



Mapping Privacy

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Characteristics of Web 2.0

- Participatory Culture
 - Many-to-many communication
 - User-generated content
 - Wikis, blogs, online social networks etc
 - Consumers become producers
- Convergence Culture
 - Internet is one aspect of interconnected communications culture (eg Henry Jenkins)
 - Convergence in terms of *devices and content*



Web 2.0 Challenges ...

- Politics
 - Business Models
 - Intellectual Property Law (& consumer-oriented business models)
 - Emerging Social Norms
- and.....
- PRIVACY



Web 1.0 Privacy Concerns

- Data Aggregation (eg consumer profiling)
- E.U. Data Protection Directive
- U.S. law more limited e.g. *Whalen v Roe*, *Dwyer v AMEX*
- E.U. recognized more “dignitary” harms whereas U.S. based on ascertaining “economic damage” (more difficult to prove in privacy context eg *Dwyer v AMEX*).



Web 2.0 Privacy Challenges

- Increased potential for legally unclassified/unrecognized privacy harm in participatory web
 - *Chang v Virgin Mobile*
 - Justice Scalia/Prof Reidenberg
 - Star Wars Kid, Dog Poop Girl, Bus Uncle
 - *Mosley v News Group (UK)*
 - *AutoAdmit*
 - Bob Quick resignation (UK Counterterrorism expert)
- Importance of timing; identify problems/develop responses before privacy-destroying norms become entrenched (see Bernstein)
- Limitations of Web 1.0 privacy laws even more pronounced



Existing Privacy Theory...

- Search for a common denominator (rejected recently by Solove)
- Solove's "taxonomy of privacy"
- Relationships of confidence (Richardson/Solove)
- Doctrinal attempts eg updating individual privacy torts (Sánchez Abril on public disclosure of private facts)
- Might it help to develop a "meta"-theory at a higher level of abstraction?



Privacy Umbrella

- Helps illustrate “reasonable expectations” of privacy for Web 2.0 culture
- Illustrates latent connections between disparate-seeming privacy incursions
- Assist development of privacy policy for Web 2.0
- Help identify gaps in reach of current privacy laws?



Six Dimensions of Privacy...

- Mechanics of Privacy Incursion
 1. Actors/Relationships
 2. Conduct (data gathering, aggregation, dissemination)
 3. Motivations
 4. Harms /Remedies
- Information
 5. Substance of information (content)
 6. Format of information (text, audio, video, multi-media)



1. Actors/Relationships

- Individuals
 - Friends
 - Acquaintances
 - Strangers
- Business entities
 - Online service providers (eg Facebook, Google, YouTube, Flickr, Amazon, Linden/Second Life, Twitter)
 - Financial services
 - Online health services
- Government agencies/Politicians' websites
 - Web 2.0 + Obama administration = government accessing more personal information in a “participatory” context (Danielle Citron, http://www.concurringopinions.com/archives/2009/04/president_obama_2.html#more)



2. Conduct

- Solove's taxonomy, eg:
 - Collection (surveillance, interrogation)
 - Processing (aggregation, identification, exclusion etc)
 - Dissemination (disclosure, exposure etc)
 - Invasion (intrusion, decisional interference)
- Web 2.0 raises new types of potentially privacy-intrusive activities eg “friending”, tagging, compilations of information by groups (rather than individual entities)



3. Motivations

- Innocent
- Harmful
- Negligent
- Public interest (cf “interesting to the public”)
- Profit (paparazzi?)
- Relevance of motivation?
 - Link between actor and activity
 - Plays into harm/remedy
 - Currently plays into some privacy actions - “Evidence of outrageous, intentional, and systematic campaigns to harass, discredit, or embarrass have been widely held to indicate invasions of privacy” – *Abril, Recasting Privacy Torts*, 21 *Harvard JOLT* 1, 36 (2007). How does this play out in Web 2.0 context?



4. Harms/Remedies

- Shame
- Embarrassment
- Ridicule
- Economic loss (incl. loss of employment, health insurance, academic opportunities etc, identity theft)
- Criminal harm (eg cyberstalking, pedophilia)
- Culture of “unease”
- Should remedies be compensatory/financial or something else?
- Should remedies be based on litigation or something else?




5. Substance of information

- Innocuous personal details
- Embarrassing personal information
- Consumer spending profiles
- Personally identifying information
- Sensitive health information
- Sensitive financial information
- Criminal record

6. Format of Information

- Text (eg consumer profiles on Amazon, Netflix etc)
- Audio (eg NASA space shuttle case)
- Still Image (eg *Mosley v News Group*; death scene images of deceased; Solove, http://www.concurringopinions.com/archives/2009/04/family_privacy.html#more)
- Moving Image (video) (eg Star Wars Kid, *Mosley v News Group*)
- Multi-Media (mashup or collaborative aggregation eg Dog Poop Girl)



The Professor, the Judge, and the Internet...

- Should Judge Scalia have a privacy action against Prof Reidenberg and his students?
 1. Actors?
 2. Activities?
 3. Motivations?
 4. Harms?
 5. Substance/content?
 6. Format?
- Does this scenario fit the criteria in the different categories? Why/why not?
- Does this exercise help develop/refine the contours of digital age privacy rights?