

University of Florida
Law and Privacy: US and European Perspectives
EUS 3930
POS 4931
Spring 2023

COURSE INFORMATION:

Instructor: Prof. Alexander Panayotov, Ph.D.

Course Location: Leigh Hall 0104

Course Time: Monday, Wednesday, and Friday 9:35-10:25 AM

Office Location: Turlington Hall 3343

Office Hours: Monday 11:00-1:00PM (in person), Wednesday 11:15-12:15 PM (Zoom), and by appointment

COURSE DESCRIPTION:

Privacy is a concept that is both omnipresent and elusive. Lawyers, economists, political scientists, and philosophers – among others – try to capture its essence. Despite their efforts, the concept of privacy remains in flux: we have too much to study, we know too little about it, and even what we know is too unclear. For this reason, we will seek to clarify a pragmatic approach to privacy and embed it within a broader framework for understanding law, authority, and power. This means that we will establish the boundaries of the concept and look at its applications. Because of this, the course has the following objectives: 1) to explore the conceptual basis of privacy; 2) to outline how governments, corporations, and individuals view the concept of privacy and deploy it to attain their objectives; and, 3) to learn the difference between the American and European concepts of privacy and the regulatory implications of these differences. States, corporations, and individuals are involved in the negotiation, contestation, and regulation of privacy. We will study how these actors developed strategies for controlling, monetizing, and exploiting privacy. We will refrain from studying the technological aspects of privacy and their relations to global commerce and business. Overall, this course is about the conceptual clarification of privacy and its political and legal ramifications in the context of the relationships between the United States and the European Union

In this class, you will learn different styles of analysis and argumentation. Understanding these styles might prove challenging. Because of this, be prepared to discuss them in class. The class discussion is a deliberative exercise: you are expected to contribute to it because everyone will benefit from a vigorous exchange of ideas. To facilitate this exchange, I will call people in class. Please be advised that class attendance is mandatory. In addition, please respect your colleagues' views: we will study problems open to multiple interpretations. Don't forget that collegiality and tolerance are virtues not vices.

LEARNING OBJECTIVES:

Students in this course will:

- Explore the conceptual foundations of privacy.
- Learn the methodological skills to analyze and understand privacy issues.
- Refine their writing, editing, and presentation skills.

COURSE TEXTS:

1. Daniel J. Solove, *Understanding Privacy* (Harvard University Press, 2008) [hereinafter UP].
2. European Agency for Fundamental Rights, “*Handbook of European Data Protection Law*” [hereinafter EDPL]. Please do not buy the book, it will be available on Canvas.
3. Simon Chesterman, “*We, the Robots: Regulating Artificial Intelligence and the Limits of the Law*” (Cambridge University Press, 2023) [hereinafter WR].
4. Materials on the Canvas web site.

EXAMINATIONS AND ACADEMIC HONESTY:

- I will not be able to change exams’ parameters and presentation dates except in the following cases: a medical emergency, which must be properly documented, and a death in the immediate family.
- Absences from class must be properly documented. An absence without proper documentation will be counted as an unexcused one. Two or more unexcused absences will result in lowering of your attendance and participation grade.
- Depending on our progress, there might be changes in the schedule. You will be notified of all changes in advance.
- No extra credit assignments will be offered.
- Please note that UF students are bound by The Honor Pledge which states, “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: “On my honor, I have neither given nor received unauthorized aid in doing this assignment.” The Honor Code (<http://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor in this class. Please note that this is a research-intensive course. Because of this, plagiarism and other forms of academic dishonesty will not be tolerated. Students are required to read, understand, and abide by the University of Florida Academic Honesty policy. The policy can be found here: <https://sccr.dso.ufl.edu/process/student-conduct-code/> . All violations of the said policy will be reported in accordance with the process outlined in it.
- The requirements in the syllabus are consistent with the UF grading policy. The policy can be found here: <https://catalog.ufl.edu/UGRD/academic-regulations/grades-grading-policies/>

GRADE CONCERNS:

If a student disagrees with her grade, she must outline her concerns in writing within 48 hours of receiving the grade. I will not accept grade concern statements after the expiration of the 48 hour period. The statement must contain a reasoned claim backed by textual evidence. After evaluating the merit of the claim, I will do one of the following: 1) increase the grade; 2) lower the grade; or, 3) leave the grade unchanged. The student will be notified about my decision within a reasonable time frame and the grade will be adjusted accordingly. Please note that this policy will not be applicable to the final paper and the overall final grade.

