# Seminar Syllabus – Privacy, Data Breaches & Cyber Security

LAW6936 § 0354, Spring 2018

Mondays at 1:00 – 2:40 PM

Room 354 HOL

**Two credit hours**

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Student Hours by appointment only

**COURSE DESCRIPTION**

This seminar will evaluate the development and current status of the law related to the privacy, cybersecurity and data breaches. We will discuss the regulations and legal structures that regulate and attempt to protect data.

We will evaluate the developing law and policy relating to cybersecurity on a global scale and the implications of new technology on the law.

Additionally, the class will evaluate established statutory and remedies for those harmed by data breaches.

The seminar will include a written research paper and an oral presentation to the class.

We will be using guideline for Advanced Writing Certificate which is: 25 pages (exclusive of footnotes) on Letter-sized paper, 12-point Times New Roman, 1 inch margins (top, bottom & sides), and double-spaced text.

**Completion of Course:**

Students must participate in class discussion, make a presentation to the class base on their chosen topic and complete the 25 page seminar paper.

**Grades:** Grades will be based on : 1)In class participation (5%) ; 2) presentation to the class (25% ; and the seminar paper (75%)

Grade Values :

|  |  |
| --- | --- |
| **Letter Grade** | **Point Equivalent** |
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |
| E (Failure) | 0.0 |
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**Academic Misconduct:** Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>**.**

**Workload and class preparation:** It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

**Student learning outcomes:** After completing the course students should be able to

1. Understand laws relating to privacy
2. Understand the history and perspective on the laws relating to data breaches and cybersecurity.
3. Understand the differences among international principles and policies in privacy and cybersecurity and policies in the US
4. Understand the contemporary developments in case law and policy on cybersecurity issues

**Class attendance & participation policy:** Attendance will be taken at each class meeting. Students are allowed 2 absences during the course of the semester. Students are responsible for ensuring that they are not recorded. As absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course.

**COURSE SYLLABUS**

**01/09/18 Week #1 – Privacy in the age of big data: The value of personal information to the individual, the government, and corporations**

* 1. Selections from Privacy: The Lost Right(Oxford University Press, 2008) (Pages 9-35, posted on Canvas).
  2. Excerpts from *United States of Secrets*, PBS Frontline, *available at* http://www.pbs.org/wgbh/pages/frontline/united-states-of-secrets/.
  3. Parc Tong Sun, *Envision a Future where your Personal Information is Digital Currency*, WIRED (2015). https://www.wired.com/insights/2015/01/personal-information-digital-currency/.
  4. *ACLU v. Clapper*, 785 F. 3d 787 (2d Cir. 2015) (posted on Canvas).
  5. *Klayman v. Obama*, 800 F.3d 559 (D.C. Cir. 2015) (posted on Canvas).

**01/23/18 Week #2 – Everything You Always Wanted To Know About Data Breaches\* (\*But Were Afraid To Ask)**

1. Guest Lecturer: Andy Adkins, formerly of Steptoe & Johnson. *Information Security Awareness Initiative,* Legal Technology Institute (posted on Canvas).
2. Jon Mills & Kelsey Harclerode, *Privacy, Mass Intrusion, and the Modern Data Breech*, FLA. LAW REV. (2017 – forthcoming) (Available on Canvas)
3. Data Breech Response: A Guide for Business, FTC (Sept. 2016) https://www.ftc.gov/system/files/documents/plain-language/pdf-0154\_data-breach-response-guide-for-business.pdf.
4. DOJ-Cybersecurity Unit, Breach Guidelines: *Best Practices for Victim Response and Reporting of Cyber Incidents* (April 2015) (posted on Canvas).
5. Gelmato and SafeNet, *2014 Year of the Mega Breaches and Identity Theft*, *available at* http://breachlevelindex.com/pdf/Breach-Level-Index-Annual-Report-2014.pdf.

**01/30/18 Week #3 – Data Management Practices**

1. Malcolm Chisholm *Seven Phases of a Data Life Cycle*, BLOOMBERG (July 14, 2015) available at https://www.bloomberg.com/enterprise/blog/7-phases-of-a-data-life-cycle/
2. Farnam Jahanian, *The Policy Infrastructure for Big Data: From Data to Knowledge to Action*, 10 J. L. & POL'Y FOR INFO. SOC'Y 865, 871 (2015).
3. Careful Connections: Building Security in the Internet of Things, FTC (Jan. 2015) *available at* https://www.ftc.gov/system/files/documents/plain-language/pdf0199-carefulconnections-buildingsecurityinternetofthings.pdf
4. Bob Leaper, The Rise of the Chief Data Officer, WIRED (2014) *available at* https://www.wired.com/insights/2014/07/rise-chief-data-officer/.

