

Lecture Notes on Legality and Ethics

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Major discussion points not in Aaron's slides

Outline

Privacy & Electronic Communication Privacy Act (ECPA)
Case study – Law enforcement interception of emails

Prosecutorial discretion

Jurisdictional issues

Computer Fraud and Abuse Act (CFAA)
Case study – U.S. v. Lori Drew and criminal application of CFAA

Ethics

Institutional Review Boards (IRB)

ECPA

No clear guidance on what's content and non-content

E.g. For Google query “<http://www.google.com/search?q=4th+amendment&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a>”, <http://www.google.com> is non-content, but everything afterwards are content.

Content discloses “substance, purport, or meaning”

Privacy

Wiretap outside home

Private (i.e. non-govt.) entities can wiretap

Hence not covered by 4th Amendment (re govt. searches and seizures)

Supreme Court hold 4th Amendment protects people not places – hence “outside the home” irrelevant

Radio communications covered by Communication Act of 1934

Generally not covering radio broadcast

Wiretap Act also covers only non-broadcast

Broadcast vs. non-broadcast distinguished by intent, not by medium

Several different kinds of communication

Oral – face to face

Wire – sound of human voice (telephone)

Electronic – everything else

Protection of oral and wire communications went into effect in 1968

Protection of electronic communications went into effect in 1986

Law enforcement intercept of emails

Work w/ ISP

ISP equipment has wiretap capability

Key question – when traffic pass through the router, is it stored or not?

One stance – the data is stored

Ruling – court interpretation of the law & legislative intent – data is actually not stored

Original mental model is that data is stored only at the sender/receiver

3rd party doctrine

All bank records, calling records, IP logs, etc. have no constitutional protection

However protected by statutes

When laws don't keep up w/ technology, rely on courts' interpretation

Prosecutorial discretion

Also plays a part in interpreting the law

Botlab – can justify through provider exception, i.e. defending the Wash. U network from spam

Caveat – Botlab doesn't help with immediate spam mitigation, only long term

Alternative framework – rely on user consent, e.g. authorization for university to monitor traffic

Implicit consent – e.g. spam filter has implicit examination; this point also covered in provider exception

If implicit consent = no terms of service, then it's tricky

If one objects to terms of service, don't even start using the product

If start using the product, it's effectively the same as giving consent

There are protections against outright ridiculous contracts – contract unconscionability

Jurisdictional issues

Many states have their own wiretap laws

Federal law preempts all state law

In prosecution, to decide on which law to use, often start with treatise of all relevant laws

Generally can start with identifying the kind of provider

But not all laws are orthogonal

CFAA – introduced 1986

Essentially an anti-hacking statute
Also covers DoS – interference and loss with some system

U.S. v. Lori Drew

Facts of the case

- Lori Drew created fake MySpace account
- Bullied 13 yrs old Megan Meier
- Meier subsequently committed suicide

Not enough to slap slander on Lori Drew – slander is a civil offense, criminal prosecution sought
Convicted on breach of contract of MySpace terms of service (TOS)
Overturned on criminal application of CFAA in TOS breach cases – constitutionally void for vagueness

More details on http://en.wikipedia.org/wiki/Suicide_of_Megan_Meier and
http://en.wikipedia.org/wiki/United_States_v._Lori_Drew

Ethics

Consequentialism

- The moral rightness of an act depends only on its consequences
- E.g. utilitarianism, greatest increase in collective good
- Objection – individuals have rights, so should not violate even if it's for the collective good
- Objection – uncertainty – how far into the future do we know
- Objection – diversity – how to know other people's values
- Still a useful framework for thinking about things

Deontological theories

- Morality is prescribed by individual rights, duties
- Somewhat acts as a balance against consequentialism
- E.g. role/duty as researcher is to understand problem with realistic tradeoffs

Research community need to develop general framework/best practices

Requiring zero risk of causing harm is probably not good

But allowing harm is also not good

IRB

Interesting – IRB mostly concerned with people dying – should ask for exemption and leave IRB alone?

E.g. Find ways to frame the research as not about human subjects – hence IRB does not apply

Exemption possible if

- Studies existing with publicly available data
- No identifiable data

Expedited review also possible if research has no more than minimal risk

- Quicker protocol approval