



HISTORICAL SOCIETY *of the* NEW YORK COURTS

CYBERSPACE AND THE LAW: WHAT ARE OUR RIGHTS AND RESPONSIBILITIES?

Topic Background

Cyberbullying is the first issue we examine. In March 2012, former Rutgers freshman Dharun Ravi was found guilty of a hate crime based upon his use of a webcam to spy on his college roommate and his subsequent broadcast on iChat of the video of his roommate in a sexual encounter with another man. Shortly afterward, his roommate, 18-year-old Tyler Clementi, indicated in a Facebook post that he intended to jump from the George Washington Bridge. Clementi's body was found in the Hudson River the following day. Ravi was prosecuted in the New Jersey Superior Court, found guilty and sentenced to jail. Unfortunately, the Tyler Clementi-type tragedy is all too common and many young people have taken their lives as a result of cyberbullying. A great number of others have suffered serious psychological harm. Cyberbullying is now one of the top challenges facing schools and colleges.

Digital Piracy is the second issue and involves the misappropriation of copyrighted digital files. In May 2012, the Supreme Court of the United States refused to hear a constitutional challenge by a Boston University PhD student to a \$675,000 penalty imposed on him by the courts for illegally downloading and sharing 30 songs. Joel Tenenbaum had been warned that his downloading and file sharing activities could lead to trouble—by his father in 2002, his college in 2003, and the Recording Industry Association of America in 2005. Despite these warnings, Tenenbaum continued to download and distribute copyrighted materials and was sued by the music companies (*Sony BMG Music Entertainment et al. v Tenenbaum*). Industry sources indicate that copyright infringement costs billions of dollars in lost sales and has led to the loss of thousands of jobs. While the media companies may be suffering harm from digital piracy, consumers too have been negatively impacted by conditions the industry imposes when downloads are purchased. Unlike the ownership rights we have in CD, DVD and book formats, purchasing digital downloads provides us only with a non-transferable right to possess a copy of the digital file. When we no longer want it, we can't pass it along to a friend, sell it on the "used goods" market or bequeath it in our wills. Bruce Willis, who has a huge digital music library that he wants to leave to his daughters, is planning to sue Apple over the terms and conditions it imposes at the time a download is purchased.

The Right to Privacy is the third issue. In New York, the right to privacy was first raised by Abigail Roberson, a very pretty 18-year-old from Rochester, New York, who sat for a studio portrait. She showed the beautiful photograph to her boyfriend, who asked to "borrow" it. The photograph was used (without her consent) in an advertising campaign for baking flour. Abigail sued, but New York's highest court, the Court of Appeals, held that the common law did not recognize a right of privacy (*Roberson v Rochester Folding Box Company*). Shortly afterward,



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the New York State Legislature enacted sections 50 and 51 of the New York Civil Rights Law that prohibit the unauthorized use of an individual's picture for advertising or trade without the person's written consent. Today, businesses monitor our online behavior through cookies installed on our computers. Cookies track us as we search, browse or buy online. This tracking information, often acquired without our knowledge or consent, is compiled into a profile that is sold to other businesses. Consumers are increasingly concerned that, just like Abigail Roberson in her day, an aspect of their personal privacy, their digital profiles, are being purloined.

The use of electronic surveillance by law enforcement and other governmental authorities is the fourth issue. The right of a citizen to be free from unwarranted search and seizure is enshrined in the Fourth Amendment to the United States Constitution. As Justice Brandeis stated, “as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.” Today, new technologies such as surveillance cameras, drones, facial recognition software, automatic license plate recognition systems, and smart phone GPS records threaten our expectation of privacy in public spaces. In the 2009 case of *People v Weaver*, the New York Court of Appeals addressed the issue of GPS monitoring through a tracking device attached to a vehicle. In 2012, the United States Supreme Court heard a similar case, *U.S. v Jones*. Nowadays, due to technological developments, law enforcement no longer needs to attach an actual tracking device to collect GPS data. Our “right to be let alone” may be in jeopardy.