
Information Privacy in the Digital Age – Introduction

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Introduction to Introduction:

- ❑ There are various privacy problems addressed in the public debate and technological discourse
 - ❑ We will strive to address both theory and practice
 - ❑ This presentation will map out main issues addressed throughout the course
 - ❑ Security and cyber are treated as a separate matter.
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Why "Global" Privacy Law?

- Global economy.
 - International deals
 - International firms
 - International clients.
 - Comparative influences.
 - Intermingled legal topics.
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Why Privacy is “Exploding” Now

- Collection:
Omnipresent, Quantity leap, Quality leap
- Analysis:
Digital environment, easy to “warehouse”
- Use: Narrowcasting, tailored content and the “feedback loop”
 - Behavioral targeting as a test-case

Privacy – Why Now? (2)

- Changes in business models:
 - Global data transfers as a business.
 - The “attention economy”
 - The power of “free”
 - The rise of online platforms
 - The weakening of “consent”
 - “databases of doom”
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The Challenge of Identifying Privacy Problems

Privacy concerns:

- Privacy is a “tricky” concept
 - Three “mega” problems stemming from the collection of personal data:
 - (1) Fear the data will be used by government, or passed on to it
 - (2) Fear of the collection of personal data *per se* (collection on its own is bad enough)
 - (3) Fear of the specific detriments stemming from the use of personal data (the “so what?” approach)
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Identifying the problems – *Fear of Collection per se*

- Specific concerns:
 - Loss of control over data, self-monitoring, conformity, inability to form intimacy, loss of autonomy

 - Overall response – *social adaptation*
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Common responses to “Privacy claims”

□ Privacy creates:

- Social costs: reputation, search expenses (waste)
 - Security and social costs (inability to track terrorists, criminals, **diseases**)
 - Free Speech Arguments (*Sorrell*)
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Identifying “actual” problems

- Abuse
 - Discrimination:
 - (1) In general
 - (2) Problematic Factors
 - (3) Based on prior patterns of behavior
 - Autonomy and Manipulation
 - “Dark Patterns”
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Autonomy:

- ❑ Difficult and problematic concept
 - ❑ “insight” into the users’ preferences allows content providers to effectively *manipulate* them
 - ❑ On the other hand, autonomy possibly compromised when personal data analyzed without consent.
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Overview of Responses(1)

- Ex post via courts: the privacy torts
 - “The Right of Privacy” (1890)
 - Torts – the Four Privacy Torts (Prosser, 1960):
Intrusion, Disclosure of Private Facts, False Light, Appropriation – garden variety of rights
 - Implemented into Israeli law
 - Contract law – breaches of contractual obligations.
 - Breaches of security obligations.
 - Torts and contracts usually fail
 - Difficulty with damages; insufficient protection in the contract
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Overview of Responses (2)

- Regulatory response:
 - EU: See below.
 - US: FTC somewhat enforces the “Fair Information Practices” – Notice, Access, Choice, Security and Enforcement
 - In the EU – also purpose specification, minimization, proportionality.
 - The U.S. Patchwork –
 - Protected realms - Health (HIPPA)
 - Protected Subjects - Children (COPPA)
 - Protected forms of Data (“Sensitive Data”)
 - State laws – California and beyond...
 - Now also in Virginia
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Privacy from Government

- Laws related to searches, surveillance and interceptions.
 - Constitutional and human rights are invoked.
 - Difficult issues regarding the private-public interaction.
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Data Protection and the EU

- 1995 – the EU adopts the Data Protection Directive
 - Generally, a Directive sets a minimal standard.
 - Broad spectrum of levels of adoption throughout the continent.
 - The Directive was premised on FIPPs.
 - Sets jurisdictional boundaries and relies upon the work of DPAs.
- 2018 – GDPR comes into force.

Foundations of EU Privacy Law

- European member states adopt data protection laws.
 - EU Charter of Rights now includes privacy and data protection.
 - Not to be confused with the ECtHR
 - Therefore court can strike down Directives.
 - Digital Rights Ireland.
 - ECJ – relevant court
 - Growing set of case law.
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