. 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 (I contribute to this blog)
Google's Public Policy Blog: <http://googlepublicpolicy.blogspot.com/>.

In the mainstream media, the New York Times (particularly on its "Bits blog" page), Washington Post, Wall Street Journal, and Cnet.com (particularly Declan McCullagh) publish many stories about information privacy.

A good place to find detailed lists of privacy policy issues are the websites of the major online privacy groups. Look at, for example, the "Policy Issues" list at the Electronic Privacy Information Center (<http://epic.org/privacy/>); the "Privacy" page of the Electronic Frontier Foundation (<http://www.eff.org/issues/privacy>); and the web page of the Center for Democracy and Technology (<http://www.cdt.org/>).

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, the mandatory reading responses, and the questions for conference panelists 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.

III. Class-by-class Syllabus

*** About the Reading**

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

To help you organize your paper, I have structured this syllabus around conflicts from the world of information privacy. We will focus almost every week on one or more, ripped-from-the-headlines privacy conflicts, and students should come to class prepared to understand the conflict, debate the merits of all interested parties, and try to come to a resolution to the problem. As a consequence of this structure, students should expect depth but not breadth in our treatment of the topics. You will not exit this class with a comprehensive understanding of information privacy law; instead, you will learn a lot about a set of topics, and you should also develop a good feel for how information privacy topics are described, debated, and resolved.

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. I will often assign excerpts from articles, so be sure to consult the class website (paulohm.com) before every class to find the exact pages assigned.

Part I: History and Concepts

Monday, August 23, 2010

Class 1: The History and Meaning of Information Privacy

To begin, 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:

S&S 1-2; 10-27; 39-69.

Themes: Defining Privacy; History; Harm; Prescriptions.

Part II: Privacy and Private Actors

Monday, August 30, 2010

Class 2: Reputation and the End of Forgetting

Readings:

S&S 3-10; 28-31 (through 1.B.1.(c))

Jeffrey Rosen, The Web Means the End of Forgetting, NEW YORK TIMES MAGAZINE, July 21, 2010, available at <http://www.nytimes.com/2010/07/25/magazine/25privacy-t2.html>.

Excerpt from VIKTOR MAYER-SCHOENBERGER, *DELETE: THE END OF FORGETTING IN THE DIGITAL AGE* (2009).

New York Times Q&A with Paul Ohm and Michael Fertik, Answers to Questions about Internet Privacy, Parts I & II, <http://bits.blogs.nytimes.com/2010/07/26/part-i-answers-to-questions-about-internet-privacy/> and <http://bits.blogs.nytimes.com/2010/07/27/part-ii-answers-to-questions-about-internet-privacy/> (July 2010).

Excerpt from Lior Strahilevitz, 'How's My Driving?' for Everyone (and Everything?), 81 N.Y.U. L. REV. 1699 (2006).

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

Themes: Harm; Prescriptions; Markets; Architecture.

Monday, September 6, 2010: NO CLASS (Labor Day)

Monday, September 13, 2010

Class 3: Consent

Readings:

S&S 31-38.

N.Y. Times Infographic, *Facebook Privacy: A Bewildering Tangle of Options*, May 12, 2010, <http://www.nytimes.com/interactive/2010/05/12/business/facebook-privacy.html>.

Mark Zuckerberg, *Making Control Simple*, THE FACEBOOK BLOG, May 26, 2010, <http://blog.facebook.com/blog.php?post=391922327130>.

Excerpt from LAWRENCE LESSIG, *CODE: AND OTHER LAWS OF CYBERSPACE, VERSION 2.0* (2006).

Excerpt from Julie Cohen, *Examined Lives: Informational Privacy and the Subject as Object*, 52 STAN. L. REV. 1373, 1422. (2000).

Excerpt from Paul Schwartz, *Privacy and Democracy in Cyberspace*, 52 VAND. L. REV. 1609 (1999).

Alessandro Acquisti, *Nudging Privacy: The Behavioral Economics of Personal Information*, IEEE SECURITY & PRIVACY (2000), available at <http://www.heinz.cmu.edu/~acquisti/papers/acquisti-privacy-nudging.pdf>.

Themes: Consent; Markets.

Monday, September 20, 2010

Class 4: Behavioral Advertising

Readings:

Julia Angwin, *The Web's New Gold Mine: Your Secrets*, WALL ST. J., July 30, 2010, available at <http://online.wsj.com/article/SB10001424052748703940904575395073512989404.html>.

Julia Angwin and Tom McGinty, *Sites Feed Personal Data Details to New Tracking Industry*, WALL ST. J., July 30, 2010, available at <http://online.wsj.com/article/SB10001424052748703977004575393173432219064.html>.

Excerpt from Federal Trade Comm'n, Staff Report: Self-Regulatory Principles for Online Behavioral Advertising: Tracking, Targeting, and Technology (February 2009), available at <http://www.ftc.gov/os/2009/02/P085400behavadreport.pdf>.

Excerpt from Paul Ohm, *The Rise and Fall of Invasive ISP Surveillance*, 2009 U. ILLINOIS LAW REVIEW 1417.

Excerpt from James Grimmelman, *Saving Facebook*, 94 IOWA L. REV. 1137 (2009).

Themes: Harm; Architecture.

*** Monday, September 20, 2010: Paper Topics due by 5pm**

Monday, September 27, 2010

Class 5: Speech versus Privacy

Readings:

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 Danielle Citron, *Cyber Civil Rights*, 89 BOSTON L. REV. 61 (2009).

