



**I hope you know this will go  
down on your permanent record**

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MILLS  
COLLEGE

San José State  
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STANFORD  
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UNIVERSITY OF CALIFORNIA

 VANDERBILT  
UNIVERSITY

ISD  
Sept. 17, 2007

# Overview

- The law of the traditional permanent record
- The public/private divide
- The new permanent record
  - Two info services models
- The law of the new permanent record
- Approaches to addressing this record

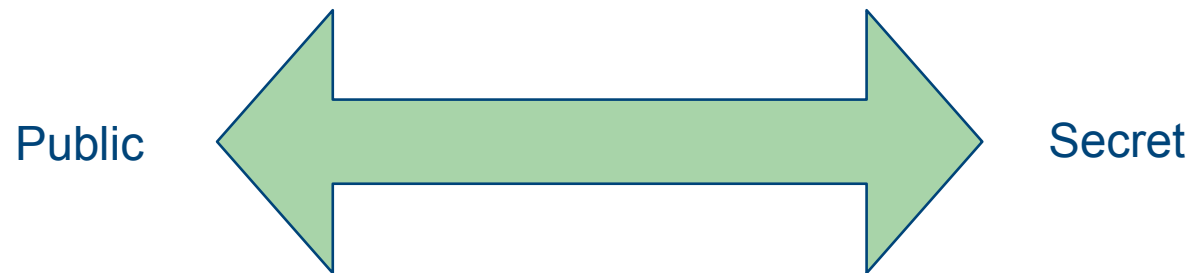
# Your “Permanent Record”

- Controlled by the Federal Educational Rights and Privacy Act of 1974 (“FERPA”)
  - Gives students a right to access the record
  - May apply to make corrections
  - Allows students to limit many disclosures of the record
  - However, some information is not a student record
    - “Directory information,” such as basic contact information clubs, sports, academic achievements, require opt out.

# Opting out at UC?

- “The term "directory information"...means information contained in a student record that would not generally be considered harmful or an invasion of privacy if disclosed.”
  - Student's name, Address (local, permanent, billing, e-mail), Telephone number (local, permanent), Date and place of birth, Major field of study, Dates of attendance, Class level, Enrollment status, Number of course units in which enrolled, Degrees and honors received, Most recent previous educational institution attended, Participation in officially recognized activities, including intercollegiate athletics

# The Secrecy Paradigm



# What is Public?

- An individual “assumes the risk” of disclosure of personal information when s/he shares it with others
- Under *US v. Miller*, individuals do not have a constitutional expectation of privacy in business records
  - But many of our relationships are mediated by business records...
- Even if there is no constitutional protection, a statute may protect data

# Sectoral versus General

US  
Sectoral

Asia-Pacific  
Economic  
Cooperation  
(2004-5)

Personal  
information  
processing should  
only be limited to  
prevent harm.



Rest of the World,  
General Privacy  
Protection

Organization for  
Economic Cooperation  
and Development Fair  
Information Practices  
(1980)

Personal information  
processing implicates  
human rights.

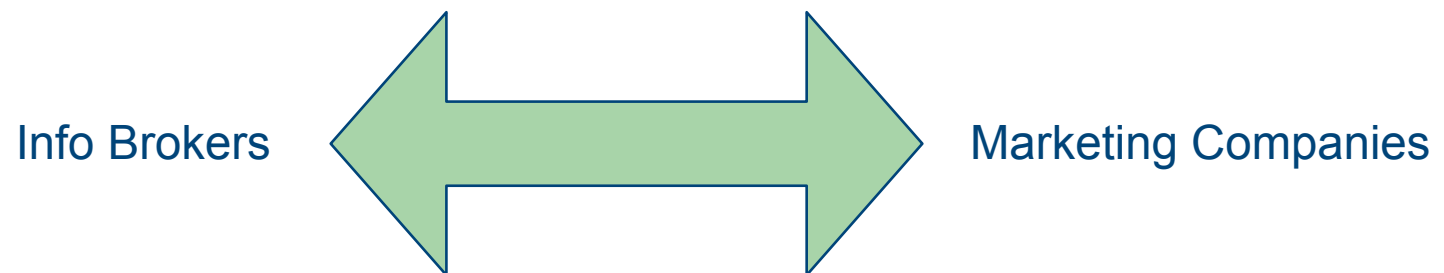
# Sectoral World

- What information was collected?
  - Social Security number
- By whom?
  - Bank
- For what purpose?
  - Identification

