

Herding Cats: *Disclose Me*

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Is it unreasonable to think that privacy concerns are something that only this generation of citizens has to deal with? Privacy laws have evolved over time starting with the landmark article published in 1890 by Samuel Warren and Louis Brandeis, “The Right to Privacy,” whereby Warren and Brandeis assert that common law had nurtured a new right--the right to privacy.

It’s not the same kind of inalienable right that you might find in the US Bill of Rights, but over time it has evolved and eventually worked its way into one of the first laws on the subject--The Privacy Act of 1974¹.

Since then, we have seen several new spins on privacy generally tailored to a specific set of circumstances, such as the Electronic Communications Privacy Act of 1986², or the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Ironically, many of the new privacy laws enacted are as a reaction to the information revolution. More data is available electronically than ever before, and these laws are designed to protect individuals represented by this data.

Privacy does not only extend to electronic information³. Dumpster diving is a common practice used by individuals looking to gain access to discarded items that could prove useful for their own nefarious purposes. Common law has varying degrees of penalty in these types of cases, mainly due to varying interpretations and scenarios around what the expectation of privacy should be in certain situations.

For example, if you personally place discarded bank records and personally identifiable information in a trash bag on the curb of a major street in your city for pickup, do you have any expectation that the information should still remain private? Most courts have resoundingly said this is not the case, and only in situations where discarded items are stored for pickup on private property have courts considered alternative decisions.

Things might even get stickier if you look at discarded electronic information. Let’s say that your company is doing a hardware refresh and it has 1,000 hard drives with sensitive data on it. If the IT department simply ships these to a recycling center, is there any expectation that the information contained on those drives would remain private? What if they were sent to a destruction facility first? Any recourse may rely solely on contract law, meaning that sending things to a public recycling center may not afford you any rights to privacy at all.

Social media sites further complicate the issue and have quickly thrust an immature generation of teenagers into the limelight by giving them an easy platform to *electronify* their lives⁴. All you need is a working email address and you are able to create your electronic identity. Of the social media sites, Facebook offered the most amount of privacy when it started, but has now expanded in such a way that the initial mission has long since been tossed for a bigger one.

FOOTNOTES

¹ http://en.wikipedia.org/wiki/Privacy_Act_of_1974

² ECPA Pub. L. 99-508, Oct. 21, 1986, 100 Stat. 1848, 18 U.S.C. § 2510

³ *For the record, I am NOT a lawyer, nor do I play one on television. My assertions are based on publicly available research and notes on these topics.*

⁴ *Geek admission time. I built a personal website in 1994 for fun, and had a personal blog based on software that I wrote starting in 1997. Not that anyone looked at it, but I was WAY ahead of my time. And totally humble too.*

Many privacy issues have come out of social media where people communicate ideas or upload photos and videos that may be controversial to prospective employers, learning institutions, or constituents. Things that end up online rarely disappear, and things that teenagers do today could conceivably follow them for the rest of their lives. Should one be arrested for being drunk in public, that record could be sealed, plead to a lesser charge, or just go away after time. If photos of the arrest were uploaded to Facebook or Twitter, the long term reputation damage could be severe.

Between social media and surveillance cameras, should people have any expectation of privacy? Will this generation's children have any expectation of privacy? Or will society become more tolerant to mistakes we all make?

Thank goodness that today's adults have a significantly reduced expectation of privacy. If we didn't, YouTube would be dead.

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