

INFORMATION PRIVACY LAW
Georgetown University Law Center
Spring 2007

Prof. Marc Rotenberg

LAWJ-342-09
revised Jan. 16, 2007

DESCRIPTION

This course examines "information privacy," an individual's right to control his or her personal information held by others. The aim of the course is to understand how courts and the Congress seek to protect information privacy as new technologies and new institutional practices emerge.

The course traces the origins of the right to information privacy in American law, through Constitutional law, tort law, and modern statutory law. Case studies of landmark privacy legislation illustrate how expectations of privacy are translated into legal frameworks. The course looks at recent controversies involving workplace monitoring, direct marketing, and the use (and misuse) of the Social Security number. The course also considers the impact of the European privacy directive, the growth of the Internet, the recommendations of the 9-11 Commission (and the response of Congress), and the availability of cryptography on the future of privacy law in the United States.

Course clusters: Constitutional law and government. Public interest law. Credits: Information Privacy Law is a three credit course.

Welcome

This is the preliminary syllabus for the spring 2007 version of Information Privacy Law. Please note that a couple of the classes will be rescheduled.

Key dates:

- The exam is Monday, May 3, 2007.
- Papers for graduating students are due April 30, 2007.
- For non-graduating students, papers will be due May 15, 2007.

Marc Rotenberg.

IN THE NEWS

Computer Search and Seizure

- ["Is Baseball Drugs Ruling A Fourth-Amendment Foul?" Wall Street Journal, Jan. 16, 2007](#)
- United States v. Comprehensive Drug Testing, Inc., No. 05-10067 (9th Cir. Dec. 27, 2006)

TEXTS

Two books are required. Daniel J. Solove, Marc Rotenberg, and Paul Schwartz *Information Privacy Law* (Aspen 2006), and George Orwell, *1984* (with an afterword by Erich Fromm). One book is recommended but not required. Bruce Schneier, *Beyond Fear, Thinking Sensibly About Security in an Uncertain World*

You may also enjoy reading *The Right to Privacy* by Ellen Alderman and Caroline Kennedy (Knopf 1995), *The Unwanted Gaze* by Jeffrey Rosen (Random House 2000), *Technology and Privacy: The New Landscape* edited by Philip E. Agre and Marc Rotenberg (MIT Press 1997), *Ben Franklin's Web Site: Privacy and Curiosity from Plymouth Rock to the Internet* (Privacy Journal 2000) by Robert Ellis Smith, and *The Digital Person* (NYU Press 200) by Daniel J. O.Solove.

TIME AND LOCATION

The Law of Information Privacy meets Tuesday evenings and some Thursday evenings from 5:45 to 7:45 in Room 160. The first class meets on Tuesday, January 16, 2007. The last class is April 24, 2007. The exam is May 3, 2007. There is no class on Tuesday, February 20, Thursday, February 22 (Monday classes meet) or Tuesday, March 6 (Spring break). The Law School generally follows the federal government policy when there is snow. If in doubt, check the class cancellation line at 202/662-9446.

CONTACT INFORMATION

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PAPER AND CLASS PARTICIPATION

Grading for this course is as follows

Class participation 20%
Final paper or exam 80%

The course requires taking the examination on May 3 or submission of a Research Paper for credit by May 15. The Georgetown Bulletin states that for a Research Paper that "the aggregate minimum amount of written work should be approximately 25 pages. Outlines and drafts are not required."

Several students in Information Privacy Law have produced papers that were eventually published in major journals. See, e.g., Alan R. Kabat, "Scarlet Letter Sex Offender Databases and Community Notification: Sacrificing Personal Privacy for a Symbol's Sake," 35 American Criminal Law Review 333-370 (Winter 1998); Amy Monihan, "Deconstructing Information Walls: the Impact of the European Data Directive on U.S. Businesses," 29 Law and Policy in International Business 275- (January 1998).

The examination is open book. There are four questions. You will be asked to answer three. For the paper, all non-graduating students will have until May 15. All papers should be submitted directly to the Office of the Registrar.

Grading will be on the basis of clarity of analysis, persuasiveness of argument, originality of thought, and familiarity with course materials. Class participation is also important. If for some reason you are unable to attend a class, please let me know in advance.

