

# Privacy and Technology Spring 2008

Professor Todd Cheesman  
email: toddcheesman@gmail.com



Last Updated 11-24-07

**Course Description:** This course examines the legal doctrines of privacy and confidentiality used to protect personal information. The aim of the course is to understand how courts and legislatures seek to protect information as new technologies and new institutional practices emerge. The course examines the philosophical roots of the concepts of privacy and confidentiality, and traces the development in American law of the protection of an individual's right to control his or her personal information held by others. The course will review developments in Constitutional law, tort law, and statutory law, with a strong emphasis on the post 9-11 and Patriot Act era. The class will examine case studies of landmark privacy legislation to understand how expectations of privacy and confidentiality are translated into legal frameworks. The course spends a considerable amount of time studying the scope and implications of federal statutes that attempt to establish fair information practices with respect to electronic personal information.

**Timeliness:** You are responsible for getting your weekly answers to me by noon Friday. You will find the questions, readings and audio/video on our website: <http://www.concord-law.net/Privacy>. These assignments contribute significantly to your overall grade and late assignments will receive a deduction.

***This Syllabus Subject to Change:*** changes to our syllabus will appear on the class website.

**Readings:** All readings will be available online. As the readings are taken from numerous Internet sites which I do not maintain, if you should find that any of the links no longer function, please contact me and I will make appropriate adjustments to the syllabus.

**Technology Issues:** All students must have an email account that allows you to send and receive attachments (files attached to the email). You will need to provide me with your email address by the first week of class (send it to [todd.cheesman@comcast.net](mailto:todd.cheesman@comcast.net)). I will assign each of you a username and password so you can access our virtual classroom. There you will be able to access audio files of class lectures, additional reference materials and our online forum. Do not lose your password or username and do not share it with anyone else. This is very important.

**Help:** I will not be maintaining office hours this semester. If you have any questions, issues or comments, you can email me. While I am usually prompt in returning emails, this semester may be an exception. Generally speaking, the more substantive your email the more likely I will respond to it quickly. **Note: this course requires extensive use of the Internet.** A background in computer technology and Internet use is strongly encouraged but not required. However, the technological requirements of accessing and using Internet features are your responsibility as young professionals.

**Meetings:** While the class does not physically meet, you are responsible for (1) listening to lectures; (2) completing readings; (3) submitting your answers online by noon on the date specified and (4) extensive participation in our online class discussion threads.

**Academic Honesty:** You are responsible for listening to all classes and reading all materials. In addition, you will be asked to respond to several questions I pose each week and which are contained in this syllabus. Please do all your own work and cite any material you borrow from other sources.

**Disclaimer:** Policies and Procedures are subject to change. Also, because this field is constantly evolving, readings may be modified to reflect current events.

**Examination:** your final exam will be a written exam held online. Sample Final Exam Questions and Answers will be posted online prior to the exam.

### **Week 1 Introduction**

January 18

Warren & Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890)

Additionally, please be prepared to begin a discussion thread on a recent event or news item that you feel raises information privacy concerns.

### **Week 2 What is privacy? Why do we care?**

January 25

Philosophical perspectives on privacy

### **Week 3 Privacy and the media: Disclosure of truthful information**

February 1

*Gill v. Hearst Publ. Co.*; *Daily Times Democrat v. Graham*; *Miller v. Motorola, Inc.*; *Sipple v. Chronicle Publ. Co.*; *Shulman v. Group W. Prod'ns, Inc.*

### **Week 4 Media: Disclosure of truthful information, appropriation**

February 8

*Cox Broadcasting Corp. v. Cohn*; *Florida Star v. B.J.F.*; *Carson v. Here's Johnny Portable Toilets, Inc.*; *Finger v. Omni Publications Int'l, Ltd.*; *Zacchini v. Scripps-Howard Broadcasting Co.*

### **Week 5 Media: Dissemination of false or misleading information; illegally obtained information**

February 15

*N.Y. Times v. Sullivan*; *Gertz v. Robert Welch, Inc.*; *Zeran v. America Online, Inc.*; *Blumenthal v. Drudge*; *Time Inc. v. Hill*; *Hustler Magazine v. Falwell*; *Bartnicki v. Vopper*

### **Week 6 Privacy & law enforcement: Fourth Amendment and responses to changing technology**

February 22

United States v. Olmstead; United States v. Lopez; United States v. Katz; White v. United States

**Week 7 Privacy and law enforcement: Reasonable expectations of privacy**

February 29

Smith v. Maryland; United States v. Place; Illinois v. Caballes; California v. Greenwood; Florida v. Riley; Dow Chemical v. United States; Kyllo v. United States

**Week 8 Federal surveillance law**

March 7

Structure of federal surveillance law: Electronic Communications Privacy Act (ECPA); Steve Jackson Games v. Secret Service

CALEA, FISA, USA PATRIOT Act

Doe v. Gonzales, 334 F. Supp. 2d 471 (S.D.N.Y. 2004)

In re Application for Pen Register and Trap/Trace Device with Cell Site Location Authority, H-05-557M S.D. Tex., Oct. 14, 2005 [http://www.eff.org/legal/cases/USA\\_v\\_PenRegister/Cell-Site-Opinion.pdf](http://www.eff.org/legal/cases/USA_v_PenRegister/Cell-Site-Opinion.pdf)

**Week 9 Spring Break - No Classes**

March 14

**Week 10 National security**

March 21

In re Sealed Case (FISA Court of Review)

CAPPS II, <http://www.boycottdelta.org/> and <http://www.swiss.ai.mit.edu/6805/student-papers/spring02-papers/caps.htm>

**Week 11 Encryption and responses to it**

March 28

United States v. Scarfo

Bernstein v. United States Department of Justice, 176 F.3d 1132 (9th Cir. 1999)

**Week 12 Anonymity and Anonymity Online**

April 4

Talley v. California; McIntyre v. Ohio Elections Commission; Watchtower Bible & Tract Soc'y v.

Village of Stratton; Tattered Cover v. City of Thornton

Review Zeran and Blumenthal v. Drudge

ACLU v. Miller; Columbia Ins. Co. v. SeesCandy.com; Doe v. 2TheMart.com; RIAA v. Verizon

Blogging anonymously from EFF, <http://www.eff.org/Privacy/Anonymity/blog-anonymously.php>, and Reporters Without Borders, [http://www.rsf.org/article.php3?id\\_article=15012](http://www.rsf.org/article.php3?id_article=15012)

### **Week 13 Privacy and commerce**

April 11

Collecting Data & Regulating Information Use

Dwyer v. American Express; Remsburg v. Docusearch

In re Pharmatrak; Dyer v. Northwest Airlines; Chance v. Avenue A; Dirkes v. Borough of Runnemede

### **Week 14 Online privacy**

April 18

In re Northwest Airlines; In re GeoCities; In re Toysmart.com

Privacy Policy: Find and read the privacy policy for a website you visit frequently

Browse the TRUSTe website, <http://www.truste.org/>

Jeri Clausing, Privacy Watchdog Declines to Pursue Microsoft, a Backer, N.Y. Times, March 22, 1999, <http://www.nytimes.com/library/tech/99/03/cyber/articles/23privacy.html>

Joseph Reagle and Lorrie Faith Cranor, The Platform for Privacy Preferences, <http://www.w3.org/TR/NOTE-P3P-CACM/>

### **Week 15 Applying it all: Privacy and government records**

April 25

FOIA

DOJ v. Reporters Committee For Freedom of the Press

National Archives and Records Administration v. Favish

LAPD v. United Reporting Publishing Corp.

Paul P. v. Verniero