Daniel J. Solove & Paul M. Schwartz

PRIVACY LAW FUNDAMENTALS

An IAPP publication

Privacy Law Fundamentals

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ABOUT THE AUTHORS

Daniel J. Solove is the John Marshall Harlan Research Professor of Law at the George Washington University Law School. He is also a senior policy advisor at Hogan Lovells. One of the world's leading experts in privacy law, Solove is the author of numerous books, including *Nothing to Hide: The False Tradeoff Between Privacy and Security* (Yale, forthcoming 2011), *Understanding Privacy* (Harvard 2008), *The Future of Reputation: Gossip and Rumor in the Information Age* (Yale 2007) (winner of the 2007 McGannon Award), and *The Digital Person: Technology and Privacy in the Information Age* (NYU 2004). Professor Solove is also the author of a textbook, *Information Privacy Law*, with Aspen Publishing Co., now in its third edition, with co-author Paul Schwartz.

Additionally, he is the author of several other textbooks, including *Privacy and the Media* (1st edition, Aspen Publishing Co. 2009) and *Privacy, Information, and Technology* (2nd edition, Aspen Publishing Co. 2009), all with Paul Schwartz. He has published nearly 40 articles and essays.

Solove has testified before the U.S. Congress and has been involved as an expert and consultant in a number of high-profile privacy cases. He has been interviewed and featured in several hundred media broadcasts and articles, including *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *Chicago Tribune*, *USA Today,* Associated Press, *Time*, *Newsweek*, *People*, *Reader's Digest*, *ABC*, *CBS*, *NBC*, *CNN*, *NPR* and *C-SPAN*'s "Book TV."

He blogs at www.concurringopinions.com. More information about his work can be found at www.danielsolove.com. And he can be followed on Twitter at http://twitter.com/DanielSolove.

Paul M. Schwartz is Professor of Law at the University of California-Berkeley Law School and a director of the Berkeley Center for Law & Technology. A leading international expert on informational privacy and information law, he has published widely on these topics. In the U.S., his articles and essays have appeared in periodicals such as the *Harvard Law Review*, *The Yale Law Journal*, *Stanford Law Review*, *California Law Review*, *N.Y.U. Law Review*, and *Chicago Law Review*. With Daniel Solove, he has published the leading casebook, *Information Privacy Law,* (Aspen, 3d ed., 2009) and other books.

Professor Schwartz has testified as an expert before congressional committees in the United States and provided legal reports to the Commission of the European Community and Department of Justice, Canada. He has assisted numerous corporations in the United States and abroad with information privacy issues. A member of the American Law Institute, Schwartz has received scholarship and grants from the American Academy in Berlin, where he was a Berlin Prize Fellow; the Alexander von Humboldt Foundation; German Marshall Fund; Fulbright Foundation; the German Academic Exchange, and the Harry Frank Guggenheim Foundation.

Professor Schwartz received a JD degree from Yale Law School, where he was a senior editor on *The Yale Law Journal*, and a BA degree from Brown University. His homepage is www.paulschwartz.net.

DEDICATION

To Pamela and Griffin—DJS

To Steffie, Clara and Leo—PMS

PREFACE

This book provides a concise guide to privacy law. *Privacy Law Fundamentals* is not a treatise. Instead, it is designed to serve as a primer of the essential information one needs to know about the field. For the student of privacy law or the beginning privacy professional, the book will provide an overview of the field that can be digested readily. For the more seasoned and experienced, the book will serve as a handy reference guide, a way to refresh one's memory of key components of privacy laws and central cases. It will help close gaps in knowledge and inform on areas of the field about which one wants to know more.

In writing this book, we have aimed to avoid the "too-much-information" problem by singling out the essential provisions of law, regulations and judicial decisions. Far too often, the key definitions, provisions and concepts become lost in a litany of very long and dense statutes and in a mass of cases. We have endeavored to distill the field down to its fundamentals and present this information in as clear and useful a manner as possible. Wherever possible, we have developed charts and lists to convey the material.

The book is organized in thirteen chapters:

- Chapter One – an overview of privacy law in all its varied types and forms and a timeline with key points in the development of privacy law.
- Chapter Two – privacy law involving the media, including the privacy torts, defamation and the First Amendment.
- Chapter Three – the law of domestic law enforcement, focusing on the Fourth Amendment and the statutes regulating electronic surveillance.

