

Privacy and Information Security Law

Law243-R01

Professor Ali Jessani

Tuesday: 6:05-8:05 pm (ET)

Objective: This course will explore the primary legal and policy principles surrounding the use and disclosure of personal information and the core principles for information privacy and security generally. We will focus on the key terms and principles, identify and analyze the primary laws regulating privacy in commercial relationships, both in the United States and internationally, and address some of the key topics for privacy and security lawyers, including enforcement, data rights, and security incidents. We will also introduce new legal concepts surrounding emerging technologies, such as biometrics, “big data”, and artificial intelligence.

Learning Outcomes: By the end of the course, students should be able to:

- Understand how personal information is regulated in the United States and abroad.
- Analyze different theories related to data protection law and how those impact regulations and legal outcomes.
- Evaluate privacy and cybersecurity implications for new and emerging technologies.
- Identify practical considerations related to advising clients on data protection issues.

Logistics: The class will be online only. I will send out a Zoom invite prior to our first class. Please let me know if you did not receive the link or are having trouble connecting. You can contact me at ali.jessani@wilmerhale.com if you have any questions.

Grading: The class grade will be determined by a current events paper (15 percent), class participation (25 percent), and a final exam (60 percent).

Current Events Paper – Data privacy is a constantly evolving field. It is important for privacy professionals to stay up to date on important developments. As part of this requirement, you are required to submit one 2-3 page paper on a privacy development that has occurred during the semester. The development can be something we have talked about in class or something you came across in your own research. Your current events paper should cover what the development is and why it is important in the overall privacy law landscape (this second point is more important than the first). This current events paper must be submitted prior to the last day of class. I highly encourage you to complete this requirement on the sooner side of the semester.

Final Exam – The final exam will be short essay questions. It will be open book and open Internet. I will send out the exam during the first day of the exam period (April

24) and will expect you to turn it back to me during the last day of the exam period (May 8).

Class Participation – I expect everyone to ask questions and actively participate in the discussion questions that are raised in the class. We will also have a number of guest speakers, and you are also expected to actively participate as part of those discussions.

Text: No textbook. Various articles assigned will be made available as links through the Syllabus. If you have trouble accessing any of the materials, you can email me, and I will send you the link.

Office Hours: By appointment only. Please send an email to ali.jessani@wilmerhale.com to schedule a meeting.

Instructor Expectations:

- All students are expected to complete the assigned readings before each week's class and to come prepared to discuss them.
- Please be mindful of the mute button.
- Students are expected to keep their camera on while in class. If students need to step away, they should ensure they are on mute and their cameras are off during that time.
- Please let me know in advance if you cannot make class.
- Per school policy, classes will not be recorded, and recording the lectures is prohibited.

PRELIMINARY COURSE SCHEDULE AND
READINGS

Week	Date	Topics and Readings
1	January 16	<p>Introduction to Data Privacy and Key Principles Samuel Warren & Louis Brandeis, The Right to Privacy, 4 HARV. L. REV. 193 (1890) Cohen, Julie E. "What Privacy is For" Harvard Law Review 126 Harv. L. Rev. 1904 (full article) Daniel Solove, Murky Consent: An Approach to the Fictions of Consent in Privacy Law, January 2023 Fair Information Practice Principles (FIPPs) (1973)</p> <p>(We may not get through all of the material and will pick it up in the second class)</p> <p>Optional: Nahra, "Privacy Law and the First-Year Law School Curriculum," 23 GREEN BAG 2D 22 (2019), available at http://greenbag.org/v23n1/v23n1_articles_nahra.pdf</p>
2	January 23	<p>Introduction to Data Security William McGeeveran, The Duty of Data Security, Minnesota Law Review (2019)</p>

