

Exam Number:

GEORGETOWN UNIVERSITY LAW CENTER  
EXAMINATION  
"THE LAW OF INFORMATION PRIVACY"  
(3 HOURS)

Professor Rotenberg  
1993

December 8,

INSTRUCTIONS:

1. This is an OPEN book examination.
2. You should select three of the following four questions. Each question will receive equal weight. There will be no additional credit for answering a fourth question.
3. Use only one side of the paper. Write clearly.
4. I will consider only the material that is in the exam book or in the typed submission.
5. Organize your answers carefully. Note the particular format requested in each question.

This exam consists of 3 pages in addition to this cover page. Please be sure that your exam is complete.

PLEASE DO NOT TURN THE PAGE  
UNTIL THE PROCTOR GIVES THE SIGNAL

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### Question 1

You are counsel to the Morning Herald, a daily newspaper published in New York city.

You have just received a call from an editor who says that he spoke with an angry person named Alan Jones who threatens to sue the newspaper. The editor explains to you that Mr. Jones's picture appeared in a story in the Herald that day. The story was about the growing use of condoms on college campuses. The picture showed Mr. Jones and three other students walking casually across a college campus in New York city. None of the students were identified by name, though the faces were easy to recognize. The caption underneath the picture said, "Students on colleges such as this one face new concerns about AIDS."

Mr. Jones explained to the editor that he intended to join the clergy and also that he knows his parent subscribe to the Morning Herald.

Describe the causes of action that Mr. Jones might bring against the Herald. Discuss how the Herald should reply. What are Mr. Jones's chances of success? Are there any steps that the newspaper could take at this point to head off a lawsuit?

### Question 2

You are counsel to the Senate Judiciary Committee.

You have been asked by the Chairman of the Committee to draft a bill to protect the privacy of drivers license information. A state typically collects the following information for each licensed driver: name and address, social security number, age, height, weight, use of corrective lenses, any mental or physical condition that might impair driving ability, any states where licenses were previously granted as well as states where licenses were revoked, and record of results on driving examination.

In some states drivers license information is sold to marketing firms. In other states it is not. Several states are exploring proposals to incorporate magnetic stripes that would make data machine-readable. Some states are also considering the use of digitized fingerprints for

identification. This would allow state officials and others to scan a person's fingerprint and determine whether it corresponds to the holder of the driver's license.

Outline and briefly describe the sections of the bill.

### Question 3

You are a counsel in a small criminal defense firm in California.

Mr. Zims, a client now in your office, is facing a federal indictment for the illegal export of cryptographic products from the United States. The government's case is based solely on evidence obtained through a new hi-tech investigative method that involves the capture of low-frequency emanations that are generated by computer keyboards when individual keys are depressed. Through the use of a hi-intensity detection device placed outside of Mr. Zims home the government has obtained copies of all the messages and files that Mr. Zims created at his keyboard.

The sole question in the government's case against Mr. Zims is whether this evidence is admissible. Discuss.

### Question 4

You are general counsel to a new hi-tech firm Datatron.

The CEO of the company explains to you that she would like to sell marketing lists based on the lists that are typically created by a computer network service called a "list server." She explains that list server lists are much like newsletter or magazine subscription lists. A person affirmatively joins a list maintained by a particular organization and receives information relating to a particular interest. The range of interests represented by various list servers available through the computer network is at least as diverse as the selection of magazines in a well-stocked newsstand. Also, there is typically no charge to join a list server. The number of names for a particular list may vary from 500 to half a million.

The CEO believes that if a person joins a list server on, for example magic tricks, then it would be sensible to inform the person about interesting products and services for magicians. But she is very much concerned about privacy and would like to develop a scheme that meets the toughest standards for privacy protection. "If we can't do it right,

we're not going to do it," she says to you.

Se also anticipates that this product will develop a global market, as list server membership can include people from many countries. She is familiar with the OECD Guidelines and believes that they provide a good starting point for the companies new service, but invites you to incorporate better principles if you think appropriate.

Draft a code of conduct for Datatron's new list products.