

Lecture 3: Privacy

CMSC 25910

Spring 2023

The University of Chicago



THE UNIVERSITY OF
CHICAGO

Privacy Hot Takes

Facebook's Zuckerberg Says The Age of Privacy Is Over

By MARSHALL KIRKPATRICK of  **ReadWriteWeb**
Published: January 10, 2010

 PRINT

Facebook founder Mark Zuckerberg told a live audience yesterday that if he were to create Facebook again today, user information would by default be public, not private as it was for years until the company changed dramatically in December.

<https://archive.nytimes.com/www.nytimes.com/external/readwriteweb/2010/01/10/10readwriteweb-facebooks-zuckerberg-says-the-age-of-privac-82963.html>

Privacy Hot Takes



<https://www.forbes.com/sites/jacobmorgan/2014/08/19/privacy-is-completely-and-utterly-dead-and-we-killed-it/>

Privacy Hot Takes

“Have you read the terms and conditions to use Facebook? Your smart phone? Most people have not, and probably with good reason... each of us knows that we’re signing away our privacy rights to use these platforms and devices. So why do we do it? We don’t truly value privacy as much as we like to believe we do.”



<https://www.forbes.com/sites/neilsahota/2020/10/14/privacy-is-dead-and-most-people-really-dont-care/>

Privacy Hot Takes

“You have zero privacy anyway. Get over it.”

Scott McNealy, Former CEO of Sun Microsystems (1999)

<https://www.wired.com/1999/01/sun-on-privacy-get-over-it/>

Privacy Hot Takes

“If you have something that you don’t want anyone to know, maybe you shouldn’t be doing it in the first place, but if you really need that kind of privacy, the reality is that search engines including Google do retain this information for some time... that information could be made available to the authorities.”

Eric Schmidt, Former CEO of Google (2009)

https://www.pcworld.com/article/515472/googles_schmidt_roasted_for_privacy_comments.html

Privacy Hot Takes



<https://www.datacenterdynamics.com/en/opinions/privacy-big-data-world-it-dead-or-alive/>

Privacy

“Some might say ‘I don't care if they violate my privacy; I've got nothing to hide.’ Help them understand that they are misunderstanding the fundamental nature of human rights. Nobody needs to justify why they ‘need’ a right: the burden of justification falls on the one seeking to infringe upon the right.”

“Arguing that you don't care about the right to privacy because you have nothing to hide is no different than saying you don't care about free speech because you have nothing to say.”

Edward Snowden, Whistleblower (2015)

https://www.reddit.com/r/IAmA/comments/36ru89/just_days_left_to_kill_mass_surveillance_under/crglgh2/

Privacy is Hard to Define

“Privacy is a value so complex, so entangled in competing and contradictory dimensions, so engorged with various and distinct meanings, that I sometimes despair whether it can be usefully addressed at all.”

Robert C. Post, Three Concepts of Privacy,
89 Geo. L.J. 2087 (2001).