- Chapter Four – national security law, including the Foreign Intelligence Surveillance Act.
- Chapter Five – government records and laws, such as the Privacy Act and the Freedom of Information Act.
- Chapter Six – the laws and regulations that pertain to health and genetic data, including HIPAA.
- Chapter Seven – the laws concerning financial information, including the Fair Credit Reporting Act and the Gramm-Leach-Bliley Act.
- Chapter Eight – legal regulation of the privacy of consumer data and business records, involving statutes, tort protections and FTC enforcement actions.
- Chapter Nine – the standards for government access to private-sector records, such as the Bank Secrecy Act, National Security Letters and subpoenas.
- Chapter Ten – data security law, including the varying laws in a majority of the states.
- Chapter Eleven – school privacy, including the Family Educational Rights and Privacy Act.
- Chapter Twelve – the regulation of employment privacy, including the different rules for government and private-sector employees.
- Chapter Thirteen – international privacy law, including the EU Data Protection Directive, the OECD Guidelines, the APEC Privacy Framework and rules of international data transfers.

For his suggestions on our chapter about school privacy, we wish to thank Steven McDonald. This manuscript also benefitted greatly from the proofreading and research assistance of Benedikt Burger, Leah Duranti, Yan Fang and Bill Friedman.

For further references, including books, websites, statutes and other sources of news and legal materials, visit our website (http://informationprivacylaw.com), and for our casebooks, click on the "resources" tab at the top.

We look forward to keeping this book up to date and to finding additional ways to make it as useful as possible. Please feel free to contact us with any suggestions and feedback about the book.

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CHAPTER 1

An Overview of Privacy Law

ESSENTIAL POINTS

- Information privacy law is a relatively youthful area of law. New developments are still shaping it and changing its form. As an example, data breach notification statutes in the United States only date to 2003.

- The development of privacy law in the United States may also be viewed as a dialogue between the courts and the legislature about the scope and application of the legal concept of privacy. In some matters, courts will define new privacy rights. In others, the courts will leave the job to the legislature.

- Privacy problems occur in particular contexts, and different types of problems involve different trade-offs and concerns.

- Technology plays an especially important role in shaping the kinds of privacy concerns that society faces and the role of the law.

- In Europe and most of the rest of the world, this area is called data protection law. International developments have played a highly visible and important role in shaping the role of privacy professionals and the privacy dialogue within the United States.

TYPES OF PRIVACY LAW

Torts

In the United States, tort law is primarily state law. As a result, the particular boundaries of privacy tort law will differ from state to state—sometimes dramatically. As an initial example, some states recognize all four privacy torts, but Minnesota accepts only three of the four. It does not recognize the false light tort. *Lake v. Wal-Mart,* 582 N.W.2d 231 (Minn. 1998).

TORTS

The following torts are the ones most commonly involved in privacy cases:

- Invasion of Privacy (a collective term for the four privacy torts)
  - Public Disclosure of Private Facts
  - Intrusion Upon Seclusion
  - False Light
  - Appropriation of Name or Likeness
- Breach of Confidentiality
- Intentional Infliction of Emotional Distress
- Defamation
  - Libel
  - Slander
- Negligence

ORIGINS OF THE PRIVACY TORTS

Samuel Warren & Louis Brandeis, *The Right to Privacy,* 4 Harv. L. Rev. 193 (1890)
This foundational article, which inspired the development of privacy law in the twentieth century, argued that privacy was protected by the common law as "the right to be let alone."

William Prosser, *Privacy,* 48 Cal. L. Rev. 383 (1960)
The legendary torts scholar William Prosser surveyed all the common law privacy tort cases and identified the central four interests protected. His formulations of the privacy torts remain in widespread use today. The states have widely adopted Prosser's four privacy torts.

Contract/Promissory Estoppel

Confidentiality or other privacy protections can be an express or implied contractual term in a relationship. Promises to protect privacy might be enforced through promissory estoppel.

Criminal Law

Many privacy laws have criminal penalties. Many states have criminalized blackmail, "Peeping Tom" activity or surreptitiously capturing nude images of others.

Evidentiary Privileges

In evidence law, many privileges protect the confidentiality of information shared within certain relationships, such as attorney-client and patient-physician.

