



FACULTY OF LAW, School of Law

LAWS3037

# Data Surveillance and Information Privacy Law

SEMESTER 2, 2008

## Course Outline

(Statement of Objectives and Assessment Strategy)

Postgraduate optional course  
Total contact hours: 28 (intensive)

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## 1. Course details

This course has 8 Units of Credit value. It is a postgraduate optional course. **Total contact hours: 28 (intensive)**. A copy of this Course Outline is provided to all students in the first class.

Teachers: Graham Greenleaf (Convener) <[g.greenleaf@unsw.edu.au](mailto:g.greenleaf@unsw.edu.au)> ; tel 9385 2233 and Nigel Waters <[nigelwaters@primus.com.au](mailto:nigelwaters@primus.com.au)>

Timetable - 17 & 18 September and 2 & 7 October, 9am – 5:30pm; Each day 4 sessions x 1 hr 45 mins, plus one hour for lunch and two 15 minute tea breaks.

## 2 Course aims

The course provides a critical survey of Australian information privacy and surveillance laws, and their relationships to international privacy standards, and gives students the opportunity to pursue more detailed study of a topic of interest to them.

## 3 Student learning outcomes

By the end of this course, you should:

- Understand the concepts of 'privacy' (particularly 'information privacy' or 'data protection') and 'surveillance' (particularly 'data surveillance') and be able to identify the values at issue in laws dealing with these subjects.
- Have a critical understanding of the key *general* laws (statutory and other) that protect information privacy and those that facilitate data surveillance. The emphasis is on the law applying in New South Wales (State, Federal and common law), and those aspects of international law that are relevant.
- Understand the current proposals to reform Australian privacy laws at both State and Commonwealth levels, and have developed your own critique of those proposals;
- Be able to distinguish the key differences between the different types of enforcement mechanisms for privacy laws, and the strengths and weaknesses of each;
- Understand the relationship between Australia's privacy laws, and international standards for privacy protection;
- Have gained a more in-depth understanding of the operation of data surveillance and data protection practices and these laws in a selected area of business, government or society, if you choose to do so.

### Relationship to Law Graduate Attributes

This course aims to support each of the UNSW Law Graduate Attributes (see Appendix for details), namely:

1. **Core disciplinary knowledge** - a functioning and contextual knowledge of privacy law and the legal institutions supporting it;
2. **Transferable intellectual skills** - intellectual skills of analysis, synthesis, critical judgment, reflection and evaluation are developed in the context of the interrelationships between Australia's privacy legislation and its various sources of interpretation, and its relationships with international standards ;
3. **Research skills** – students are taught to use specialised online research tools in this field, and doing a research essay enhances their capacity to use those skills for scholarly research;

4. **Communication skills** - oral and written communication skills are developed through class discussion and participation in a public conference;
5. **Personal and professional values** - a commitment to personal and professional self-development, ethical practice and social responsibility is developed through study of the ethical and policy bases of privacy protection, particularly in the context of the values underlying current reforms of Australia's privacy laws.

## 4. Subject content

This subject examines information privacy (or 'data protection') law in both the public and private sectors from a number of perspectives, including as part of human rights law, as part of e-commerce infrastructure, and as a response to the use of data surveillance (the techniques of social control through the use of information technology). The pervasiveness of Internet use by business, government and citizens has placed both data surveillance and privacy protection at the centre of the emerging information economy and information society.

Australia now has information privacy laws affecting the whole of the private sector. Similar laws cover the public sectors of the Commonwealth, NSW, Victoria, and the Northern Territory and are proposed in some other States. These laws, plus a plethora of other sector-specific laws (credit reporting, telecommunications, health etc) give Australia a comprehensive (but arguably very defective) body of national privacy legislation for the first time.

At present the federal and NSW privacy laws are undergoing extensive law reform review, and the comparison between the existing laws, what is being proposed by those reviews, and other more critical perspectives, will be a major focus of the 2008 course. Students will attend a one-day public conference (as part of the course) where senior law reform officials, other policy-makers, academics and interest group representatives will address and debate these issues, and they will be encouraged to participate in discussions.

This subject examines surveillance and privacy principally through the focus of these Australian laws, but also considers their place in an emerging international context of surveillance practices and privacy laws, and the relationship between these.

The course is based around a detailed examination of Australia's privacy laws, and in particular the substantially similar 'information privacy principles' (IPPs) that are the core of all of these laws. There will be a systematic examination (with international comparisons) of the IPPs dealing with the 'life cycle' of personal information: collection, storage, use, disclosure, individual access, security and destruction. Remedies in common law, equity and administrative law will be considered with their IPP equivalents. The role of Privacy Commissioners, industry codes, Courts and tribunals in enforcing privacy rights will be examined.