Michael Wolf- The Transparent City



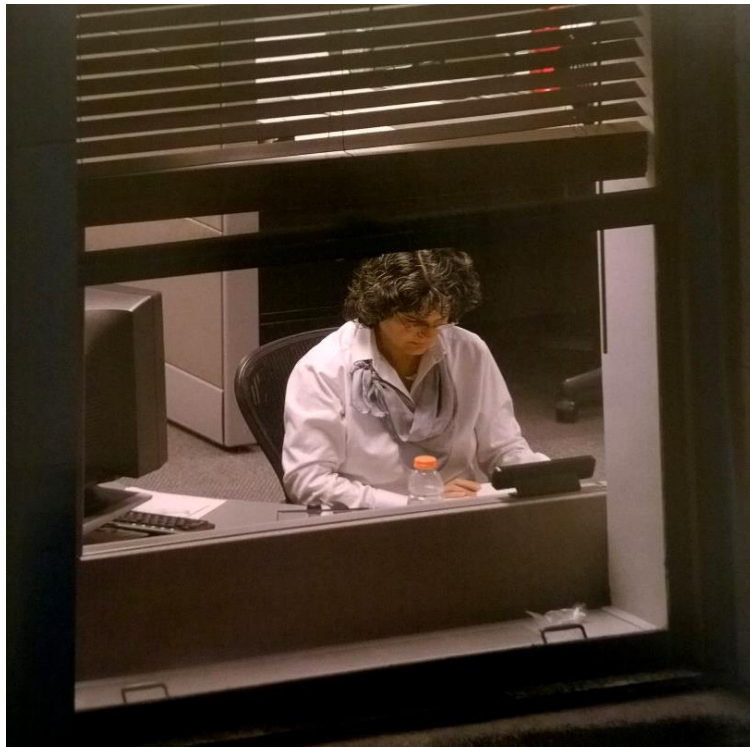
Michael Wolf- The Transparent City



Michael Wolf- The Transparent City



Michael Wolf- The Transparent City



“Chicago has recently undergone a surge of new construction...In early 2007, the Museum of Contemporary Photography...invited Michael Wolf as an artist-in-residence....Wolf chose to photograph the central downtown area, focusing on issues of voyeurism and the contemporary urban landscape....his details are fragments of life—digitally distorted and hyper-enlarged—snatched surreptitiously via telephoto lenses

<http://aperture.org/shop/the-transparent-city/>

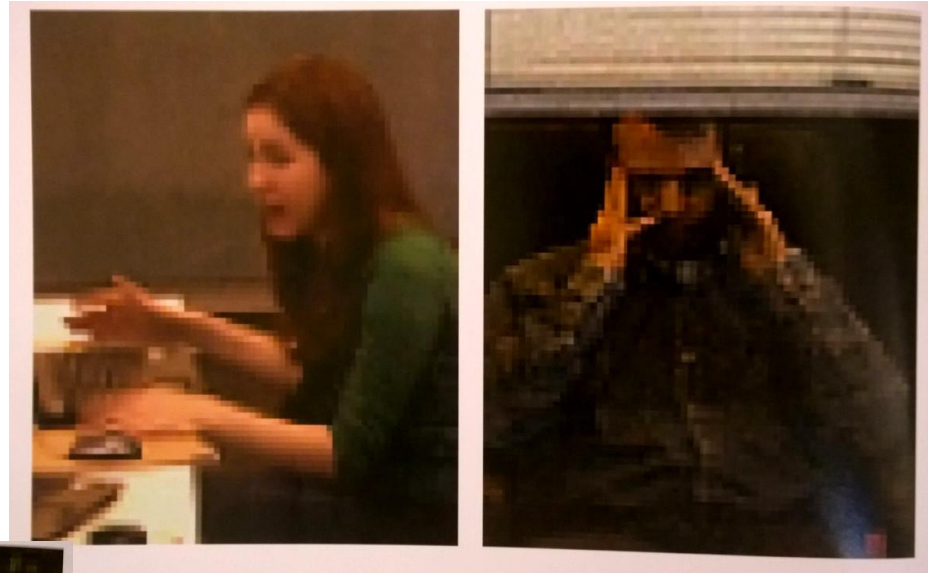
Michael Wolf- The Transparent City



Michael Wolf- The Transparent City

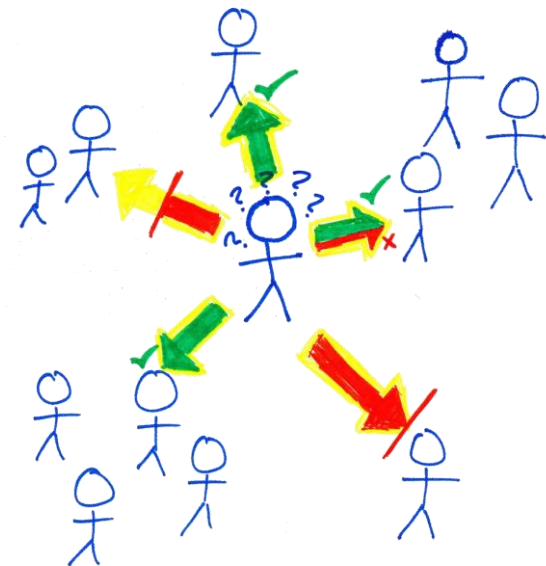


Michael Wolf- The Transparent City





Conceptualizing Privacy



Warren and Brandeis (1890)



HARVARD
LAW REVIEW.

VOL. IV. DECEMBER 15, 1890. NO. 5.

THE RIGHT TO PRIVACY.

“It could be done only on principles of private justice, moral fitness, and public convenience, which, when applied to a new subject, make common law without a precedent; much more when received and approved by usage.”

WILLES, J., in *Millar v. Taylor*, 4 Burr. 2303, 2312.

THAT the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. Thus, in very early times, the law gave a remedy only

Warren and Brandeis's Inspiration



“Have you seen the Kodak fiend? Well, he has seen you. He caught your expression yesterday while you were recently talking at the Post Office. He has taken you at a disadvantage and transfixed your uncouth position and passed it on to be laughed at by friend and foe alike. His click is heard on every hand. He is merciless and omnipresent.”