**02/06/18 Week #4 – Samples of a Data Breach (Case Studies)**

1. Sony Pictures and Entertainment
2. David E. Sanger & Martin Fackler, *N.S.A. Breached North Korean Networks Before Sony Attack, Officials Say*, The New York Times (Jan. 18, 2015), *available at* http://www.nytimes.com/2015/01/19/world/asia/nsa-tapped-into-north-korean-networks-before-sony-attack-officials-say.html?\_r=0.
3. Target Corporation
4. Sara Germano, *Target’s Data Breach Timeline*, Wall Street Journal (Dec. 27, 2013), *available at* http://blogs.wsj.com/corporate-intelligence/2013/12/27/targets-data-breach-timeline/.
5. Samantha Sharf, *Target Shares Tumble as Retailer Reveals Cost of Data Breach*, Forbes (Aug. 5, 2014), *available at* http://www.forbes.com/sites/samanthasharf/2014/08/05/target-shares-tumble-as-retailer-reveals-cost-of-data-breach/.
6. *In re Target Corporation Customer Data Security Breach Litigation*, MDL No. 14-2522 at 45 (PAM/JJK), *available at* http://www.courthousenews.com/2014/12/19/target.pdf.
7. LabMD
   1. In re Lab MD (Sept. 29, 2016) https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter
8. Wyndham
9. FTC Order https://www.ftc.gov/system/files/documents/cases/151211wyndhamstip.pdf
10. FTC Press Release: https://www.ftc.gov/news-events/press-releases/2012/06/ftc-files-complaint-against-wyndham-hotels-failure-protect

**02/13/18 Week #5 – FTC**

1. Daniel J. Solove & Woodrow Hartzog, *The FTC and the New Common Law of Privacy*, 114 Col. L. Rev. 583, 600 (2011).
2. *F.T.C. v. Wyndham Worldwide Corp.*, No. 14-3514, 2015 WL 4998121, at \*1-2 (3d Cir. Aug. 24, 2015).
3. HIPAA introduction, *available at* http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/.
4. *Privacy By Design and the New Privacy Framework of the U.S. Federal Trade Commission,* remarks of FTC Commissioner Edith Ramirez at the Privacy by Design Conference (June 13, 2012)*, available at https://www.ftc.gov/sites/default/files/documents/public\_statements/privacy-design-and-new-privacy-framework-u.s.federal-trade-commission/120613privacydesign.pdf***.**

**02/20/18 Week #6 – FTC and Everybody Else**

1. Health
2. BYRNE: Closing the Gap Between HIPAA and Patient Privacy, 53 San Diego L. Rev 201(2016) see [Here](https://1.next.westlaw.com/Document/Ia11cb135441611e698dc8b09b4f043e0/View/FullText.html?listSource=Search&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad62af00000015a432b35690b0573dc%3fNav%3dANALYTICAL%26fragmentIdentifier%3dIa11cb135441611e698dc8b09b4f043e0%26startIndex%3d1%26contextData%3d%2528sc.Search%2529%26transitionType%3dSearchItem&list=ANALYTICAL&rank=1&listPageSource=a1266783a0edc0be96c8998e0af8e262&originationContext=docHeader&contextData=(sc.Search)&transitionType=Document&needToInjectTerms=False&enableBestPortion=True&docSource=cba9e277e8194b3e8ce28f2108f2929c)
3. HIPAA generally, *see* http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/.
4. Other entities
5. 45 C.F.R. §§ 164.400-414 (2015).
6. Financial institution
7. *How to Comply with the Privacy of Consumer Financial Information Rule of the Gramm-Leach-Bliley Act*, Federal Trade Commission (July 2002), *available at* https://www.ftc.gov/tips-advice/business-center/guidance/how-comply-privacy-consumer-financial-information-rule-gramm#other.
8. *Privacy of Consumer Financial Information*, 16 C.F.R. § 313.1-9 (2015).
9. FCC
10. *FCC Plans $10M Fine for Carriers That Breached Consumer Privacy,* Federal Communications Commission (Oct. 24, 2015), *available at* http://www.fcc.gov/document/fcc-plans-10m-fine-carriers-breached-consumer-privacy.
11. Education
12. Family Educational and Privacy Rights, 20 U.S.C.A. § 1232g (2013).
13. Student Privacy Prevention Act, S. 1341, 114th Congress (2015), *available at* https://www.congress.gov/bill/114th-congress/senate-bill/1341**.**

