

# Privacy law overview

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# Happy constitution day

- On September 17, 1789 constitution signed by 12 original states
  - Rhode Island did not ratify until May 29, 1790
  - Constitution was ratified by required nine states on June 21, 1788
  - First US Congress seated March 4, 1789
  - George Washington inaugurated as first President of the United States April 30, 1789



# Patchwork quilt of privacy laws

# Privacy laws around the world

- Privacy laws and regulations vary widely throughout the world
- US has mostly sector-specific laws, with relatively minimal protections - often referred to as “patchwork quilt”
  - Federal Trade Commission has jurisdiction over fraud and deceptive practices
  - Federal Communications Commission regulates telecommunications
- European Data Protection Directive requires all European Union countries to adopt similar comprehensive privacy laws that recognize privacy as fundamental human right
  - Privacy commissions in each country (some countries have national and state commissions)
  - Many European companies non-compliant with privacy laws (2002 study found majority of UK web sites non-compliant)

# US law basics

- Constitutional law governs the rights of individuals with respect to the government
- Tort law governs disputes between private individuals or other private entities
- Congress and state legislatures adopt statutes
- Federal agencies can adopt regulations which are equivalent to statutes, as long as they don't conflict with statute

# US Constitution

- No explicit privacy right, but a zone of privacy recognized in its penumbras
- Penumbra: “fringe at the edge of a deep shadow created by an object standing in the light” (Smith 2000, p. 258, citing Justice William O. Douglas in *Griswold v. Connecticut*)





# The Bill of Rights

The first 10 amendments to the US Constitution, ratified 1791 (3 years after Constitution established)

1. Freedom of religion, speech, press, assembly, and petition
2. Right to keep and bear arms
3. Restriction on quartering soldiers in a house
4. Freedom from unreasonable searches and seizures
5. Right to due process, freedom from self-incrimination and double jeopardy
6. Rights of accused criminals, e.g. right to a speedy and public trial
7. Right to trial by jury in civil cases
8. Freedom from excessive bail, cruel and unusual punishments
9. All other rights retained by the people
10. States have rights over everything not in the constitution

# Federal statutes and state laws

- Federal statutes
  - Tend to be narrowly focused
- State law
  - State constitutions may recognize explicit right to privacy (AK, AZ, CA, FL, HI, IL, LA, MT, SC, WA)
  - State statutes and common (tort) law
  - Local laws and regulations (for example: ordinances on soliciting anonymously)
  - Sometimes Federal law preempts state law



# Four aspects of privacy tort

- Tort: A wrongful act that causes loss or harm leading to civil legal liability
  - Not a *torte*!
- You can sue for damages for the following torts
  - Disclosure of truly intimate facts
    - May be truthful
    - Disclosure must be widespread, and offensive or objectionable to a person of ordinary sensibilities
    - Must not be newsworthy or legitimate public interest
  - False light
    - Personal information or picture published out of context
  - Misappropriation (or right of publicity)
    - Commercial use of name or face without permission
  - Intrusion into a person's solitude



# The Authority of the FTC

- Federal Trade Commission deals with consumer protection
- Section 5 of the FTC Act allows the FTC to bring action against any “unfair or deceptive trade practice”
  - Deceptive = false or misleading claims
  - Unfair = commercial conduct that causes substantial injury that consumers can't reasonable avoid, without offsetting benefits
- FTC can also enforce certain laws
- FTC does not have jurisdiction over certain industries, for example financial
- FTC action does not preclude state action
- FTC may work with companies to resolve problems informally or launch a formal enforcement action
  - May result in consent decree and/or fines

# Some US privacy laws

- Fair Credit Reporting Act, 1971
- Privacy Act, 1974
- Right to Financial Privacy Act, 1978
- Cable TV Privacy Act, 1984
- Video Privacy Protection Act, 1988 – updated 2012
- Family Educational Right to Privacy Act, 1974 (but many later amendments)
- Electronic Communications Privacy Act, 1994
- Freedom of Information Act, 1966, 1991, 1996

# More US privacy laws

- HIPAA (Health Insurance Portability and Accountability Act, 1996)
  - When implemented, will protect medical records and other individually identifiable health information
- COPPA (Children 's Online Privacy Protection Act, 1998)
  - Web sites that target children must obtain parental consent before collecting personal information from children under the age of 13
- GLB (Gramm-Leach-Bliley-Act, 1999)
  - Requires privacy policy disclosure and opt-out mechanisms from financial service institutions
- CAN-SPAM Act of 2003
- Video Voyeurism Prevention Act (2004)

# Safe harbor

- Membership
  - US companies self-certify adherence to requirements
  - Dept. of Commerce maintains signatory list  
<http://www.export.gov/safeharbor/>
  - Signatories must provide
    - notice of data collected, purposes, and recipients
    - choice of opt-out of 3rd-party transfers, opt-in for sensitive data
    - access rights to delete or edit inaccurate information
    - security for storage of collected data
    - enforcement mechanisms for individual complaints
- Approved July 26, 2000 by EU
  - reserves right to renegotiate if remedies for EU citizens prove to be inadequate



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