

Exam Number: _____
Confirmation Code: _____

**GEORGETOWN UNIVERSITY LAW CENTER
EXAMINATION IN INFORMATION PRIVACY LAW
(3 HOURS)**

Professor Marc Rotenberg

May 7, 2014

INSTRUCTIONS:

1. This is an OPEN book exam. You are permitted to access material you have brought into the exam room and material available online. However, you may not consult with any other person. Cell phones must be turned off completely and placed out of sight.
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. There is an extra credit question this year.
3. Laptop users: To write your exam answers, use a blank document screen to access the exam template in Word as directed by the proctor(s). You must submit your exam in either DOC or PDF format.
4. You may not identify yourself in any way to the professor as the author of an exam until the grades are published. Therefore, you must remove personal identifying information from your exam document. Failure to remove any personal identifying information is an exam violation that will be referred to the Ethics Counsel. Instructions on how to remove personal identifying information from your exam are available in the laptop instructions handed out by the proctor.
5. Exams at the Law Center are graded on an anonymous basis. The Student Disciplinary Code provides that the “unauthorized breach of anonymity in connection with a blind-graded examination” is a disciplinary violation. Therefore, be sure that you do not reveal your identity as the author of an examination in your answers themselves, in any communications with the professor, or otherwise discuss the substance of the exam with your professor(s) or with any other student from the time the exam is first administered until after grades are published.
6. You must remove personal identifying information from your exam document. Failure to remove any personal identifying information is an exam violation that will be referred to the Ethics Counsel. Instructions on how to remove personal identifying information from your exam are available in the laptop instructions handed out by the proctor.

This exam consists of 4 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). Tbbq yhpx!

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

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Question 1

You are counsel to the House Judiciary Committee.

The Committee has recently concluded a series of hearings on Event Data Recorders, also known as automobile “black boxes.” The devices have been mandated by the National Highway Traffic Safety Administration and will be installed in all new cars and light trucks. The devices collect information on vehicle speed, braking, and airbag deployment. Future devices may include GPS data, records associated with Wi-Fi access, and driver ID. The data is used by NHTSA crash investigators to help design safer vehicles. It may also be obtained by police in the course of investigations or by private parties in civil litigation. The chair of the Committee is concerned about the privacy implications of the routine collection of this data. She believes that federal legislation is necessary to protect important Fourth Amendment interests as well as to limit privacy violations that may result from the use of the data by private parties.

She has asked you to draft the Auto Data Privacy Act of 2014. Briefly outline the key provisions. For each provision, explain its purpose.

Question 2

You are a clerk to Supreme Court Justice Sonya Sotomayor.

Before the Court is *U.S. v. Butler*, a case concerning the use of a new investigative technique – the Stingray phone tracker -- that allows the police to locate nearby cell phone devices and to collect communications traffic. According to an amicus brief filed by technical experts, the Stingray can collect data from mobile phones even when the phone is not in use and also when the phone is inside a house. In the case before the Court, the police used a Stingray phone tracker to obtain cell phone data (specifically date, time, and GPS location linked to a crime scene) that provided evidence of a crime. The defendant Butler moved to suppress the evidence, arguing that the warrantless search of his phone was unlawful. The district court denied the motion. On appeal, the DC Circuit reversed. The government then petitioned the Court for certiorari, which was granted.

Justice Sotomayor has asked you to briefly outline a draft opinion, relying on the Court’s earlier jurisprudence, her own views, and any other factors that you believe are relevant.

Question 3

You are counsel for the Silicon Valley start-up StealthHealth, which specializes in fitness devices, disguised as fashion accessories, that encourage a healthy lifestyle.

The basic StealthHealth device is an electronic pedometer that records user activity, which can then be uploaded to the StealthHealth website. The company website also allows users to upload and track food and alcohol consumption. StealthHealth users can share this information with other users by joining the StealthHealth Community, an opt-in choice. The StealthHealth CEO plans to introduce GPS tracking for the next generation of StealthHealth devices so that users can locate other StealthHealth users. Users would select the StealthHealth FindMe feature, also opt-in. Separately, the company plans to use the location data for personalized marketing involving local gyms, fitness stores, and organic food stores, which the company believes will be of value to StealthHealth users. The marketing plan includes transferring user data to these local merchants for advertising and promotion. The StealthHealth CEO would prefer not to disclose to users that the company is routinely tracking their location even when the FindMe feature is not enabled.

In light of the Federal Trade Commission's authority to investigate unfair and deceptive trade practices, what advice would you give to the StealthHealth CEO? Please be specific.

Question 4

You are counsel to the Secretary of State.

The Secretary has been asked to give a speech at an international conference comparing the US approach to privacy protection with the European approach to privacy protection. In particular, he has been asked to compare the Fourth Amendment of the US Constitution with Article 7 and Article 8 of the European Charter of Fundamental Rights as applied to the bulk collection of telephone records by government.

Please draft the speech.

END OF EXAM

WRITE NOTHING AFTER TIME IS CALLED.