

## Bringing Blurry Online Privacy Into Sharp Relief

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Lauren Gelman, [Privacy, Free Speech, and “Blurry-Edged” Social Networks](#), 50 *B. C. Law. Rev.* 1315 (November 2009).

In this article Lauren Gelman discusses the tensions between free speech and privacy concerns on what she calls social networks with “blurry edges,” where information primarily intended for an audience comprised of friends and family members is available for the whole world to access. While these networks facilitate online community building, she says, they also create “an illusion of privacy that the law fails to recognize.” People think they have privacy through obscurity online, so they do not make efforts to fence potential trespassers out of their e-spaces. And they want to be accessible to friendly visitors, so they forgo the virtual gates and vicious dogs.

Gelman illustrates the concept in meet space by analogizing to the white pages of a phone book. Though most people do not want to receive calls from strangers, they prefer to be listed because they want some people to be able to ascertain their phone numbers and call them, some of the time. Online, people post pictures and other information without password protecting it, perhaps believing that people who do not have a wholesome interest in the material will bypass or ignore it. This creates externalities: When the openly available content references or depicts other people, those referenced folks are subject to the same level of exposure, but without having any choice in the matter. The more personal the information posted is, the more vulnerable everyone involved becomes.

Gelman asserts that there are strong incentives for people to publish a lot of information about themselves and others in a publicly accessible way, because they want to participate robustly in online life. But they do so with a false illusion of privacy, not realizing that the legal regime currently in place provides few tools for restricting the flow of information in cyberspace. That the government may be willing to compromise free speech values for commercial reasons, such as the protection of copyrights, but generally not for privacy interests, is a bitter lesson many people learn too late. They expect that there are laws to protect them from being damaged by others online. But they are wrong.

Gelman explains the decreasing role of intermediaries in the distribution of information online, and how the lines between the public record, and information that was or should be kept private, have disappeared. Once something is published on the Internet, the information is presumptively public, regardless of the intent of the poster. This comes as a terrible surprise to people who treated blogs like diaries, and used them to record their deepest feelings and emotions about events like childbirth, divorce, cancer treatments, or the sexual harassment they are encountering at work.

Gelman proposes implementing a tool with which people could tag their content with privacy preferences, following the approach Creative Commons uses with respect to authors’ copyright desires. She would deploy it in conjunction with social norms that respect expressed privacy preferences “until and unless they conflict with stronger interests or implicate free speech values.” If I read her correctly, she believes these norms are already mildly extant, they simply need to be cultivated. Bringing privacy norms into closer alignment with copyright norms is an interesting proposition, in part because I’ve seen this occur organically on blogs, when writers who feel their privacy has been invaded couch their complaints in the language of plagiarism and theft.

This article was enthusiastically [recommended to me by James Grimmelman](#). I appreciated reading it because it lays online privacy issues out simply and clearly, with good illustrative examples. I do not share Gelman’s confidence that respectful social norms would expansively emerge once privacy preferences are made clear on a broad scale. I’m

dubious that many privacy disputes arise from ignorance about a given poster's privacy preferences. Often those can be ascertained by simply e-mailing or otherwise contacting the poster and asking. I fear that too many Internet users vigorously accord themselves potent free speech rights that trump privacy concerns, and that this is a norm more deeply instantiated within cyberspace than respecting privacy ever will be. And there is also a depressingly level of raging hypocrisy among people who believe they can say or do anything they want because their cause is just, including the extensive deployment of racism, sexism, and/or excessive generalized nastiness against anyone who expresses an "incorrect" political opinion.

People who are generally inclined to behave decently probably do not need reminders to do so. The people who need to be reminded to be decent may be resistant to new norms that cut against their previous antisocial inclinations. But I like the idea of the privacy tags anyway, because they could make visible the enormous demand for control over personal information that is currently unmet by either law or technology. And I'm open to the possibility that I am wrong, and that Gelman's optimism about the potential for more civil online interactions is warranted. She wrote a fine article that would work very well in a Cyberspace Law classroom because of its clarity and fresh perspective.

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