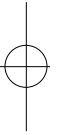
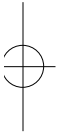
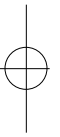


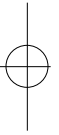
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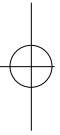
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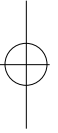
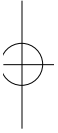
ISBN 0-89089-043-9
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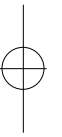


CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

*for David Stagliano,
Mark and Emily*





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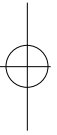
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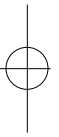
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Preface

Justice Douglas asked rhetorically, “If a man’s privacy can be invaded at will, who can say he is free?” *Osborn v. United States*, 385 U.S. 323, 354 (1966) (Douglas, J., dissenting). What constitutes legitimate spheres of “privacy,” what comprises an “invasion,” and which countervailing interests may supercede privacy interests have generated a considerable body of caselaw, legislation, and scholarly commentary. Issues relating to the law of privacy call into question the degree to which one may control access by others to information about him, and whether, once acquired, legal constraints operate to prevent indiscriminate or other disclosure. Also at issue is the scope of an individual’s capacity to make decisions, the degree to which such decisions are adequately informed, and the ability to restrict others from interfering with decisions. Privacy essentially serves as a shield against unwanted interference from others. As well, privacy fosters independent decision-making. Autonomy, which is animated and facilitated by privacy, fosters self-determination to shape one’s identity and distinguishes one person from another.

This book is designed to explore constitutional tenets and their inferences, judicial constructs, and legislative precepts, in order to consider such quintessentially metaphysical questions as the definition of personhood. The approach of the book is to require the student to take initial, intuitive reactions, and traverse through doctrinal rationales and analytical prisms, reflecting on whether reaction and reason are coincident. At the outset, fundamental principles of privacy are explored as a means of laying a foundation for doctrinal approaches to the consideration of privacy problems. Access to information is then discussed in order to evaluate the degree to which the individual has, and should have, control over access to personal information. Legal constraints on the dissemination of such information once access is achieved are then reviewed. Finally, autonomous decision-making, an analogue and facilitator of informational privacy, is illustrated through a discussion of reproductive freedoms and end of life decisions.

Privacy law is an inherently capacious topic, ill-suited to any reasonable aspiration to comprehensively cover all facets of the law. Further, in light of the extraordinary fluidity of privacy law, the inter-disciplinary nature of the field, dynamic technological developments in surveillance and tracking methods, and continuing advancements in biomedical research and clinical practice, the materials included in this work no doubt will deserve updating even before the book goes to press in mid-2002.

The book includes materials that are noteworthy for their analyses, because courts have distinguished or relied on them, or in light of the media attention they have garnered, notwithstanding that they may have been modified by subsequent developments, technological advances, or other proceedings.* While caselaw in this area tends to consist

* Footnotes, headings, and citations to case records have been selectively omitted, and other stylistic modifications have been made to court decisions, statutes, and secondary sources, in order

of quite lengthy court decisions, concurring and dissenting opinions often have been included nonetheless in order to promote a more comprehensive understanding of alternative and countervailing rationales. The factual basis for the claim asserted frequently is set forth as well, lest one lose sight of the fact that legal analyses are expounded about personal sensibilities.

The selected case excerpts and commentary are not designed to summarize the current state of the law; rather, they survey in didactic fashion the efficacy and utility of the analyses utilized to reach particular conclusions. Exhaustive review of all aspects of the law of privacy law simply is not feasible. This book omits, for instance, extensive discussion of comparative international and state privacy law, proposed legislation, and review of criminal law issues. Nor does the book deal with a wide range of privacy issues attendant to medical care, such as consent to biomedical investigation, treatment options, and genetic counseling.

This book expands on, and is compatible with, *Law of Internet Speech*. Not surprisingly, there is some overlapping discussion and case excerpts with that book, particularly with respect to privacy issues that have arisen in the Internet context. This book is designed to be used independently of *Law of Internet Speech*, as a companion to it, or for either a prerequisite or advanced course on the subject matter.

There is no question that privacy matters are inherently controversial and highly emotional, engendering passionate views. Amongst the insights that may be gleaned from court decisions and scholarly commentary is a pronounced effort to respect opposing views while zealously advocating a particular position. The author is an in-house attorney at AOL Time Warner Book Group Inc., which is part of AOL Time Warner Inc., and an Adjunct Associate Professor at the Fordham University School of Law. The materials included in this book, which contain divergent viewpoints, are intended to serve as an intellectual catalyst to provoke discussion and thought; but where there are vestiges of viewpoints or if views are inferred, nothing herein should be construed as necessarily expressing the views of anyone other than the author or as constituting legal advice.

to promote consistency and facilitate review. Footnotes within excerpts, to the extent they are included herein, correspond to the footnote numbers in published reports. Citations for supporting authorities and citations within case excerpts are included to support extended research.