# General Privacy Laws

- A gross generalization:
  - Is personal information controlled by an entity?
    - What is “personal information?”
      - Email addresses = yes.
    - What is control?

# Info Services Models



# Info Services: Public Records

**NOTICE: THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.**

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

COLIN L. POWELL (Seal)  
-Borrower  
Social Security Number [REDACTED]

ALMA J. POWELL (Seal)  
-Borrower  
Social Security Number [REDACTED]

\_\_\_\_\_  
(Seal)  
-Borrower  
Social Security Number

# Info Brokers: Zabasearch

The screenshot shows a web browser window with the URL [http://www.zabasearch.com/query1\\_zaba.php?sname=kar%20rove&state=DC&ref=%24ref&se=%24se&doby=...](http://www.zabasearch.com/query1_zaba.php?sname=kar%20rove&state=DC&ref=%24ref&se=%24se&doby=...). The page title is "ZABA KARL ROVE #1 People Search Engine". The search bar contains "karl rove" and the location is set to "All States". The search results are summarized as "1 KARL ROVE / 1 K ROVE / 3 ROVE".

**ZABASEARCH** Search Any Full Name:  All States  [Advanced Search](#)

**Public Information** Results Summary: [1 KARL ROVE](#) / [1 K ROVE](#) / [3 ROVE](#) [E-mail This F](#)

**KARL ROVE - Background Check, 20 Year History** Premium Listing  
[www.Intelius.com](http://www.Intelius.com) Comprehensive Report. Criminal Records. Latest Contact Information.  
[Find KARL ROVE](#) Premium Listing  
[www.Intelius.com](http://www.Intelius.com) Get Current Phone and Address

**KARL ROVE - 1 Listing**  
[Leave a message for karl rove](#) [Check messages](#) [E-mail This Page](#) [ZabaAlert](#)  
Check messages for: [rove - karl](#) - [karl rove](#) [About ZabaSearch](#)

**KARL C ROVE** Born Dec 1950 [More Information on KARL C ROVE](#)  
4925 WEAVER TER NW [Map It](#) Recorded: Unknown [KARL C ROVE business listings](#) [Check Yellow Pages](#)  
WASHINGTON, DC 20016 [Find cell number for KARL C ROVE](#) [Leave a message](#)  
[Google Karl C Rove](#) [Current and Historical Public Records about KARL C ROVE](#)

**K ROVE - 1 Listing**  
[Leave a message for](#) [Check messages](#) [E-mail This Page](#) [ZabaAlert](#)  
Check messages for: - - [karl rove](#) [About ZabaSearch](#)

**KARL C ROVE** Born Dec 1950 [More Information on KARL C ROVE](#)  
4925 WEAVER TER NW [Map It](#) Recorded: Unknown [KARL C ROVE business listings](#) [Check Yellow Pages](#)  
WASHINGTON, DC 20016 [Find cell number for KARL C ROVE](#) [Leave a message](#)  
[Google Karl C Rove](#) [Current and Historical Public Records about KARL C ROVE](#)

**ROVE - 3 Listings**  
[Leave a message for](#) [Check messages](#) [E-mail This Page](#) [ZabaAlert](#)  
Check messages for: - - [karl rove](#) [About ZabaSearch](#)

