

Law 497: EMERGING LAW OF INTERNET PRIVACY SEMINAR

George Mason University Antonin Scalia Law School
Summer 2024

Monday and Wednesday at 6 p.m.
Syllabus (version 1.0)

Instructors:

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Learning Outcomes

- Students will understand the effects of the internet on privacy law in both the civilian and criminal settings at the local, national, and international levels.
- Students will develop skills to advocate on issues related to internet privacy and its interaction on the national and world stages.
- Students will engage in deep research and analysis of topical issues related to privacy and internet security.
- Students will engage in mock situations such as presentations to Congress or Federal agencies that demand students not only understand their own arguments but also the arguments of the opposition.

Course book

- Since this is ever evolving, we're using regularly accessible materials.

Schedule and Readings

May-13 (Class 1) Government Access to Private Information: The Fourth Amendment and the Third Party Doctrine - Roman

- 4th Amendment
 - *Katz v. United States*, 389 U.S. 347 (1967)
 - *Smith v. Maryland*, 442 U.S. 735 (1979)
 - *Florida v. Riley*, 488 U.S. 445 (1989)
 - *Kyllo v. United States*, 533 U.S. 21 (2001)
 - *United States v. Jones*, 565 U.S. 400 (2012)
 - *Riley v. California*, 573 U.S. 373 (2014)
- Third Party Doctrine
 - *United States v. Miller*, 425 U.S. 435 (1976)
 - *Smith v. Maryland*, 442 U.S. 735 (1979)
 - *Carpenter v. United States*, 138 S. Ct. 2206 (2018)

May-15 (Class 2) Federal Consumer Privacy - Roman

- *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016)
- *In re Google Inc. Cookie Placement Consumer Privacy Litig.*, 988 F. Supp. 2d 434 (D. Del. 2013), *aff'd in part and vacated in part*, 806 F.3d 125 (3d Cir. 2015), petition for cert filed, (U.S. Mar. 14, 2016)
- *Dwyer v. Am. Express Co.*, 652 N.E.2d 1351 (Ill. App. Ct. 1995)

- *Fraley v. Facebook, Inc.*, 830 F. Supp. 2d 785 (N.D. Cal. 2011)
- *In re Google Inc.*, FTC No. C-4336 (Oct. 13, 2011)
- *In re MySpace LLC*, FTC No. C-4369 (Aug. 30, 2012)
- *In re Snapchat, Inc.*, FTC No. C-450 (Dec. 23, 2014)
- 15 U.S.C. § 45

May-20 (Class 3) The First Amendment and Civil and Constitutional Concepts of Information Privacy - Szabo

- Warren & Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890), available at [Cornell](#)
- How the Internet Works (please read the introduction and all six parts): [ibiblio.org](#)
- Review compare and contrast the following bills:
 - Rep. Cathy McMorris Rodgers, *Control Our Data Act*, available at <https://republicans-energycommerce.house.gov/wp-content/uploads/2021/11/2021.11.02-Republican-CODA-Draft-.pdf>
 - Sen. Wicker Privacy Bill, *United States Consumer Data Privacy Act of 2019*, available at [U.S Senate Committee on Commerce, Science & Transportation](#)
 - *Consumer Online Privacy Rights Act*, available at [Congress.gov](#)
- International Association of Privacy Professionals, *Fair Information Practice Principles* (FIPPs), available at [iapp Resource Center](#) (last visited May 14, 2023)
- Fred H. Cate, *The Failure of Fair Information Practice Principles*, *Consumer Protection in the Age of the Information Economy* (2006), available at [Hunton Andrews Kurth](#)
- 47 USC § 230
- *Protect Online Voices, Section 230*, available at [Protect Online Voices](#)

May-22 (Class 4) State Privacy Laws - Szabo

- California Consumer Privacy Act (CCPA)/CPRA
 - Read the California Consumer Privacy Act, available at [California Legislative Information](#)
 - CCPA regulations available at [State of California Department of Justice](#)
 - Eric Goldman, *California Amends the Consumer Privacy Act (CCPA); Fixes About 0.01% of its Problems*, Tech. Mktg. L. Blog (Oct. 4, 2018), available at

[Technology & Marketing Law Blog](#)

