

# 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

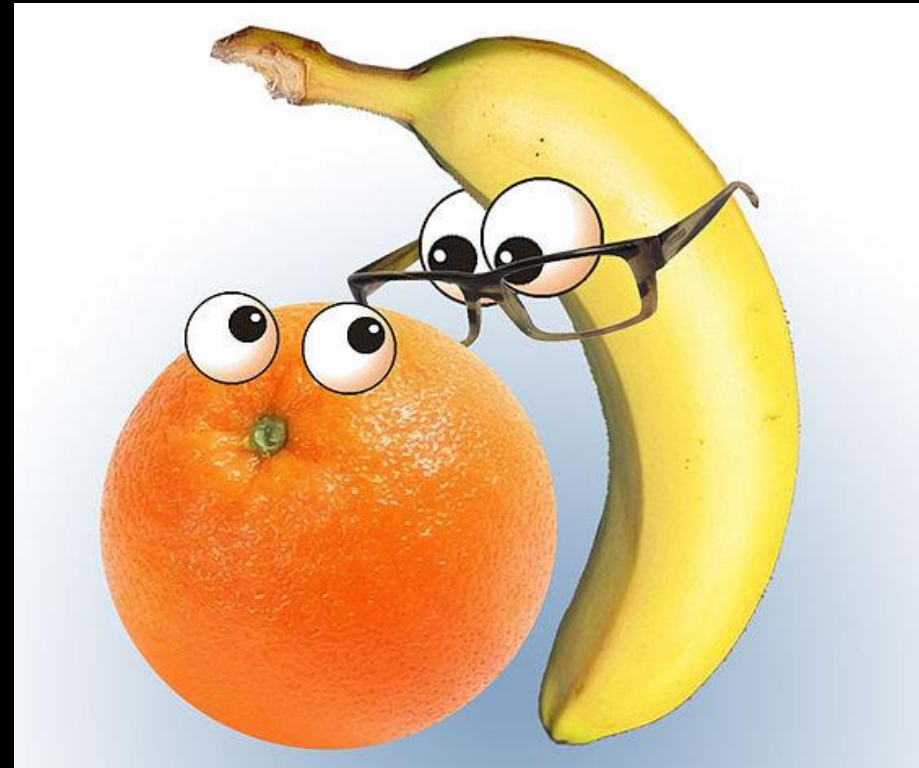
1. to content
2. without surveillance



# Privacy of Law Library Users

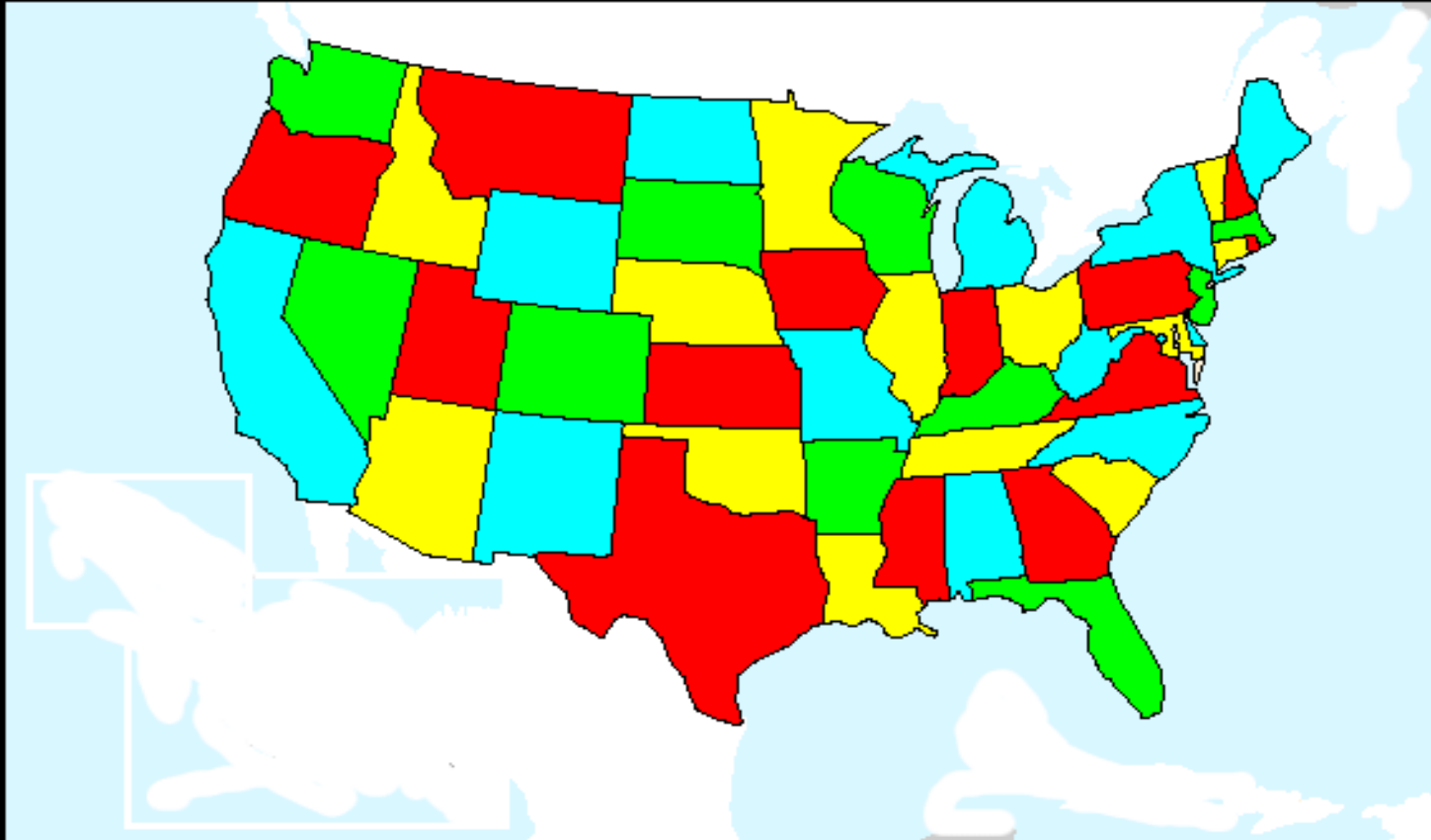
## Most Protections Developed Pre-Digital Age

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



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# Library Privacy Laws at the State Level



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# California 2012, Delaware 2016 Commercial (Digital) Book Services



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# **1999 American Association of Law Libraries Ethical Principles**

**We uphold a duty  
to our clientele  
to develop service policies  
that respect  
confidentiality and privacy.**

# American Bar Association Model Rules of Professional Conduct

## *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**

# “Free” Research?

Articles ( include patents)  Legal documents

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”



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*IFLA Statement on Privacy in the Library  
Environment, August, 2015*

**...opportunities to influence, regulate or gain reliable knowledge of the data collection practices of commercial vendors or government institutions may be limited.**

# American Library Association 2014

*PRIVACY: AN INTERPRETATION OF THE LIBRARY BILL OF RIGHTS*

“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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