# Privacy law overview

Rebecca Balebako

Lorrie Cranor

September 22, 2015

*8-533 / 8-733 / 19-608 / 95-818:*
*Privacy Policy, Law, and Technology*

Carnegie Mellon University
CyLab

institute for SOFTWARE RESEARCH

Engineering & Public Policy

# Today you will learn

- Key models of privacy protection
- Overview of privacy regulation in the US

# Key models of privacy protection

- Comprehensive model
- Sectoral model
- Co-regulatory model
- None

# Key models of privacy protection

- Comprehensive model – EU
- Sectoral model – US, Japan
- Co-regulatory model – Australia
- None – China

# US vs EU approach

US

- Mostly sector-specific laws, with relatively minimal protections - often referred to as “patchwork quilt”
- No explicit constitutional right to privacy
- Federal Trade Commission has jurisdiction over fraud and deceptive practices; other sector-specific regulators
- Many self-regulatory programs

EU

- Data Protection Directive requires all EU countries to adopt similar comprehensive privacy laws
- Privacy as fundamental human right
- Privacy commissions in each country (some countries have national and state commissions)
- Many companies non-compliant with privacy laws

# To comply with Safe Harbor a company must:

- (a) identify in its publicly available privacy policy that it adheres to the Principles and actually does comply with the Principles
- (b) self-certify that it is in compliance with the Principles

# Safe Harbor Principles

- 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

# Safe harbor status

- Membership
  - Dept. of Commerce maintains signatory list http://www.export.gov/safeharbor/
- Approved July 26, 2000 by EU
  - reserves right to renegotiate if remedies for EU citizens prove to be inadequate
  - 400 members in 2004 (lower than expected)
- Settlement in 2011 against an internet company tricking UK customers to thinking it was based in the UK
  - Balls of Kryptonite


US sectoral model:
Patchwork quilt of privacy laws

# 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
- Supreme Court makes decisions about constitutionality of laws

# US Constitution

No explicit privacy right

A zone of privacy recognized in its penumbras

See opinion of Justice William O. Douglas in Griswold v. Connecticut

Merriam-Webster

**pen·um·bra** *noun* \pə-'nəm-brə\

*plural* **pen·um·brae** *or* **pen·um·bras**

m-w.com

**Definition of PENUMBRA**

Cite! g+1 Like

**1** **a :** a space of partial illumination (as in an eclipse) between the perfect shadow on all sides and the full light

**b :** a shaded region surrounding the dark central portion of a sunspot

**2** **:** a surrounding or adjoining region in which something exists in a lesser degree **:** FRINGE

**3** **:** a body of rights held to be guaranteed by implication in a civil constitution

**4** **:** something that covers, surrounds, or obscures **:** SHROUD <a *penumbra* of secrecy> <a *penumbra* of somber dignity has descended over his reputation — James Atlas>

# 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

# Due process clause of the 14th Amendment

- No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
- Narrowly defined protection of privacy

# 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

# 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

# Some US Privacy Laws

- CTIA Best Practices and Guidelines for Location Based Services
- The Privacy Act of 1974
- The Federal Wiretap Act
- The Fair Credit Reporting Act
- The Gramm-Leach Bliley Act
- The Video Privacy Protection Act
- Children's Online Privacy Protection Act
- Family Educational Rights and Privacy Act (FERPA)
- CPNI rules
- Cable TV Privacy Act
- California SB-1386
- White House Consumer Privacy Bill of Rights
- NTIA Code of Conduct on Mobile Application Transparency
- Any other national privacy law

# 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)

# Homework 2 discussion

2. [40 points] Pick a technology that causes privacy concerns.

a) Describe the privacy concerns, citing relevant sources.

b) Prepare a table similar to Table 1 in the *I Didn't Buy it for Myself* paper that lists privacy risks, possible consequences, and examples of parties to whom personal information might be exposed for the technology you picked.

c) Prepare a table similar to Table 2 in the *I Didn't Buy it for Myself* paper that demonstrates how the OECD privacy principles might be applied to reducing the privacy risks associated with the technology you picked.

3. [20 points] Find a reference to privacy in art, literature, advertising, or pop-culture (tv, movie, cartoon, etc.).


Carnegie Mellon University
CyLab

isr institute for SOFTWARE RESEARCH

Engineering & Public Policy