- o Eric Goldman, *The California Consumer Privacy Act Should be Condemned, not Celebrated*, International Association of Privacy Professionals (Jul. 27, 2018), available at [iapp News](#)
- o Californians for Consumer Privacy, *About* (Last visited May 14, 2023), [Californians for Consumer Privacy](#)
- Virginia's Consumer Data Protection Act (CDPA)
 - o [Virginia's Legislative Information System](#)
- California "Eraser Button": Calif. Bus. & Prof. Code §§ 22580-22582
- Biometric Privacy
 - o Illinois Biometric Information Privacy Act (BIPA), 740 Ill. Comp. Stat. 14/1 et seq. (2008)
 - o *Rosenbach v. Six Flags Entertainment Corp.*, 147 N.E.3d 125 (2d App. Ill. 2017)
 - o *Patel v. Facebook Inc.*, 290 F. Supp. 3d 948 (N.D. Cal. 2018)

May-27 **Memorial Day**

May-29 (Class 5) **State and Federal Powers for Regulation of Content and Content Moderation - Szabo**

- *NetChoice v Paxton, NetChoice v Moody*, available at NetChoice.org
- *Miami Herald Publishing Company v. Tornillo*, 418 US 241 (1974)
- *PruneYard Shopping Center v. Robins*, 447 US 74 (1980)
- *Hurley v. Irish American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 US 557 (1995)
- *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.* 547 US 47 (2006)

June-3 (Class 6) **Government Access to Private Information: Statutory Limitations - Roman**

- Laws
 - o *Berger v. New York*, 388 U.S. 41 (1967)
 - o Stored Communications Act (SCA)
 - 18 U.S.C. § 2702-13 (Electronic Communications Privacy Act ("ECPA"))
 - 18 U.S.C. § 3121-27 (Pen Register/Trap and Trace)
 - 18 U.S.C. § 2510-11 (Wiretap Act)
 - *US v. Warshak*, 631 F.3d 266 (6th Cir. 2010)
 - *United States v. Chaterie*, Case No.: 2:19-cr-130, 2022 WL 628905 (E.D. Va. Mar. 3, 2022)
 - o Communications Assistance for Law Enforcement Act of 1994, Pub. L. No. 103-414 (CALEA)
 - o USA Patriot Act of 2001, Pub. L. No. 107-56
- Policy
 - o Statement of James X. Dempsey, Vice President for Public Policy Center for Democracy & Technology, before the House Committee on the Judiciary,

Subcommittee on the Constitution, Civil Rights, and Civil Liberties, *ELECTRONIC COMMUNICATIONS PRIVACY ACT REFORM* (May 5, 2010), available at [Center for Democracy & Technology](#)

- o Orin S. Kerr, *A User's Guide to the Stored Communications Act, and a Legislator's Guide to Amending It*, 72 GEO. WASH. L. REV. 1208 (2004), available at [SSRN](#)
- o Orin S. Kerr, *Applying the Fourth Amendment to the Internet: A General Approach*, [62 Stanford Law Review 1005 \(2010\)](#), available at [SSRN](#)
- o Department of Defense, Technology and Privacy Advisory Committee, *Safeguarding Privacy in the Fight Against Terrorism* (March 2004), available at [Center for Democracy & Technology](#)

June-5 (Class 7) Cambridge Analytica discussion and Social Media Privacy - Szabo

- Cambridge Analytica
 - o Carole Cadwalladr and Emma Graham-Harrison, *Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in Major Data Breach* (March 17, 2018), available at [The Guardian](#)
 - o Testimony of Mark Zuckerberg Before the United States House of Representatives Committee on Energy and Commerce (June 29, 2018) [U.S. House of Representatives Document Repository](#)
- *In re Google Inc.*, FTC No. C-4336 (Oct. 13, 2011)
- *In re Facebook, Inc.*, FTC No. C-4365 (July 27, 2012)
- *In re MySpace LLC*, FTC No. C-4369 (Aug. 30, 2012)
- *United States v. Google Inc.*, No. CV 12-04177 SI, 2012 WL 5833994 (N.D. Cal. Nov. 16, 2012)
- *In re Epic Marketplace, Inc.*, FTC No. C-4389 (Mar. 13, 2013)
- *FTC v. T-Mobile USA, Inc.*, No. 2:14-cv-00967-JLR (W.D. Wash. Dec. 19, 2014)
- *In re Snapchat, Inc.*, FTC No. C-450 (Dec. 23, 2014)
- Social Media Privacy Laws
 - o Ex: Montana HB 343, available at [Montana Legislature](#)