ATTENDANCE:

- Please be advised that class attendance is mandatory. I will revise your grade one grade step down (e.g. B+ to B) for systemic unexcused absences from class (three or more absences).
- Arrive on time. I will lower your attention and participation grade in cases of systematic tardiness. I define systematic tardiness as “three or more late arrivals to class.”
- Do not leave early. If you leave early three or more times, I will lower your attention and participation grade.
- Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at: <https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>

INCOMPLETES:

Incompletes will be granted under exceptional circumstances. A student who wants to receive an incomplete must: (1) inform the professor 10 (ten) days prior to the last day of class and (2) provide a written explanation about the reasons necessitating the incomplete. These reasons must be properly documented. In addition, the student must provide a written plan for finishing the missing work. The student must complete the work during the following semester. Failure to complete the work will result in an E.

COURSE EVALUATIONS:

“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 and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.”

ACCOMMODATIONS:

Students with disabilities who experience learning barriers and would like to request academic accommodations should connect with the disability Resource Center by visiting

disability.ufl.edu/students/get-started. It is important for students to share their accommodation letter with their instructor and discuss their access needs, as early as possible in the semester

Faculty can expect to receive a student's accommodation letter within the first 3 weeks of classes; however, if a student registers with the DRC later in the semester faculty are still obligated to facilitate accommodations. Neither faculty nor administrators may independently deny a request for accommodation that is approved by the Disability Resource Center.

Students are also advised to explore the opportunities offered by the UF Disability Resource Center. The Center is located at 001 Reid Hall, web page: <https://disability.ufl.edu/#> .

CLASS EXPECTATIONS:

In response to COVID-19, the following recommendations are in place to maintain your learning environment, to enhance the safety of our in-classroom interactions, and to further the health and safety of ourselves, our neighbors, and our loved ones. If you are not vaccinated, get vaccinated. Vaccines are readily available and have been demonstrated to be safe and effective against the COVID-19 virus. Visit one.uf for screening / testing and vaccination opportunities. If you are sick, stay home. Please call your primary care provider if you are ill and need immediate care or the UF Student Health Care Center at 352-392-1161 to be evaluated. Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work.

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.

RESPONSIBILITIES:

- Ensure that you have a reliable access to Canvas because it will be used extensively throughout the semester. Note that you will be responsible for printing or viewing the assigned material.
- Read the materials in advance and in the order indicated in the syllabus.
- Turn off your cell phones **before** coming to class.
- Restrict the use of electronic devices to class-related activities, e.g., note-taking or article reading.
- Please do not eat in class. Drinks in closed containers are permitted.
- Please note that I will call people in class. This means that it's your responsibility to be prepared at all times. I reserve the right to lower your participation grade if you are unprepared.

GRADE SCALE:

A	94-100
A-	90-93
B+	87-89
B	84-86
B-	80-83
C+	77-79
C	74-76
C-	70-73
D+	67-69
D	64-66
D-	60-63
E	0-59

ASSIGNMENTS AND DEADLINES:

