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22C:169

# Computer Security

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Privacy Laws

# Privacy

Privacy is

*"the expectation that confidential personal information disclosed in a private place will not be disclosed to third parties, when that disclosure would cause either embarrassment or emotional distress to a person of reasonable sensitivities."*

RONALD B. STANDLER, ESQ, 1997

*What does confidential mean?*

*Why potential embarrassment or distress?*

## **Classical privacy rights ban:**

Unreasonable intrusion on seclusion

*home invasion, eavesdropping,  
harassing phone calls ...*

Appropriation of name or likeness

*plastering your name all over town*

Publication of private facts

*financial data, sexual info, personal  
communications, medical data*

Publication that misrepresents someone

*telling the truth in a bad way*

## **Some things are not private**

Purchases made in a public place

*Clerk can tell anyone what you bought*

*So, Stores can collect and sell this data*

AND THEY REGULARLY DO SO

Garbage tends to be public

*Dumpster diving is common (and fun!)*

*US law does not guard privacy of trash*

SHOULD IT?

Privacy rights versus freedom of the press

*are Paparazzi journalists or stalkers?*

## **Some privacy rights are old**

Ban on reading other people's mail,  
*Rabbi Gershom of Mainz, 960-1040*

Privacy of First Class Mail in US  
*Ex parte Jackson, 1878,*  
*decided on 4th amendment grounds*

Privacy of telegraphic communications  
*ICC act of 1887 requires subpoena,*  
*3/4 of states guarded this by 1900*

Privacy of telephone communications  
*Federal Communications Act of 1934*

# Observations

Delay between

*Development of new technology and*

*Extension of obvious privacy*

*rights under the 4th ammendment*

Has been far too long for comfort

Focus of legislation has been on

*creating exceptions to privacy rights*

*in order to allow "reasonable" law*

*enforcement efforts.*

Shouldn't 4th amendment and telegraph  
law automatically apply to E-mail?

## **Current law:**

Electronic Communications Privacy Act of 1986

*Public electronic communication providers must ensure privacy of subscribers.*

Subscribers of free E-mail services  
might be the advertisers, not the users!

*protection of E-mail in transit*

*no protection of stored E-mail*

*no protection of internal business E-mail*

Disclosure of E-mail by the recipient

*Sender owns copyright on the text*

*Recipient may disclose content*

Except if sender has reasonable  
expectation of privacy, e.g. if recipient  
is a doctor, lawyer or professor.

## **Horror story:**

### **Steve Jackson Games Case**

*Illuminati Bulletin Board Seized in 1990  
along with the 3 computers of company  
side effect of investigation of employee*

### **Steve Jackson Games was a publisher**

*Computers even included book manuscript  
Seizure of such work is illegal  
Seizure of copies would have been legal  
Seizure of private e-mail questionable*

### **Steve Jackson and Illuminati clients**

*sued and won, appeal decided 1994  
\$8.7K direct damages, \$42K lost profit  
\$195K attorneys' fees, \$57K plaintiff's costs*



# Family Educational Privacy Rights Act, 1974

Student rights to

*Inspect and review educational records*  
*amend inaccurate or inappropriate records*  
*control disclosure of public records*

Institution is permitted to

*disclose directory information, by default*  
*release other information in emergency*

NEED TO KNOW BASIS, WHEN SUCH RELEASE  
NECESSARY TO PROTECT HEALTH OR SAFETY

*release other info. to privileged recipients*

FACULTY, FINANCIAL AID SOURCES, OTHER SCHOOLS,  
FEDERAL AND STATE AUTHORITIES, ACCREDITING ORGS.

Institution may not release data

*without student's permission*  
*to anyone else including parents.*

Effect on computer use

*Creates a category of privileged data*

# HIPAA. 1996

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

Expectation of privacy in medical care

*is an ancient traditional right*

*conflicts with needs of insurance industry*

*may pose barrier to epidemiological studies*

HIPAA Requires that providers

*Explain patient rights and proposed info use*

*Secure patient records*

REASONABLE AND APPROPRIATE ADMINISTRATIVE ,  
TECHNICAL AND PHYSICAL SAFEGUARDS REQUIRED

*Assume responsibility for this!*

HIPAA gives patient control of

*Release of health information*

*Unless all personal identifiers are removed*

*Except in emergency*