June-10 (Class 8) Protecting Your Privacy Through Cybercrime Laws - Roman

- 18 U.S.C. § 1028 (Identity Theft)
- 18 U.S.C. § 1028A (Aggravated Identity Theft)
 - o *U.S. v. Salazar-Montero*, 520 F. Supp. 2d 1079 (N.D. Iowa 2007)
 - o *U.S. v. Contreras-Macedas*, 437 F. Supp. 2d 69 (D.D.C. 2006)
- 18 U.S.C. §§ 2510-2514 (Wiretap Act)
- 18 U.S.C. § 1029 (Access Device Fraud)
- 18 U.S.C. § 1030 (Hacking)
 - o *United States v. Nosal*, 676 F.3d 854 (9th Cir. 2012)

- o *WEC Carolina Energy Solutions LLC v. Miller*, 687 F.3d 199 (4th Cir. 2012)
- o *United States v. Valle*, 807 F.3d 508 (2nd Cir. 2015)
- o *United States v. John*, 597 F.3d 263 (5th Cir. 2010)
- o *United States v. Rodriguez*, 628 F.3d 1258 (11th Cir. 2010)
- o *United States v. Van Buren*, 940 F.3d 1192 (11th Cir. 2019)
- 18 U.S.C. § 2261A (Stalking)

June-12 (Class 9) European Regulation and Right to Be Forgotten + Internet of Things & Health and Genetic Privacy - Szabo

- Universal Declaration of Human Rights (1948), [United Nations](#)
- Louis Joinet, *Guidelines for the Regulation of Computerized Personal Files*, United Nations (1988), available at [United Nations Digital Library](#)
- Ernst-Oliver Wilhelm, *A Brief History of Safe Harbor (2000-2016)*, International Association of Privacy Professionals (last visited May 14, 2023), available at [iapp](#)
- *Copland v. United Kingdom*, 62617/00 Eur. Ct. H.R. (2007), [5rb](#)
- *Schrems v. Data Prot. Comm'r*, Case C-362/14 (2015 E.C.R. Sept. 23, 2015), available at [InfoCuria Case-law](#)
- General Data Protection Regulation (GDPR) <https://www.eugdpr.org>
- ePrivacy Directive, [European Data Protection Supervisor](#)
- Mark Began, *What to Expect from the EU's Move to Regulate U.S. Tech Companies*, Vox (May 5, 2015), available at [Vox](#)
- *Google Inc. v Agencia Española de Protección de Datos (AEPD)* (EU Court of Justice May 13, 2014), available at [InfoCuria Case-law](#)
- European Commission, *Factsheet on the "Right to be Forgotten" ruling*, available at
- Mark Scott, *'Right to Be Forgotten' Should Apply Worldwide, E.U. Panel Says*, New York Times (Nov. 26, 2014), available at [The New York Times](#)
- Chris Green, *Law Firms Exploiting EU 'Right to be Forgotten' Ruling to Help Individuals Remove Awkward Newspaper Articles from Google*, The Independent (Apr. 17, 2015), available at [Independent](#)

- Internet of Things
 - FTC Staff Report, *Internet of Things Privacy and Security in a Connected World* (Jan. 2015), available at [Federal Trade Commission](#)
 - Jat Singh & Julia Powles, *The Internet of Things - The Next Big Challenge to Our Privacy*, *The Guardian* (Jul. 28, 2014), available at [The Guardian](#)
- Health and Genetic Privacy
 - *Hammonds v. Aetna Cas. & Sur. Co.*, 243 F. Supp. 793 (N.D. Ohio 1965).
 - *Moore v. Regents of the Univ. of California*, 51 Cal.3d 120 (Cal. 1990).
 - *Urbaniak v. Newton*, 277 Cal. Rptr. 354 (Ct. App. 1991)
 - Health Insurance Portability and Accountability Act of 1996, *Pub. L. No. 104-191*
 - Texas Medical Privacy Act, *Tex. Health & Safety Code Ann §§ 181.001 et seq.*
 - Genetic Information Nondiscrimination Act of 2008 (GINA), *Pub. L. No. 110-223*