**DARBY T ROVE** Born Oct 1948 [More Information on DARBY T ROVE](#)  
4925 WEAVER TER NW [Map It](#) Recorded: Unknown [DARBY T ROVE business listings](#) [Check Yellow Pages](#)  
WASHINGTON, DC 20016 [Find cell number for DARBY T ROVE](#) [Leave a message](#)  
[Google Darby T Rove](#) [Current and Historical Public Records about DARBY T ROVE](#)

**Public Records on KARL ROVE**  
Confirmed Phone/Address, Relatives, Age, Date of Birth, Background Check  
[www.ThePublicRecords.com](http://www.ThePublicRecords.com)

**Found KARL ROVE Information**  
Current Phone Number, Address and Age was Located in our Database  
[www.Intelius.com](http://www.Intelius.com)

**Find KARL ROVE**  
Get current address and phone.  
[www.PeopleLookUp.com](http://www.PeopleLookUp.com)

**Criminal Records**  
Check KARL ROVE National Criminal Records Search  
[www.Intelius.com](http://www.Intelius.com)

**Search By Social Security Number**  
Current Phone Number, Address, Address History, Criminal Records  
[www.Intelius.com](http://www.Intelius.com)

Transferring data from www.youtube.com... M 2.9, Northern California 1.634s 0:144 Now: Mostly Sunny, 62° F Tue: 68° F Wed: 67° F

# Info Broker Integration

Obtaining Birthdays in One Step  
(birthdatabase.com)

[Stephen P. Morse](#), San Francisco

Ancestry Privateeye Zabasearch Myfamily

Frequently Asked Questions My Other Webpages

*Full first and last names are required. Partial names are not allowed.  
All other fields are optional.*

First Name  Middle Initial  Last Name  Age  ± 3 years

City starts with or is  State  Zip code starts with or is

year month day  
Earliest date of birth     
Latest date of birth

hits/screen before filtering: 25\*   
Start search at page

**PLEASE NOTE!!!**  
The results that will be displayed on each screen are filtered according to the values you entered above.  
Just because you get few or no results on a screen does not mean that you have reached the last screen.  
Continue displaying screens as long as you keep seeing a "Next" button.

Search Reset

Done eQuake: 404 1.590s S E 0:143 Network Error

# Third Parties = No Rights



May 21, 2004

Dear Consumer,

To answer your question of what rights you have over the information that we have about you, there are none. We are a third party data collection company and we import information about each subject from several different sources including credit bureaus and utility companies. If you find that the information supplied to you from us is inaccurate, you may take that up with those companies.

Thank you for using LocatePlus.

A handwritten signature in cursive script, appearing to read "Anne Ouellette".

Anne Ouellette  
LocatePlus.com Customer Service

# Racial, Identification Data

|   |              |
|---|--------------|
| <b>Asian selects</b>  | <b>Price</b> |
| Asian .....   | \$10/M       |
| Specific ethnicity (Chinese, Japanese,<br>Korean, Vietnamese) ..... | \$20/M       |

|                             |                          |            |
|-----------------------------|--------------------------|------------|
| <b>Other Ethnic selects</b> |                          | <b>N/C</b> |
| Arabian (Saudi Arabia)      | Irish (Ireland)          |            |
| Armenian (Armenia)          | Italian (Italy)          |            |
| Belgian (Belgium)           | Latvian (Latvia)         |            |
| Bulgarian (Bulgaria)        | Lithuanian (Lithuania)   |            |
| Czech                       | Norwegian (Norway)       |            |
| Czecho-Slovakian            | Persian (Iran)           |            |
| Danish (Denmark)            | Polish (Poland)          |            |
| Dutch (Netherlands)         | Portuguese (Portugal)    |            |
| English (Great Britain)     | Romanian (Romania)       |            |
| Estonian (Estonia)          | Russian (Russia)         |            |
| Finnish (Finland)           | Scottish (Scotland)      |            |
| French (France)             | Slovakian                |            |
| German (Germany)            | Swedish (Sweden)         |            |
| Greek (Greece)              | Swiss (Switzerland)      |            |
| Jewish (Israel)             | Syrian (Syria)           |            |
| Hindi (India)               | Turkish (Turkey)         |            |
| Hispanic                    | Ukrainian (Ukraine)      |            |
| Hungarian (Hungary)         | Welsh (Island of Wales)  |            |
| Icelandic (Iceland)         | Yugoslavian (Yugoslavia) |            |