DUE DATE	ASSIGNMENT	DESCRIPTION	WEIGHT
	Attendance and participation	Please note that attendance is mandatory. Participation is an essential ingredient for your success in the course. I reserve the right to revise your grade one grade step up (e.g. A- to A) to reward your class participation. I also reserve the right to revise your grade one grade step down (e.g. B+ to B) for systemic unexcused absences from class (two or more absences). I will consider revising the grade one grade step down (e.g. B+ to B) for systemic tardiness (three or more late arrivals). I will not revise grades upwards to reward regular attendance. Do not leave early. If you leave early three or more times, I reserve the right to lower your attention and participation grade.	10%
31-Jan-2023	Précis	The précis is a one-page summary of an important privacy concept. I will post three privacy-related concepts on Canvas and you will have to select one of them. The précis will have to be 1” margin all around, Times New Roman font, size 12, single line spacing. You may cite course materials or external sources — books, articles, judicial decisions or primary documents — related to the concept. All sources must be properly cited in a bibliography, which will not be counted toward the page requirement. Please submit the assignment by using the Canvas web site. I will deduct 15 points for assignments submitted after the deadline and before 11:59 PM on February 2 nd . I will not accept submissions after that and no points will be awarded for this assignment.	20%
01-Mar-2023 – 08-Mar-2023 11:59 pm	Midterm (take-home exam)	The midterm will consist of two questions and two short answers. The answers to the essay questions should not exceed 5 double-spaced pages each. The short answers should not exceed five sentences. The additional requirements for the essay questions and the short answers are: 1” margin all around, Times New Roman font, size 12. Your answers should reflect the assigned readings and the class discussions. I will deduct 15 points for a proposal submitted after the deadline and prior to 11:59 PM on March 10 th . I will not accept submissions after that and no points will be awarded for this assignment.	30%

27-Apr-2023 – 04-May-2023 11: 59 pm	Final Exam (take home exam)	The final exam will consist of two questions and two short answers. The answers to the essay questions should not exceed 5 double-spaced pages each. The short answers should not exceed five sentences. The additional requirements for the essay questions and the short answers are: 1” margin all around, Times New Roman font, size 12. Your answers should reflect the assigned readings and the class discussions. I will deduct 15 points for a proposal submitted after the deadline and prior to 11:59 PM on May 6 th . I will not accept submissions after that and no points will be awarded for this assignment. The final exam will cover all materials studied throughout the semester.	40%
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SUBMISSIONS:

All assignments should be submitted via the Canvas course page. Please note that each student is responsible for the timely submission of her assignments. I will not send reminders for overdue assignments.

IMPORTANT DATES:

- **January 31st:** Précis I due
- **March 8th:** Midterm due
- **May 4th:** Final Exam due

TOPICS AND READINGS:

INTRODUCTION

“Philosophers make imaginary laws for imaginary commonwealths, and their discourses are as the stars, which give little light because they are so high”
Francis Bacon

Date	Subject	Readings
09-Jan-2023	Introduction	<ol style="list-style-type: none">1. Josh Chin and Liza Lin, “<i>The Two Faces of China’s Surveillance State</i>” [Canvas]2. Amy Dockser Marcus, “<i>When Your Ancestry Test Entangles Others</i>” [Canvas]3. Rob Copeland, Dana Mattioli and Melanie Evans, “<i>Paging Dr. Google: How the Tech Giant Is Laying Claim to Health Data</i>” [Canvas]

CONCEPTUALIZING PRIVACY: THE TANGLED WEB

“We feel as if we had to repair a torn spider’s web with our fingers”
Ludwig Wittgenstein, “Philosophical Investigations”, §106