**02/27/18 Week #7 – Republication**

1. *Bartnicki v. Vopper*, 532 U.S. 514, 517 (U.S. 2001).
2. Eric B. Easton, *Ten Years After: Bartnicki v. Vopper As A Laboratory for First Amendment Advocacy and Analysis*, 50 U. Louisville L. Rev. 287 (2011).
3. [47 U.S.C. § 230](https://www.law.cornell.edu/uscode/text/47/230), A provision of the Communications Decency Act (CDA) of 1996.
4. Optional: see summary and analysis of section 230 at https://www.eff.org/issues/cda230

**03/13/18 Week #8 – EU’s Approaches to Data Breaches**

1. General Data Protection Regulation (GDPR) (2016) http://ec.europa.eu/justice/data-protection/reform/files/regulation\_oj\_en.pdf.
2. Two-Way Street: U.S.-EU Parallels Under The General Data Protection Regulation Ghostery/Hogan Lovells Data Privacy Day, FTC (Remarks) (Jan. 21, 2016) *available at https://www.ftc.gov/system/files/documents/public\_statements/910663/160121hoganghostery\_dpd.pdf*.
3. EU-US Privacy Shield Framework (2016) see generally https://www.privacyshield.gov/Program-Overview; full text: https://www.privacyshield.gov/servlet/servlet.FileDownload?file=015t00000004qAg.
4. *Schrems v. Data Protection Comm'r*, CJEU Case C-362/14 (Oct. 6, 2015), available at http://curia.europa.eu/juris/celex.jsf?celex=62014CJ0362&lang1=en&type=TXT&ancre=; *see also* http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150117en.pdf.
5. *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González* (2014) *available at* http://curia.europa.eu/juris/document/document\_print.jsf?doclang=EN&docid=152065.
6. Julia Fioretti, *Google Refuses French Order to Apply ‘Right to be Forgotten” Globally*, Reuters (July 31, 2015), *available at http://www.reuters.com/article/2015/07/31/us-google-france-idUSKCN0Q50VP20150731*.
7. Excerpts from:
8. *Yildirim v. Turkey*, no.3111/10 (2011).
9. *Mouvement raëlien suisse v. Switzerland*,no. 16354/06 (2012) available at http://hudoc.echr.coe.int/eng?i=001-112165#{"itemid":["001-112165"]}.
10. *Yahoo!, Inc. v. La Ligue Contre Le Racisme et L’Antisemitisme*, 169 F. Supp. 2d 1181, 1193 (N.D. Cal. 2001).
11. *Axel Springer AG v. Germany*, ECHR 227 [2012], available at http://www.bailii.org/eu/cases/ECHR/2012/227.html.

**03/20/18 Week #9 – State Approaches**

1. California SB 1386, *available at* http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb\_1351-1400/sb\_1386\_bill\_20020926\_chaptered.pdf.
2. Data Breach Charts: http://www.bakerlaw.com/files/Uploads/Documents/Data%20Breach%20documents/Data\_Breach\_Charts.pdf.
3. Gina Stevens, *Data Security Breach Notification Laws*, Cong. Res. Service at 3 (April 10, 2012), *available at* https://fas.org/sgp/crs/misc/R42475.pdf.
4. Steptoe & Johnson, LLP, *Comparison of US State and Federal Security Breach Notification Laws* (current through October 31, 2014), *available at* http://www.steptoe.com/assets/htmldocuments/SteptoeDataBreachNotificationChart.pdf.