- 100\* Date of Birth (DOB)
- 101\* Estimated Year of Birth
- 102\* Inferred Age Ranges
- 103\* Gender Code
- 104\* Experian Estimated Household Income
- 106\* Given Name
- 107\* Marital Status
- 108A\* Ethnic Markets Code
- 108B Asian Markets
- 110 Individual Household Status Code
- 211\* Geographic Income Percentile- County
- 212\* Geographic Income Percentile- National
- 224\* Home Business Indicator
- 225\* Business Owner Indicator
- 180 Height, Weight, Vision Code
- 181 Social Security Number
- 182 Drivers License Number
- 111 Address Verification
- 112 Deceased Indicator  
(with date of death, where available)
- 219 Industry Mail Preference Indicator






# Medical, Political Data

## AILMENTS (Base \$150.00/M includes 1 selected)

- \_\_\_\_\_ Allergies
- \_\_\_\_\_ Angina
- \_\_\_\_\_ Arthritis/Rheumatism
- \_\_\_\_\_ Asthma
- \_\_\_\_\_ Back Pain
- \_\_\_\_\_ Birth Defects
- \_\_\_\_\_ Bladder Control/Incontinence
- \_\_\_\_\_ Clinical Depression
- \_\_\_\_\_ Diabetes
- \_\_\_\_\_ Epilepsy
- \_\_\_\_\_ Frequent Heartburn
- \_\_\_\_\_ Glaucoma
- \_\_\_\_\_ Gum problems
- \_\_\_\_\_ Hearing difficulty
- \_\_\_\_\_ High Blood Pressure
- \_\_\_\_\_ High Cholesterol
- \_\_\_\_\_ Migraines/Frequent Headaches

## CONTRIBUTORS AND MEMBERSHIPS (Base \$65.00/M self-reported / \$45.00/M modeled)

### Contributors

- \_\_\_\_\_ Animal Welfare
-  \_\_\_\_\_ Charitable Donor - HH Indicator
- \_\_\_\_\_ Child Welfare
- \_\_\_\_\_ Cultural Arts
-  \_\_\_\_\_ Donors by Mail - HH Indicator
-  \_\_\_\_\_ Donors by Phone - HH Indicator
-  \_\_\_\_\_ Donors by Telethon - HH Indicator
- \_\_\_\_\_ Environmental
-  \_\_\_\_\_ Environmental Donors - Modeled Select
- \_\_\_\_\_ Health Related
- \_\_\_\_\_ Political
- \_\_\_\_\_ Religious
- \_\_\_\_\_ Social Services

**FLORIDA MOTORCYCLISTS**

Data Verified: Dec 26, 2002.

Location ID: 10 DCLS 508 Mid 732214-000  
SmartTarget Marketing, 725 Broad Street, Augusta, GA  
30901, Toll Free 800-329-5478, Fax 706-823-3471  
E-mail: contact@smarttarget.com

**1. PERSONNEL**

Gen Mgr—Tim Killebrew  
Natl Sales Mgr—Arthur bud Henderson  
Operations Manager—Debby Goolsby

**2. SUMMARY DESCRIPTION**

Motorcycles registered to individuals in the state of Florida.

**3. LIST SOURCE**

Compiled government records.

**4. SELECTIONS WITH COUNTS**

Updated: Dec 16, 2002.

|                      | Total<br>Number | Price<br>per/M |
|----------------------|-----------------|----------------|
| Total list.....      | 181,139         | 65.00          |
| Minimum order 5,000. |                 |                |

**4A. OTHER SELECTIONS**

SCF, Zip, MSA, county, 5.00/M extra; age, 10.00/M extra; ethnicity, 15.00/M extra; manufacturer, 25.00/M extra; marital status, gender of owner, income, key coding, 5.00/M extra.