Date	Subject	Readings
11-Jan-2023	The Concept of Privacy: The Beginning	<ol style="list-style-type: none">1. Samuel D. Warren, Louis D. Brandeis, “<i>The Right to Privacy</i>” [Canvas]
13-Jan-2023	The Concept of Privacy I	<ol style="list-style-type: none">1. UP 1-11
18-Jan-2023	The Concept of privacy II	<ol style="list-style-type: none">1. UP 12-38
20-Jan-2023	The Concept of privacy III	<ol style="list-style-type: none">1. UP 39-54
23-Jan-2023	The Concept of privacy IV	<ol style="list-style-type: none">1. UP 54-77
25-Jan-2023	The Value of Privacy I	<ol style="list-style-type: none">1. UP 78-100
30-Jan-2023	The Value of Privacy II	<ol style="list-style-type: none">1. John Lanchester, “<i>You are the Product</i>” [Canvas]2. Rachael Levy, “<i>How the 1% Scrubs Its Image Online</i>” [Canvas]
01-Feb-2023	Information Collection & Surveillance I	<ol style="list-style-type: none">1. UP 101-117
03-Feb-2023	Information Collection & Surveillance II	<ol style="list-style-type: none">1. Mara Hvinstendahl, “<i>Inside China’s Vast New Experiment in Social Ranking</i>” [Canvas]2. Simon Head, “<i>Big Brother Goes Digital</i>” [Canvas]

06-Feb-2023	REVIEW SESSION	There are no readings for this class. Please prepare your questions for the review session.
08-Feb-2023	Information Processing	1. UP 117-136 2. Kashmir Hill & Aaron Krolik, “ <i>How Photos of Your Kids Are Powering Surveillance Technology</i> ” (Canvas)
10-Feb-2023	Information Dissemination	1. UP 136-161
13-Feb-2023	Invasion	1. UP 161-170 2. Katherine Bindley, “ <i>Your Health Data Isn’t as Safe as You Think</i> ” [Canvas]
15-Feb-2023	Understanding Privacy (Summary)	1. UP 171-197

DOES MIGHT MAKE RIGHT? PRIVACY, WEALTH, AND POWER

“Right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must.”

Thucydides “History of the Peloponnesian War”, 4th ct. BC

Date	Subject	Readings
17- Feb-2023	Sovereignty and Privacy: Privacy Across Borders or Bordered Privacy?	1. Tim Wu, “ <i>Is Internet Exceptionalism Dead?</i> ”
20- Feb-2023	Privacy and Cyberwarfare: What Explains Cyberattacks?	1. Rebecca Slayton, “ <i>What is the Cyber –Offense Defense Balance? Conceptions, Causes, and Assessment?</i> ” [Canvas]
22- Feb-2023	The Wheels of Commerce: Monetizing Privacy in the Digital Age I	1. Tim Wu, “ <i>Blind Spot: The Attention Economy and the Law</i> ” [Canvas]
24- Feb-2023	The Wheels of Commerce: Monetizing Privacy in the Digital Age II	1. Hal Varian, “ <i>Computer Meditated Transactions</i> ” [Canvas] 2. Hal R. Varian, “ <i>Beyond Big Data</i> ” [Canvas] 3. Shoshana Zuboff, “ <i>Big Other: Surveillance Capitalism and the Prospects of an Information Civilization</i> ” [Canvas]
27- Feb-2023	The Wheels of Commerce: Monetizing Privacy in the Digital Age III	1. Raffi Khatchadourian, “ <i>We Know How You Feel</i> ” [Canvas]

WHAT IS (EUROPEAN) PRIVACY?

“The purpose of law is to prevent the strong always having their way”

Ovid

Date	Subject	Readings
01-Mar-2023	European and American Privacy I	1. James Q. Whitman, “ <i>The Two Western Cultures of Privacy: Dignity vs. Liberty</i> ”, pp. 1153-1180 [Canvas]
06-Mar-2023	European and American Privacy II	1. James Q. Whitman, “ <i>The Two Western Cultures of Privacy: Dignity vs. Liberty</i> ”, pp. 1180-1202 [Canvas]
08-Mar-2023	European and American Privacy III	1. James Q. Whitman, “ <i>The Two Western Cultures of Privacy: Dignity vs. Liberty</i> ”, pp. 11202-1221 [Canvas]
10-Mar-2023	Foundations of European Privacy I	1. <i>EDPL</i> 83-114
20-Mar-2023	Foundations of European Privacy II	1. <i>EDPL</i> 115-138
22-Mar-2023	Foundations of European Privacy III	1. <i>EDPL</i> 205-227 2. <i>Google v. Spain</i> [Canvas]
24-Mar-2023	Foundations of European Privacy IV	1. <i>EDPL</i> 227-248
27-Mar-2023	Foundations of European Privacy V	1. <i>EDPL</i> 249-271