**03/27/18 Week #10 – Remedies: Overview and Property-Based**

**Guest Lecturer: Mr. Stuart Singer, Boies Schiller & Flexner, LLP.**

1. Elizabeth De Armond, *A Dearth of Remedies*, 113 Penn St. L. Rev. 1 (2008).
2. William Dalsen, *Civil Remedies for Invasions of Privacy: A Perspective on Software Vendors and Intrusion upon Seclusion*, 2009 Wis. L. Rev. 1059, 1063 (2009).
3. *Clapper v. Amnesty Intern. USA* 113 S. Ct. 1138, 1147 (U.S. 2013).
4. *In re Sony Gaming Networks and Customer Data Breach Litigation*, 996 F. Supp. 2d 942, 996 (S.D. Cal. 2012).
5. *Daly v. Metro Life Ins. Co.*, 782 N.Y.S. 2d 530, 535 (NY Sup. Ct. 2004).
6. Michael L. Rustad & Thomas H. Koenig, *Extending Learned Hand’s Negligence Formula to Information Security Breaches*, 3 I/S: J. L. & Pol'y for Info. Soc'y 237 n. 139 (2007).
7. Non-negligence Tort
   * 1. Selections from Privacy in the New Media Age(University Press of Florida, 2015).
     2. Restatement (Second) of Torts § 652B (1977).
     3. *Randolph v. ING Life Ins. & Annuity Co*., 973 A.2d 702, 710 (D.C. 2009).
     4. *Galaria v. Nationwide Mut. Ins. Co*., 988 F. Supp. 2d 646, 656 (S.D. Oh. 2014).
8. Unjust enrichment: *In Re Zappos.com, Inc. Customer Data Security Breach Litigation*, 2013 WL 4830497 at \*4 (D. Nevada, September 9, 2013).
9. Trade Secret Protections: Samuelson, *Trade Secrets and the First Amendment*, 58 Hastings L.J. 777
10. Emotional Injury and Loss of Privacy
11. Amburgy v. Express Scripts, Inc., 671 F. Supp. 2d 1046, 1055 (E.D. Mo. 2009).
12. Randolph v. ING Life Ins. & Annuity Co., 973 A.2d 702, 711 (D.C. 2009).
13. Hammond v. The Bank of New York Mellon Corp., 08 CIV 6060 RMB RLE, 2010 WL 2643307, at \*7-8, \*11 (S.D.N.Y. June 25, 2010).
14. Loss of Value Information: In re Barnes & Noble Pin Pad Litig., 12-CV-8617, 2013 WL 4759588, at \*4 (N.D. Ill. Sept. 3, 2013).

**04/03/18 Week #11 – Student Presentations**

**04/10/18 Week #12 – Student Presentations**

**04/17/18 Week #13 – Student Presentations**

**04/24/18 Week #14 – Student Presentations**

Note:

Disability Syllabus Statement

The University of Florida is committed to providing equal educational access to students with disabilities. As you are developing and/or updating your syllabi for the spring semester, please take a moment to review the university’s “[Policy on Course Syllabi](http://www.aa.ufl.edu/Data/Sites/18/media/policies/syllabus-policy-current.pdf)” which specifies the inclusion of the following recommended statement related to accommodations for students with disabilities:

“Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, [www.dso.ufl.edu/drc/](http://www.dso.ufl.edu/drc/)) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the instructor when requesting accommodations. Students with disabilities should follow this procedure as early as possible in the semester.”

A disability syllabus statement serves to open the lines of communication between an instructor and a student by making the student feel included when approaching an instructor regarding accommodation needs and/or disability-related concerns.

Additional resources for faculty can be found on the Disability Resource Center’s Instructor Resources webpage (<https://www.dso.ufl.edu/drc/faculty/resources-for-instructors>). Please contact the Disability Resource Center at 352-392-8565 or via e-mail at [accessuf@dso.ufl.edu](mailto:accessuf@dso.ufl.edu) if you have any questions.

**Bibliography (Draft)**

1. Daniel Solove, *3 Types of Incidents Account for 86% of HIPAA Data Breaches*, TeachPrivacy.com (January 25, 2016), *available at* <https://www.teachprivacy.com/types-incidents-data-breach-hipaa-healthcareata-breaches/>
2. DOD-Defense Science Board, Task Force Report: *Resilient Military Systems and the Advanced Cyber Threat* (January 2013), *available at* <http://www.acq.osd.mil/dsb/reports/CyberCloud.pdf>
3. The Berkman Center for Internet & Society at Harvard University, *Don’t Panic. Making Progress on the “Going Dark” Debate* (February 1, 2016), *available at* <https://cyber.law.harvard.edu/pubrelease/dont-panic/Dont_Panic_Making_Progress_on_Going_Dark_Debate.pdf>