# **Cybersecurity and Cybercrimes**

LAW6936, Class No. 21068, Spring 2022

Thursdays at 3:15 PM – 5:15 PM

355 A Holland Hall

Two credit hours

Professor Jon Mills Pedro Allende

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Office Hours: 1- 3pm Thursdays

**COURSE DESCRIPTION**

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

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

Additionally, this class will evaluate established statutory 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 following the Guidelines for the Advanced Writing Certificate: 25 pages (exclusive of footnotes) on letter-sized paper, 12-point Times New Roman, 1-inch margins (top, bottom & sides), and double-spaced text. The oral presentations will take place the last 3 weeks of class.

**Workload and Class Preparation:**

There is no required textbook for this course. The attached weekly schedule lists the readings for each class; these readings are either linked on the syllabus or provided on Canvas. These readings are subject to change; if a change is made, students will be notified through Canvas. The schedule includes “optional background materials,” which are truly optional and only intended to allow you to further explore a particular subject.

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 spent in class.

**Completion of Course:**

Students must participate in class discussion, make an oral presentation to the class on a topic of their choice, and complete a 25-page seminar paper.

**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.

**Grades:**

Grades will be based on in-class participation (5%); oral presentation to the class (25%); and the seminar paper (70%).

**Grade Values**

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| --- | --- |
| **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  |

**Academic Misconduct:**

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Law Student Honor Code at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

**Class Attendance & Participation Policy:**

Attendance will be taken at each class meeting. Students are allowed 2 unexcused absences over the course of the semester. Students are responsible for ensuring that they are not marked absent. Students are marked absent if they arrive to class late. A student who fails to meet the attendance requirement will be dropped from the course.

If you have a medical reason for missing class, you must contact me ASAP before or soon after class and provide documentation for your absence to be excused. To be excused from class for religious holidays, students must contact me beforehand by e-mail.

**Use of Laptops:**

You are permitted to use laptops in class, but please use your laptops wisely and stay on task.

**Disability Statement:**

The University of Florida is committed to providing equal educational access to 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/students.php)) 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.

**Audio & Video Recordings**:

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third-party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

**Online Course Evaluation Process:**

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional, respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can complete evaluations in their Canvas course menu under GatorEvals. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

**Health and Wellness Resources:**

*U Matter, We Care*: If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit the [U Matter, We Care website](https://umatter.ufl.edu/) to refer or report a concern and a team member will reach out to the student in distress.

*Counseling and Wellness Center*: Visit the [Counseling and Wellness Center website](https://counseling.ufl.edu/) or call 352-392-1575 for information on crisis services as well as non-crisis services.

*Student Health Care Center*: Call 352-392-1161 for 24/7 information to help you find the care you need, or visit the [Student Health Care Center website](https://shcc.ufl.edu/).

*University Police Department*: Visit [UF Police Department website](https://police.ufl.edu/) or call 352-392-1111 (or 9-1-1 for emergencies).

*UF Health Shands Emergency Room / Trauma Center:* For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608. You can also visit the [UF Health Emergency Room and Trauma Center website](https://ufhealth.org/emergency-room-trauma-center).

**COVID-19 Protocol:**

Please take appropriate precautions for your health and safety.

 **WEEKLY SCHEDULE**

**01/20/22** **Week #1 – Privacy in the Age of Big Data: The Value of Personal Information to the Individual, the Government, and Corporations
(68 pages + video)**

# Parc Tong Sun, *Envision a Future where your Personal Information is Digital Currency*, WIRED (2015) (3 pages)

# Forbes, *If You’re Not Paying For It, You Become the Product* (2012) (3 pages)

# The Atlantic Council, *The MADCOM Future: How Artificial Intelligence Will Enhance Computational Propaganda, Reprogram Human Culture, and Threaten Democracy…and What Can be Done About it* (Executive Summary; Pages 10-11; remainder as optional background material) (2 pages)

# *ACLU v. Clapper*, 785 F.3d 787, 791–832 (2d Cir. 2015) (42 pages)

# Senate Select Committee on Intelligence Statement for the Record: Worldwide Threat Assessment of the U.S. Intelligence Community (Pages 5-8; 15-16; 19 bullet 3) (7 pages)