The following topics will be covered, not necessarily in this order:

- Overviews of (i) information privacy; and (ii) privacy laws in Australia
- Online research tools in the field of privacy law and policy
- What is privacy / surveillance? – Theories
- General law protection of privacy
- International development of privacy standards
- Key concepts in privacy laws and IPPs
- Enforcement and administration of privacy laws
- Collection principles
- Surveillance laws
- Use and Disclosure principles;

- Data quality principles
- Access and Correction principles
- Other information privacy principle (security etc)

## 5. Teaching and learning approach and strategies

*Learning and teaching rationale* The rationale for this course's educational strategy is that postgraduate students in a relatively new (at least in terms of judicial development) and very policy-oriented area of law and practice will gain the best appreciation of the subject matter through active debate and discussion with their peers, facilitated by the course teacher and materials.

*Learning and teaching strategy* This course is based on learning through reading or selected materials for the purposes of class discussion, active discussion between all class participants, and each student leading at least one part of the class discussion. The online reading guide then provides more extended versions of all class readings, and additional readings, so that students can explore in more depth the issues introduced in class, and so that they have an initial reading list for the purposes of their research essay.

*Course evaluation and development* - Your feedback on the course will be requested in a brief evaluation form at the end of the intensive classes, since we do not meet again before the end of semester. This feedback is considered carefully in developing future versions of the course.

## 6. Required and recommended reading

Required and recommended readings for each topic are listed in Topic Outline and Reading Guides available at <http://www2.austlii.edu.au/privacy/> with links to online materials. A printed selection of required readings is provided for classes. This also includes extracts from key legislative materials, the *Privacy Act 1988* (Cth) (incorporating the *Privacy Amendment (Private Sector) Act 2000*) and the *Privacy & Personal Information Protection Act 1998* (NSW). These are the two most important Acts for this course, and students must be familiar with all aspects of them (except any aspects specifically excluded). Although there are many valuable books on privacy, there is no suitable Australian textbook for this subject. The compulsory subject materials are the extensive online Reading Guides for each topic are provided on the subject's web pages.

## 7. Assessment

Subject to discussion in the first class, there will be two items of assessment, a Take-Home Assignment and a Research Essay. Because of the intensive nature of the classes and that in 2008 they will occur toward the end of semester, both must be submitted by the start of the Examination Period. Two different dates may be set. This will be discussed at the start of the course, and student views obtained on the format and topics to be covered, before it is finalised.

Late assignments will not be accepted except for demonstrated good cause (including medical reasons). Students who do not complete the assignment in time are able to do the two hour exam instead. The Faculty Policy on late submission is

"Late work will not be accepted without penalty unless an extension has previously been granted. Late work may be penalised by the deduction of up to 10% of available marks for that assessment for each full day that the work is late up to a

maximum of 50% penalty. Extensions should not normally exceed one week. In the absence of documented grounds, an extension for a common assignment will not be granted beyond the date of return of the work of other students.”

Assignments must be submitted on paper at the Law Faculty counter according to the instructions on the assignment cover sheet.

*Relationship between objectives and assessment strategy* - This subject aims to help students acquire the fundamentals of this new field in four intensive days of classes, tests knowledge of the whole course through a take-home examination, and then encourages students to apply this knowledge in piece of research and analysis on a topic of particular interest to them.

## 8 Administrative matters

*Occupational Health and Safety* - see [www.riskman.unsw.edu.au/ohs](http://www.riskman.unsw.edu.au/ohs) for details of all UNSW OHS policies.

*Equity and diversity* - Those students who have a disability that requires some adjustment in their teaching or learning environment are encouraged to discuss their study needs with the course convenor prior to, or at the commencement of, their course, or with the Equity Officer (Disability) in the Equity and Diversity Unit (9385 4734 or [www.equity.unsw.edu.au/disabil.html](http://www.equity.unsw.edu.au/disabil.html)). Issues to be discussed may include access to materials, signers or note-takers, the provision of services and additional exam and assessment arrangements. Early notification is essential to enable any necessary adjustments to be made.

## 9 Academic standards and plagiarism

The following statement is the official UNSW statement on plagiarism. You should read it carefully.

**Plagiarism is the presentation of the thoughts or work of another as one's own.\***

Examples include:

- direct duplication of the thoughts or work of another, including by copying material, ideas or concepts from a book, article, report or other written document (whether published or unpublished), composition, artwork, design, drawing, circuitry, computer program or software, web site, Internet, other electronic resource, or another person's assignment without appropriate acknowledgement;
- paraphrasing another person's work with very minor changes keeping the meaning, form and/or progression of ideas of the original;
- piecing together sections of the work of others into a new whole;
- presenting an assessment item as independent work when it has been produced in whole or part in collusion with other people, for example, another student or a tutor; and,
- claiming credit for a proportion a work contributed to a group assessment item that is greater than that actually contributed.†

Submitting an assessment item that has already been submitted for academic credit elsewhere may also be considered plagiarism. Knowingly permitting your work to be copied by another student may also be considered to be plagiarism. An assessment item produced in oral, not written form, or involving live presentation, may similarly contain plagiarised material.