The *Hawaiian Gazette*, 1890

<https://wirewheel.io/privacy-is-dead/>

Warren and Brandeis's Argument

- “The individual shall have full protection in person and in property”
- The legal basis for fear
 - Battery → assault
 - Tangible property → intangible property
- Gossip pages about high society

Warren and Brandeis's Argument

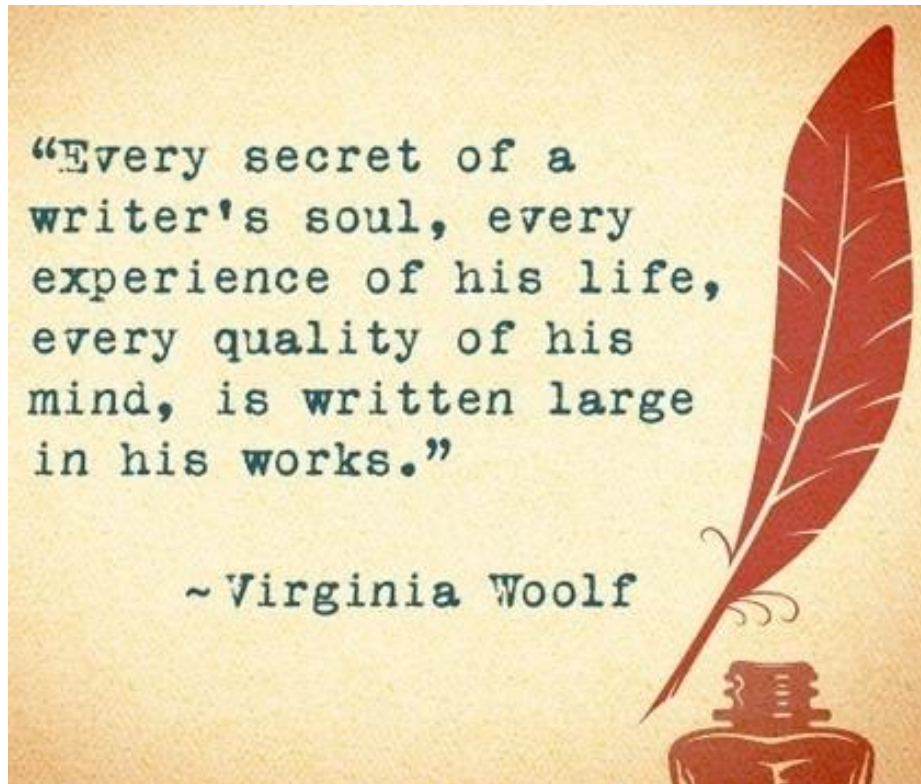
- Libel and slander are insufficient in considering only damage to reputation
- Considers property rights
- The right to prevent, rather than profit from, publication
- **“The right to be let alone”**
- Excludes topics of general interest

Photography Laws

Consent required for action related to a picture of a person in a public place (by country)			
Country	Take a picture	Publish a picture	Commercially ¹ use a published picture
Afghanistan	No	Yes (with exceptions)	Yes (with exceptions)
Argentina	No	Yes (with exceptions)	Yes (with exceptions)
Australia	No (with exceptions)	No (with exceptions)	Yes
Austria	No	No (with exceptions)	Yes
Belgium	No	Yes (with exceptions)	Yes
Brazil	Yes	Yes	Yes
Bulgaria	No	No	Yes
Canada	Depends on province	Yes (with exceptions)	Yes
China	No	No	Yes
Czech Republic	Yes (with exceptions)	Yes (with exceptions)	Yes (with exceptions)
Denmark	No	Yes (with exceptions)	Yes (with exceptions)
Ethiopia	No	Yes (with exceptions)	Yes
Finland	No	Yes (with exceptions)	Yes (with exceptions)
France	Yes (with exceptions)	Yes (with exceptions) ^[3]	Yes
Germany	No (with exceptions)	Yes (with exceptions)	Yes (with exceptions)
Greece	No	No	Yes (with exceptions)
Hong Kong	Depends on circumstances	Depends on circumstances	Depends on circumstances
Hungary	Yes (with exceptions)	Yes (with exceptions)	Yes (with exceptions)
United Kingdom	Depends on circumstances	Depends on circumstances	Depends on circumstances
United States	No	No	Usually (although laws differ by state)

https://commons.wikimedia.org/wiki/Commons:Photographs_of_identifiable_people#The_right_of_publicity

Is Being “Let Alone” Sufficient?