# Frances Haugen Written Testimony, Hearing Entitled: “Protecting Kids Online: Testimony from a Facebook Whistleblower” Subcommittee on Consumer Protection, Product Safety and Data Security of the Senate Committee on Commerce, Science, and Transportation. <https://www.commerce.senate.gov/services/files/FC8A558E-824E-4914-BEDB-3A7B1190BD49> (4 pages)

# Jon Mills & Kelsey Harclerode, *Privacy, Mass Intrusion, and the Modern Data Breach*, Fla. L. Rev. (2017) (Pages 773-79) (7 pages)

# Optional background materials:

## *Obama v. Klayman*, 800 F.3d 559, 560–70 (D.C. Cir. 2015)

## *United States v. Moalin*, 973 F.3d 977, 983–1010 (9th Cir. 2020)

## Hearing Entitled: “Protecting Kids Online: Testimony from a Facebook Whistleblower” Subcommittee on Consumer Protection, Product Safety and Data Security of the Senate Committee on Commerce, Science, and Transportation, [https://www.commerce.senate.gov/2021/10/protecting%20kids%20online:%20testimony%20from%20a%20facebook%20whistleblower](https://www.commerce.senate.gov/2021/10/protecting%20kids%20online%3A%20testimony%20from%20a%20facebook%20whistleblower).

**01/27/22** **Week #2 – Everything You Always Wanted to Know about Data Breaches (but Were Afraid to Ask)
(24 pages)**

# Data Breach Response: A Guide for Business, FTC (Feb. 2021) (16 pages)

# Michael Adams, *Why the OPM Hack is Far Worse than You Imagine*, LawFare (Mar. 11, 2016) (5 pages)

# Robert Kim, *Analysis: CFIUS Scrutiny Forces Chinese Sale of Grindr*, Bloomberg Law(Apr. 16, 2019) (3 pages)

# Optional background materials:

## Ponemon Institute, *Cost of a Data Breach Report* (2021)

**02/03/22** **Week #3 – Data Management Practices
(50 pages + video)**

# Malcolm Chisholm, *Seven Phases of a Data Life Cycle*, Bloomberg (July 14, 2015) (9 pages)

# Farnam Jahanian, *The Policy Infrastructure for Big Data: From Data to Knowledge to Action*, 10 J. L. & Pol’y for Info. Soc’y 865, 871–880 (2015) (11 pages)

# Bob Leaper, *The Rise of the Chief Data Officer*, WIRED (2014) (3 pages)

# The Internet of Things (IoT)

## *Careful Connections: Building Security in the Internet of Things*, FTC (Jan. 2015) (12 pages)

## Executive Order No. 14028, 86 FR 26633 (May 12, 2021) (15 pages)

## *What is the Internet of Things (IoT) and how can we secure it?*, NIST (Apr. 26, 2018), <https://www.youtube.com/watch?v=H_X6IP1-NDc&t=377s> (07:53)

# Optional background materials:

## Michael Fagan, Growing the Internet of Things Into a Safe and Responsible Member of Your Household, NIST (Oct. 17, 2019)

## Cybersecurity Labeling for Consumers: Internet of Things (IoT) Devices and Software, NIST

## Making the Business Case for a Chief Data Officer, MIT Sloan Blog (2021)

## Rethinking the Role of Chief Data Officer, Forbes (2019)

## The New Hero of Big Data and Analytics: The Chief Data Officer, IBM (2014)

**02/10/22** **Week #4 – Samples of a Data Breach (Case Studies)
Guest Lecturer: Mr. Charles Carmakal, Mandiant
(25 pages + skim 49 pages)**

# Colonial Pipeline

## What We Know About The Ransomware Attack On A Critical U.S. Pipeline, NPR (9 pages)

## 6 U.S.C. § 673 (4 pages)

## Department of Justice Seizes $2.3 Million in Cryptocurrency Paid to the Ransomware Extortionists Darkside, U.S. Department of Justice (2 pages)

# Solar Winds

## SolarWinds Cyberattack Demands Significant Federal and Private-Sector Response, Government Accountability Office (6 pages)

# Sony Pictures Entertainment

## David E. Sanger & Martin Fackler, *N.S.A. Breached North Korean Networks Before Sony Attack, Officials Say*, The New York Times (Jan. 18, 2015) (4 pages)

# Cybersecurity

## Cybersecurity Risk Information Sharing Program (CRISP) Fact Sheet, U.S. Department of Energy Office of Cybersecurity, Energy Security, and Emergency Response (2 pages) (skim)

