

Privacy and Intellectual Property Rights

Privacy

- The ambiguity of the Right to Privacy: privacy and secrecy

- The origins of Privacy:
Warren & Brandeis, "The Right to Privacy", 4 Harvard L.R. 193, 1890
- Definition: a right to be let alone

- The origins of Privacy:
- Justice William Douglas in *Griswold v. Connecticut* (1965): privacy implicit in the Bill of Rights (“within the penumbras of the Constitution”)
- Prosser, Privacy, 48 Cal. L. Rev. 383 (1960):
 - Appropriation of someone’s identity
 - False light in the public eyes
 - Publication of private facts
 - Intrusion

- Privacy in EU/Italy
- European Convention on Human Rights (ECHR), art. 8:
 - Article 8 – Right to respect for private and family life
 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others

- Privacy in Italy
 - diritto al nome (art. 6 c.c.)
 - diritto all'immagine (art. 10 c.c.)
 - diritto al ritratto (artt. 96 ss. L. 633/1941)
 - diritto all'onore e alla reputazione (artt. 594 e 595 c.p.)
 - diritto morale d'autore

- Privacy as Judge made law
- From the right to be let alone to *computer privacy*

- European Legislation
- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data
- General Data Protection Regulation (GDPR) (finally approved by the EU Parliament on 14 April 2016. Entered in force on 25 May 2018)

- General Data Protection Regulation (GDPR)
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

- General Data Protection Regulation (GDPR)
- <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0679>
- Art. 4: definitions:
 - ‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

- General Data Protection Regulation (GDPR)
- <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0679>
- Art. 4: definitions:
 - ‘processing’ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

- General Data Protection Regulation (GDPR)
- <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0679>
- Art. 4: definitions:
 - ‘pseudonymisation’ means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;

- General Data Protection Regulation (GDPR)
- <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0679>
- Art. 4: definitions:
 - consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her;

- General Data Protection Regulation (GDPR)
- Art. 5: Principles:
 - processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');
 - collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('purpose limitation');
 - adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');
 - accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');
 - kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; [...]
 - processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

- General Data Protection Regulation (GDPR)
- Art. 9: Processing of special categories of personal data

Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.

- Exceptions listed in paragraph 2.

- General Data Protection Regulation (GDPR)
- Art. 15: Right of access:

The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:

(a) the purposes of the processing;

(b) the categories of personal data concerned;

- General Data Protection Regulation (GDPR)
- Article 16

Right to rectification

The data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her. [...]

- Article 17

Right to erasure ('right to be forgotten')

The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies [...]

- General Data Protection Regulation (GDPR)
- Article 20:

Right to data portability

The data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the personal data have been provided, where: [...]

- General Data Protection Regulation (GDPR)
- Article 25

Data protection by design and by default

1. Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, the controller shall [...] implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data-protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing in order to meet the requirements of this Regulation and protect the rights of data subjects. [...]
2. The controller shall implement appropriate technical and organisational measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed. [...]

- General Data Protection Regulation (GDPR)

Other important articles:

- Art. 32 on security of processing
- Art. 33 and 34 Notification of a personal data breach to the supervisory authority and the data subject
- Art. 44 ff.: Transfers of personal data to third countries or international organisations (“A transfer of personal data to a third country or an international organisation may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection.”)
- Art. 51 ff.: Independent supervisory authorities