

# The Philadelphia Inquirer

## Time to 'like' new privacy laws?

January 12, 2012

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What would the Founding Fathers think of Facebook?

Great question. We keep referring almost everything back to the Fathers - so it makes sense to wonder what they'd think of social media. You can just see it:

(Madison: "Well, there goes the right to privacy.")

Jefferson: "This is *so cool!*")

This question - which opens into a bigger one, about the fate of personal privacy in the communications age - is the topic Thursday at 6:30 p.m. at the National Constitution Center.

Lori B. Andrews, author of *I Know Who You Are and I Saw What You Did* (Free Press, \$26), will join other experts to discuss perhaps the biggest techno-sociological issue of our day: Can anything be kept private? Does the common man or woman have a chance when all is digitized, copied, and shared?

The Founders would have had much to consider:

"Locationgate" of 2011, when it was learned Google's Android and Apple's iPhone and iPad stored location data on users.

Online sites that sell personal information on users and their tastes and choices.

Porn and scams and spam spam spam.

Hackers who pilfer personal ID and information.

Facebook's rehandling of your info and who can see it; some now worry about Facebook Timeline, a program that lets you see a person's posts over time more easily.

The public immortality of your e-mail and posts, deathless info-bits that could someday morph to little land mines beneath your career, marital, or business chances.

Your TiVo telling folks what shows you watch (not with your name on it, but still), and your Kinect, which can tell folks what games you play and what sports you like.



JULIE JACOBSON / Associated Press

Convention goers walk by a TCL display at the 2012 International Consumer Electronics Show, on Wednesday in Las Vegas.

And as recently as this week, at the Computer Electronics Show in Las Vegas, the debut of "connected homes," where the appliances can talk to you - and third parties.

Yes: What would the Founders think?

**Revisiting the rules.** Andrews, the main guest at the Constitution Center on Thursday, is professor of law and director of the Institute for Science, Law and Technology at Illinois Institute of Technology. Andrews says, mostly, comm tech is wonderful. But the law, in her view, is lagging behind the reality.

Greg Lastowka, professor of law at Rutgers, concurs: "We're not one step behind; we're five steps behind."

"We need to rethink our law and the values behind the law," Andrews says. "Judges, in particular, need to be far better educated in the issues regarding privacy on the Web. We need to define, with much better nuance, what we expect to keep private. And we need to review how we've handled other new technologies when they appeared."

Andrews is astonished at "the level at which Twitter tweets and Facebook pages are being used as evidence. Let's say a woman who posts a sexy photo on Facebook loses custody of her kid. We need to educate judges about treating this evidence. Does this really show she can't take care of her children?" Schools punish students based on their Facebook posts. Employers fire people because of their tweets.

Other countries are enacting laws to protect personal privacy on the Web. In Finland, hirers can't use Facebook information when recruiting employees. Germany is mulling laws that ban employers from firing based on their social-media pages. "Europe has a more unified data-privacy regime," says Lastowka, "and a unified idea of reasonable expectations. I'd like to see us come up with our own version of that."

Andrews has even drafted a Social Network Constitution, to specify users' rights (<http://bit.ly/wkJGI>):

*The right to privacy in one's social networking profiles, accounts, related activities, and data derived therefrom shall not be abridged. The right to privacy includes the right to security of information and security of place. . . .*

**A change in values.** Technology is but part of it. Many, many of us are *delighted* to share *everything* about ourselves with the world, whether it wants to know or not. Ask Anita Allen, professor of law and of philosophy at the University of Pennsylvania and author of *Unpopular Privacy* (Oxford University Press, \$35). Like many of us, she scented a change in attitudes almost 15 years ago.

"Back in the late '90s," Allen says, "I began to sense that people in the United States were beginning to lose their sense of privacy, or not valuing it as much because they were so enthralled with the new technology. It began on the Acela, with people chattering on their cellphones. Why were they so willing to share with strangers at the top of their voices?"

Lastowka says that this change in expectations about privacy is part of the muddle: "The Fourth Amendment was based on what people in 1789 could reasonably expect to keep private. But expectations change with time. Today, some people think Google is tracking them everywhere and all their posts on Facebook are public domain - and they're fine with that - while others see all this as Orwellian."

Some of this willingness to share is the rashness of youth, some the ill-informedness of age - but it's also the thrill of being able to reach out, share, have access to people and info.

That's a very American attitude. And for David G. Post, professor of law at Temple and author of *In Search of Jefferson's Moose* (Oxford University Press, \$27.95), it suggests a partial answer to the Founding Father question. "Jefferson would have loved Facebook," Post says. "He was a lover of technology and gadgets, a free-speech guy, and so the Web's access to the latest information, the latest science - he would have been crazy over the Net as a storage and retrieval system, especially at the global ability to communicate. Jefferson would have been a blogger."

Leaving Madison and Hamilton to worry out the constitutional issues.

("I think Washington would have been appalled," Lastowka says.)

Kashmir Hill, staff writer for Forbes, will be at the Constitution Center on Thursday. Her online page is titled - wryly - The Not-So Private Parts (<http://blogs.forbes.com/kashmirhill>). She says: "As a society, we're in a state of flux as regards Facebook and social media. We're all still adapting to how public our daily activities are now, to that fact that we all have daily publishing platforms." Are privacy worries justified? "Yes, because the bad stories are out there. But it's an adjustment process."

**Taking back the right.** Allen says the threat is loss of control. "Many people now are uploading all sorts of personal information on clouds," she says. "A lot of my medical data is now stored in a cloud. I'm hoping and praying the people who own the cloud won't sell it or share it, but I can't *know* they won't."

That's crucial: You don't know enough - you *can't* - about the cyberworld to share things without unease. The Age of Revelation (in which we share everything) is also an Age of Uncertainty: "You simply can never be sure what may befall you or your information someday."

"It's an astonishingly big question," says Post: "How can you keep people in control of their own destinies within a global communications scale?"

James Madison had the brilliance and vision to solve huge issues in the formation of our young government. "The question for social media is: Do we have a Madison now?" says Post. "We haven't figured out the best way to maximize the good and minimize the harms. But I'm optimistic we can."

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## If You Go

*What Would the Founding Fathers Think of Facebook?*

Legal expert Lori Andrews, Forbes blogger Kashmir Hill, and New York Times reporter Jennifer Preston speak. Christopher Wink, cofounder of Technically Philly, moderates.

**When:** 6:30 p.m. Thursday

**Where:** National Constitution Center, Independence Mall, 525 Arch St.

**Tickets:**

\$10 nonmembers.

\$7 members, students, and teachers.

Free for 1787 members.

Reservations required.

**Information:**

215-409-6700 or [on the Web](#)

John Timpane, "Time to 'Like' New Privacy Laws?," *The Philadelphia Inquirer*, Jan. 12, 2012, at A1, [http://www.philly.com/philly/news/homepage/20120112\\_Time\\_to\\_like\\_new\\_privacy\\_laws.html](http://www.philly.com/philly/news/homepage/20120112_Time_to_like_new_privacy_laws.html).