



## ***Privacy Notes V***

***November 12, 2012***

### NOTE ON SOCIAL NETWORKS: THE UNINVITED GUESTS

The Washington Post carried a small but potentially important story, detailing still another peril, alongside those typically listed, from careless use of the social networks. Several party givers, usually young people, of high-school or college age, have circulated invitations to a close and restricted set of friends. If they did not accurately specify the restricted list, or if the system goofed, or if the close friends they have are excessively eager ones, then uninvited guests, perhaps persons – to say the least, not really fitting in – may show up, with disruptive effect, and on occasion violence has ensued. The part about the friends is that the first, or primary list of invitees to the festivities may themselves have circulated the invitation, passing it on to their own lists, and the secondary invitees, now beyond any control by the party giver, may show up, and may indeed have spread word to a tertiary circle, and so on. As always, it may be for better or worse, but a risk averse temperament counsels caution. It is a venerable trope of comedy films: the parents return a day early from vacation in Paris, only to find the unsuspecting brigade of their offspring's age cohort en masse rioting in the parlor. Few things are funnier, but only when we are protected from the goings on by the safe barrier of the television screen.

### LAW ENFORCEMENT SURVEILLANCE REQUESTS, PART II

It has been recently brought to public attention that the flood of information requests made by law enforcement agencies to telecommunications carriers for information on their clients (as described in the previous edition of Privacy Notes), is dealt with in the absence of any general visibility, by courts conducting proceedings in obscurity – quite in contrast to the manner of most proceedings before American tribunals, where a “case or controversy” is openly implicated, and an adversary necessarily receives notice. Here, since investigation in criminal or related matters is in question, secrecy is a practical necessity, and it appears the presence of the adversary is not comparably necessary; nor are the third parties, not the target of an investigation (like the persons whose mobile devices are found within a specified radius of a transmission tower), represented by a sort of guardian ad litem or otherwise. While the imperative of secrecy extends to sealing the orders issued by these courts, which thus allow the surreptitious gathering of information by the authorities, the Magistrate Judge (a judicial functionary of slightly lower grade than the District Judges themselves in the federal court system) who processes these stultifyingly monotonous surveillance requests, may well puzzle why the orders remain sealed. The general run of the population, many of whom are concerned – or should be permitted to interest themselves – to learn of the content of such requests and of the orders allowing them, the identity of the requesters, the reasons for the request, the apparent relationship of the targets to any harmful activities, etc. – these persons, it is argued, should have access to the information. The worry of the Magistrate Judge quoted in the Times article, and the like concerns of others in the worrying community, is that the silent but steady growth of nodes of secret proceedings, accreted over months and years, are a sort of dark menace to the security and privacy of the population. If a cognizable need, appearing in the course of fair law enforcement, no less intrusive alternative being found, requires continued secrecy, such need should be the measure, it is argued, of any persisting secrecy in the premises – that is to say, any contemplated extension of secrecy beyond such justification, parsimoniously calculated, would be judged non-licit.

## THE FARTHER ADVENTURES OF STOP AND FRISK, NY

The previous number of the Dialogue's privacy notes detailed some of the misgivings of New Yorkers, and in particular the discomforts among the judiciary of the city, with reference to the police practice of stopping persons in parks and on the streets, with issuance of summonses to appear in court upon accusations of one or another palpably trivial offense, which were probably not perpetrated at all, and if they were, fell under laws that ought not be on the books. The Bronx District Attorney, it is reported, has notified the police that his office, the Borough's prosecuting authority, would not proceed to bring before the Court cases originating with the stop and frisk procedure. A procedure that in the District of Columbia would be termed to "no-paper" the case, deep-sixing it, ordinarily for serious insufficiency of evidence.

## FABLE OF THE ERASABLES

A tale of confusions radiating from a single internet posting, more amusing than tangibly harmful, and the dénouement in which the jockey finds the joker not such a bad sort, at any rate personally – appearing in a recent edition of the NY Times. Once upon a time, not so long ago at that, the proprietor of a blog distinguished by its hyperventilating fancies at the far edges of the political universe, delivered himself of a pointed essay on some of the old familiar themes, this time, however, affixing a name not his own, perhaps contrived out of thin air, perhaps picked randomly from an old academic catalogue. The name attracted the attention of a circle of folks who were, however improbably, readers of the curious blog and at once acquainted with a certain middle aged professor of the selfsame name. Persons seeking to learn of the professor through standard search engines found themselves brought up short with the vagrant essay. A goodly portion of these remonstrated with the professor, some with amusement, some with reproach, all adverting to the somewhat bizarre disquisition loosed on the internet. The professor, perceiving it must have been someone else with the same name, resorted to the search engine himself. A couple of clicks disclosed that another subject, also, by coincidence, a professor, in a different science at a different academy in a different quarter of the country, went by the selfsame name. Believing he had had lighted on the culprit, Prof. A called Prof. B. It was as if both exclaimed at once: Aha, you are the rascal! It soon was clear that neither was the rascal. B ruefully recounted his own storm of attention and his own efforts to give notice to the world that he, a perfectly respectable philosopher — he and the hidden author of the document, ça fait deux.

Through reconдите investigative ploys Prof. A had soon traced down the blog the document was posted on – a veritable trove, it turned out, of tightly knotted crackpottery, a mad alternative cosmos of public policy views. He soon had the bloggeur on the line by telephone. The gentleman readily admitted that he had set the essay loose, and allowed that he was scarcely surprised to find that the name he had tagged it with belonged to someone. They both fell quite amiably to discussing the vagaries of life in the blogosphere, all without reference to the strange world of the gentleman's ideology. He was, Prof. A concluded, a rather nice fellow. Just a little off the rails on certain topics, which one could easily steer clear of in ordinary conversation. It was agreed that the subject would pull the offending document off the blog. All might end with a smile over the whole business, no real harm having been done.

But the question one remains with is this: how does one efface the offending document from the internet and from the corpus of information that the only-so-clever search engine, rooting through all the information on the face of the earth, continues in perpetuity to throw up to the unsuspecting searcher. The true concept of eternity. The story brings to mind the experiences, not too infrequent, of the user – after a while the user grows to have the savvy to look out for the false clues – when one finds in the bill of notices on, say, an elderly nun, that she is also the state salsa champion, or when one writes a letter of congratulation to the newly appointed official, only to find that the notice is a decade old and that the public career came, in the event, to be a royal fiasco.