

Privacy – U.S. Law

February 27, 2014

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Not Intended as Legal Advice

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What do we all have in common?



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- We are divorced.
- We have television shows.
- We have filed lawsuits for invasion of privacy.



Privacy Law History

- 1890: Brandeis and Warren: right of privacy from intrusion by the press and the public
- 1940s: Courts begin to recognize right of privacy
- 1960: Prosser's article on the right of privacy creates the framework
- 1970s-1980s: sporadic privacy developments
- 1990s: Internet boom spurns new privacy laws
- 2000s: Comprehensive privacy laws

Privacy - Areas of Legal Protection

- No express US Constitutional protection
- Industry self-regulation
- Federal industry specific legislation
- State legislation (and common law)
 - Some states constitutions, have express privacy provisions
 - California Constitution, Article 1, Section 1:

“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”

U.S. Common Law Privacy Rights

- Intrusion upon seclusion
- Public disclosure of private facts
- False light
- Appropriation (Personality Rights)

Data Breach Notification Laws

Why Storing and Protecting Data Is Important: Evaluating State Data Breach Notification Laws



Less strict

More strict

Key: The darker the state, the more strict the law

Examples of Large US Breaches



California – New Privacy Changes

- Privacy Rights for Minors
 - Marketing Restrictions
 - Social Eraser
- Do Not Track Disclosures
- Expansion of Breach Notification Obligations

Federal Privacy Protections

■ Consumer Privacy

- Federal Trade Commission
 - Deceptive trade practices, Unfair trade practices
 - Children's Online Privacy Protection Act (COPPA), CAN-SPAM

■ Medical Privacy

- Department of Health and Human Services
 - HIPAA

■ Financial Privacy

- Consumer Financial Protection Bureau
- Federal Reserve
- Office of the Comptroller of Currency
 - Gramm-Leach-Bliley Act (GLBA)

■ U.S. / EU Data Transfers

- Departments of Commerce and Transportation
 - EU Safe Harbor

Privacy – U.S. Updates

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