Privacy and Information Security: Foreword

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The adage goes, “Knowledge is power.” Never in history have these words rung as true as they do today. The agrarian society of our nation’s Founders and the industrial era that marked America’s rise as a global superpower have given way to an “Information Age” in which the acquisition, exploitation, and control of knowledge increasingly drive economic, political, and personal interests. Those who access and use wisely the wealth of information now available through the Internet, innumerable databases, and myriad other sources can achieve more than ever before. Those who misuse such information can inflict harm like never before.

Power, in the form of knowledge, can be a force for incredible good. Inventions, creative works, and other intellectual property are improving quality of life, saving lives, and bringing hope to people in immeasurable ways. Information assets have become an increasingly important engine of our economy; more and more companies count intellectual property as their most critical assets. Ever-improving access to information can level the playing field and be a tool for advancement for millions of the less fortunate.

But knowledge—power—also can be abused. Excessive control and manipulation of information can consolidate rather than diffuse power. The cold efficiency with which modern information can be harvested, analyzed, and employed have begun to threaten some of our most cherished values, including those of privacy and information security, the values of having our own place in the world. The widespread technological advances of the Information Age, in short, make possible both good and evil such as the world has never seen. And, in between these extremes, those technologies affect nearly every American in some way and every day.

It should come as no surprise that in a situation as dynamic as this, the law related to information rights and protection—specifically intellectual property, privacy, and information security law—has itself become incredibly dynamic. The law always has been a principal vehicle for exploring and resolving fundamental societal debates. As political forces, economic systems, and technologies evolve, people inevitably disagree about the merits of the evolution. Society’s verdicts on those disagreements are rendered in, among other things, new and amended statutes, judicial decisions, regulatory rulemakings, and the reordering of private relationships (for example, through contract). And that is exactly what is happening with respect to information rights and intellectual property.

Today’s new technologies are constantly raising new questions about the respective rights of individuals and entities: Does the control or exploitation of information in a particular instance advance or hinder the development of a better and more just society? Do we view “targeted” Internet ads based on “electronic profiles” as a welcome opportunity to receive advertising that actually is relevant to our specific interests? Or are such ads unwelcome, raising the specter of Big Brother watching us? At what point does a company’s efforts to protect its “trade secrets” impinge on other important values, like the interest of individuals to work and earn a living? Is the ability to send thousands of e-mails inexpensively with the click of a button a blessing, facilitating both the promise of new economic activity and the free speech values embodied in the First Amendment? Or is it principally a source of nuisance, or worse, an invasion of privacy?

The answers to these and countless other questions about the Information Age require a balancing of many interests. People on all sides feel passionately about them. As a result, legislators, regulators, lawyers, and judges are struggling with these questions all the time. Whether one thinks Congress’s recent enactment of the CAN-SPAM Act of 2003 (addressing unsolicited commercial e-mails) went too far or not far enough, however, there can be little question that the area of privacy and information security is an active one in which the legal landscape is being modified in an attempt to reflect the digital age in which we live.

To be sure, intellectual property, privacy, and security are not new subjects on the American legal scene; they go back to the nation’s origins. Congress’s power to protect intellectual property—“(t)o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”—is enshrined in Article I of the Constitution. The Bill of Rights, more than two centuries old, contains perhaps our most important privacy protection: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .” The advent of the Internet and other warp-speed technological developments, however, have, in a short time, made it easier than the coun-

**FOREWORD**

by Paul H. Schwartz

Paul H. Schwartz, Broomfield, is a partner in the Cooley Godward LLP Litigation Department—(720) 566-4000. His practice includes intellectual property, commercial contracts and torts, privacy law, and information security and cybercrime. He also has written articles on media and privacy law.
try's Founders ever could have imagined to collect, analyze, and transmit data; to bombard individuals with unwanted communications; and to monitor people's commercial and noncommercial activities.

While modern technology has imbued new discoveries and creative works with enormous potential both from a financial standpoint and the standpoint of advancing civilization, modern technology also has made it easier than ever to steal and abuse the discoveries and creative works of others. In other words, the historical concerns underlying intellectual property, privacy, and security law are intensified and expanded in a digital world.

Having a basic understanding of the law as it relates to information rights is not important simply for patent and copyright lawyers or lawyers who represent technology companies. The point is, in this Information Age, technology pervades society. Any individual may be at risk if his or her personal, financial, medical, or other data are stolen and misused. Any lawyer who represents individuals may be called on to address issues of privacy and security. A lawyer does not have to be an intellectual property lawyer for those topics to become relevant, say, in drafting basic business contracts. For several years, the top consumer complaint to the U.S. Federal Trade Commission has been identity theft. Even non-high-tech companies depend on technology to be competitive and need to be concerned about both protecting their own intellectual property and not infringing the intellectual property of others. Thus, it is reasonable to expect that as the Information Age progresses, privacy and information security issues will touch the practices of a large number of Colorado lawyers.

Colorado, in fact, is on the leading edge of the Information Age. According to a recent speech by Governor Bill Owens, Colorado boasts the highest concentration of high-tech workers nationwide. It ranks third among all states in the Milken Institute's 2004 Technology and Science Index. The information technology sector has been a major driver of the state's growth in the past ten years. And, by the very nature of the Information Age, Colorado is inextricably linked to the rest of an ever-shrinking digital world through the Internet and other communications technologies. As a result, legal developments in the area of information rights and intellectual property are of special relevance to Colorado lawyers.

All of this makes this Special Issue on Privacy and Information Security invaluable. As topics related to information rights touch more people and companies, understanding the legal principles and being aware of key legal issues become imperative for lawyers. In this sense, too, knowledge is power: the power to advise clients about their rights in a world where information management and control is paramount; the power to caution clients about the pitfalls of dealing with others' information; and the power to serve clients in light of the times in which they live. In the end, this concept of power is a very old notion indeed.

NOTES

6. Id.
7. Id.

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