

# Bullet Points on a Primer: The Quick Version of the Sedona Conference's Data Privacy Primer

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The Sedona Conference has just published the public comment version of its *Data Privacy Primer*, a publication of its very active Working Group on Data Security and Privacy Liability. The primer is excellent. I highly recommend downloading it.

Privacy law began in 1890 when *Harvard Law Review* published "The Right to Privacy" by Samuel Warren and Louis Brandeis. They suggested that natural law should recognize a "right to be let alone." In 1905, relying on that article, the Supreme Court of Georgia became the first court to agree. From that beginning sprang the common law privacy torts:

- Intrusion upon seclusion
- Appropriation of name or likeness
- Public disclosure of private facts
- False light, or "publicity"

There is also an argument that the Constitution itself implicitly recognizes a right to privacy. After all, what other wellspring could the Fourth Amendment have?

Today, privacy is codified in a wide variety of state and federal statutes, most of which are well-covered in the Sedona Conference primer:

- The Federal Trade Commission (FTC) Act. Protects consumers against unfair or deceptive acts, including as related to business's use and protection of consumer's Personal Identifying Information (PII).
- Children's Online Privacy Protection Act (COPPA). Provides specific additional protection for the private information of children under age 13.
- Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act). Protects privacy in e-mail.
- Telemarketing and Consumer Fraud and Abuse Prevention Act. Protects consumers from telemarketers and established the "Do Not Call" list.
- Communications Act of 1934. Established the Federal Communications Commission (FCC) and protects privacy and data security from abuse by telecommunications carriers.
- Telephone Consumer Protection Act of 1991. A broader, FCC version, of the FTC's Telemarketing Act.
- HIPAA. Protects health care information.
- Gramm-Leach-Bliley Act. Protects financial information and PII of financial institution customers.
- Fair Credit Reporting Act (FCRA). Protects consumer credit information.
- Right to Financial Privacy Act of 1978 (RFPA). Supplements FCRA's protections.

Both the common law and these and other statutes work together to protect all of our rights to privacy.

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