

Exam Number: _____

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

Professor Rotenberg

May 16, 2005

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.
6. Laptop users: To write your exam answers, use a blank document screen in Word or WordPerfect (or vi or teco) as directed by the proctor(s). Laptop users are permitted to access other documents, outlines, notes, files, macros, etc. on their hard drives (or other storage devices) and are also permitted to access the Internet. Access to the Internet does not mean that students may consult one another or any other person during the exam by computer or other electronic device. Functions such as Autocorrect, Spell Check and Grammar Check must be disabled. Palm Pilots and other electronic devices that store information may be used in the exam room.

This exam consists of 4 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 counsel to a federal appellate judge.

Before the judge is a challenge to a new state law that permits the police to arrest a person who "(1) acts in a suspicious manner and (2) fails to present an identification document that is approved by the federal government." The petitioner alleges that the statute violates the Fourth and Fifth Amendments. The state says that, under *Hiibel v. Sixth Judicial District* (US 2004), the statute is permissible.

Draft a brief memo for the judge as to the merits of the arguments and provide a preliminary recommendation.

Question 2

You are counsel to the Senate Judiciary Committee.

Several Members of the Committee have expressed concern about the privacy implications of Digital Rights Management. These are techniques that may, in some circumstances, track the individual use of a digital work to determine whether the use is infringing. The members are interested in understanding both legislative and self-regulatory approaches to the privacy concerns that might arise with DRMs.

Draft a brief memo for the committee that (1) outlines a model DRM Privacy Protection Act and (2) discusses alternative self-regulatory approaches to privacy protection.

Question 3

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

The CPO has explained to you that the Secretary of Homeland Security is concerned about the vulnerability of the United States Capitol to attack from a bomb placed aboard passenger and freight trains that travel beneath the Capitol building. He has explained to the CPO that he intends to consider a wide range of measures to address this threat, but he 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 and all train personnel at all times.

(2) Identification and screening requirements for all rail passengers and transportation workers. Under this proposal, a passenger-screening program similar to CAPPS II would be established for railway passengers. Individuals who appear on a No-Travel list or Selectee list would not be permitted to board trains that travel near the US Capitol. All railway workers would be required to carry a Transportation Worker Identity Card.

(3) Enhanced sensory techniques. Under this proposal, the Department of Homeland Security would support efforts to identify and track explosive materials and biohazards that may be carried aboard trains that travel beneath the Capitol building.

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

Question 4

You are general counsel to FineWineOnline, a firm based in California, that provides excellent wines to customers across the United States.

The CEO of FineWineOnline is interested in expanding the firm's operations to Europe and is concerned about compliance with the EU Data Directive. He has asked you to briefly outline what the firm may need to do if it offers

its products in Europe. As the head of an innovative company, he has also asked you to suggest technical means that might incorporate privacy safeguards.

Briefly, describe the steps you will recommend for FineWineOnline.

END OF EXAM

WRITE NOTHING AFTER TIME IS CALLED