Privacy Issues Cheat Sheet

Description. This handout summarizes principles, laws, frameworks and perspectives that can help in navigating privacy issues. All of these are discussed in chapter 2 of the text, which is excerpted and paraphrased below. Use this handout as you consider the privacy case studies explored in class, and also as you consider current events.

Privacy Principles for Personal Information (taken verbatim from Figure 2.1, p. 54)
- Inform people when personally identifiable information about them is collected, what is collected, and how it will be used.
- Collect only the data needed.
- Offer a way for people to opt out from mailing lists, advertising, transfer of their data to other parties, and other secondary uses.
- Provide stronger protection for sensitive data (e.g., opt-in policy for disclosure of medical data)
- Keep data only as long as needed.
- Maintain accuracy of data. Where appropriate and reasonable, provide a way for people to access and correct data stored about them.
- Protect security of data (from theft and from accidental leaks).
- Develop policies for responding to law enforcement requests for data.

Key Questions to Ask Regarding New Systems or Policies for personal Data Use or Data Mining (pp. 65-66)
- Is the info to be used or collected accurate and useful?
- Can a less intrusive means accomplish similar results?
- Will the policy/system inconvenience ordinary citizens and also be easy for criminals to thwart?
- How significant are the risks to ordinary people?
- Can systems or policies be removed easily once terror threat recedes?

Fourth Amendment (pp. 66-67)
- Sets limits on the government’s rights to search homes/businesses and seize documents.
- Requires “probable cause,” i.e., good evidence to support the search/seizure, as well as a court order (warrant).
- Computer technology makes it possible to perform searches and seizures without actually entering homes/businesses, and to perform such searches and seizures without our knowledge.
- USA PATRIOT Act further weakens personal privacy, allowing government to collect personal information in certain cases without court order.
- “Expectation of privacy,” which defines where court orders are needed for law enforcement, has been interpreted by courts in restrictive way; Kyllo v. U.S. (2001) clarified that if the government uses technology that is not in “general public use” to perform surveillance, it is considered a “search” and hence requires a warrant.

“The Right to Privacy,” by Warren and Brandeis (1890) (p. 106)
- Privacy is a right in itself and needs its own protection
- Principle of “inviolate personality”: People have the right to prohibit publication of facts about and photographs of themselves
- Few exceptions: Information of “general interest” or specifically concerns another person’s interest.
- Focus is on how personal information is used.
Judith Jarvis Thomson (pp. 107-108)
• Uses several cases to motivate position (e.g., using binoculars to see someone else’s magazine)
• There is no violation of privacy without a violation of some other right—usually the right to control one’s property or person.
• Focus is on how personal information is obtained.

Tasks of Basic Legal Framework (pp. 111-112)
• Enforce contracts
• Set defaults for situations not covered by contracts
• Determine penalties for criminal offenses and breach of contracts

“Free Market” vs. “Consumer Protection” Views of Privacy
• Free Market View
  o Emphasis is on freedom of individuals, consumers, and businesses to make voluntary agreements with each other.
  o There are a lot of different views of privacy, and people should be allowed to freely enter into agreements they’re comfortable with.
  o Informed consent and freedom to enter into contracts are inviolate; people who violate these should be punished.
  o We should avoid restrictive laws and regulations because the political system is worse than the market system for determining consumers want; legislators simply cannot know in advance what consumers will be willing to trade for privacy.
  o Privacy is a “commodity,” but not a “right.”
• Consumer Protection View
  o Emphasis is on the privacy violations that can result from ways in which personal information is collected and used in modern society, especially when it is stolen and used carelessly
  o We need more stringent regulations and laws to protect consumers against carelessness and abuse by others and against their own lack of knowledge on these matters; since they are so busy trying to earn a living, they may not know what “consent” means
  o Consumers cannot realistically negotiate contracts with large businesses; consumers are in a “one down” position, and are often not in a financial position to reject contracts that are not in their best interest
  o Self-regulation by businesses does not work; we must require businesses to adopt pro-privacy policies
  o Privacy is a (claim) “right,” not a “commodity”