June-17 (Class 10) FISA Courts and ECPA - Roman

June-24 (Class 11) Children's Privacy - Szabo

- Children's Online Privacy Protection Act
 - Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501–6505
 - Children's Online Privacy Protection Rule: Final Rule Amendments -- 16 C.F.R. Part 312, available at [GovInfo](#)
 - *In re Apple Inc.*, FTC No. C-4444 (Mar. 25, 2014)
 - *United States v. VTech Elec. Ltd. Inc.*, No. 1:18-cv-114 (N.D. Ill. Jan. 8, 2018)
 - *United States v. Playdom, Inc.*, No. 8:11-cv-00724-AG (ANx) (C.D. Cal. May 24, 2011)
 - *FTC v. YouTube*, Case No.: 1:19-cv-2642 (D.C. 2019)
 - Complaint: [Federal Trade Commission](#)
 - Settlement: [Federal Trade Commission](#)
- Family Educational Rights and Privacy Act (FERPA)
 - 20 U.S.C. § 1232g
 - 34 CFR Part 99
 - *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002)
 - *United States v. Miami Univ.*, 294 F.3d 797 (6th Cir. 2002)
- Student Privacy Bills
 - Eduard Godman, *Privacy in the Classroom: What You Need To Know About Educational Software*, IAPP (April 28, 2015), available at [iapp News](#)

- o California, Student Online Personal Information Protection Act of 2014 (SOPIPA) - [California Legislative Information](#)
- o Future of Privacy Forum, *Student Data Privacy Pledge*, [Student Privacy Pledge](#)

June-26 (Class 12) Data Breach Legislation - Roman

- California Data Breach Law, Cal. Civ. Code §§ 1798.29, 1798.80 *et seq.*
- Massachusetts Data Breach Law, Mass. Gen. Laws § 93H-1 *et seq.*
- *FTC v. Wyndham Hotels & Resorts, LLC* (3d Cir.), Supplemental Brief of FTC, 14-3514 (115.52 KB)
- *LabMD, Inc. v. FTC*, 891 F.3d 1286 (11th Cir. 2018)
- *In re Microsoft Corp.*, FTC No. C-4049 (Dec. 20, 2002)
- *In re Twitter, Inc.*, FTC No. C-4316 (Mar. 2, 2011)
- *In re Snapchat, Inc.*, FTC No. C-4501 (Dec. 23, 2014)
- *Cybersecurity: A Practical Guide to the Law of Cyber Risk* (Edward R. McNicholas & Vivek K. Mohan eds., 2016)

July-1 (Class 13) Directed Research analysis and work - Roman/Szabo

July-2 (Class 14) Directed Research analysis and work - Roman/Szabo

Course Policies:

Course attendance is required. Participation and preparation for our course meetings will be a critical part of your performance in this course. In the unusual event that you cannot attend a particular session, please inform us by email before class. Excessive absences will affect your grade.

Readings:

Unless otherwise specified, all readings are mandatory, and you should be prepared to discuss them in class. Because the law and policies related to Internet privacy are constantly changing, and because sometimes I change my mind, we may change the reading assignments, sometimes drastically, from time to time. We will announce such changes in class. If you cannot attend class, you should consult a colleague to ensure you have the correct assignments and are appropriately prepared.

If there is something that you think would be useful for the class to read, please suggest it.

Assignments:

There will be one short writing assignment and a longer research paper. All written assignments should conform to BlueBook citations.

Directed Research paper:

For this semester, and the majority of your final grade, we are engaging in a directed research project designed to place you in the position of an advocate.

Students will rank their top 2 topics from a list provided by the Professor on which they would like to work. The Professor will then, taking into account ranking choices, assign to students. Note that you may still be assigned a topic area that you did not choose.

For most of the topics, there will be one student arguing each side of the issue. This means that students should take into account opposing arguments and address them in their advocacy document.

Each pair of students will concurrently present their initial work and arguments to the Professor. This will last for a total of one-hour for each issue and performance will be incorporated into final grades on directed research.

All papers should take into account the issue of "unintended consequences" and should address them -- are there any and if so, do they outweigh benefits?

The longer writing assignment also requires you, in about 20, thoughtful, concise, well-researched pages, to research this problem or controversy related to privacy and emerging technologies and identify and argue for a solution.

The directed research paper will be due by 11:59 p.m., EST, on the last day of exams for the semester.

Your paper must conform to the Blue Book (law review style). Students are strongly encouraged to retrieve a hard copy of the George Mason Law Review from the library and review a student note or comment to help familiarize themselves with legal academic writing and the expected content and format of the papers.

Ultimately, this paper should be of such quality that you can submit for publication.

Notices:

We will post notices about the course, new readings, items of interest, and relevant material via email.

Please check your email regularly and supply me with an email address that you can regularly access. Some notices may be posted or distributed to students via the registrar's office.

Office Hours:

We are happy to talk with you outside class, preferably by appointment.

Grading:

15%	Class Participation
10%	Presentation of Directed Research Paper
75%	Directed Research Paper