The inclusion of the thoughts or work of another with attribution appropriate to the academic discipline does not amount to plagiarism.

Students are reminded of their Rights and Responsibilities in respect of plagiarism, as set out in the University Undergraduate and Postgraduate Handbooks, and are encouraged to seek advice from academic staff whenever necessary to ensure they avoid plagiarism in all its forms.

The [Learning Centre website](http://www.lc.unsw.edu.au/plagiarism) <[www.lc.unsw.edu.au/plagiarism](http://www.lc.unsw.edu.au/plagiarism)> is the central University online resource for staff and student information on plagiarism and academic honesty. The Learning Centre also provides substantial educational written materials, workshops, and tutorials to aid students, for example, in:

- correct referencing practices;
- paraphrasing, summarising, essay writing, and time management;
- appropriate use of, and attribution for, a range of materials including text, images, formulae and concepts.

Individual assistance is available on request from The Learning Centre.

Students are also reminded that careful time management is an important part of study and one of the identified causes of plagiarism is poor time management. Students should allow sufficient time for research, drafting, and the proper referencing of sources in preparing all assessment items.

*\* Based on that proposed to the University of Newcastle by the St James Ethics Centre. Used with kind permission from the University of Newcastle.*

*† Adapted with kind permission from the University of Melbourne.*

## 9 Course Staff

The course teachers for Session 1 2008 are Graham Greenleaf <[graham@austlii.edu.au](mailto:graham@austlii.edu.au)> or <[g.greenleaf@unsw.edu.au](mailto:g.greenleaf@unsw.edu.au)> (Convener); tel 9385 2233; Room 224 Law Faculty Building and Nigel Waters <[nigelwaters@primus.com.au](mailto:nigelwaters@primus.com.au)>

*Outline revised by Graham Greenleaf (Convener) 23 June 2008*

## APPENDIX: UNSW LAW SCHOOL GRADUATE ATTRIBUTES

### 1. WHAT ATTRIBUTES DO WE DEVELOP IN OUR STUDENTS?

The UNSW School of Law instils in students the understandings, values, skills and qualities necessary to become highly qualified professionals with a strong sense of citizenship, community and social justice. A legal education at the UNSW Law School, therefore, develops graduates who have:

6. **(Core disciplinary knowledge)** a functioning and contextual knowledge of law and legal institutions;
7. **(Transferable intellectual skills)** excellent intellectual skills of analysis, synthesis, critical judgment, reflection and evaluation;
8. **(Research skills)** the capacity to engage in practical and scholarly research;
9. **(Communication skills)** effective oral and written communication skills both generally and in specific legal settings;
10. **(Personal and professional values)** a commitment to personal and professional self-development, ethical practice and social responsibility.

These attributes build on and contextualises the 12 generic UNSW graduate attributes.<sup>1</sup>

## 2. WHAT DO THESE ATTRIBUTES MEAN?

**A functioning and contextual knowledge of law and legal institutions** means:

- a comprehensive knowledge of the core principles of law, including a critical understanding of the policy considerations informing the law;
- an understanding of the principal institutions in the Australian and other legal systems and their purpose and functions;
- an appreciation of the contextual factors that influence the operation of the law and the impact law has on society, politics, the economy and culture;
- a general understanding of Australian law in international and comparative perspective; and
- an engagement with the scholarship of law.

**Excellent intellectual skills of analysis, synthesis, critical judgment, reflection and evaluation** incorporate the ability to

- collect and sort facts;
- identify and analyse legal issues;
- interpret legal texts;
- apply the law to real legal problems;
- invoke theory and inter-disciplinary knowledge to develop new and creative solutions to legal problems;
- critique law and policy to develop new ideas about the law and law reform;
- participate effectively in debates about the law; and

**The capacity to engage in scholarly and empirical research** involves the ability to:

- Develop and plan an effective research strategy
- Collect, retrieve and collate relevant information
- Analyse, evaluate and interpret that information
- Apply and report on the information

**Effective oral and written communication skills both generally and in specific legal settings** includes the ability to:

- articulate and defend arguments about what the law is and/or should be in writing and orally.
- Work with a diverse range of people and communities
- Demonstrate effective listening skills and an ability to discern the legal issues presented

**A commitment to personal and professional self-development, ethical practice and social responsibility** incorporates:

- a willingness to engage in life-long learning, that is, retaining and extending existing legal and other skills and knowledge;

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<sup>1</sup> Thus, *core disciplinary knowledge* incorporate generic attributes 1, 2 and 9; *transferable intellectual skills*, attributes 3, 4 and 6; *research*, attribute 5; *communication*, attribute 12; *key values*, attributes 4, 7, 8, 9, 10 and 11.

- the capacity to work both independently and as a productive member of a team;
- an understanding of the ethical framework in which law is practised;
- acceptance of personal and professional responsibility,
- a sense of social responsibility and justice;
- a commitment to values of equity, diversity and inclusivity.