

## Privacy and Information Security Law

Robert H. Ledig  
Fried, Frank, Harris, Shriver & Jacobson  
202 639-7016  
ledigro@ffhsj.com

Class materials: excerpts from Vartanian, Ledig and Bruneau, 21st Money, Banking & Commerce (“21st Century”) (2002 Edition), supplementary materials.

### Course Outline

Class 1 August 18

Introduction.

General concepts relating to personal information. Do you have to give your name to the police? Consumer ownership versus business asset. Principles explored in the *U.S. West* case, opt-in or opt-out. Increasing attention to the significance of information security. Implications for national security and corporate operations.

21st Century pp. 377- 394

*U.S. West Inc. v. FCC* (8th Cir. 1999)

*Hiibel v. Sixth Judicial District Court of Nevada* (Sup. Ct. 2004)

Class 2 August 25

Common law of privacy, state statutes. Early federal initiatives: the Privacy Act, the Right to Financial Privacy Act, Electronic Communications Privacy Act.

21st Century pp. 416 – 424, 425- 438, 486 – 490

Privacy Act

Right to Financial Privacy Act

Electronic Communications Privacy Act

*Bartnikci v Vopper* (Sup. Ct. 2001)

*Konop v. Hawaiian Airlines* (9th Cir. 2001)

Class 3

September 1

The beginning of the networked information age: the Computer Fraud and Abuse Act.

21st Century pp. 439 – 451

Computer Fraud and Abuse Act

*U.S. v. Czubinski* (1st Cir. 1997)

*Jane Doe v. Dartmouth-Hitchcock Medical Center* (D.N.H. 2001)

*EF Cultural Travel BV v. Zefer* (1st Cir. 2003)

*U.S. v. Ivanov* (D.Ct. 2001)

*AOL v. National Health Care* (N.D. Iowa 2000)

Class 4

September 8

Fair Credit Reporting Act, Video Rental Privacy Protection Act, Drivers Privacy Protection Act

21st Century pp. 407 – 415

Fair Credit Reporting Act

Fair and Accurate Credit Transactions Act

Federal Trade Commission FCRA Regulations

*Trans Union Corporation v. FTC* (D.C. Cir. 2001)

*Trans Union LLC v. FTC* (Sup. Ct. 2002)

Driver's Privacy Protection Act of 1994

*Reno v. Condon* (Sup. Ct. 2000)

Video Rental Privacy Act

Class 5

September 15

The advent of the Internet – information everywhere. Voluntary privacy policies. Emerging concepts of disclosure and FTC and state law implications. Silent watchers – Doubleclick. The Do Not Call Rule.

21st Century pp. 494 – 497

*In the Matter of GeoCities*, FTC Order

*Liberty Financial Companies*, FTC Order

FTC Doubleclick Inc. letter

*Hatch v. U.S. Bank*

ToysMart FTC action

*Mainstream Marketing v. FTC* (D. Col. 2003)

*Mainstream Marketing v. Muris* (10<sup>th</sup> Cir. 2004)

FTC Do Not Call Registry enforcement action

Class 6            September 22

The Gramm-Leach-Bliley Act – applicable to broad range of entities that qualify as financial institutions. Privacy policy notice requirements, limitations on use, reuse and disclosure.

21st Century pp. 456 – 485  
GLBA Privacy Provisions  
FTC GLB Act Privacy Regulations  
*Trans Union LLC v. FTC* (D.C. Cir. 2002)  
California Financial Privacy Law

Class 7            September 29

The Gramm-Leach-Bliley Act – part II.  
Information security guidelines. Banking agency guidance. The perils of outsourcing.

Health Insurance Portability and Accountability Act.  
Notice and choice principles, responsibility for safeguarding personal medical information.

Children’s Online Privacy Protection Act.

21st Century pp. 104 – 114, 172 – 181, 216 – 218, 259 – 268, 288 – 290  
FTC Standards for Safeguarding Customer Information  
Office of the Comptroller of the Currency enforcement actions  
HIPPA Regulations  
HHS HIPPA Q&A’s  
21st Century pp. 452- 454  
Children’s Online Privacy Protection Act

Class 8            October 6

International Data Protection.  
EU Directive, Commerce Department Safe Harbor, Air Passenger Information

21st Century pp. 498 – 501  
EU Privacy Directive  
Commerce Department Safe Harbor  
EU materials regarding air travel data

Class 9

October 13

Federal Information Security Policy; USA PATRIOT Act; Air Traveler Information

21st Century pp. 401 – 404

Executive Order 13231 - Critical Infrastructure Protection in the Information Age

National Strategy to Secure Cyberspace

USA PATRIOT Act materials

*In re Northwest Airlines Privacy Litigation* (D. Mn. 2004)

*Privacy Rights Clearinghouse v. Jet Blue Airways* (Cal. Sup. Ct. 2003)

*Electronic Privacy Information Center v. Dept. of Homeland Security* (D.D.C. 2004)

Class 10

October 20

Current Problems in Privacy and Information Security

Identity theft, phishing scams, information broker stalker case, increasing consumer control over personal information disclosure

FTC ID Theft materials

*TRW v. Andrews* (Sup. Ct. 2001)

*Boyer v Docusearch* (N.H. Sup. Ct. 2002)

H.R. 1636, Consumer Privacy Protection Act

Class 11

October 27

Liability for breaches of Information Security, Duty to Notify.

FTC Eli Lilly action, State Attorney General actions, California disclosure law.

The Next Phase in Privacy Law? The Duty to Disclose Unauthorized Access to Personal Information

*TJ Hooper* (2d Cir. 1932)

FTC Eli Lilly materials

NY Attorney General Ziff Davis action

H.R. 818, S. 1350

Class 12

November 3

Privacy and Information Security Student Presentations

Class 13 November 10

Privacy and Information Security Student Presentations

Information Security Considerations

21st Century pp. 502 – 539

Federal Financial Institutions Examination Council IT Examination Handbook

Class 14 November 17

Corporate Implications of Information Security Issues

The growing significance of intellectual property assets; Screen scraping  
Internal controls and the Sarbanes-Oxley Act. Insurance considerations

Scrape It, Scrub It and Show It: The Battle Over Data Aggregation

*Ebay, Inc., v. Bidder's Edge, Inc.* (N.D. Cal. 2000)

*Register.Com, Inc., v. Verio, Inc.* (S.D.N.Y. 2000)

Securities Exchange Commission Regulations implementing Section 404  
of the Sarbanes-Oxley Act

Ty Sagalow, Board Level Guidance – Questions to Ask