

Abstract of Lecture

The Evolving Perspective of American Cyber Law

Evolving Technologies produce emerging legal theories and the need for legislation designed to contend with new and novel privacy issues. Privacy law, which is the foundation of cyber law, originates in the idea of *the right to be left alone*. This right essentially balances the interests of the various involved parties: the government versus society. To what extent can the government obtain citizen or corporate data and in what manner, if any?

Traditional analysis when confronted with a new or novel issues or concerns, begins with a Constitutional analysis. But, as new concerns arose, Congressional involvement was deemed necessary. A demonstration of such necessity occurred as far back as 1979 when the Supreme Court decided *Smith v. Maryland*, a landmark case that established the Third Party Doctrine. This doctrine maintains that individuals have no reasonable expectation of privacy in evidence in the possession of a third-party. Consequently, many sources of data were exposed to government intrusion simply because the owner of the data was not in actual possession of that data.

The impact of this determination caused widespread concern. For example, are your bank or medical records protected? In an updated sense, are your emails or other electronic data, which are stored and maintained by a third-party provider, protected from seizure? What about location data information or overseas storage of data?

As a response, Congress passed various pieces of legislation designed to address the privacy concerns that arose in the 1980's. With the advent of the digital-age and the commonality of powerful devices, capable of containing historically large storage capacity, the nature of privacy and cyber issues have expanded. Device capability and storage locations, in addition to encryption of data, have led to new analysis and applications of these laws, in addition to uncertainties for all the involved parties.

This lecture will focus on the foundations of cyber and privacy law, explaining the source of privacy and cyber law. It will then transition into an analysis of the modern applications of the laws and the legal instability created by outdated laws. An essential portion will be devoted toward demonstrating the Supreme Court's updated perspectives of privacy and the consequences of that. Finally, this lecture will discuss contemporaneous issues that are currently being litigated and determined. (As a preview: Is data protected from intrusion if the storage provider, Google or Microsoft, choose to store it in a foreign datacenter? Can any country claim a right to the data, or is it removed from the reach of any claim?)