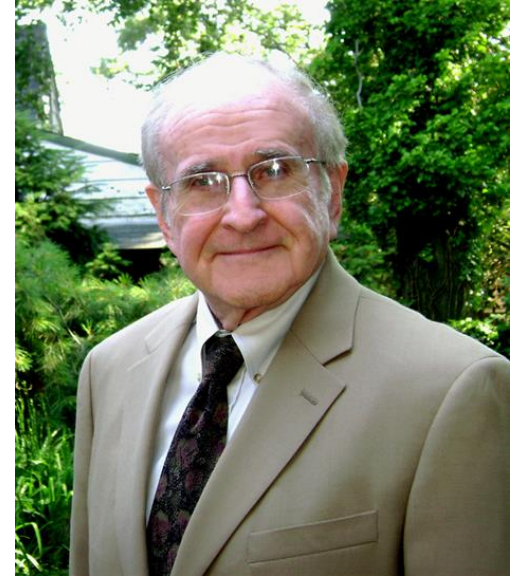


Privacy as Control / Secrecy (1967)

“Privacy is the claim of individuals, groups or institutions to determine for themselves when, how, and to what extent information about them is communicated to others.”

“...each individual is continually engaged in a personal adjustment process in which he balances the desire for privacy with the desire for disclosure and communication....”

Alan Westin, *Privacy and Freedom*, 1967



Is Limiting Access Sufficient?

- Individuals sometimes prefer to be let alone, yet sometimes want to be social
 - Privacy was traditionally “social withdrawal”

Privacy Regulation Theory (1975)

- Irwin Altman (social psychology)
 - Preceded by Altman and Taylor's Social Penetration Theory (1973) about intimacy in relationships
- Dialectic and dynamic process of boundary regulation
 - Continuous movement on a continuum
- Goal: optimum balance of privacy and social interaction



CPM Theory (1991)

- Sandra Petronio (communications)
 - Communication Privacy Management Theory
- Regulate boundaries based on perceived costs and benefits
 - Movement on a continuum
- Expect rule-based management
- Boundary turbulence related to clashing expectations



Purpose Matters



Privacy as Contextual Integrity (2004)

- Helen Nissenbaum (philosophy)
- “Contextual integrity ties adequate protection for privacy to norms of specific contexts, demanding that information gathering and dissemination be appropriate to that context.”

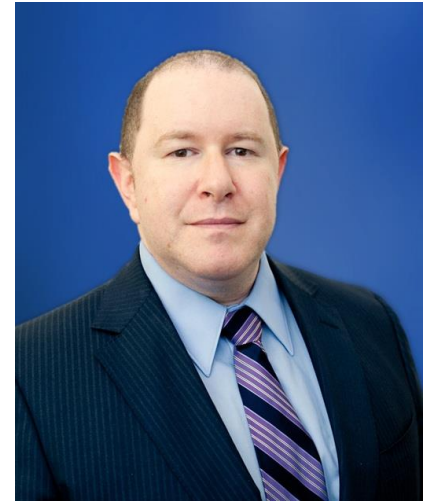


Privacy as Contextual Integrity (2004)

- Appropriate flows of information
- Appropriate flows conform to contextual information norms
- Norms refer to the data subject, sender, recipient, information type, and transmission principle
- Conceptions of privacy evolve over time and are grounded in ethics

Dan Solove's Pluralistic Conceptions

- Some data isn't "sensitive," but its collection and use impact privacy
 - Impact power relationships
 - Kafka-esque
- Solove's privacy taxonomy
 - Information collection
 - Information processing
 - Information dissemination
 - Invasion



Privacy Law and Regulation

How Privacy is Protected

- Laws, self regulation, technology
 - Notice and access
 - Control over collection, use, deletion, sharing
 - Collection limitation
 - Use limitation
 - Security and accountability

OECD Fair Information Principles

- Collection limitation
- Data quality
- Purpose specification
- Use limitation
- Security safeguards
- Openness
- Individual participation
- Accountability
- <http://www.privacyrights.org/ar/fairinfo.htm>

US FTC's Fair Information Practice Principles (FIPPs)

- Notice / Awareness
- Choice / Consent
- Access / Participation
- Integrity / Security
- Enforcement / Redress
- https://en.wikipedia.org/wiki/FTC_Fair_Information_Practice



Privacy on the Books / on the Ground

- Data Protection Directive (1995, since superseded by GDPR) - EU countries must adopt similar comprehensive laws, recognize privacy as fundamental human right
 - Privacy commissions in each country
- US has sector-specific laws, minimal protections, “patchwork quilt”
 - No explicit constitutional right to privacy or general privacy law
 - Some privacy rights inferred from constitution
 - Narrow regulations for health (HIPAA 1996), credit (FCRA 1970), education (FERPA 1974), video rental records (VPPA 1998), children (COPPA 1998)
 - FTC investigates **unfair & deceptive** practices
 - FCC regulates telecommunications
 - Some state and local laws
- See Bamberger and Mulligan, “Privacy on the Books and on the Ground,” <https://www.jstor.org/stable/41105400>

