

*Privacy Laws and Freedom of  
Expression*

# Privacy

# Privacy Protection and the Law

- Systems collect and store key data from every interaction with customers to make better decisions
- Many object to data collection policies of government and business
- Privacy
  - Key concern of Internet users
  - Top reason why nonusers still avoid the Internet
- Reasonable limits must be set
- Historical perspective on the right to privacy
  - Fourth Amendment reasonable expectation of privacy

# Information Privacy

- Definition
  - “The right to be left alone—the most comprehensive of rights, and the right most valued by a free people”
- Combination of:
  - Communications privacy
    - Ability to communicate with others without being monitored by other persons or organizations
  - Data privacy
    - Ability to limit access to one’s personal data by other individuals and organizations in order to exercise a substantial degree of control over that data and its use

# Privacy Laws, Applications, and Court Rulings

- Legislative acts passed over the past 40 years
  - Most address invasion of privacy by the government
  - No protection of data privacy abuses by corporations
  - No single, overarching national data privacy policy
- Financial data
  - Fair Credit Reporting Act of 1970
    - Regulates operations of credit-reporting bureaus
  - Gramm-Leach-Bliley Act (GLBA)
    - Bank deregulation that allowed banks to merge
    - Three key rules affecting personal privacy

# Privacy Laws, Applications, and Court Rulings (cont'd.)

- Opt-out policy
  - Assumes that consumers approve of companies collecting and storing their personal information
  - Requires consumers to actively opt out
  - Favored by data collectors
- Opt-in policy
  - Must obtain specific permission from consumers before collecting any data
  - Favored by consumers

# Privacy Laws, Applications, and Court Rulings (cont'd.)

- Health Information
  - Health Insurance Portability and Accountability Act of 1996 (HIPAA)
    - Improves the portability and continuity of health insurance coverage
    - Reduces fraud, waste, and abuse
    - Simplifies the administration of health insurance
- Children's Personal Data
  - Children's Online Privacy Protection Act (1998)
    - Must notify parents or guardians about its data-collection practices and receive parental consent

# Privacy Laws, Applications, and Court Rulings (cont'd.)

- Electronic Surveillance
  - Communications Act of 1934
    - Established the Federal Communications Commission
    - Regulates all non-federal-government use of radio and television
  - Title III of the Omnibus Crime Control and Safe Streets Act (Wiretap Act)
    - Regulates the interception of wire (telephone) and oral communications
  - Foreign Intelligence Surveillance Act (FISA) of 1978
    - Monitors communications between foreign powers



# Privacy Laws, Applications, and Court Rulings (cont'd.)

- Foreign Intelligence Surveillance Amendments Act
  - Implemented legal protections for electronic communications service providers
- Electronic Communications Privacy Act of 1986 (ECPA)
  - Protects communications in transfer from sender to receiver
  - Protects communications held in electronic storage
  - Prohibits recording dialing, routing, addressing, and signaling information without a search warrant

# Privacy Laws, Applications, and Court Rulings (cont'd.)

- Communications Assistance for Law Enforcement Act (CALEA) 1994
  - Amended both the Wiretap Act and ECPA
  - Required the telecommunications industry to build tools into its products so federal investigators could:
    - Eavesdrop and intercept electronic communications
  - Covered emerging technologies, such as:
    - Wireless modems
    - Radio-based electronic mail
    - Cellular data networks

# Privacy Laws, Applications, and Court Rulings (cont'd.)

- USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) 2001
  - Increased ability of law enforcement agencies to search telephone, e-mail, medical, financial, and other records
  - Eased restrictions on foreign intelligence gathering in the United States
  - Relaxed requirements for National Security Letters (NSLs)
  - “Sunset” provisions designated by Congress

# Privacy Laws, Applications, and Court Rulings (cont'd.)

- Export of personal data
  - Organisation for Economic Co-operation and Development Fair Information Practices (1980)
    - Fair Information Practices
      - Set of eight principles
      - Model of ethical treatment of consumer data
  - European Union Data Protection Directive
    - Requires implementing set of privacy directives on the fair and appropriate use of information
      - Set of seven principles for data privacy

# Privacy Laws, Applications, and Court Rulings (cont'd.)

- BBBOOnLine and TRUSTe
  - Independent initiatives that favor an industry-regulated approach to data privacy
  - Provide BBBOOnLine reliability seal or a TRUSTe data privacy seal
  - Seals
    - Increase consumer confidence in site
    - Help users make more informed decisions about whether to release personal information