## Malware Analysis Report (AR21-039B, Cybersecurity & Infrastructure Security Agency (15 pages) (skim)

## Malware Analysis Report (AR21-039A), Cybersecurity & Infrastructure Security Agency (32 pages) (skim)

**02/17/22** **Week #5 – Government and Private Sector Data Security
Guest Lecturer: Brian Cavanaugh, Former Senior Director for Resilience @ National Security Council
(60 pages)**

# U.S. Government

## Presidential Policy Directive 21 on Critical Infrastructure Security and Resilience (15 pages)

## Presidential Policy Directive 41 on United States Cyber Incident Coordination (8 pages)

## Executive Order 13942 (TikTok) (3 pages)

## Executive Order 13943 (WeChat) (3 pages)

# Adversaries

## USTR Update Concerning China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (Pages 10-21; remainder as background only) (12 pages)

## United States v. Pangang Group Company, Ltd., 6 F.4th 946 (2021) (14 pages)

## The National Medium-and Long-Term Program for Science and Technology Development (2006-2020) (II. 1. Guiding Principles; II. 2. Development Goals; III. Main Areas and Priority Topics (skim headings only); V. Frontier Technologies (skim headings only)) (5 pages + skimming headings)

# Optional background materials:

## Senate Select Committee on Intelligence Russian Active Measures Campaigns and Interference in the 2016 U.S. Election (Pages 3-8; 11-12 (Russian Use of Disinformation); Page 20 (First two paragraphs); Page 29 (First paragraph); remainder as background only)

**02/24/22** **Week #6 – Regulators: The FTC… and Everyone Else
(63 pages)**

# Daniel J. Solove & Woodrow Hartzog, *The FTC and the New Common Law of Privacy*, 114 Col. L. Rev. 583, 600-27 (2011) (28 pages)

# *F.T.C. v. Wyndham Worldwide Corp.*, No. 14-3514, 2015 WL 4998121, at \*1-2 (3d Cir. Aug. 24, 2015) (24 pages)

# Target Corporation

## *In re Target Corp. Customer Data Sec. Breach Litigation*, 64 F. Supp. 3d 1304, 1304–14 (D. Minn. 2014) (11 pages)

# Optional background materials:

## Target Corporation continued

### Robin Sidel et al., *Target Hit by Credit-Card Breach* (Dec. 19, 2013)

Paul Ziobro & Danny Yadron, *Target Now Says 70 Million People Hit in Data Breach* (Jan. 10, 2014)

### Samantha Sharf, *Target Shares Tumble as Retailer Reveals Cost of Data Breach*, Forbes (Aug. 5, 2014)

## Wyndham

### FTC Order

### FTC Press Release

## LabMD

### *In re Lab MD* (Sept. 29, 2016) https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter (FTC has not updated)

### Privacy Bar Section, *US Appeals Court Narrows FTC’s ‘Unfair’ Standard in LabMD Case*

### Atlanta Small Business Network, *Taking Data Security Seriously: How Michael Daugherty Learned the Hard Way* (2020 Update from LabMD perspective)

### *Labmd, Inc. v. FTC*, No. 16-16270-GG, 2019 U.S. App. LEXIS 13588 (11th Cir. May 6, 2019)

## Health

### HIPAA introduction, *available at* <http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/>

## Other Entities

### 45 C.F.R. §§ 164.400-414 (2015)

## Financial Institution

### *How to Comply with the Privacy of Consumer Financial Information Rule of the Gramm-Leach-Bliley Act*, Federal Trade Commission (July 2002)

### Privacy of Consumer Financial Information, 16 C.F.R. § 313.1-9 (2015)

## FCC

### *FCC Plans $10M Fine for Carriers That Breached Consumer Privacy,* Federal Communications Commission (Oct. 24, 2015)

##  Education

### Family Educational and Privacy Rights, 20 U.S.C.A. § 1232g (2013)

### Student Privacy Prevention Act, S. 1341, 114th Congress (2015)

**03/03/22** **Week #7 – Free Speech, Republication, and Immunity
(33 pages + skim 50 pages)**

# *Bartnicki v. Vopper*, 532 U.S. 514, 517 (U.S. 2001) (24 pages)

# 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) (skim) (50 pages)

# 47 U.S.C. § 230, A provision of the Communications Decency Act (CDA) of 1996 (9 pages)

# Optional background materials:

## Summary and analysis of 47 U.S.C. § 230

## NPR Politics Podcast, *Trump’s Social Media Lawsuit is Mostly Messaging, But Tech Regulation is Coming*, at <https://www.npr.org/2021/07/08/1014321286/trumps-social-media-lawsuit-is-mostly-messaging-but-tech-regulation-is-coming>

