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Connect **to**
Protect

Privacy in Europe: Back to the Future

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Modernisation of EU data protection

Harmonisation

Stronger rights

Global dimension



Cloud computing

Big Data

Internet of Things

A framework in the making



Beyond Europe



Controlling the uncontrollable?




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Embracing
technology

Transparency 2.0

Privacy by design

Security by default

Safe vendors

Courtesy IMET /
Irwin Allen News Network / Mantis

RSAConference2016

Giving something back



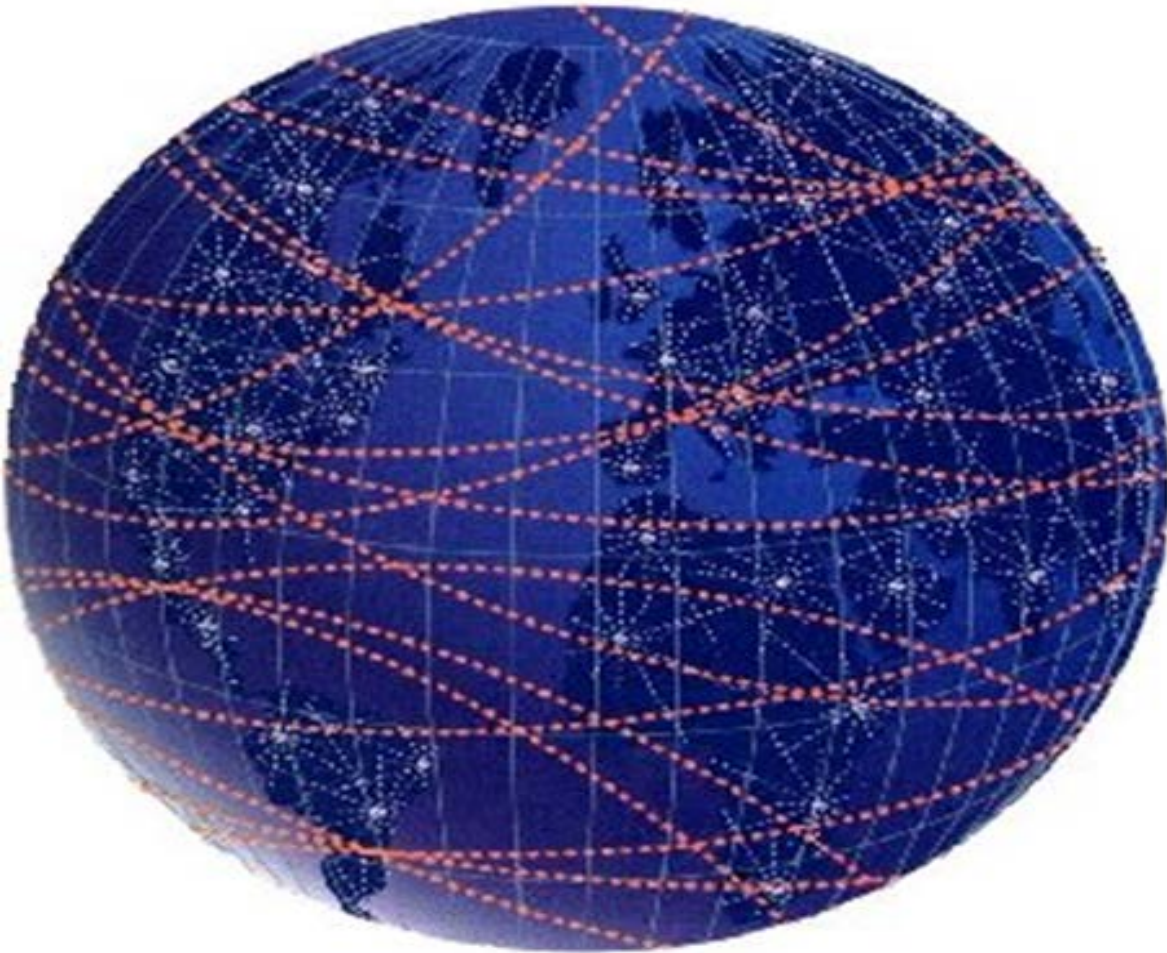
Access to data

Data portability

Transparent profiling?



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Addressing data globalisation

A strategy for the future



Global approach

Privacy impact assessments

Team effort

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The Gasping Death of the Reasonable Expectation of Privacy

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The Legal Standard used by the Government to Protect Your Privacy is Withering Away



Connected World



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Will We Let Reality Destroy Our Rights?



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Technology is taking away your privacy.

Will it dissolve your RIGHT to privacy in the U.S.A.?

Today's Roadmap



- What is the Reasonable Expectation of Privacy?
- How are Advances in Technology Killing it?
- If we can never reasonably expect privacy, what happens?