SCHEDULE (Please note: assignments and page numbers subject to change)

I. INTRODUCTION (Tuesday, January 16, 2007)

Topics

- Why Privacy Law Matters: The FISA
- Course administration
- Information Privacy Law: Origins and Roots
- Brandeis Warren article
- Philosophical Perspectives

Assignment

- *Information Privacy Law* 9-30, 33-38, 56-64

II. PRIVACY AND THE MEDIA 1 (January 23, 2007)

Topics

- Recognition of the Privacy Torts
- Intrusion Upon Seclusion
- Paparazzi and Video Voyeurism
- Disclosure of Illegally Obtained Information

Assignment

- *Information Privacy Law* 76, 94-101, 103-104, 131-43,

III. PRIVACY AND THE MEDIA 2 (January 30, 2007)

Topics

- Defamation and the Internet
- Appropriation

Assignment

- *Information Privacy Law* 152-58, 159-69, 188-206

IV. HEALTH AND GENETIC PRIVACY (February 6, 2007)

Topics

- Privacy in Medical Care
- Medical Testing
- Privilege
- DNA Databases

Assignment

- *Information Privacy Law* 350-56, 377-85, 390-94, 394-401, 441-50

NO CLASS Thursday, February 8, 2007. Class will meet Thursday, February 15, 2007.

V. PRIVACY AND THE FOURTH AMENDMENT (February 15, 2007)

Topics

- Fourth Amendment and Technology
- Electronic Surveillance
- Reasonable Expectation of Privacy

Assignment

- *Information Privacy Law* 207-21, 223-29, 232-45, 248-52, 256-62

VI. PRIVACY BY STATUTE I: LAW ENFORCEMENT (February 27, 2007)

Topics

- Federal Wiretap Law
- "ECPA" and "FISA"
- The Patriot Act
- National Security Letters

Assignment

- *Information Privacy Law* 263-72, 276-77, 277-82, 285-88, 288-92, 294-300, 300-07, 312-14, 338-43
- 2004 Sourcebook "Electronic Communications Privacy Act"
- 2004 Sourcebook "Foreign Intelligence Surveillance Act"

VII. PRIVACY BY STATUTE II: PUBLIC SECTOR RECORD SYSTEMS (March 1, 2007)

Topics

- Privacy Act
- FOIA
- Privacy Policies
- Role of FTC

Assignment

- *Information Privacy Law* 577-83, 583-94, 600-09, 612-15, 618-21
- 2004 Sourcebook "Privacy Act"

- 2004 Sourcebook "Freedom of Information Act"

NO CLASS Tuesday, March 13, 2007. Class will meet Thursday, March 29, 2007.

VIII. THE FUTURE (March 20 or March 22, 2007)

Topics

- DNA Databases
- Genetics
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Assignment

- View "Gattaca"

NO CLASS Tuesday, March 20, 2007 or Thursday, March 22, 2007. Class will meet Saturday, March __, 2007.

VIII. PRIVACY BY STATUTE III: PRIVATE SECTOR RECORD SYSTEMS (March 27, 2007)

Topics

- Third Party Records
- Internet Privacy
- First Amendment concerns

Assignment

- *Information Privacy Law* 623-29, 642-43, 646-49, 655-57, 660-68, 669-73
- 2004 Sourcebook "Video Privacy Protection Act"
- 2004 Sourcebook "Cable Communications Policy Act"

IX. PRIVACY OF ASSOCIATION AND IDENTITY (March 29, 2007)

Topics

- Privacy of Group Association
- Anonymous Speech
- Identification
- Copyright Enforcement
- WHOIS Directory

Assignment

- *Information Privacy Law* 470-80, 490-94, 498-500, 503-04, 504-18

X. INTERNATIONAL PRIVACY I (April 3, 2007)

Topics

- Article 8 of the European Convention of Human Rights
- OECD Privacy Guidelines
- EU Data Directive

Assignment

- *Information Privacy Law* 871-88, 900-05, 915-22
- 2004 Sourcebook "OECD Privacy Guidelines"
- 2004 Sourcebook "EU Data Directive"

XI. INTERNATIONAL PRIVACY II (April 5, 2007)

Topics

- International Data Transfers
- Global Privacy Standards
- Passenger Profiling Redux

Assignment

- *Information Privacy Law* 929-63

XII. PRIVACY AND PLACE (April 10, 2007)

Topics

- Privacy at Home
- Privacy at School
- Privacy at Work

Assignment

- *Information Privacy Law* 765-801

XIII. PRIVACY AFTER 9-11 (April 17, 2007)

Topics

- Oversight
- Civil Liberties and Privacy Oversight Board
- Chief Privacy Officer

Assignment

- Rotenberg, "The Sui Generis Privacy Agency," SSRN WPS (Sept. 2006)
- H.R. 1, Title VIII

XIV. PRIVACY AND NEW TECHNOLOGY (April 19, 2007)

Topics

- Surveillance, Profiling, and Identification
- RFID and biometrics
- Role of Law

Assignment

- t/b/a

XV. PRIVACY AND THE INTERNET (April 24, 2007)

Topics

- WHOIS Database
- Advertising
- DRM

Assignment

- t/b/a

May 15, 2007 - PAPER DUE
