

Information Law and Policy

IT 801-INFORMATION LAW AND POLICY TENTATIVE SYLLABUS FALL 2009

Welcome to Information Law and Policy. We will explore this ever-changing area of law through discussions, hypotheticals, student presentations and perhaps a guest lecture or two. Your participation is essential. To fulfill the requirements for this three-credit seminar, you will need to (1) prepare and deliver an in-class presentation, (2) complete an original position paper and (3) make a personal information inquiry.

COURSE DESCRIPTION

This seminar considers the historical foundation and current status of information law and policies. We will examine a variety of issues concerning *information privacy* i.e., the gathering, use and protection of information about individuals. Topics will include consumer privacy, protection of personal health and financial information, the right of access to information, the free flow and use of information, the value of personal information, commercial uses of personal information, privacy implications of emerging technologies and the roles of government and the private sector in protecting information privacy. Specific topics and materials may be adjusted according to current events and students' experience with and interests in informational privacy.

COURSE MATERIALS

There is no required textbook for this class. Course materials will be posted online at www.lesliereis.com/infolaw.html. Additional materials may be distributed in class or via email.

Recommended texts:

William G. Staples, *Encyclopedia of Privacy* (Greenwood Press, 2007). A copy of this encyclopedia may be found in the JMLS Library.

Nicholas Carr, *The Big Switch* (W.W. Norton & Co., 2008).

Engaging Privacy and Information Technology in a Digital Age (The National Academies Press, 2007).

Daniel J. Solove, *The Digital Person: Technology and Privacy in the Information Age* (NYU Press, 2004).

Simson Garfinkle, *Database Nation: The Death of Privacy in the 21st Century* (O'Reilly & Associates, Inc., 2000).

Robert O'Harrow, *No Place to Hide* (Simon and Schuster, 2005).

James Cortada, *Making the Information Society* (Prentice Hall, 2002).

How To Use The Federal FOI Act. Available free online at <http://www.rcfp.org/foiact/index.html>.

GRADES AND COURSE REQUIREMENTS

Grades will be based on class participation (20%), an in-class presentation (20%), a personal information inquiry/plan (20%), and a final paper (40%).

IN-CLASS PRESENTATIONS -- Each student will make a fifteen-minute in-class presentation that explains, as simply as possible, the significance of a specific current controversy, problem, statutory regime, or other issue involving informational privacy. The goal of this assignment is to explain and demystify a concept or issue to a non-expert audience (such as clients or managers) in a realistic format. Thus, the fifteen-minute time limit will be strictly enforced. Students may use the in-class presentation to discuss their position paper (see below). Each presentation must offer additional information or raise issues not covered in the assigned readings. Creativity is greatly appreciated and handouts are strongly encouraged. Specific topics for in-class presentations will be discussed during our third class meeting.

PERSONAL INFORMATION INQUIRY/ONLINE IMAGE DEVELOPMENT PLAN -- Each student must research the personal information about a classmate that is available online or through other sources and formulate a plan to best promote a professional online image. Students will submit a brief report that includes a summary of their findings explaining the process and the general results of the inquiry (specific details of the personal information obtained should not be submitted) and a plan to increase or improve their online images with an eye toward professional development. Creativity is encouraged. We will discuss the processes used and progress made in obtaining this information throughout the semester. The reports are due on or before the last class session, so students should not wait until late in the semester to make the inquiry.

POSITION PAPERS -- Each student must complete an original, well-researched, position paper that expresses a *novel* idea or approach to resolving an issue, problem or controversy in some area of information law and policy. The ideal paper will clearly state a problem, offer a suggested solution and justify that solution citing applicable law, policies or theories. The paper must be submitted in publishable form--i.e., fully edited, with correct grammar and spelling, proper citations, and supporting materials (statutes, appendices, etc.) if appropriate. While there is no length requirement, most topics will likely require at least 10-15 pages (3,000 words not including citations) to adequately address. Remember, quality is more important than quantity.

- Papers will be evaluated on the basis of clarity of analysis, persuasiveness of argument, depth of research, originality of thought, readability, and understanding of the course materials. Proper use of authority is required (footnotes preferred).
- Students may present projects of equivalent depth and magnitude in other formats with prior approval of the instructor.
- Students will submit a thesis statement on or before the eighth class meeting.
- The instructor is available to discuss questions regarding papers/projects.
- Position Papers are due on or before 11:59 pm, December 20, 2009.