Excerpt from Doe v. Cahill, 884 A.2d 451 (Del. 2005).

Excerpt from Neil Richards, *Intellectual Privacy*, 87 TEX. L. REV. 387 (2008)

Electronic Frontier Foundation, *Google Book Search Settlement and Reader Privacy*, July 2009, <http://www EFF.org/issues/privacy/google-book-search-settlement>.

Themes: Harm; Prescriptions; Balancing Privacy Against Other Values.

Monday, October 4, 2010

Class 6: Privacy and New Technology (Lab Class)

Readings:

Excerpt from Paul Ohm, *Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization*, 57 UCLA L. REV. ____ (forthcoming 2010).

Peter Eckersley, *How Unique Is Your Web Browser?*, available at <https://panoptickick.eff.org/browser-uniqueness.pdf>.

Themes: Architecture; Harm.

Monday, October 11, 2010

Class 7: Digital Dossiers and Personal Prospectuses

Special Guest Participant: Scott Peppet, CU Law.

Readings:

Excerpt from DAN SOLOVE, *THE DIGITAL PERSON: TECHNOLOGY AND PRIVACY IN THE INFORMATION AGE* (2006).

Excerpt from Scott Peppet, *Unraveling Privacy: The Personal Prospectus & the Threat of a Full Disclosure Future* (forthcoming 2011).

EU, Data Protection Directive

California Data Breach Notification Law

Massachusetts Data Security Law

Additional excerpt from Federal Trade Comm'n, Staff Report: Self-Regulatory Principles for Online Behavioral Advertising: Tracking, Targeting, and Technology (February 2009), available at <http://www.ftc.gov/os/2009/02/P085400behavadreport.pdf>.

Themes: Prescriptions; Balancing Privacy Against Other Values.

Part III: Government Access to Private Information

Monday, October 18, 2010

Class 8: The Fourth Amendment and Storage Devices

This class, 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:

S&S 77-85; 158-65.

Excerpt from Orin Kerr, *Searches and Seizures in a Digital World*, 119 HARV. L. REV. 531 (2005).

Excerpt from United States v. Comprehensive Drug Testing, 579 F.3d 989 (9th Cir. 2009) (en banc).

Excerpt from United States v. Arnold, 523 F.3d 941, 946 (9th Cir. 2008).

Themes: Analogies; Balancing Privacy Against Other Values.

Monday, October 25: NO CLASS (Finish First Drafts)

Monday, November 1, 2010

Class 9: The Fourth Amendment and the Internet

Readings:

S&S 85-120; 138-149; 168-88.

Brief of Amici Curiae Law Professors and Instructors, *Rehberg v. Paulk*, <http://paulohm.com/projects/rehberg/RehbergLawProfessorsAmiciBrief.pdf>.

Themes: Analogies; Balancing Privacy Against Other Values; Architecture.

*** Friday, November 5, 2010: First Drafts of Paper Due by 5pm**

Monday, November 8, 2010

Class 10: Location Privacy

Readings:

S&S 120-38.

Excerpt from Helen Nissenbaum, Privacy as Contextual Integrity, 79 WASH. L. REV. 119 (2004).

Excerpt from United States v. Maynard, xx F.3d xx (D.C. Cir. Aug. 6, 2010).

Excerpt from Opinion and Memorandum Order of Magistrate Judges of Western District of Pennsylvania, In the Matter of the Application of the United States (Feb. 19, 2008), *available at* http://www.eff.org/files/filenode/celltracking/criminalapplicationorder_finalopinion.pdf.

Brief of United States, *In the Matter of the Application of the United States* (3d Cir. 2009).

Ryan Singel, *Google Latitude to Cops: 'I Don't Remember'*, WIRED EPICENTER BLOG, March 5, 2009, <http://www.wired.com/epicenter/2009/03/googles-latitud/>.

Justin Scheck, *Stalkers Exploit Cellphone GPS*, WALL ST. J., Aug. 3, 2010, *available at* <http://online.wsj.com/article/SB10001424052748703467304575383522318244234.html>.

Themes: Analogies; Harm; Architecture; Context.

Monday, November 15, 2010

Class 11: Government Secrets

Readings:

S&S 243-301.

Mohamed v. Jeppesen DataPlan Inc, 563 F.3d 992 (9th Cir. 2009).

El-Masri v. United States, 479 F.3d 296 (4th Cir. 2007).

Raffi Khatchadourian, *No Secrets: Julian Assange's Mission for Total Transparency*, NEW YORKER, June 7, 2010, available at http://www.newyorker.com/reporting/2010/06/07/100607fa_fact_khatchadourian.

Themes: Analogies; Harm; Balancing Privacy Against Other Values; Architecture.

Monday, November 22, 2010: NO CLASS: Fall Break

*** Wednesday, November 24, 2010: Last chance to submit drafts or outlines for Professor's comments.**

Monday, November 29, 2010

Class 12: Privacy and the Press

Readings:

Readings to be announced.

Themes: Harm, Balancing Privacy Against Other Values; Architecture

*** Thursday, December 2, 2010: Final Papers Due by 5pm.**

Friday, December 3, 2010

Class 12: Privacy and the Press Conference

All students must attend two hours of the conference on Friday, December 3rd. Students must submit two questions for the panelists to the class blog no later than Noon on Wednesday, December 1st.

Readings:

No new readings.