

# Lecture 23: Information Fiduciaries

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CS 181W

Fall 2022

# Recall: Privacy as Control

Privacy is the claim of individuals, groups or institutions to determine for themselves what extent information about them is communicated to others.

## Informed Consent

– Alan Westin

*Privacy and Freedom, 1967*

# Recall: Improving on Privacy Policies

- ~~Idea #1: Improve how information is communicated~~
- ~~Idea #2: Give people choices~~
- Idea #3: Legally-mandate absolute protections

# Beyond Existing Laws

- Right of private action?
- Civil rights approaches?
- Information fiduciaries?
- Something else?

# Fiduciaries

- fiduciaries are people with a responsibility to act in the best-interest of another person
- goal is to protect individuals against professionals with more information and (potentially) conflicting interests
- Examples: doctors, financial advisors, lawyers

# Information Fiduciaries

- Idea: fiduciary duties should apply to tech companies
- Companies would be legally-required to act in the best-interest of data subjects when handling personal info

# Privacy Debate

- Question: Should there be a privacy regulation that imposes an information fiduciary duty on tech companies?
- Resources:
  - Brief intros:
    - EFF. ["Information Fiduciaries" must protect your data privacy.](#) 2018.
    - Federman. [Moving beyond notice and choice to welcome a fiduciary standard.](#) 2021.
  - More in-depth essay:
    - Guevara. [Data Fiduciaries and Privacy Protection in the Digital Age.](#) 2021.
  - Original law articles:
    - Khan and Pozen. [A Skeptical View of Information Fiduciaries.](#) 2019.
    - Balkin. [The Fiduciary Model of Privacy.](#) 2020.
    - Richards and Hartzog. [A Duty of Loyalty for Privacy Law.](#) 2021.

# Information Fiduciaries



**"Turning our dismal performance around might be easier if we eliminated our ethics committee."**