Federal Constitutional Law

WAYS THE U.S. CONSTITUTION PROTECTS PRIVACY

- The First Amendment right to speak anonymously
- The First Amendment freedom of association, which protects privacy of one's associations
- The Third Amendment's protection of the home from the quartering of troops
- The Fourth Amendment's protection against unreasonable searches and seizures
- The Fifth Amendment's privilege against self-incrimination
- The Constitutional Right to Privacy
- The Constitutional Right to Information Privacy

State Constitutional Law

A number of states have directly provided for the protection of privacy in their constitutions. Example: Cal. Const. art. I, § 1 — "All people are by their nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness and privacy."

STATES WITH EXPRESS CONSTITUTIONAL PRIVACY PROTECTION

AK	Alaska Const. art. I, § 22
AZ	Ariz. Const. art. II, § 8
CA	Cal. Const. art. I, § 1
FL	Fla. Const. art. I, § 23
HI	Haw. Const. art. I, § 23
IL	Ill. Const. art. I, § 12
LA	La. Const. art. I, § 5
MT	Mt. Const. art. II, § 10
SC	S.C. Const. art. I, § 10
WA	Wash. Const. art. I, § 7

Federal Statutory Law

- Fair Credit Reporting Act of 1970, 15 U.S.C. §§ 1681 *et seq.* — provides citizens with rights regarding the use and disclosure of their personal information by consumer reporting agencies.

- Bank Secrecy Act of 1970, Pub. L. No. 91-508 — requires banks to maintain reports of people's financial transactions to assist in government white-collar investigations.

- Privacy Act of 1974, 5 U.S.C. § 552a — provides individuals with a number of rights concerning their personal information maintained in government record systems, such as the right to see one's records and to ensure that the information in them is accurate.

- Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §§ 1221 note, 1232g — protects the privacy of school records.

- Right to Financial Privacy Act of 1978, 12 U.S.C. §§ 3401–3422 — requires a subpoena or search warrant for law enforcement officials to obtain financial records.

- Foreign Intelligence Surveillance Act of 1978, 15 U.S.C. §§ 1801–1811 — regulates foreign intelligence gathering within the U.S.

- Privacy Protection Act of 1980, 42 U.S.C. § 2000aa — restricts the government's ability to search and seize the work product of the press and the media.

- Cable Communications Policy Act of 1984, 47 U.S.C. § 551 — mandates privacy protection for records maintained by cable companies.

- Electronic Communications Privacy Act of 1986, 18 U.S.C. §§ 2510–2522, 2701–2709 — updates federal electronic surveillance law to respond to the new developments in technology.

- Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a — regulates automated investigations conducted by government agencies comparing computer files.

- Employee Polygraph Protection Act of 1988, 29 U.S.C. §§ 2001–2009 — governs the use of polygraphs by employers.

- Video Privacy Protection Act of 1988, 18 U.S.C. §§ 2710–2711 — protects the privacy of videotape rental information.

- Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 — provides certain remedies from repeat telephone calls by telemarketers.

- Driver's Privacy Protection Act of 1994, 18 U.S.C. §§ 2721–2725 — restricts the states from disclosing or selling personal information in their motor vehicle records.

- Communications Assistance for Law Enforcement Act of 1994, Pub. L. No. 103-414 — requires telecommunication providers to help facilitate government interceptions of communications and surveillance.

- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193 — requires the collection of personal information (including Social Security numbers, addresses, and wages) of all people who obtain a new job anywhere in the nation. The resulting information is placed into a national database to help government officials track down deadbeat parents.

- Health Insurance Portability and Accountability Act of 1996 — gives the Department of Health and Human Services (HHS) the authority to promulgate regulations governing the privacy of medical records.

- Identity Theft and Assumption Deterrence Act of 1998, 18 U.S.C. § 1028 — criminalizes the transfer or use of fraudulent identification with the intent to commit unlawful activity.

- Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501–6506 — restricts the use by Internet websites of information gathered from children under age 13.

- Gramm-Leach-Bliley Act of 1999, 15 U.S.C. §§ 6801–6809 — requires privacy notices and provides opt-out rights when financial institutions seek to disclose personal data to other companies.

- USA-PATRIOT Act of 2001 — amends a number of electronic surveillance statutes and other statutes to facilitate law enforcement investigations and access to information.

- CAN-SPAM Act of 2003 — provides penalties for the transmission of unsolicited e-mail.