3	January 30	<p>Overview of US Data Privacy and Security Laws The State of Consumer Data Privacy Laws in the US (And Why It Matters), N.Y. Times (Sep. 6, 2021). Daniel Solove & Paul Schwartz, An Overview of Privacy Law in 2022 (Chapter 1) (2022).</p>
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4	February 6	<p>Financial Privacy, Biometrics, and Data Brokers</p> <p>Hoofnagle, “How the Fair Credit Reporting Act Regulates Big Data,” available at https://fpf.org/wp-content/uploads/2013/07/Hoofnagle-How-the-FCRA-Regulates-Big-Data1.pdf</p> <p>FTC, “How To Comply with the Privacy of Consumer Financial Information Rule of the Gramm-Leach-Bliley Act,” (July 2002), available at: https://www.ftc.gov/system/files/documents/plain-language/bus67-how-comply-privacy-consumer-financial-information-rule-gramm-leach-bliley-act.pdf</p> <p>Biometrics Biometric Information Privacy Act Rosenbach v. Six Flags, 2019 IL 123186 (Jan. 25, 2023) Abril and Harwell, “Keystroke Tracking, Screenshots, And Facial Recognition: The Boss May Be Watching Long After the Pandemic Ends,” The Washington Post (Sept. 26, 2021), available at: https://www.washingtonpost.com/technology/2021/09/24/remote-work-from-home-surveillance/</p> <p>Data Brokers Justin Sherman, Data Brokers Are a Threat to Democracy, Wired (Apr. 13, 2021).</p>
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5	February 13	<p>HIPAA and Health Privacy</p> <p>Kirk Nahra, A Public Service Announcement about the HIPAA Privacy Rule, IAPP, June 18, 2021</p> <p>Kirk Nahra, HIPAA Privacy and Cybersecurity for Beginners, July 2014</p> <p>Vince Kuriatis and Deven McGraw, Health Data Outside of HIPAA: The Wild West of Unprotected Personal Data, The Health Care Blog, Aug. 12, 2019</p> <p><i>Guest Lecture</i></p>
6	February 20	<p>Federal Trade Commission</p> <p>Daniel Solove and Woodrow Hartzog, The FTC and the New Common Law of Privacy, Columbia Law Review, 2014</p> <p>IAPP, What FTC Enforcement Actions Teach Us About the Features of Reasonable Privacy and Data Security Practices, 2014 — —</p> <p>LabMd v. Federal Trade Commission, Case No. 16-16270 (11th Cir. 2018)</p> <p>FTC Enforcement Action to Bar GoodRx from Sharing Consumers' Sensitive Health Info for Advertising, Feb. 1, 2023</p>
7	February 27	<p>State Privacy Laws</p> <p>Nahra, Evers, & Jessani, Strategies for Developing a Multistate Privacy Compliance Program (download full chapter), LexisNexis (Jan. 12, 2023).</p> <p>Nahra, Jessani, and Gujarathi, Delaware Makes a Dozen States with a Comprehensive Privacy Law, JDSupra (July 11, 2023)</p> <p>IAPP, Washington's My Health My Data Act (April 2023).</p>
8	March 12	<p>Children's, Employee, and Education Information</p> <p>FTC, "Children's Online Privacy Protection Rule: A Six-Step Compliance Plan for Your Business," available at https://www.ftc.gov/tips-advice/business-center/guidance/childrens-online-privacy-protection-rule-six-step-compliance</p> <p>Rejouis, "Why Is It OK for Employers to Constantly Surveil Workers?," available at https://slate.com/technology/2019/09/labor-day-worker-surveillance-privacy-rights.html (Sept. 2, 2019)</p> <p>Student Press Law Center, FERPA: What It Means and How it Works</p>
9	March 19	<p>Marketing and Targeted Advertising</p> <p>Marketing</p>

		<p>Electronic Privacy Information Center, “Telemarketing and the Telephone Consumer Protection Act (TCPA),” available at https://www.epic.org/privacy/telemarketing/ (skip past “Top News” to Introduction)</p> <p>Facebook Inc. v. Digid (2021)</p> <p>FTC, “CAN-SPAM Act: A Compliance Guide For Business,” available at https://www.ftc.gov/tips-advice/business-center/guidance/can-spam-act-compliance-guide-business</p> <p>Targeted Advertising</p> <p>Digital Advertising Alliance, Self-Regulatory Principles for Online Behavioral Advertising</p> <p>Sean Illing interview with Tim Wu, There’s a war for your attention. And you’re probably losing it., Vox, Feb. 11, 2019</p> <p>Edelman, “Why Don’t We Just Ban Targeted Advertising?,” Wired (March 22, 2020), available at https://www.wired.com/story/why-dont-we-just-ban-targeted-advertising/</p>
10	March 26	<p>Breach Notification Laws</p> <p>Federal Trade Commission, Data Breach Response. A Guide For Business, February 2021</p> <p>Stewart, “Companies lose your data and then nothing happens.,” Vox (April 21, 2022)</p> <p>Woodrow Hartzog & Daniel Solove, Breached! Why Data Security Law Fails and How to Improve It, March 2022</p> <p><i>Guest Lecture</i></p>
11	April 2	<p>Big Data & AI</p> <p>White House Report on Big Data (2016)</p> <p>Nahra, Jessani, & Evers, Big Data Privacy Considerations, LexisNexis (2023)(download full chapter)</p> <p>Benizri, Evers, Mercer, & Jessani, A Comparative Perspective on AI Regulation, Lawfare (July 19, 2023)</p> <p>Jessani, Chatbots, AI, and the Future of Privacy, IAPP, March 31, 2023</p>
12	April 9	<p>The GDPR, e-Privacy Directive, and Other International Privacy Laws</p> <p>Jones and Kaminski, “An American’s Guide to the GDPR,” 98 Denver Law Review 93 (2021), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3620198</p> <p>Matt Burgess, What is GDPR? The Summary Guide to GDPR Compliance in the UK (March 24, 2020)</p>
13	April 16	<p>The Legislative Debate on Privacy</p> <p>Husch Blackwell, 2023 State Privacy Law Tracker</p>

		<p>H.R.8152 - American Data Privacy and Protection Act, available at https://www.congress.gov/bill/117th-congress/house-bill/8152/text</p> <p>Kerry, Why Protecting privacy is a losing game today – and how to change the game (July 12, 2018), available at https://www.brookings.edu/research/why-protecting-privacy-is-a-losing-game-today-and-how-to-change-the-game/</p>
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