SYLLABUS AND READINGS (Subject to change)

PLEASE NOTE: There is a lot of reading for this class. The inclusion of many different types of material is intended to give you an overview of information theory, policy and law and a little background in a lot of areas. You are not required to brief cases or memorize statutes. Just familiarize yourself with the materials and be prepared to discuss the issues raised.

Class #1 – INTRODUCTION: In this session, we will explore the various definitions and concepts of "information" – who needs it, who wants it, and who can protect it. We will discuss the history and development of information policy in the United States and examine the regulatory mechanisms, applicable statutes, and the right of access to information. We will begin an ongoing analysis of "information privacy"-- an individual's right to control how personal information about him or her is collected, used and shared.

Class #2 – THE PRIVACY IMPLICATIONS OF EMERGING TECHNOLOGIES: In this class, we will begin to examine specific information technologies and how these technologies have affected access to, as well as collection and dissemination of personal information. Student presentations will continue.

Class #3 – ACCESS TO INFORMATION ABOUT THE GOVERNMENT AND INFORMATION THE GOVERNMENT HAS ABOUT INDIVIDUALS: This session will focus on access to information about the government. Among the topics that will be addressed are public records and federal and state Open Meetings Acts, Freedom of Information Acts and the federal Privacy Act of 1974.

Class #4 – INFORMATION THE GOVERNMENT HAS ABOUT INDIVIDUALS CONTINUED AND NATIONAL SECURITY ISSUES: Here, we will begin examining the law and policies underlying information collection. We will look at fair information practices and information about individuals that is collected, maintained and used by the government. We will examine changes to the informational privacy landscape during a time of heightened national security post 9/11 and we will begin a discussion about information that is considered to be "public record."

Class #5 – PUBLIC RECORDS AND THE INTERSECTION BETWEEN PUBLICLY AND PRIVATELY HELD INFORMATION: In this class, we will look at information that is considered to be public record. We will examine how recent technological developments have dramatically increased access to public records and whether the privacy implications of such increased access demands a change in public records policy. In addition, we will discuss the issues that arise when publicly and privately collected/held information is combined. Topics for discussion will include court, criminal history and educational records.

Class #6 – INFORMATION THE PRIVATE SECTOR HAS ABOUT INDIVIDUALS, INFORMATION AS A COMODITY,DATA MINING AND THE USE AND ABUSE OF CUSTOMER LISTS: In this session, we will continue our discussion about the privacy implications of emerging technologies and take a cost/benefit approach as we investigate the collection, manipulation and distribution (buying, selling and trading) of consumer information

in the private sector. We will also look at the regulatory mechanisms (government and industry self-regulation) used to protect consumer's personal information and the role of the Federal Trade Commission in enforcing consumer privacy protections.

Class #7 - PRIVACY OF FINANCIAL INFORMATION AND MEDICAL

INFORMATION: Here, we will look at permitted uses and disclosures of an individual's financial information and how post-9/11 regulations and policies affect the confidentiality of such information. In addition, we will discuss the problems associated with outsourcing and offshoring of personal financial information. In addition, we will explore the collection, use and dissemination of an individual's health information using the Health Insurance Portability and Accountability Act (HIPAA) as a basis for discussion. We will also look at genetic and biometric information.

Class #8 – REGULATING PRIVACY: We will explore public and private sector approaches to privacy regulation. We will discuss privacy policies, certification systems as well as other self-regulatory mechanisms to protect privacy.

Class #9 – DATA BREACHES AND OTHER INFORMATION SCAMS: Here, we will focus on the data subject's (victim's) rights and remedies when personal information is used without knowledge and/or consent. Special consideration will be given to identity theft and other data-based crimes. Student presentations will begin

Class #10 – INTERNATIONAL ISSUES, EMERGING TRENDS AND WRAP-UP: Here, we will explore differing cultural concepts of informational privacy. We will examine some of the regulatory mechanisms governing trans-border data flow including the European Union Data Protection Directive and Safe Harbor provisions. This class will also examine some contemporary problems and emerging trends in informational privacy. Student presentations will continue.

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