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**FIGURE 4-1** JustStrings.com displays the BBBOnLine Reliability Program seal

# Privacy Laws, Applications, and Court Rulings (cont'd.)

- Access to Government Records
  - Freedom of Information Act (FOIA) (1966 amended 1974)
    - Grants citizens the right to access certain information and records of the federal government upon request
    - Exemptions bar disclosure of information that could:
      - Compromise national security
      - Interfere with active law enforcement investigation
  - The Privacy Act of 1974
    - Prohibits government agencies from concealing the existence of personal data record-keeping system

# Key Privacy and Anonymity Issues

- Identity theft
- Consumer profiling
- Treating customer data responsibly
- Workplace monitoring
- Advanced surveillance technology



# Identity Theft

- Theft of key pieces of personal information to impersonate a person
- Information includes:
  - Name
  - Address
  - Date of birth
  - Social Security number
  - Passport number
  - Driver's license number
  - Mother's maiden name

# Identity Theft (cont'd.)

- Fastest growing form of fraud in the United States
- Consumers and organizations are becoming more vigilant and proactive in fighting identity theft
- Four approaches used by identity thieves
  - Create a data breach
  - Purchase personal data from criminals
  - Use phishing to entice users to give up data
  - Install spyware to capture keystrokes of victims

# Identity Theft (cont'd.)

- Data breaches of large databases
  - To gain personal identity information
  - May be caused by:
    - Hackers
    - Failure to follow proper security procedures
- Purchase of personal data
  - Black market for:
    - Credit card numbers in bulk—\$.40 each
    - Logon name and PIN for bank account—\$10
    - Identity information—including DOB, address, SSN, and telephone number—\$15

# Identity Theft (cont'd.)

- Phishing
  - Stealing personal identity data by tricking users into entering information on a counterfeit Web site
- Spyware
  - Keystroke-logging software
  - Enables the capture of:
    - Account usernames
    - Passwords
    - Credit card numbers
    - Other sensitive information
  - Operates even if infected computer is not online

# Identity Theft (cont'd.)

- Identity Theft and Assumption Deterrence Act of 1998 was passed to fight fraud
- Identity Theft Monitoring Services
  - Monitor the three major credit reporting agencies (TransUnion, Equifax, and Experian)
  - Monitor additional databases (financial institutions, utilities, and DMV)

# Consumer Profiling

- Companies openly collect personal information about Internet users
- Cookies
  - Text files that a Web site can download to visitors' hard drives so that it can identify visitors later
- Tracking software analyzes browsing habits
- Similar controversial methods are used outside the Web environment

# Consumer Profiling (cont'd.)

- Aggregating consumer data
  - Databases contain a huge amount of consumer behavioral data
  - Affiliated Web sites are served by a single advertising network
- Collecting data from Web site visits
  - Customized service for each consumer
  - Types of data collected
    - GET data
    - POST data
    - Click-stream data

# Consumer Profiling (cont'd.)

- Four ways to limit or stop the deposit of cookies on hard drives
  - Set the browser to limit or stop cookies
  - Manually delete them from the hard drive
  - Download and install a cookie-management program
  - Use anonymous browsing programs that don't accept cookies



# Consumer Profiling (cont'd.)

- Personalization software
  - Used by marketers to optimize the number, frequency, and mixture of their ad placements
    - Rules-based
    - Collaborative filtering
    - Demographic filtering
    - Contextual commerce
- Consumer data privacy
  - Platform for Privacy Preferences (P3P)
    - Shields users from sites that don't provide the level of privacy protection desired

# Treating Consumer Data Responsibly

- Strong measures are required to avoid customer relationship problems
- Companies should adopt:
  - Fair Information Practices
  - 1980 OECD privacy guidelines
- Chief privacy officer (CPO)
  - Executive to oversee data privacy policies and initiatives

# Treating Consumer Data Responsibly (cont'd.)

**TABLE 4-5** Manager's checklist for treating consumer data responsibly

Question	Yes	No
Does your company have a written data privacy policy that is followed?		
Can consumers easily view your data privacy policy?		
Are consumers given an opportunity to opt in or opt out of your data policy?		
Do you collect only the personal information needed to deliver your product or service?		
Do you ensure that the information is carefully protected and accessible only by those with a need to know?		
Do you provide a process for consumers to review their own data and make corrections?		
Do you inform your customers if you intend to use their information for research or marketing and provide a means for them to opt out?		
Have you identified a person who has full responsibility for implementing your data policy and dealing with consumer data issues?		

