Exam Number: _____

GEORGETOWN UNIVERSITY LAW CENTER
EXAMINATION IN
INFORMATION PRIVACY LAW
TAKE HOME EXAM (8 hours)

Professor _____ Date of Exam

INSTRUCTIONS:

1. This is an OPEN book, TAKE-HOME exam.

2. This take-home exam available for the entire exam period beginning April 28 and ending May 12. Exams must be picked up and returned to the Registrar's Office McDonough 315 during exam period office hours. Last day for return is Tuesday, May 12. Please note that the Office of the Registrar will not accept take-home exams submitted by fax, email, disk, or flash drive. Students must submit paper copies of their exams in person and may not email their exam responses to the professor.

3. You will have EIGHT (8) hours from the time you pick up the exam till the time you return the exam. Please be aware that take-home exams must be submitted to the Registrar's Office within the time limit. Failure to submit your take-home exam within the time limit will result in a late take-home exam sanction.

4. 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.

This exam consists of 3 pages, including this cover page. Please be sure your exam is complete.

Please be sure that you use your exam number (not your student ID number or social security number).

HONOR STATEMENT #1

ON MY HONOR AND AWARE OF THE STUDENT DISCIPLINARY CODE I SWEAR OR AFFIRM THAT I HAVE NEITHER GIVEN NOR HAVE I RECEIVED ANY UNAUTHORIZED AID FROM ANY OTHER PERSON OR PERSONS, NOR HAVE I USED ANY UNAUTHORIZED MATERIALS IN WRITING MY ANSWERS TO THIS TAKE-HOME EXAMINATION.

_____ _____
(Please sign with exam number only) Date

HONOR STATEMENT #2

ON MY HONOR AND AWARE OF THE STUDENT DISCIPLINARY CODE, I SWEAR OR AFFIRM THAT I HAVE NOT WORKED MORE THAN _____ HOURS ON THIS EXAM.

_____ _____
(Please sign with exam number only) Date

GEORGETOWN UNIVERSITY LAW CENTER
EXAMINATION IN
INFORMATION PRIVACY LAW
TAKE HOME EXAM (8 hours)

Professor Rotenberg Date of Exam: Spring 2009 (Take-home)

Question 1

You are an attorney in private practice in Watchington, DC.

You are approached by Mrs. Winston, the mother of a 15 year-old high school student Maria. Mrs. Winston explains that her daughter's school was recently selected for a pilot program involving a new security device called, "Whole Body Imaging." The device, similar to an airport metal detector, is placed at the entry point of the school. The students are required to walk through the device and an image of the student, fully naked is captured and transmitted to an operator who can determine whether the student is carrying concealed items, such as guns, knives, or drugs into the school. The systems, while expensive, are under consideration by the school board as a means to improve school security and to help identify students who attempt to bring contraband into school that cannot be detected with a traditional metal detector.

The vendor L-1000 has taken a number of steps to ensure privacy, including placing the operator away from the entry point so that the students cannot be observed as they pass through the device, displaying only a "chalk line" image of the student's body so that the private parts are obscured, and assuring the school that the recording capability of the device has been disabled.

Mrs. Winston shows you a picture of her daughter, apparently downloaded from the Internet, passing through the device. Maria can be identified because of a distinctive silver necklace that her parents gave her on her 15th birthday. The picture shows a great deal of detail and apparently lacks the obscuring features for the images that are typically displayed for the operator.

She would like your thoughts about what she should do.

Question 2

You are deputy counsel to the Department of Homeland Security.

The Department is reviewing the operation of state Fusion Centers. According to the DHS:

> Fusion centers are the state and major city facilities that the 9/11 Act recommended as the best way for federal, state, local, tribal and territorial governments and the owners and operators of critical infrastructure to share information and intelligence about terrorist threats, criminal activity and other hazards. Since the fusion center initiative began in 2006, states and major cities have stood up some 70 centers across the country, with the federal government providing personnel, financial and technical support.

However, privacy concerns have been raised about the program. Some critics contend that these databases fail to comply with the federal Privacy Act, that the purpose of the Fusion Center program is not well defined, and also that the collection of all of this data will create new privacy and security risks for American citizens.

The Secretary has described the continued operation of the Fusion Centers as a "Top priority," but she is willing to take steps to address privacy concerns. Briefly outline options available to the Department to improve the privacy and security of Fusion Centers.

Question 3

You are counsel for the popular Internet Search company Bugle.

Under the current Terms of Service, Bugle agrees to completely delete all search queries within 72 hours, to require affirmative consent when disclosing personally identifiable information to third parties, and to comply with legal requests only when required to do so by a court. Bugle also routinely audits its employee's access to user data (one employee was fired last year for improper access) and deploys state of the art techniques to ensure security and limit the risk of improper access. In other words, Bugle has excellent terms of service and business practices, from a privacy perspective. But there are new challenges. The downturn in the economy has created increasing pressure to "monetize" search histories. Application developers have good ideas for new services based on search histories that would also require dropping the opt-in policy. Researchers within the company complain that the data deletion policy is making it more difficult to track long-term trends in the use of the service. The government is not happy about the company's position on National Security Letters, which it considers to be uncooperative and potentially threatening to national security. The security systems, although very good, are still subject to attack, and there have been data leakages.

The CEO of Bugle would like your thoughts about how to proceed. Should you modify the Terms of Service? If so, what would you change and how?

Question 4

You are a clerk for a Supreme Court Justice.

Before the Court is *Flores-Figueroa v. United States*. At issue in the case is the Identity Theft Penalty Enhancement Act, 18 U.S.C. § 1028A, which imposes a mandatory two-year sentence upon persons who commit "aggravated identity theft." Ignacio Flores-Figueroa was convicted on two counts of aggravated identity theft in a federal district court and sentenced to 75 months imprisonment. On appeal, he argued that his conviction was in error because the government did not prove he knew the identification he possessed belonged to another person. The United States Court of Appeals for the Eighth Circuit rejected this argument and affirmed the trial court's decision. The appellate court held that the government need not prove Mr. Flores-Figueroa knew the identification he possessed belonged to another person.

Aggravated identity theft is defined in the statute as: "Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years."

The question now presented is:

> In order to prove aggravated identity theft, does the government need to prove the defendant knew the identification he possessed belonged to another person?

Briefly outline for the Justice the key issues that you believe need to be considered by the Court.

END OF EXAM