

Information Privacy Law

Spring 2012 | UC Berkeley Law
Law 276P | 4 Credits
Mondays, Tuesdays, and Wednesdays from 2:15-3:25
Boalt Room 134

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Course Description

Ten years ago, a handful of practitioners could be called "privacy lawyers." Now thousands concentrate in the field. Almost all modern businesses need advice about information privacy law. While the roots of privacy law in the US started with a right to be let alone, modern business models, the needs of the administrative state, law enforcement priorities, and our own behavior complicate approaches based upon seclusion or secrecy. This course will explore the roots of US privacy law, its evolution in the 20th century, and the challenges of regulating information in the modern era where institutions and "data subjects" need and reveal information constantly, but also seek basic dignity and safety from harm. Privacy law is torts, contracts, constitutional law, statutory law, and soft law norms. We will discuss all of these things and developments in the headlines.

Texts

Required

Information Privacy Law

Daniel J. Solove & Paul M. Schwartz

Edition: 4th Edition / 2011 (this book comes out in December 2011)

Publisher: Aspen

ISBN: 9780735510401

The authors maintain a website for the textbook with many useful resources:

<http://docs.law.gwu.edu/facweb/dsolove/Information-Privacy-Law/>

Optional

Privacy Law Fundamentals

Daniel J. Solove & Paul M. Schwartz

IAPP 2011

ISBN: 9780979590191

Grades

Your grade will be determined based upon the final exam (80%) and classroom discussion (20%). The final exam will be a take-home, open-book exercise. Once you start this exam, you must complete it within 8 hours. This work must be your own. You should not discuss or work with anyone else during the exam administration period.

Because of the size of this class, participation is very important. Please read for each class and be prepared to discuss the material.

Attendance

Since you are an adult, you can choose to attend or not. However, being absent cannot be good for the 20% of your grade that depends upon in-class discussion.

Office Hours

I am happy to meet with you any day of the week. Just email me. My office is 217 Boalt. I'm there pretty much every day. In the mornings, I work at Pizzaiolo, a restaurant in Oakland, and I will buy you coffee if we can meet there ☺

Make Up Classes

I am a practitioner and have to travel a bit to stay on top of things. I'm cancelling class three times this semester (indicated in the reading schedule below) and will make up this time by asking you to participate in privacy events over the summer. One is already scheduled—Professor Susan Landau's lecture on March 9th. Professors Ruth Gavison (leading privacy theorist who developed the "limited access to the self" conception of privacy) and Omer Tene (international privacy expert) will also be giving talks this semester, and I'll update the schedule as soon as they are calendared.

Privacy Events

Berkeley is a leading multidisciplinary center for privacy thought. Please consider participating in these events--

Privacy@Berkeley: this multidisciplinary group of faculty, students, and staff meets regularly to discuss privacy issues and research projects.

<https://bspace.berkeley.edu/portal/tool/!gateway-410?id=afe5f725-75b6-4c78-aea9-65513578e36e>

On Thursdays, our NSF-supported Team for Research in Ubiquitous Secure Computing hosts an interesting speaker on privacy or security issues. These talks are at 1 PM, lunch is served, the events are free, and do not require a RSVP. They typically are held in either Soda or Cory Hall on the north side of campus.

<http://www.truststc.org/seminar.htm>

Berkeley holds the annual Privacy Law Scholars Conference (PLSC) on June 7-8, 2012. This year it will be hosted at GW Law School in Washington, DC. At PLSC, authors “workshop” their academics papers in progress. If you are interested in becoming a privacy scholar, or practicing in privacy, you should participate! Just email me for an invite.

<http://docs.law.gwu.edu/facweb/dsolove/PLSC/>

Schedule of Classes

Date	Topic	Reading
M 1/9	Introduction to the course; Sidis; Rowling	1-10; 1092-3
T 1/10	The origins of information privacy law	10-40
W 1/11	Philosophical perspectives	40-61
M 1/16	MLK Day—No Class	
T 1/17	Philosophical perspectives continued	62-77
W 1/18	Privacy and the media: information gathering	79-98
M 1/23	Information gathering continued; Von Hannover	98-107; 1073-1080
T 1/24	Disclosure; Bodil Lindqvist	108-123; 1118-1122
W 1/25	Disclosure continued; breach of confidentiality in the US and UK; newsworthiness Reminder: Saturday the 28 th is “Data Privacy Day:” http://dataprivacyday.org/	123-146; 1090-1092
M 1/30	Disclosure continued; first amendment limitations	146-160
T 1/31	Disclosure continued; first amendment limitations	160-181
W 2/1	Class Cancelled	
M 2/6	Dissemination of false information	181-205
T 2/7	Dissemination continued	205-219
W 2/8	Appropriation	220-246
M 2/13	Privacy and law enforcement; the fourth amendment and emerging technology; Olmstead	247-265
T 2/14	Wiretapping; bugging; reasonable expectation of privacy	265-285
W 2/15	Applying the reasonable expectation of privacy test	285-313
M 2/20	President’s Day—No Class	

T 2/21	Federal electronic surveillance law; ECPA; CALEA; USA PATRIOT Act	313-333
W 2/22	Digital search and seizure; Andrus; Steve Jackson Games	333-351
M 2/27	Digital search and seizure continued; Warshak; Hambrick; McVeigh This week is RSA 2012—the biggest information security conference ever, and it’s in San Francisco: http://www.rsaconference.com	351-366
T 2/28	Digital search and seizure continued; Forrester, Scarfo	366-377
W 2/29	National security; Keith; FISA	377-404
M 3/5	National security; the NSA surveillance program	404-428
T 3/6	Health privacy ; confidentiality of medial information	429-432; 437-453
W 3/7	Confidentiality continued; HIPAA	453-480
M 3/12	Constitutional protections for medical information	480-503
T 3/13	Constitutional right to info privacy	503-526
W 3/14	Privacy of association and identity	561-582
M 3/19	Anonymity	582-602
M 3/19	Make up session: please attend the BCLT Privacy Lecture, featuring Professor Susan Landau	Time TBD—probably 4-6 PM at the Bancroft Hotel
T 3/20	Anonymity continued; identification	602-616
W 3/21	Identification continued	616-633
3/26-3/30	Spring Break—No Class	
M 4/1	Class Cancelled	
T 4/2	Class Cancelled	
W 4/3	Privacy and Government Records ; public access; FOIA; constitutional requirements	635-651; 660-668
M 4/9	Megan’s laws	686-698

T 4/10	The privacy Act; the Driver's Privacy Protection Act	698-723; 754-756
W 4/11	The Fair Credit Reporting Act	757-765; 772-779
M 4/16	The Gramm-Leach-Bliley Act; identity theft; security breach notification	779-799; 880-883
T 4/17	Consumer privacy ; tort; contract; FTC	799-801; 804-807; 813-831
W 4/18	The privacy statutes; Video Privacy Protection Act; Cable Communications Policy Act; Children's Online Privacy Protection Act; Telephone Consumer Protection Act; CAN-SPAM; Pineda	839-850; 867-879
M 4/23	First Amendment Limitations on Privacy	900-926
M 4/24	International ; The EU Data Protection Directive	1061-1068; 1094-1098; 1109-1117