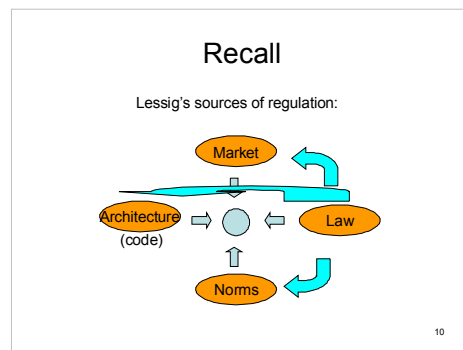


1

We meet next on *Thursday*, April 5, 6:00 p.m. (Monday schedule)





Applying this taxonomy to privacy

- Norms
 - Arguably the root of privacy
 - Do we shape norms with law or vice versa?
- Markets
 - Including industry self-regulation, consumer self-help
 - Do we devalue privacy by buying and selling it?
- Code
 - Changing tech changes expectations of privacy
- Law

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- Fair Information Practices principles:
 - Notice
 - Choice
 - Access
 - Security
 - Enforcement

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- Law
 - Property
 - Contract
 - Tort
 - Statute
 - Privacy-specific or general-purpose
 - Regulate the market?
 - Regulate the technology?
 - Regulate the norms?

13

- What does the law say?
- What *should* the law say?

14

Restatement of Torts

- § 652A General Principle
 - (1) **One who invades the right of privacy of another is subject to liability for the resulting harm to the interests of the other.**
 - (2) **The right of privacy is invaded by**
 - (a) unreasonable intrusion upon the seclusion of another, as stated in § 652B; or
 - (b) appropriation of the other's name or likeness, as stated in § 652C; or
 - (c) unreasonable publicity given to the other's private life, as stated in § 652D; or
 - (d) publicity that unreasonably places the other in a false light before the public, as stated in § 652E.

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§ 652B Intrusion Upon Seclusion

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

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Appropriation

- Rest. 2d of Torts § 652C
 - One who appropriates to his own use or benefit the name or likeness of another is subject to liability to the other for invasion of his privacy.

17

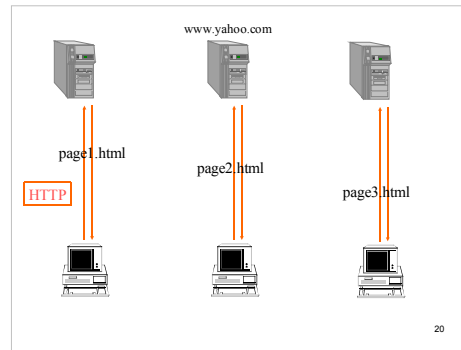
Publicity Given to Private Life

- Rest. 2d of Torts § 652D
 - One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that
 - (a) would be highly offensive to a reasonable person, and
 - (b) is not of legitimate concern to the public.

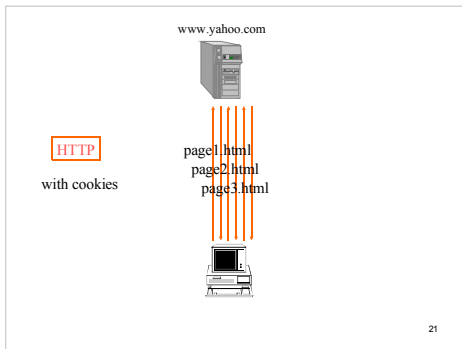
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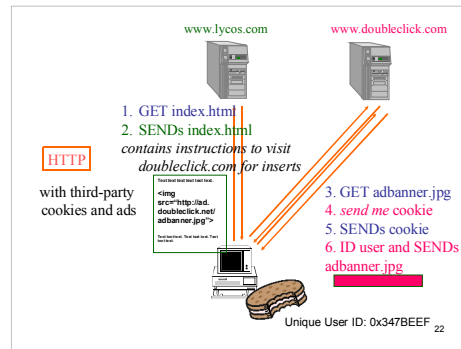
Image from pix.paip.net



20



21



22

Pharmatrak

- HTML programming, JavaScript programming, cookies, and web bugs.
- "Pharmatrak's logs 'identified hundreds of people by name.'"

23

Structuring a privacy law

- Prohibited acts or information
- Relevant parties
- Exceptions

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Wiretap Act

- **§ 2511. (1)** Except as otherwise specifically provided in this chapter any person who--
- **(a)** intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;
- ...shall be punished as provided...

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SCA: Unlawful access to stored communication

- **§ 2701 (a) Offense.**--Except as provided in subsection (c) of this section whoever--
 - **(1)** intentionally accesses without authorization a facility through which an electronic communication service is provided; or
 - **(2)** intentionally exceeds an authorization to access that facility;
- and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

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Computer Fraud and Abuse Act

- <http://www4.law.cornell.edu/uscode/18/1030.html>
- **(a)(5) (A)**
 - (i) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer;
 - (ii) intentionally accesses a protected computer without authorization, and as a result of such conduct, recklessly causes damage; or
 - (iii) intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage; and
- **(B)** by conduct described in clause (i), (ii), or (iii) of subparagraph (A), caused (or, in the case of an attempted offense, would, if completed, have caused)— (i) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least \$5,000 in value;

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Sectoral Privacy Law

- Video Privacy Protection Act
- Cable Act
- Telephone Consumer Protection Act
- Children's Online Privacy Protection Act

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- **(b) Video Tape Rental and Sale Records.**— (1) A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person...
- **(c) Civil Action.**— (1) Any person aggrieved by any act of a person in violation of this section may bring a civil action in a United States district court.

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