# Workplace Monitoring

- Employers monitor workers
  - Ensure that corporate IT usage policy is followed
- Fourth Amendment cannot be used to limit how a private employer treats its employees
  - Public-sector employees have far greater privacy rights than in the private industry
- Privacy advocates want federal legislation
  - To keep employers from infringing upon privacy rights of employees

# Advanced Surveillance Technology

- Camera surveillance
  - U.S. cities plan to expand surveillance systems
  - “Smart surveillance system”
- Facial recognition software
  - Identifies criminal suspects and other undesirable characters
  - Yields mixed results
- Global positioning system (GPS) chips
  - Placed in many devices
  - Precisely locate users

# Freedom of Protection

# First Amendment Rights

- Right to freedom of expression
  - Important right for free people everywhere
  - Guaranteed by the First Amendment
- Definition of free speech includes:
  - Nonverbal, visual, and symbolic forms of expression
  - Right to speak anonymously

# First Amendment Rights (cont'd.)

- Not protected by the First Amendment:
  - Perjury
  - Fraud
  - Defamation
  - Obscene speech
  - Incitement of panic
  - Incitement to crime
  - “Fighting words”
  - Sedition



# Obscene Speech

- Speech is considered obscene when:
  - Average person finds the work appeals to the prurient interest
  - Work depicts or describes sexual conduct in an offensive way
  - Lacks serious literary, artistic, political, or scientific value

# Defamation

- Publication of a statement of alleged fact that is:
  - False
  - Harms another person
    - Harm is often of a financial nature
- Slander
  - Oral defamatory statement
- Libel
  - Written defamatory statement

# Freedom of Expression: Key Issues

- Controlling access to information on the Internet
- Anonymity on the Internet
- Defamation
- Hate speech
- Corporate blogging
- Pornography

# Controlling Access to Information on the Internet

- Freedom of speech on the Internet is complicated by children's access
- Communications Decency Act (CDA)
  - Aimed at protecting children from pornography
  - Broad language and vague definition of indecency
  - Found unconstitutional in 1997

# Controlling Access to Information on the Internet (cont'd.)

- Child Online Protection Act (COPA)
  - Applies to communication for commercial purposes
  - Imposes penalties for exposing minors to harmful material on the Web
  - Found unconstitutional in 2004
- Internet filtering
  - Software installed with a Web browser
  - Blocks access to certain Web sites that contain inappropriate or offensive material

# Controlling Access to Information on the Internet (cont'd.)



**FIGURE 5-3** Screen shot from Net Nanny 6.0

# Controlling Access to Information on the Internet (cont'd.)

- URL filtering
  - Blocks objectionable URLs or domain names
- Keyword filtering
  - Blocks key words or phrases
- Dynamic content filtering
  - Web site's content is evaluated immediately before being displayed
  - Uses
    - Object analysis
    - Image recognition

# Controlling Access to Information on the Internet (cont'd.)

- Top-rated Internet filters for home users
  - NetNanny 6.0
  - Safe Eyes
  - CYBERSitter
  - WiseChoice.net
  - CyberPatrol
- Additional filters
  - ADL HateFilter (Anti-Defamation League)
  - ICRA (Family Online Safety Institute)



# Controlling Access to Information on the Internet (cont'd.)

- ICRA rating system
  - Questionnaire for Web authors
  - Generates a content label
    - Platform for Internet Content Selection (PICS)
  - Users configure browsers to read the label
  - Relies on Web authors to rate their site
  - Complement to other filtering techniques

# Controlling Access to Information on the Internet (cont'd.)

- ISP blocking
  - Blocking is performed on the ISP server
  - ClearSail/Family.NET prevents access to certain Web sites

# Legal Overview: Children's Internet Protection Act (CIPA)

- Federally financed schools and libraries must block computer access to:
  - Obscene material
  - Pornography
  - Anything considered harmful to minors
- Schools and libraries subject to CIPA do not receive Internet access discounts unless they certify that Internet safety measures are in place
  - Required to adopt a policy to monitor the online activities of minors

# Legal Overview: Children's Internet Protection Act (CIPA) (cont'd.)

- CIPA does not require the tracking of Internet use by minors or adults
- Acceptable use policy agreement is an essential element of a successful program in schools
  - Signed by:
    - Students
    - Parents
    - Employees