THE TRANSATLANTIC CLASH: AMERICAN VS. EUROPEAN PRIVACY IN THE SHADOW OF THE LAW

“Ius est ars boni et aequi”

(Law is the art of the good and the equitable)

Celsus, “Digests”, 2nd ct. AD

Date	Subject	Readings
29-Mar-2023	The Safe Harbor Agreement	1. Henry Farrell, “ <i>Constructing the International Foundations of E-Commerce: The EU-US. Safe Harbor Arrangement</i> ”, pp. 277-280, 285-299 [Canvas]
31-Mar-2023	The Data War	1. David Lyon, “ <i>Surveillance, Snowden, and Big Data: Capacities, Consequences, Critique</i> ”, pp. 1-13 [Canvas] 2. Abraham Newman & Henry Farrell, “ <i>The Transatlantic Data War: Europe Fights Back Against the NSA</i> ”, pp. 124-133 [Canvas]

03-Apr-2023	The Privacy Shield and Beyond	<ol style="list-style-type: none"> 1. Congressional Research Service Martin Weiss & Kristin Archick, "U.S.-EU Data Privacy: From Safe Harbor to Privacy Shield" [Canvas] 2. Suzanne Dobbie, "The Death of Privacy Shield" [Canvas] 3. Kenneth Prop and Peter Swire, "Geopolitical Implications of the European Court's Schrems II Decision" [Canvas]
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REGULATING ARTIFICIAL INTELLIGENCE: THE PROMISE AND LIMITS OF THE LAW

"I would rather have questions that can't be answered rather than answers that can't be questioned"

Richard Feynman

Date	Subject	Readings
05-Apr-2023	Speed	<ol style="list-style-type: none"> 1. WR 1-30 2. Sue Halpern, "The Human Cost of AI" [Canvas]
07-Apr-2023	Autonomy	1. WR 31-62
10-Apr-2023	Opacity	1. WR 63-82
12-Apr-2023	Responsibility	1. WR 85-113
14-Apr-2023	Personality	1. WR 114-143
17-Apr-2023	Transparency	1. WR 144-170
19-Apr-2023	New Rules	1. WR 173-194
21-Apr-2023	New Institutions	1. WR 195-223
24-Apr-2023	Regulation by AI	1. WR 224-246
26-Apr-2023	REVIEW SESSION	There are no readings for this class. Please prepare your questions for the review session.

USEFUL LINKS:

1. The Electronic Frontier Foundation: <https://www.eff.org/> (United States)
2. European Digital Rights: <https://edri.org/> (Europe)
3. The Sedona Conference: <https://thesedonaconference.org/> (The premier source on policy research and recommendations on privacy in the United States)
4. The European Digital Market: <https://ec.europa.eu/digital-single-market/> (Short and lucid explanation on how the European Union has built its digital infrastructure and incorporated privacy rights into it).
5. Privacy Rights Clearinghouse: <https://privacyrights.org/data-breaches> (This link is particularly useful if you are interested in the systematic study of data breaches).
6. The Legal Information Institute (Cornell Law School): <https://www.law.cornell.edu/> (It covers the US law as a whole).

FOREIGN LEGAL PHRASES:

A contrario: “from a contrary position”

A fortiori: “for a still stronger reason”

Ad hoc: “for this; for the specific purpose”

Contra legem: “against the law” (often used in the context of legal interpretation)

De jure: “according to law”

De facto: “in reality; in fact”

Erga omnes: “toward all” (often used in relation to obligations)

De lege ferenda: “law as it should be”

De lege lata: “law as it is”

Opinio juris: “opinion of the law”