- Video Voyeurism Prevention Act of 2004, 18 U.S.C § 1801 — criminalizes the capturing of nude images of people (when on federal property) under circumstances where they have a reasonable expectation of privacy.

State Statutory Law

Much of privacy law is found in state law. Privacy tort law and data breach notification statutes are all state law. In addition, numerous federal statutes permit state laws to exceed their specifications. This issue is regulated under the rubric of "preemption." In Chapter 8, we provide a chart that lists the federal statutes that preempt state laws and those that do not. The U.S. regulation of privacy is best thought of as a dual federal-state system for information privacy law.

Areas of State Legislation on Privacy

Substantial state legislation on privacy exists in the following areas:

Law Enforcement
- Wiretapping and electronic surveillance

Medical and Genetic Information
- Confidentiality of medical information
- Genetic privacy

Government Records
- Public records
- State agency use and disclosure of personal information

Financial Privacy
- Banking privacy
- Consumer reports
- Security freeze

Consumer Data and Business Records
- Spam
- Spyware and phishing
- Telecommunications privacy
- Pretexting
- Use of Social Security numbers
- Data disposal
- Video privacy
- RFID and tracking devices
- Restrictions on ISPs
- Unauthorized access to computers and networks

Data Security
- Identity theft
- Data security
- Data security breach notification

Employment
- State employee personal information
- Restrictions on employment application questions

For a more detailed analysis of these laws, consult Andrew B. Serwin's *Information Security and Privacy (2009).*

International Law

Around the world, numerous countries have endeavored to protect privacy in their laws. There are two general approaches toward protecting privacy:

1. *Omnibus*
   A comprehensive approach to protecting privacy that covers personal data across all industries and most contexts. Sometimes a single omnibus law will also regulate the public and private sectors.

2. *Sectoral*
   Regulating information on a sector-by-sector basis. Different industries receive different regulation, and some contexts are not regulated at all. Different statutes regulate the public and private sectors.

The world's first comprehensive information privacy statute was a state law; the Hessian Parliament enacted this statute in Wiesbaden, Germany, on

September 30, 1970. Like most European data protection laws, this statute is an omnibus law.

In contrast, the United States has generally relied on regulation of information use on a sector-by-sector basis. For example, the Children's Online Privacy Protection Act provides privacy protection for children on the Web, but there is no such law that generally regulates privacy for adults on the Web.

Outside of Europe and the United States, there are many information privacy statutes in the rest of the world. Most countries have adopted the omnibus approach.

There are also important international and transnational accords, guidelines, treaties, directives and agreements. These include:

- Organisation of Economic Co-operation and Development (OECD) Guidelines (1980)
- The Safe Harbor Privacy Principles (2000) established between the United States and the European Commission
- Asia-Pacific Economic Cooperative (APEC) Privacy Framework (2004)

THE CHIEF PRIVACY OFFICER

The chief privacy officer (CPO) is becoming a mainstay at many large organizations. Among other things, a CPO ensures that the organizations are complying with the law, that employees are trained about privacy and security practices and that the organization has an effective privacy policy.

In the public sector, the Homeland Security Act of 2002 establishes a privacy officer within the Department of Homeland Security. 6 U.S.C. § 142. This statute created the first explicit legal requirement in a federal law for a privacy officer in the United States government. Previously, the Clinton Administration had appointed a chief counselor for privacy and located this position in the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA).

In 2002, Congress also enacted the E-Government Act, which requires administrative agencies to conduct privacy impact assessments (PIAs).

In the private sector, regulations enacted pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) require "a covered entity" to "designate a privacy official who is responsible for the development and implementation of the policies and procedures of the entity." 45 C.F.R. 164.30(a)(1)(i).

As part of its role implementing the Gramm-Leach-Bliley Act, the Federal Trade Commission issued a Safeguards Rule that requires designation of an employee or employees to coordinate the company's information security pro-

gram. This requirement can encourage introduction of a chief privacy officer position into organizations that do not yet have one. 16 CFR Part 314.4(a), 67 Federal Register 36484 (2002).

In addition, the Safe Harbor Agreement, negotiated by the U.S. Department of Commerce with the European Commission, calls for U.S. companies to engage in either "self-assessment or outside compliance review" of their privacy practices. By mandating these requirements, the Safe Harbor creates the obligation for a certain amount of compliance work and an incentive for U.S. organizations that register under it to designate a CPO to take care of these tasks.

