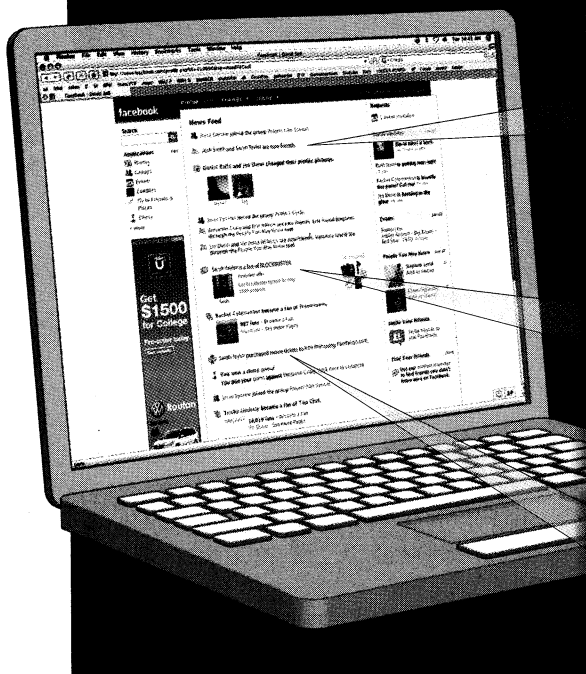


My Life Is Your Life

Facebook users demanded more privacy protection after three services sent information to "friends" without asking their permission.



- 1 News Feeds.** A notice circulates to a user's friends who are registered with the Web site whenever a profile changes. A user can now turn off the service.



Josh Smith and Sarah Taylor are now friends.

- 2 Social Ads.** Friends receive reviews of a product or movie (positive ones only), along with personal information, such as the name and photograph, of the person writing the review. A user can choose to block distribution of these details, however.



Sarah Taylor is a fan of BLOCKBUSTER.



Sarah

Exclusive offer
Get Blockbuster by Mail for only
\$3.99 a month.

Sponsored



- 3 Beacon.** The user's purchase of a movie ticket or other product or service is immediately noted in the person's public profile, although the user can opt out.



Sarah Taylor purchased movie tickets to Iron Man using Fandango.com.

now cropping up. Copyright primarily functions as a form of property right, protecting works of self-expression, such as a song or painting. To cope with increased threats to privacy, the scope of the appropriation tort should be expanded. The broadening might actually embody the original early 20th-century interpretation of this principle of common law, which conceived of privacy as more than a means to protect property: "The right to withdraw from the public gaze at such times as a person may see fit ... is embraced within the right of personal liberty," declared the Georgia Supreme Court in 1905. Today, however, the tort does not apply when a person's name or image appears in news, art, literature, or on social-networking sites. At the same time the appropriation tort protects against using someone's name or picture without consent to advertise products, it allows these representations to be used in a news story. This limitation is fairly significant. It means that the tort would rarely apply to Internet-related postings.

Any widening of the scope of the appropriation tort must be balanced against the competing need to allow legitimate news gathering and dissemination of public information. The tort should probably apply only when photographs

and other personal information are used in ways that are not of public concern—a criterion that will inevitably be subject to ongoing judicial deliberation.

Appropriation is not the only common-law privacy tort that needs an overhaul to become more relevant in an era of networked digital communications. We already have many legal tools to protect privacy, but they are currently crippled by conceptions of privacy that prevent them from working effectively. A broader development of the law should take into account problematic uses of personal information illustrated by the Star Wars Kid or Facebook's Beacon service.

It would be best if these disputes could be resolved without recourse to the courts, but the broad reach of electronic networking will probably necessitate changes in common law. The threats to privacy are formidable, and people are starting to realize how strongly they regard privacy as a basic right. Toward this goal, society must develop a new and more nuanced understanding of public and private life—one that acknowledges that more personal information is going to be available yet also protects some choice over how that information is shared and distributed.

MORE TO EXPLORE

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