The Legal and Regulatory Implications of Internet Privacy

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Agenda

- Social Networking
- Virtual Worlds
- Cloud Computing
Social Networking
Discussion Topics

- Social Networking Evolution
- Risks
- Deception Prevention
- Balance
Social Networking Evolution

- Some of the Favorites:
  - LinkedIn 03’
  - MySpace 03’
  - Facebook 05’
  - Twitter 06’

- Social Networking is Becoming Commonplace

- Leveraging Sites for More Than Just Communicating
  - Exchanging Media
  - Sharing Documents (We hope not sensitive or confidential)
  - Distributing Resumes
  - Developing and Sharing Custom Applications

- Social Networking as a Business Tool
  - Human Resources Leveraging Social Networking Sites to Recruit Candidates
  - Leveraging Open Source Solutions
  - Open Forums for Customers & Partners
Social Networking Risks

- Potential Data Leakage of Sensitive Information
- Unintentional Download of Trojans or Viruses to Employee Computers (i.e. MySpace Koobface Virus, 08’)

~ Ripped from the Headlines ~

Social Networking Becomes a “Social Engineering Incubator.” Increased Targeting of the Organization:
- Corporate Governance
- Customers / Employees
- Affiliates

- Reduced Productivity
Social Networking Deception - Prevention

- Spamming Takes Center Stage
- Profile Spoofing
- Prevention
  - Don't include common verification such as your date of birth or your mother’s maiden name
  - Set up privacy on your profile so only close friends can view your information
  - If you are going on holiday or you will be left in your home alone, don't put it on your site. This could leave you vulnerable to break ins
  - Potential partners and employers are often searching names on these sites. Don't put anything on your site which could ruin your chances of a new job or provide the wrong impression of you
  - Be wary of anyone you meet on these sites. The photo may be deceptive and they may have different intentions
Balancing Social Networking Risks

- Maximizing the Benefits of Social Networking Tools
- Proactively Identify Risks – Inform and Increase Awareness
- Develop a Balanced Social Networking Strategy
  - Business Objectives Should Dictate the Approach
  - What to Permit
  - What to Block
  - Who Should Have Access
- Establish Clearly Defined & Enforceable Policies
- Provide Ongoing Security Awareness & Training
Virtual Worlds
Virtual Worlds

- What Are They?
- Privacy Concerns
Internet in 1994

- Fad
- Consumer Toy
- B2B Tool
- Websites? What?
- Nobody relied on it.
- Big technical challenges.
ROADBLOCKS:
BANDWIDTH
PROCESSING POWER
EASE OF ACCESS
KEY FEATURE: USER CREATED / USER OWNED CONTENT
KEY FEATURE: REAL MONEY
PRIVACY CONCERNS IN VIRTUAL WORLDS

- Provider Policies
- User Activities
- Legal Obligations
Second Life
Terms of Service:

“You acknowledge and agree that Linden Lab, in its sole discretion, may track, record, observe or follow any and all of your interactions within the Service.”
"BLIZZARD MAY MONITOR, RECORD, REVIEW, MODIFY AND/OR DISCLOSE YOUR CHAT SESSIONS, WHETHER VOICE OR TEXT, WITHOUT NOTICE TO YOU, AND YOU HEREBY CONSENT TO SUCH MONITORING, RECORDING, REVIEW, MODIFICATION AND/OR DISCLOSURE."
User Activity

- Chat Spy Devices
- Tracking Devices
- Spy v. Spy
Key Concerns Regarding Privacy in Mainstream Virtual Worlds and Games

- Violation of Export Restrictions
- Loss of Trade Secret Protection
- Inadvertent Privacy Policy Violations
- Destruction of Confidentiality Protections
Children’s Online Privacy Protection Act (COPPA) (1998)

- **Generally**
  - Prohibits operators of commercial websites and online services;
  - from collecting or disclosing personal information;
  - of minors under age 13;
  - without verifiable parental consent

- **Knowledge Component**
  - Site must be “directed to children” or operator must have “actual knowledge” that site is collecting info from a child
  - "Actual knowledge" satisfied if user enters a birth date indicating under age 13
Children’s Online Privacy Protection Act (COPPA) (1998) (continued)

Notice Required
- Operators must tell parents what information is collected and how it is used, even if they consent

Not Just for Kids’ Sites
- Applies to any site that collects information from children
- Many sites forbid registration if user is under 13
Key Concern Regarding Privacy in Virtual Worlds for Kids – Inadvertent Data Collection

Information entered by the user
- Name
- Birth date
- Home Address
- Email Address
- Social Security Number

Behavior Tracked by the Game or World
- Time spent in the world
- Products or advertisements viewed; time spent looking
- Identity / demographics of online friends
- Virtual items “purchased”
- Game quests completed
Cloud Computing
Cloud Computing – DB/App Services

User → Company Server → Web/App Servers → DB Server → Cloud Service

Periodic Snapshot
The Cloud – Types

Internet-based services

- Amazon S3
- Box.net
- Google Base
- Mozy
- Amazon SimpleDB
- TrackVia
- Microsoft SSDS

Infrastructure as a Service

- Amazon EC2
- Joyent
- Sun Microft’s Network.com
- HP Flexible Computing Services
- IBM Blue Cloud
- 3tera
- OpSource
- Jamcracker

Platform as a Service

- Bungee Lab’s Bungee Connect
- Etelos
- Coghead
- Google App Engine
- HP Adaptive Infra. as a Service
- Salesforce.com
- LongJump

Software as a Service

- Oracle Saas platform
- Salesforce Sales Force Automation
- NetSuite
- GoogleApps
- Workday Human Capital Management
The Cloud – Pyramid of Flexibility

(SaaS) Application

(PaaS) Platform

(IaaS) Infrastructure

Niche

Breadth
Fourth Amendment to the United States Constitution

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized”
Fourth Amendment to the United States Constitution

Edward Coke in *Semayne’s case*

- “The house of every one is to him as his castle and fortress, as well for his defence against injury and violence as for his repose.”

Fourth Amendment to the United States Constitution

Reasonable expectation of privacy

- In *Katz v. United States*, 389 U.S. 347 (1967), Justice Harlan issued a concurring opinion articulating the two-part test later adopted by the Court as the definition of a *search* for Fourth Amendment purposes. Under the test, search occurs when (1) governmental action must contravene an individual’s actual, subjective expectation of privacy, (2) and expectation of privacy must be reasonable, in the sense that society in general would recognize it as such.
Fourth Amendment to the United States Constitution


- United States v. Ziegler: On January 30, 2007, the United States Court of Appeals for the Ninth Circuit in United States v. Ziegler reversed its earlier August 2006 decision upon a petition for rehearing. In contrast to the earlier decision, the Court acknowledged that an employee has a right to privacy in his workplace computer. The court also found that an employer can consent to searches and seizures that would otherwise be illegal.

- **Conclusion ....**
PATRIOT Act (Public Law 107-56)

- The Act applies to any data, including data in the clouds
- The Act allows the use of national security letters (an administrative subpoena) to obtain records
- Those who get the order to disclose may not be able to tell
Other Legal Concerns

- Which jurisdictions’ laws apply
- HIPAA – Business associate agreement
- Tax return information – Complex rules and consent
- Attorney-Client & other privileges – Potential waiver if not safeguarded
- Trade secret protection – Potential waiver
- Electronic Communications Privacy Act (ECPA) – Complex
- Fair Credit Reporting Act
- Bankruptcy
Solutions

Terms of service:

- Use of data
- Location of data
- No change of terms
- Destruction
- Ownership (assignment)
- Subpoena
- Audits
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