Privacy Law in the Digital Age

Information Access & the U.S.A. Law Library

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In the Digital Age

1. Privacy of library users *(shrinking)*

2. Privacy of individuals in records sought by library users *(mixed)*
Privacy of
1. Library users and
2. Persons in content

Access
1. to content
2. without surveillance
Privacy of Law Library Users
Most Protections Developed Pre-Digital Age

- Library Laws & Ethics
- Attorney-Client Confidentiality
- Judge/Legislator traditions

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Library Privacy Laws at the State Level

By DanBishop (Own work) [Public domain], via Wikimedia Commons
California 2012, Delaware 2016
Commercial (Digital) Book Services

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We uphold a duty to our clientele to develop service policies that respect confidentiality and privacy.
Client-Lawyer Relationship

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent,...
Privacy of U.S.A. Law Library Users is Shrinking

Libraries are Overwhelmed
- Technology & industries outgrowing law
- Market failure for consumer privacy
- Freedom of speech/press
- Innovation/economy
- Faith in data for safety/health
Privacy of U.S.A. Law Library Users is Shrinking

Libraries are Overwhelmed

- Invisible tracking
- ISPs, websites, advertising networks, profile sellers, hackers
- Ebook services, personalization, “free” search and content services --- not negotiating
- Government access to “shared” data is broad
We may combine personal information from one service with information, including personal information, from other Google services.
Ineffective Web Browser Privacy Settings

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Growth of Profiling Industries

DATA BROKERS

A Call for Transparency and Accountability

Federal Trade Commission May 2014

“ethnic second-city struggler”
“urban scrambler”
Broad U.S.A. government access to information “voluntarily” shared with private “third parties”
...opportunities to influence, regulate or gain reliable knowledge of the data collection practices of commercial vendors or government institutions may be limited.
“Regardless of the technology used, **everyone** who collects or accesses personally identifiable information in any format has a legal and ethical obligation to protect confidentiality.”
Privacy of individuals in records sought by USA library users is **shrinking** and expanding

**Shrinking**

- No overarching U.S. privacy law
- New technologies and industries collect and use data about individuals
- Few expansions of privacy law
  - Federal consumer protection,
  - data breach notice
  - net neutrality (so far)
Privacy of individuals in records sought by library users is shrinking and expanding.

**Shrinking**

- USA libraries participate by digitizing public records
- USA libraries no strong tradition except reader privacy
- Primary commitments to access, transparency, knowledge, preservation
Privacy of individuals in records sought by library users is shrinking and expanding.

**Expanding**
- EU Right to Be Forgotten
- Libraries and coalitions that index and meet EU jurisdiction could be required to comply
- California has modest erasure law for minors
**EU Right to Be Forgotten and Libraries**

- "Personal data must be: adequate, relevant and **not excessive in** relation to purposes for which it was collected or processed; accurate and where necessary, up to date."

- **Exemptions** in new EU law for "archiving...in the public interest, scientific... historical research or statistical purposes"
IFLA Statements on the Right to be Forgotten (2016) and Access to Personally Identifiable Information in Historical Records (2008)

Issues for libraries

• The Integrity of and Access to the Historical Record

• Freedom of Access to Information and Freedom of Expression

• Privacy of the Individual
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