**03/10/22 NO CLASS – SPRING BREAK**

**03/17/22** **Week #8 – Approaches of States and Other Jurisdictions
Speaker: Mr. Domenic DiLullo, Data Protection Coordinator Volvo Global Compliance
(54 pages + skim 120 pages)**

# *Schrems v. Data Protection Comm'r*, CJEU Case C-311/18 (July 16, 2020) (44 pages)

# Julia Fioretti, *Google Refuses French Order to Apply ‘Right to be Forgotten” Globally*, Reuters (July 31, 2015) (10 pages)

# Future of Privacy Forum, *Comparing Privacy Laws: GDPR v. CCPA* (skim) (42 pages)

# Data Breach Charts:

## BakerHostetler, *Breach Notification Law Interactive Map*, <https://www.bakerlaw.com/BreachNotificationLawMap>

## National Conference of State Legislatures, *Security Breach Notification Laws* (2021), available at <https://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx> (website)

## Foley & Lardner LLP, *State Data Breach Notification Laws* (2021) (skim) (78 pages)

# Optional background materials:

## General Data Protection Regulation (GDPR) (2016), available at <https://ec.europa.eu/info/law/law-topic/data-protection/data-protection-eu_en>

## *Yildirim v. Turkey*, no.3111/10 (2011)

## *Mouvement raëlien suisse v. Switzerland*,no. 16354/06 (2012)

## *Yahoo!, Inc. v. La Ligue Contre Le Racisme et L’Antisemitisme*, 169 F. Supp. 2d 1181, 1193 (N.D. Cal. 2001)

## *Axel Springer AG v. Germany*, ECHR 227 [2012]

* 1. Future of Privacy Forum, *Federal Preemption Statutory Language Table*

## Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González (2014)

**03/24/22** **Week #9 – Remedies for Invasion of Privacy
Guest Lecturer: Mr. Jay Edelson, Founder of Edelson PC and Plaintiffs’ Attorney
(34 pages + skim 73 pages)**

# *Clapper v. Amnesty Intern. USA*,113 S. Ct. 1138 (U.S. 2013) (28 pages)

# *In re Sony Gaming Networks and Customer Data Breach Litigation*, 996 F. Supp. 2d 942 (S.D. Cal. 2014) (skim) (73 pages)

# *Daly v. Metropolitan Life Ins. Co.*, 782 N.Y.S.2d 530 (NY Sup. Ct. 2004) (6 pages)

# Optional background materials:

## 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 (2007)

## Intentional Torts: Public Disclosure of Private Facts and Intrusion upon Seclusion

### Jon L. Mills, Privacy in the New Media Age 269-305(University Press of Florida, 2015)

### Restatement (Second) of Torts § 652B (1977)

### *Randolph v. ING Life Ins. & Annuity Co*., 973 A.2d 702 (D.C. 2009)

### *Galaria v. Nationwide Mut. Ins. Co*., 998 F. Supp. 2d 646 (S.D. Oh. 2014)

## Unjust Enrichment

### *In Re Zappos.com, Inc. Customer Data Security Breach Litigation*, 2013 WL 4830497 at \*4 (D. Nev. Sept. 9, 2013)

## Trade Secret Protections

### Samuelson, *Principles for Resolving Conflicts Between Trade Secrets and the First Amendment*, 58 Hastings L.J. 777

## Emotional Injury and Loss of Privacy

### Amburgy v. Express Scripts, Inc., 671 F. Supp. 2d 1046 (E.D. Mo. 2009)

### Hammond v. The Bank of New York Mellon Corp., 08 CIV 6060 RMB RLE, 2010 WL 2643307 (S.D.N.Y. June 25, 2010)

## Loss of Value Information

### In re Barnes & Noble Pin Pad Litig., 12-CV-8617, 2013 WL 4759588 (N.D. Ill. Sept. 3, 2013)

**04/07/22** **Week #10 – Student Presentations**

**04/14/22** **Week #11 – Student Presentations**

**04/21/22** **Week #12 (Last Class) – Student Presentations**