# Legal Overview: Children's Internet Protection Act (CIPA) (cont'd.)

- Difficulty implementing CIPA in libraries because their services are open to people of all ages
  - Including adults with First Amendment rights

# Anonymity on the Internet

- Principle of anonymous expression
  - People can state opinions without revealing their identity
  - In the wrong hands, it can be a tool to commit illegal or unethical activities
- Anonymous remailer service
  - Computer program that strips the originating address from the e-mail message
  - Forwards the message to the intended recipient
  - Ensures no header information can identify the author

# Anonymity on the Internet (cont'd.)

- John Doe lawsuit
  - Identity of the defendant is temporarily unknown
  - Common in Internet libel cases
  - Defendant communicates using a pseudonym or anonymously
  - ISPs subpoenaed to provide the identity
  - By filing a lawsuit, the company gains immediate subpoena power

# Defamation and Hate Speech

- Actions that can be prosecuted include:
  - Sending threatening private messages over the Internet to a person
  - Displaying public messages on a Web site describing intent to commit acts of hate-motivated violence
  - Libel directed at a particular person



# Defamation and Hate Speech (cont'd.)

- Some ISPs voluntarily agree to prohibit subscribers from sending hate messages
  - Does not violate subscribers' First Amendment rights because these prohibitions are in the terms of service
  - ISPs must monitor the use of their service
  - Take action when terms are violated

# Corporate Blogging

- Some organizations allow employees to create their own personal blogs to:
  - Reach out to partners, customers, and employees
  - Improve their corporate image
- Blogs can provide uncensored commentary and interaction
  - Criticism of corporate policies and decisions
- Could involve risk that employees might:
  - Reveal company secrets
  - Breach federal security disclosure laws

# Pornography

- The Internet has been a boon to the pornography industry
  - More than 4.2 million porn Web sites are accessible
  - The sites generate an estimated \$4.9 billion a year in revenue
  - 72 million estimated visitors to porn Web sites monthly
- CAN-SPAM Act
  - Deterrent in fighting the dissemination of pornography

# Pornography (cont'd.)

- Reasonable steps to stop access in the workplace
  - Establishing a computer usage policy that prohibits access to pornography sites
  - Identifying those who violate the policy
  - Taking action against those users
- Numerous federal laws address child pornography
  - Federal offense to produce or distribute
  - Most states outlaw possession as well
- At least 7 states require computer technicians to report child pornography on clients' computers

**TABLE 5-2** Manager's checklist for handling freedom of expression issues in the workplace

Question	Yes	No
Do you have a written data privacy policy that is followed?		
Does your corporate IT usage policy discuss the need to conserve corporate network capacity, avoid legal liability, and improve worker productivity by limiting the non-business use of information resources?		
Did the developers of your policy consider the need to limit employee access to non-business-related Web sites (for example, Internet filters, firewall configurations, or the use of an ISP that blocks access to such sites)?		
Does your corporate IT usage policy discuss the inappropriate use of anonymous remailers?		
Has your corporate firewall been set to detect the use of anonymous remailers?		
Has your company (in cooperation with legal counsel) formed a policy on the use of John Doe lawsuits to identify the authors of libelous, anonymous e-mail?		
Does your corporate IT usage policy make it clear that defamation and hate speech have no place in the business setting?		
Does your corporate IT usage policy prohibit the viewing or sending of pornography?		
Does your policy communicate if employee e-mail is regularly monitored for defamatory, hateful, and pornographic material?		
Does your corporate IT usage policy tell employees what to do if they receive hate mail or pornography?		

# Summary

- Laws, technical solutions, and privacy policies are required to balance needs of business against rights of consumers
- A number of laws have been enacted over the past 40 years that affect a person's privacy
- Identity theft is fastest-growing form of fraud
- Web sites collect personal data about visitors
- Consumer data privacy has become a major marketing issue

# Summary (cont'd.)

- Code of Fair Information Practices and 1980 OECD privacy guidelines
- Advances in information technology
  - Surveillance cameras
  - Facial recognition software
  - GPS systems

# Summary (cont'd)

- First Amendment protects the right to:
  - Freedom of religion and expression
- Does not protect obscene speech, defamation
- Key issues
  - Controlling access to Internet information, especially for children
  - Anonymous communication
  - Spread of defamation and hate speech
  - Access to pornography
  - CAN-SPAM Act limitations on e-mail messages