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POLICY

Re-inventing Data Protection?  
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# Technology as a Data Protection Mechanism

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- Theory: Technology as Regulation
- The Promise of PRM Technology
- Parameters for Success
- Effective Uses
- Developmental Challenge

# Theory: Technology as Regulation

- Technology is a normative source of regulation for information flows
  - Technology is NOT neutral
  - Capabilities and constraints define rules for information
    - E.g. encryption limitations on data access and use, ubiquitous collection and storage of personal information, automated data purges, labeling and filtering, etc.
  - Types of technological rules: standards and protocols, infrastructure design, specific products
- Competition and Cooperation between Law and Technology
  - Public law enshrines societal values
  - Technology overwhelms data protection law
  - Power struggle between public law and technological rule-making

# The Promise of Privacy Rights Management Technology

- Infrastructure design choices can offer powerful data protection
  - Biometric identifiers, nanotechnology, RFID
  - Anonymization and purpose identification
  - Transparency, interoperability and practical obscurity
- Privacy Rights Management (“PRM”) technology
  - Analogy to DRM
  - Technologies to mediate terms for the processing of personal information
    - E.g. Microsoft’s HealthVault

# Parameters for Success

- Policy Rules must be established by Law
  - Political process decides principles, not technological elite
- Technologies must translate and implement those rules
  - Standards/Protocols, product design, defaults, options
  - Simplification and its deformities
- “Trust but Verify” Conformity
  - The P3P problem
  - Compliance certification

# Effective Uses

- Compliance
  - Use of technology to satisfy legal and policy obligations
  - Use of technology to resolve differences across jurisdictions
- Enforcement
  - Use of technology to detect abusive data practices
  - Use of technology to sanction privacy violators

# Developmental Challenges

- Defining Data Protection within ubiquitous computing
  - Finality, Transparency
- Role of Law
  - Create incentives for development of PRM technology
  - Developer liability

# Conclusion

Technology is an indispensable data protection tool

Law must promote PRM technologies