What is the Reasonable Expectation of Privacy?

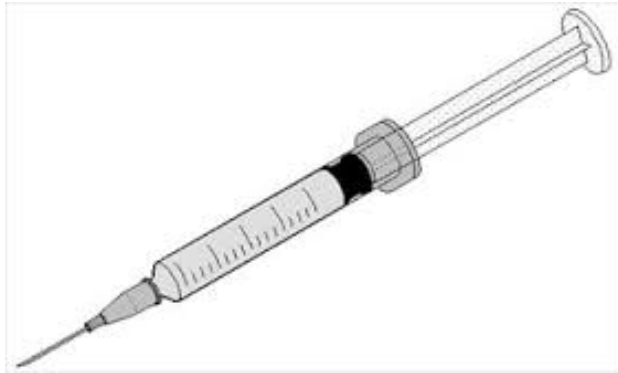


Why should we care about a legal standard?



We use it to decide whether

- the FBI can take your DNA without your permission and without a warrant



Why should we care about a legal standard?



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We use it to decide whether

- your boss can read your email



Why should we care about a legal standard?



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We use it to decide whether

- the police can look in your smartphone

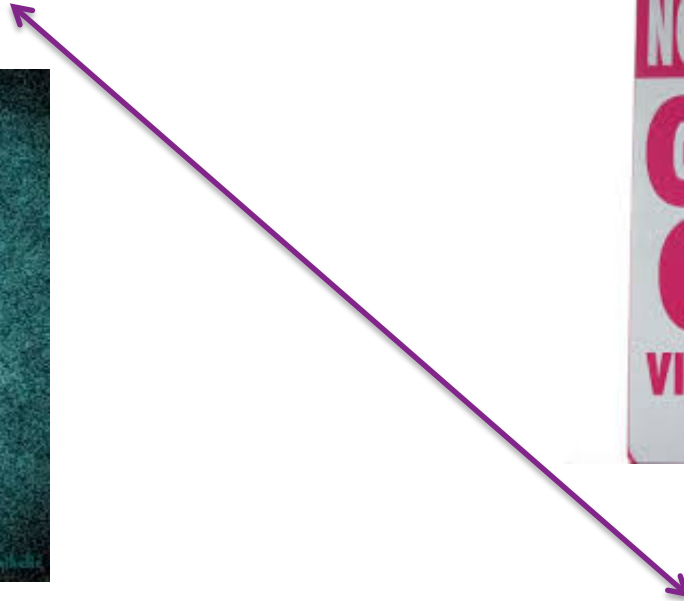


What Is a Legal Standard?



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The Dividing Line Between Privacy and Intrusion



Is the Standard in the U.S. Constitution?



NO

4th Amendment of the U.S. Constitution:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated”

So Where Did the Standard Come From?



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An 1890 Harvard Law Review Article: “The Right to Privacy”

The authors worried that the newspapers were gossiping about their society wives in Boston.



What is the Reasonable Expectation?



Olmstead v. United States, 277 U.S. 438 (1928)

Brandeis' Dissent



- Wiretapping case: New Technology: Telephone
- Defines the "right to be let alone--the most comprehensive of rights, and the right most valued by civilized men."



How is the Standard Used Today



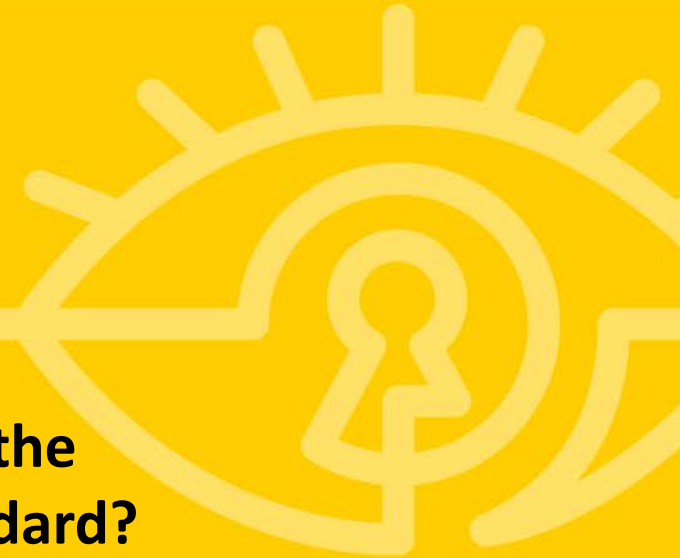
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- To decide Constitutional search cases
- To limit warrantless police investigations
- To measure intrusiveness of employers and the press





**How are advances in technology killing the
Reasonable Expectation of Privacy Standard?**



What was Reasonable Privacy in 1890?



