

Exam Number: _____

GEORGETOWN UNIVERSITY LAW CENTER
EXAMINATION
"THE LAW OF INFORMATION PRIVACY"
(3 HOURS)

Professor Rotenberg

April 29, 2004

INSTRUCTIONS:

1. This is an OPEN book examination.
2. You should select three of the following four questions. Each question will receive equal weight. There will be no additional credit for answering a fourth question.
3. Use only one side of the paper. Write clearly.
4. I will consider only the material that is in the exam book or in the typed submission.
5. Organize your answers carefully. Note the particular format requested in each question.

This exam consists of 3 pages including this cover page. Please be sure that your exam is complete.

PLEASE DO NOT TURN THE PAGE
UNTIL THE PROCTOR GIVES THE SIGNAL

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Question 1

You are a clerk to a federal district court judge.

Before the judge is a motion to suppress evidence obtained by the police in the course of a criminal investigation. According to the non-disputed facts in the case, the police obtained evidence from the suspect's home computer by means of DocuVore, a computer program that circulates widely on the Internet and appears as a form of spam. DocuVore is designed so that when it is downloaded onto a computer with a particular IP address,¹ it will identify key computer files relevant to a current criminal investigation and transmit those files from the suspect's computer to the police. No warrant was obtained prior to the release of the program in this case.

It is the defendant's position that the use of DocuVore violates both the Fourth Amendment and the federal wiretap law. It is the government's position that the defendant had no reasonable expectation of privacy in the files that could be obtained by this technique and also, that if a search did occur, the defendant effectively consented in the act of downloading the program.

Write a brief memo for the judge explaining whether the motion to suppress should be granted.

Question 2

You are counsel to the House Judiciary Committee.

¹ An IP address is a device's (typically a computer's) numerical address as expressed in the format specified in the Internet Protocol. In IPv4, the current addressing format, an IP address is a 32-bit sequence divided into four groups of decimal numbers separated by periods. In some circumstances, the IP address will identify a unique computer. In other circumstances, it does not. An IP address for a computer is similar to a telephone number for a telephone.

The Chairman of the Committee has expressed concern about the privacy implications of RFID technology.² He explains that he generally supports Fair Information Practices and believes that this is the correct approach for regulating RFIDs. He would also welcome any suggestions you have that consider special privacy concerns that might arise with RFIDs.

Briefly outline and describe the provisions of the RFID Privacy Act of 2004.

Question 3

You are assistant counsel to Chief Privacy Officer of the Department of Homeland Security.

The CPO has conveyed to you that the Secretary of the Department of Homeland Security is concerned about the vulnerability of the United States Capitol to attack from a passenger train that travel beneath the US Capitol. He has explained to the CPO that he intends to consider a wide range of measures to address this threat, but would like input from her office regarding privacy issues that should be considered. In particular, he has asked the CPO to assess three proposals:

(1) Extended visual surveillance of all railway cars traveling under the US Capitol. Under this proposal, cameras would be placed in all railway cars so that it would be possible to observe all passengers at all times

(2) Identification requirements for all rail passengers and transportation workers. Under this proposal, a passenger screening program similar to CAPPS would be established for railway passengers.

(3) Enhanced sensory techniques. Under this proposal, the Department of Homeland Security would support efforts

² Radio Frequency Identification is similar to bar code identification except that the object with an RFID tag will transmit information to a transceiver that is proximate to the object. High frequency RFID systems offer transmission ranges of approximately 90 feet. There are a wide range of applications for RFIDs, including inventory tracking, clothing care, food expiration, pet identification, auto parts, and human identification. Wal-Mart requires that its largest suppliers incorporate RFID tags on all products to track inventory by 2005. The Department of Defense has established similar requirements for DOD contractors.

to identify and track explosive materials and biohazards that may be carried aboard trains that travel beneath the Capitol.

Outline a brief memo for the Chief Privacy Officer assessing the legal and policy implications of these three proposals.

Question 4

You are assistant counsel to the Secretary of Commerce. The Secretary has indicated that she would like to establish common privacy standards for trade between the United States and countries in the Asia Pacific region. She is familiar with the US-EU Safe Harbor Arrangement and believes that this would be a good starting point. She is also aware that some criticisms have been raised about the Safe Harbor Arrangement.

Briefly outline a proposal for the Secretary.

END OF EXAM

WRITE NOTHING AFTER TIME IS CALLED