It is fair to say that most large companies that handle personal data now have a CPO.

THE DEVELOPMENT OF PRIVACY LAW: A TIMELINE

400 B.C.	Hippocratic Oath – first recorded expression of a duty of medical confidentiality.
1361	England's Justices of the Peace Act criminalizes eavesdropping and Peeping Toms.
1604	*Semayne's Case,* 77 Eng. Rep. 194 (K.B. 1604) declares that "the house of everyone is to him as his castle and fortress."
1763	*Wilkes v. Wood,* 98 Eng. Rep. 489 (K.B.) – repudiation of the use of a general warrant to search for documents relating to a pamphlet involving seditious libel. Influential in the creation of the Fourth Amendment.
1765	*Entick v. Carrington,* 95 Eng. Rep. 807 (K.B.) – another repudiation of general warrants in a seditious libel case. Influential in the creation of the Fourth Amendment.
1789	U.S. Constitution – First, Third, Fourth, and Fifth Amendments.
1860–1890	U.S. Census becomes more inquisitive. Public outcry for greater census privacy.
1877	*Ex Parte Jackson,* 96 U.S. 727 (1877) – U.S. Supreme Court holds that the Fourth Amendment protects sealed letters in the mail.
1886	*Boyd v. United States,* 116 U.S. 616 (1886) – U.S. Supreme Court holds that the government cannot compel people to turn over documents.
1890	Samuel Warren & Louis Brandeis, *The Right to Privacy,* 4 Harv. L. Rev. 193 (1890). This article inspires the recognition during the twentieth century of privacy torts in the majority of the states.

1903–1905 States begin to recognize privacy torts. New York enacts law creating Warren and Brandeis tort of appropriation. N.Y. Civ. Rts. L. §§ 50-51. Georgia Supreme Court recognizes appropriation tort. *Pavesich v. New England Life Insurance Company,* 50 S.E. 68 (Ga. 1905).

1908 FBI is formed. Originally called the Bureau of Investigation.

1928 *Olmstead v. United States,* 277 U.S. 438 (1929) – In a decision later overruled, the U.S. Supreme Court holds that Fourth Amendment protections do not extend to wiretapping. Now on the Supreme Court, Justice Louis Brandeis writes a famous dissent to the majority opinion.

1934 In response to *Olmstead,* Congress enacts § 605 of the Federal Communications Act of 1934 to limit wiretapping.

1936 Social Security system begins. Creation of the Social Security number, which is not intended to be used in other programs or as a form of identification.

1947 Central Intelligence Agency (CIA) is created.

1948 The Universal Declaration of Human Rights is adopted by the UN, protecting a right to privacy in Article 12.

1949 Publication of George Orwell's *Nineteen Eighty-Four.*

1950 European Convention on Human Rights (ECHR) is adopted, protecting the right to privacy in Article 8.

1952 President Truman creates the National Security Agency (NSA).

1953 Origins of the "right of publicity" tort in *Haelan Laboratories v. Topps Chewing Gum, Inc.*, 202 F.2d 866 (2d Cir. 1953).

1960 William L. Prosser, *Privacy,* 48 Cal. L. Rev. 383 (1960).

1961 *Mapp v. Ohio,* 367 U.S. 643 (1961) – U.S. Supreme Court holds that the exclusionary rule for Fourth Amendment violations applies to the states.

1965 In *Griswold v. Connecticut,* 381 U.S. 479 (1965), the U.S. Supreme Court prevents the government from banning contraceptives. The *Griswold* Court finds that the Constitution protects a right to privacy through the "penumbras" of many of the 10 amendments of the Bill of Rights.

1966 Congress enacts the Freedom of Information Act (FOIA).

1967 The Court in *Katz v. United States*, 389 U.S. 347 (1967) reverses *Olmstead.* The concurrence in the case by Justice John Marshall Harlan articulates the "reasonable expectation of privacy test," the current approach for determining the Fourth Amendment's applicability.

1967 Alan Westin publishes *Privacy and Freedom.*

1968 Title III of the Omnibus Crime and Control and Safe Streets Act is passed, a major revision of electronic surveillance law. Title III is now known as the Wiretap Act.