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Privacy of action was Everywhere

- Electric light only in a few cities
- Distance seen only from balloons
- Cameras only worked if you stood still



... And Now



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... And Now



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We are all tracked by global and local systems



- **Mobile tracking** -- Phones, cars, clothes
- **Stationary sensors** -- Home, road, office and retail establishments
- **Connected computers** – sending information to be collected/analyzed

... And Now



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■ Digital Cameras everywhere – Metadata



... And Now



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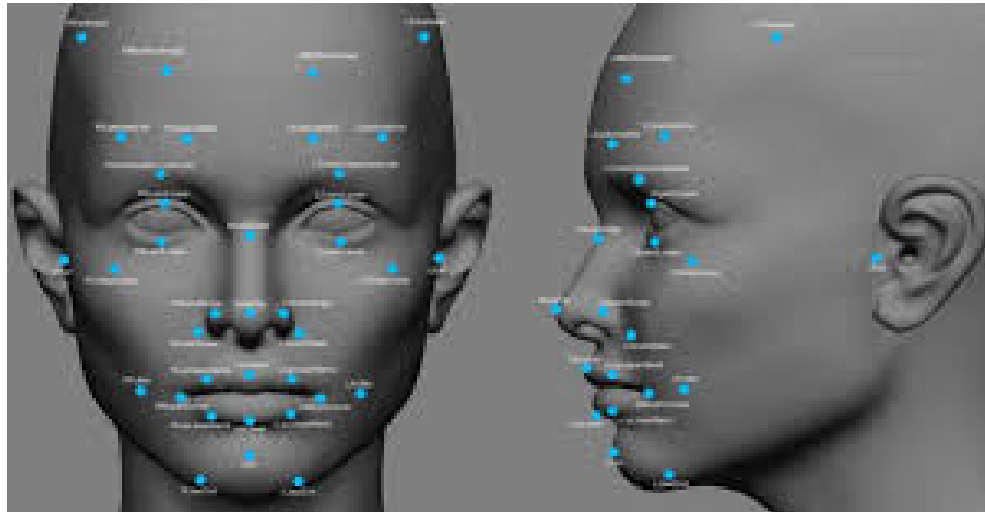
Entirely new life online – much of it captured



... And Getting Worse



- Tracking Systems moving to more devices
- Facial/Voice/Gate Recognition and other biometrics



... And Getting Worse



- Online providers becoming more sophisticated
- Official records kept of transactions
- Increased mixing of real world and cyber world



With Each Advance in Technology



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Constant Pressure from Law Enforcement to Intrude on Privacy



How Can it be Reasonable?

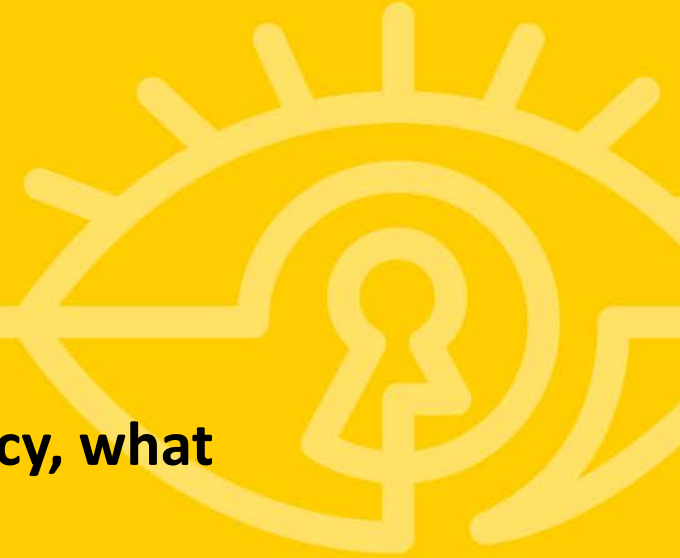


To Expect Any Kind of Privacy in this World?

Becoming less reasonable all the time.



If we can never reasonably expect privacy, what will happen?



What will happen?



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We have two choices:

- No privacy protected by law
- Choose a new standard



AllPosters

Could we choose a new standard?



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Yes, of course we could

- REOP is not enshrined in the U.S. Constitution
- Other nations use different standards



We could choose an objective standard



- Certain acts, matters and behaviors are declared to be private when conducted in a private space
- Exclude government from collecting and viewing data about these behaviors without a warrant
- Intrusion of passive technology does not affect “private space” calculation

We could look abroad for a test



European Protections

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950):

“Everyone has the right to respect for his private and family life, his home and his correspondence.” – Article 8

Objective tests for government intrusion and business intrusion.

In any case, we should discuss alternatives



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Before our scope of protectable privacy shrinks and shrinks until there is nothing important left to protect.



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