

Do We Need a Social Network Constitution?

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If you've ever uploaded a photo, downloaded an app, paid a bill online or posted a Facebook status, privacy pioneer Lori Andrews wants you to know your digital information can come back to haunt you, destroying relationships, ending careers and ruining reputations.

The law professor is author of the forthcoming book, "I Know Who You Are And I Saw What You Did: Social Networks and the Death of Privacy" (Free Press, \$26). She'll be at the National Constitution Center on Thursday to talk about how current laws do not protect basic constitutional rights online.

She cites a California case now in litigation about a marketing company which paid an Internet service provider for the right to collect all information sent from its users' computers, including financial records, passwords, purchases, emails, photos and videos.

Andrews proposes a Social Network Constitution, and asks members of the "Facebook Nation" to fight for their rights, no matter what Mark Zuckerberg thinks.

Q: Your book is frightening to read. But how should one react? It's not as simple as deleting one's Facebook profile, is it?

A: As I point out in my book, other organizations may have collected it. There's that one company that stores seven years' worth of Facebook posts and sells them to employers. You can't change mid-stream. Part of what I'm trying to do is make sure that the privacy rights we have offline also apply online. I think that Facebook pages should be considered private and that employers, insurers, schools shouldn't be able to use that information against us.

Q: It seems like it should be private; it just seems like that's common sense. I already have an expectation of a right to my privacy.

A: That's exactly the way it should be analyzed. For the past 100 years, court cases have said if you have an expectation of privacy and it's logical that society recognizes that, that the enterprise should be private. Look at the sort of information people put up — their most private information, their thoughts about their marriage and their job and so forth. So, we're putting up information that would be protected in any other area.

Think about medical information. It's super-protected under HIPPA and other things. Your doctor could lose his or her license if he reveals information about you without your consent. Yet there's nothing to prevent companies, employers, insurers from using information from your Facebook page against you.

Some of it is being used in a way that's just wrong. It's been used in a lot of ways to disadvantage women. Women who post a sexy picture of themselves or who post something provocative on their boyfriend's MySpace page may lose custody of their children. So that sort of information is being introduced into court.

. . . This is someone's private space. We've just got to tell courts about that. I think ultimately that view will win out, because every other technology I've studied — forensic technologies and medical technologies and other computer technologies — courts eventually protected privacy and expanded people's rights.

It's only with social networks . . . and maybe it's because we're at the early stages and judges are throwing up their hands and saying you have no right to privacy in anything you post.

Q: Your proposed “Social Network Constitution” would address the problems you highlight in your book — but how can such a thing be adopted?

A: What I'm hoping is that it will be a wake-up call for courts and legislators who say, oh yeah, there are actual harms to making judgments based not on the real person — like, is this woman a good mother? — but based on something she posted on her Facebook page. And I think we're starting to see some movement at like the Federal Trade Commission to enforce privacy rights. In a recent settlement with Facebook, the FTC was critical of the privacy policies and got an agreement from Facebook to give people more control over them.

Q: Do people have to market and manage their digital selves now?

A: We do. And I think in some ways that's sad, because you shouldn't have to be branding yourself since birth. Our country was based on the notion that you could re-invent yourself. But one of the problems is that photos, posts, stay around on the web forever.

Actually, some of the things that are being proposed that are quite interesting are that maybe photos should have a digital expiration date, so that red-cup photo of you in high school doesn't prevent an employer from hiring you.

I think it would be sad if we just gave up and all pretended to be better than we were.

There are real benefits to social networks, ones like PatientsLikeMe, when people separated by distance or who have the same rare disease can talk about how they feel, if they feel suicidal, or if this drug isn't working for them, without it being used against them in some way in a future job interview. There are real benefits. We've seen that with new musicians coming out, how they can really take hold because of social networks. We've seen science projects go on with social networks with crowdsourcing.

There are enormous benefits. I would hate to lose that just because other social institutions are making improper decisions based on what people are disclosing on social networks.

IF YOU GO

Privacy pioneer and lawyer Lori Andrews will be at the National Constitution Center on Independence Mall in Philadelphia at 6:30 p.m. Thursday to launch her new book, "I Know Who You Are and I Saw What You Did: Social Networks and the Death of Privacy" (Free Press, \$26). The author will be joined by social media expert and New York Times reporter Jennifer Preston and Forbes blogger Kashmir Hill. A book sale and signing will follow the program. Admission is \$7 for members, students and teachers, and \$10 for non-members. Reservations are required and can be made online at www.constitutioncenter.org or by calling (215) 409-6700.

Kim Mulford, "Q&A: Do We Need a Social Network Constitution?," *Courier-Post* (Cherry Hill, New Jersey), Jan. 10, 2012,
<http://www.courierpostonline.com/apps/pbcs.dll/article?AID=2012301100009>.