General Data Protection Regulation (2016)

- **GDPR** came into effect May 25, 2018 and applies to the EU
- Distinguishes between data subjects, controllers (people who direct analysis), and processors (those who do the analysis)
- Data controller informs the 'data subject in a concise, **transparent**, intelligible and easily accessible form, using **clear and plain language**'
- **Right of access** for data subjects
- **Right of erasure** (with some exceptions)
- **Right to object** to processing for some purposes
- **Privacy by design** (Article 25)

General Data Protection Regulation (2016)

- Pseudonymization required for stored personal data
- Data breach notification to authorities within 72 hours
- Possible fines of up to 4% of worldwide turnover
- Can only process data based on six lawful bases:
 - Consent
 - Contract
 - Public task
 - Vital interest
 - Legitimate interest
 - Legal requirement

US Approach is Centered on States



“[privacy advocates are] hoping to enact state-level privacy proposals that align closely with what Congress attempted to pass with the American Data and Privacy Protection Act: regulations that would limit what data companies can collect and share, create a data broker registry and establish new rights for Americans to delete data about themselves.”

<https://www.politico.com/news/2023/02/22/statehouses-privacy-law-cybersecurity-00083775>

California: CCPA and CPRA

- California Consumer Privacy Act (**CCPA**) went into effect 1/1/2020
- Residents of California have rights to:
 - Know what personal data is collected
 - Know whether that data is sold
 - Refuse the sale of personal data
 - Access their data
 - Request erasure of their personal data
 - Not be discriminated against for exercising these privacy rights
- Fine of \$7,500 for intentional and \$2,500 for unintentional violations
- California Privacy Rights Act (**CPRA**) is a ballot measure that expands CCPA; most parts came into effect in 2023

Virginia Consumer Data Protection Act (2021)



Virginia passes the Consumer Data Protection Act

 Mar 2, 2021  Save This





Sarah Rippy
IAPP Staff Contributor

After an extension into the 2021 special session, Gov. Ralph Northam, D-Va., signed the [Virginia Consumer Data Protection Act](#) into law March 2, 2021. In doing so, Virginia became the second state to enact comprehensive privacy legislation and the first to do so on its own initiative (California led the way in 2018, but the Legislature moved forward with the bill because they were facing a ballot initiative if they failed to do so).

The CDPA's substance is not particularly new compared to recent privacy laws. It draws heavily from the proposed Washington Privacy Act and includes components similar to the [California Consumer Privacy Act](#).

Virginia Consumer Data Protection Act (2021)

- Went into effect January 1, 2023
- “The bill applies to all persons that conduct business in the Commonwealth and either (i) control or process personal data of at least 100,000 consumers or (ii) derive over 50 percent of gross revenue from the sale of personal data and control or process personal data of at least 25,000 consumers.”
- “The bill grants **consumer rights to access, correct, delete, and obtain a copy of personal data and to opt out of the processing of personal data** for purposes of targeted advertising, the sale of personal data, or profiling of the consumer.”

State of Affairs in 2023

- “So far this year, 16 states have proposed their own data privacy laws with varying degrees of protections. Bills in Indiana, Tennessee and Texas align with the industry-backed model, while regulations proposed in Kentucky and New York provide stronger protections, but are not based on the federal legislation.”

<https://www.politico.com/news/2023/02/22/statehouses-privacy-law-cybersecurity-00083775>

and <https://www.marketingbrew.com/stories/2022/12/21/where-privacy-regulation-stands-ahead-of-2023>

Tools of the FTC in the US

- Unfair practices
 - Injure consumer
 - Violate established policy
 - Unethical
- Deceptive practices
 - Mislead consumer
 - Differ from reasonable consumer expectations



ftc.gov



FEDERAL TRADE COMMISSION

PROTECTING AMERICA'S CONSUMERS

≡ MAIN MENU

🔍 SEARCH

Digital Advertising Company Settles FTC Charges It Deceptively Tracked Consumers Both Online and Through Their Mobile Devices

Settlement ensures consumers can control targeted ads

FOR RELEASE

December 20, 2016

Privacy Issues

The Privacy Paradox

- When asked, we say we want privacy
- However, our behaviors make it seem like we don't care about privacy