1970 In Wiesbaden, Germany, the Hessian Parliament enacts the world's first comprehensive information privacy statute.

1970 The Fair Credit Reporting Act.

1972 *Roe v. Wade,* 410 U.S. 113 (1973) – the right to privacy "encompass[es] a woman's decision whether or not to terminate her pregnancy."

1973 The U.S. Department of Health Education and Welfare (HEW) issued a report, *Records, Computers, and the Rights of Citizens,* articulating the Fair Information Practices.

1974 The Privacy Act.

1974 The Family Educational Rights and Privacy Act.

1975 Congress's Church Committee conducts a thorough investigation of surveillance abuses by the government.

1975 In *Cox Broadcasting v. Cohn,* 420 U.S. 469 (1975), the U.S. Supreme Court recognizes some First Amendment limitations on the privacy torts.

1976 *United States v. Miller,* 425 U.S. 435 (1976) – the U.S. Supreme Court holds that financial records possessed by third parties are not protected by the Fourth Amendment. The Court articulates the "third party doctrine" – people lack a reasonable expectation of privacy in information conveyed to third parties.

1977 The Supreme Court recognizes the constitutional right to information privacy – the "individual interest in avoiding disclosure of personal matters" in *Whalen v. Roe,* 429 U.S. 589 (1977) and *Nixon v. Administrator of General Services,* 433 U.S. 425 (1977).

1977 German Federal Data Protection Act.

1978 French Data Protection Act.

1979 *Smith v. Maryland,* 442 U.S. 735 (1979) – the Fourth Amendment does not apply to a pen register (the telephone numbers a person dials) because of the third party doctrine – people cannot expect privacy in their phone numbers since they expose the information to the phone company.

1980 Organisation of Economic Co-operation and Development (OECD) Guidelines.

1981 Israel's Protection of Privacy Law.

1986 Congress passes the Electronic Communications Privacy Act (ECPA), creating the contemporary statutory approach to regulating the electronic surveillance of communications.

1986 Computer Fraud and Abuse Act (CFAA).

1988 Australia passes the Privacy Act, which is based on the OECD Guidelines.

1988 Video Privacy Protection Act (VPPA).

1992 The UK begins implementing its CCTV video surveillance system.

1992 Switzerland's Federal Law on Data Protection.

1992 Israel's The Basic Law on Human Dignity and Freedom provides for a right to privacy.

1994 Driver's Privacy Protection Act (DPPA).

1995 Communications Decency Act (CDA).

1996 Congress passes the Health Insurance Portability and Accountability Act (HIPAA). Title II of HIPAA requires the establishment of national standards for electronic data exchange and addresses issues concerning the privacy and security of healthcare information.

1996 The European Union promulgates the EU Data Protection Directive.

1996 Hong Kong Personal Data Ordinance.

1998 The FTC begins to bring actions against companies that violate their privacy policies.

1998 Children's Online Privacy Protection Act (COPPA).

1998 The UK Human Rights Act.

1998 The UK Data Protection Act.

1998 Sweden's Personal Data Act.

2000 The Safe Harbor Arrangement – an agreement between the U.S. and EU for data sharing under the EU Data Protection Directive.

2000 Argentina becomes the first country in South America to adopt a comprehensive data protection statute: the Law for the Protection of Personal Data. The EU Data Protection Directive strongly influences the Argentinean statute.

2001 USA Patriot Act.

2001 Personal Information Protection and Electronic Documents Act (PIPEDA) takes effect in Canada.

2001 In *Kyllo v. United States,* 523 U.S. 27 (2001), the U.S. Supreme Court holds that the Fourth Amendment requires a warrant and probable cause before the government can use thermal sensors to detect activity in people's homes.

2002 Final modifications issued by the Department of Health and Human Services to the HIPAA Privacy Rule.

2003 Japan enacts the Personal Data Protection Act.

2004 Asia-Pacific Economic Cooperation (APEC) Privacy Framework.

2004 The European Court of Human Rights decides *Von Hannover v. Germany,* [2004] ECHR 294 (2004), recognizing privacy rights in certain public settings.

2005 ChoicePoint, one of the largest data brokers, announces that it sold personal data on more than 145,000 people to fraudulent companies established by a ring of identity thieves. Subsequently, numerous companies and organizations began disclosing data security breaches. A vast majority of states enacted data security breach notification legislation in response.

