

# Privacy



What is privacy? Why do we care about it?  
And what are the challenges for privacy in the  
information age?

© University of Washington, 2001



## What is Privacy?

---

- ❖ Definition 1: Claim, entitlement, or right of a person to determine what information is about him or herself can be communicated to others
- ❖ Definition 2: Measure of the control a person has over:
  - ❑ Information about the self
  - ❑ Intimacies of personal identity
  - ❑ Who (or what) has sensory access to him or her
- ❖ Definition 3: State or condition of limited access to a person

© University of Washington, 2001



## The Rationale Behind Privacy

- ❖ “Rights” Perspectives
  - ❑ Pro: General inalienable right – the canonical “right to privacy”
  - ❑ Pro: Culturally specific right
  - ❑ Con: Reducible to other rights (e.g., property)
  
- ❖ “Psychological” Perspectives
  - ❑ Pro: Necessary for human development
  - ❑ Pro: Necessary to maintain social relations/functioning
  - ❑ Con: Harmful to society (e.g., perpetuates deceit and distrust)

© University of Washington, 2001



## Short History of Privacy in the US

- ❖ Privacy is not mentioned in the Constitution
- ❖ Privacy is not mentioned in the Bill of Rights
  
- ❖ Warren and Brandeis first argued for “The right to privacy” in the *Harvard Law Review* (1890)
  - ❑ Claim that the desire to protect privacy was recognized in cultural practice and the legal community
  - ❑ Privacy protections would need to account for harms to a person’s thoughts, emotions, and feelings
  - ❑ Question: How to do this within the existing legal framework?

© University of Washington, 2001

**FIT  
100**

## Warren and Brandeis

---

- ❖ Answer: Privacy *cannot* be adequately accounted for by extending legal conceptions of:
  - ❑ Slander
  - ❑ Property
  
- ❖ Rather: Privacy *can* be understood in terms of:
  - ❑ General “right to be let alone”
  - ❑ Conception of the “inviolable personality”
  
- ❖ Thus: Privacy *deserves* its own legal protections

© University of Washington, 2001

**FIT  
100**

## Foresight About Technology

---

- ❖ Quote from Warren and Brandeis, 1890:

“The narrower doctrine [of privacy] may have satisfied the demands of society at a time when the abuse to be guarded against could rarely have arisen without violating a contract or a special confidence; but now that modern devices afford abundant opportunities for the perpetration of such wrongs without any participation of the injured party, the protection granted by the law must be placed upon a broader foundation...”

© University of Washington, 2001

**FIT  
100**

## Surreptitious Photography...

- ❖ (continued from Warren and Brandeis)

“... While, for instance, the state of the photographic art was such that one’s picture could seldom be taken without his consciously ‘sitting’ for the purpose, the law of contract or of trust might afford the prudent man sufficient safeguards against the improper circulation of his portrait; but since the latest advances in photographic art have rendered it possible to take pictures surreptitiously, the doctrines of contract and of trust are inadequate to support the required protection.”

© University of Washington, 2001

**FIT  
100**

## Historically, Our Strongest Privacy Protections...

- ❖ ... have not been legal protections
- ❖ ... but the simple fact that it took too much time, effort, and resources to collect and manipulate information that was otherwise “publicly” available
- ❖ ... as new technologies *decrease* the amount of time, effort, and resources to collect and manipulate information, we see a corresponding *increase* in the public’s concern with privacy and the need for legal protections

© University of Washington, 2001

## Current Status of Privacy in the US

- ❖ Dialogue between the courts and the legislature on the proper scope of privacy as a legal claim
- ❖ Result is piecemeal
- ❖ Recent legislation: In response to commercial transactions in new technological services
  - ❑ Right to Financial Privacy Act of 1978
  - ❑ Privacy Protection Act of 1980
  - ❑ Electronic Communication Privacy Act of 1986
- ❖ Recent legislation: In response to new technologies that raised public concern
  - ❑ Privacy Act of 1974
  - ❑ Video Privacy Protection Act of 1988
  - ❑ Telephone Consumer Protection Act of 1991
  - ❑ Children's Online Privacy Protection Act 1999

## International Perspectives on Privacy

- ❖ Reflect a fundamental concern with human rights (e.g., Article 12 of the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948 established privacy as a fundamental human right)
- ❖ Different countries have more or less stringent privacy protections – from the perspective of privacy protection, the Scandinavian countries (and now the European Union) have some of the strongest protections
- ❖ International privacy law attempts to address the problem of privacy protection across international boundaries.



## Some Challenges to Privacy from Information Technology

- ❖ Privacy protections for information in the public domain based on the difficulty and expense of collecting and manipulating information are diminished (e.g., Lotus Marketplace)
- ❖ Data collected for one purpose is readily available and can be used for other purposes (e.g., using student computer use data to infer student effort)
- ❖ Data collection can occur “invisibly”, without the person’s knowledge (e.g., cookies, video cameras)
- ❖ Information flows readily across cultural and international boundaries; cultural understanding about privacy and privacy protections from one cultural context may not carry over to the other contexts
- ❖ Other???

© University of Washington, 2001



## Question: Ethical or Not?

- ❖ Morgan works as a receptionist in a police department computer center. At work, Morgan has access to local and national arrest records. All of this information is in the public domain: individual arrest records are publicly available from police blotters. No laws or rules govern Morgan’s handling of this information.
- ❖ Terry, Morgan’s friend, is in charge of security in a large organization and is responsible for performing background checks on new employees. The new employees sign statements allowing their employer to investigate their backgrounds, including arrest records. Terry regularly asks Morgan for and receives copies of all arrest records for new employees. Morgan does this for Terry as a favor, since it saves Terry time.
- ❖ Discuss with the person next to you: Is Morgan doing anything unethical? What about Terry? Why or why not?
- ❖ Write down your key points. (As usual, we’ll collect these.)

© University of Washington, 2001