2009 HITECH Act, enacted as part of the American Recovery and Reinvestment Act of 2009, establishes a breach notification requirement for "covered entities" under HIPAA. It also extends HIPAA's requirements for privacy and information security to the business associates of covered entities.

2010 32nd International Conference of Data Protection and Privacy Commissioners held in Jerusalem. One adopted resolution, proposed by the Information and Privacy Commissioner of Ontario (Canada), called for adoption of Privacy by Design within organizations in order to make privacy a default mode of operation.

2010 Mexico enacts the Federal Law for the Protection of Personal Data.

FOR FURTHER REFERENCE

Treatises

Kristin J. Matthews, *Proskauer on Privacy* (2006)
(originally created and edited by Christopher Wolf)

Andrew B. Serwin, *Information Security and Privacy* (2009)

Lisa Sotto, *Privacy and Data Security Law Deskbook* (2010)

General Sources

Anita L. Allen, *Uneasy Access: Privacy for Women in a Free Society* (1988)
Provides a valuable overview of philosophical accounts of privacy's definition and value.

Kenneth A. Bamberger & Deirdre K. Mulligan, *Privacy on the Books and on the Ground*, 63 Stan. L. Rev. 247 (2011)
An insightful study comprised of interviews of chief privacy officers.

Colin Bennett & Charles Raab, *The Governance of Privacy* (2003)
A thoughtful study of the political landscape of privacy policymaking around the world.

Helen Nissenbaum, *Privacy in Context: Technology, Policy, and the Integrity of Social Life* (2009)
An illuminating theory for understanding privacy in its social context.

Richard A. Posner, *The Right of Privacy,* 12 Ga. L. Rev. 393 (1978)
One of the most compelling critiques of privacy.

Robert C. Post, *The Social Foundations of Privacy: Community and Self in the Common Law Tort,* 77 Cal. L. Rev. 957 (1989)
A valuable argument about how privacy is a social value, not just an individual right.

Priscilla M. Regan, *Legislating Privacy: Technology, Social Values, and Public Policy* (1995)
Illuminating study of how and why Congress has passed certain privacy laws.

Jeffrey Rosen, *The Unwanted Gaze: The Destruction of Privacy in America* (2000)
Viewing privacy as protecting "a space for negotiating legitimately different views of the good life," and examining the loss of private spaces in modern life.

Paul M. Schwartz, *Privacy and Democracy in Cyberspace*, 52 Vand. L. Rev. 1609 (1999)
An account of the importance of protecting the privacy of digital communications.

Viktor Mayer-Schönberger, *Delete: the Virtue of Forgetting in the Digital Age* (2009)
A powerful depiction of the legal, social, and cultural implications of a world that no longer remembers how to forget. Advocates, among other solutions, an expiration date for information in different settings and contexts.

Daniel Solove, *Understanding Privacy (*2008)
A theory of what privacy is and why it is valuable.

Alan Westin, *Privacy and Freedom* (1967)
An early classic work about information privacy, providing an insightful account of the value privacy contributes to individuals and society.

PRIVACY LAW FUNDAMENTALS

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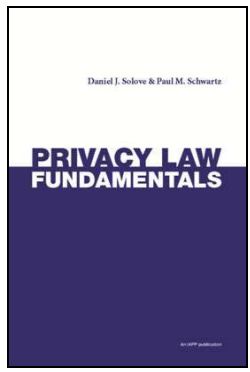
A distilled guide to the essential elements of privacy law, *Privacy Law Fundamentals* is a must-have reference offering the key knowledge privacy practitioners and students of privacy need on a daily basis. It's privacy law at your fingertips.



***Privacy Law Fundamentals* is like Strunk and White's *Elements of Style* for the privacy field – the essential handy reference guide that cuts right to the heart of each topic.**

***Privacy Law Fundamentals* explains the key provisions of all of the major privacy statutes, regulations, cases, including key state privacy laws and FTC enforcement actions. The authors provide numerous charts and tables summarizing the privacy statutes (i.e. statutes with private rights of action, preemption, and liquidated damages, among other things).**

With this book, you will quickly get an overview of the field of privacy law without having to slog through lengthy treatises and thousands of articles.

AVAILABLE AT

Amazon.com:
http://www.amazon.com/dp/0979590191

International Association of Privacy Professionals:
https://www.privacyassociation.org/knowledge_center/privacy_law_fundamentals/

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