**5. COMMISSION, CREDIT POLICY**

Cancel charges: Cancellation fee: 25% of total after receipt of purchase order up to shipping date, full fee is due after shipping date. Prepayment required for new customers. Credit terms may be arranged for subsequent orders upon approval of finance department.

**6. METHOD OF ADDRESSING**

Cheshire labels, 4-up; diskette, 5.00 fee; e-mail, 30.00 fee; FTP or bulletin board, 30.00 fee; zip disk or cd, 25.00 fee; mag tape, data cartridge, 55.00 fee; pressure sensitive labels, 10.00/M extra; clear labels, 25.00/M extra; galley listing, 25.00 fee; 8 1/2 x 11 sheets laser printed, 50.00/M extra.

**8. RESTRICTIONS**

Two sample mailing pieces required. One time use only. Unless prior arrangement has been made.

**New Listing**

**SUV OWNERS OF FLORIDA**

Data Verified: Jan 17, 2003.

Location ID: 10 DCLS 508 Mid 770431-000  
Member: D.M.A.  
SmartTarget Marketing, 725 Broad Street, Augusta, GA  
30901, Toll Free 800-329-5478, Fax 706-823-3471  
E-mail: contact@smarttarget.com

**1. PERSONNEL**

Operations Manager—Debby Goolsby

**2. SUMMARY DESCRIPTION**

Owners of SUVs registered in the State of Florida.

**3. LIST SOURCE**

Compiled public records.

**4. SELECTIONS WITH COUNTS**

Updated: Dec 1, 2002.

|                      | Total<br>Number | Price<br>per/M |
|----------------------|-----------------|----------------|
| Total list.....      | 900,183         | 75.00          |
| Minimum order 5,000. |                 |                |

**4A. OTHER SELECTIONS**

Gender, state, SCF, Zip, MSA, county, income, marital status, run charge, 5.00/M extra; Vehicle selections; lender-financier, vehicle-leased, vehicle-manufacturer, vehicle-model, vehicle-type, vehicle-model year, vehicle-year purchased, 5.00/M extra; carrier route/mailstream sort, 8.00/M extra; age, 10.00/M extra; ethnicity, 15.00/M extra; telephone number, 25.00/M extra.

**5. COMMISSION, CREDIT POLICY**

Cancel charges: Cancellation fee: 25% of total after receipt of purchase order up to shipping date. Full fee is due after ship date. Prepayment required for new customers. Credit terms may be arranged for subsequent orders upon approval of our Financial Department.

**6. METHOD OF ADDRESSING**

Cheshire labels, 4-up; pressure sensitive labels, 10.00/M extra; mag tape, 55.00 fee; diskette, 5.00 fee; e-mail, 30.00 fee; CD, 10.00 fee; data cartridge, 25.00/M extra; Zip disk, 25.00/M extra; galley listing, 25.00/M extra; FTP, 30.00 fee; bulletin board, 30.00 fee; electronic delivery, 30.00 fee; 8 1/2 x 11 laser printed sheets, 0.85 fee.

**8. RESTRICTIONS**

Sample mailing piece required. One time use only.

# Advertising

The screenshot shows a web browser window displaying a New York Times article. The browser's address bar shows the URL: [http://www.nytimes.com/2007/09/18/technology/18myspace.html?\\_r=2&oref=slogin&oref=sl](http://www.nytimes.com/2007/09/18/technology/18myspace.html?_r=2&oref=slogin&oref=sl). The browser's search bar contains "uc berkeley privacy". The browser's address bar also shows "MySpace to Discuss Effort to C..." and "Obtaining Birthdays in One Step".

The article is titled "MySpace to Discuss Effort to Customize Ads" and is part of the "Technology" section. The article is by Brad Stone and was published on September 18, 2007. The article's main text reads: "Members of the booming social network Web sites treat their individual profile pages as a creative canvas for personal expression."

The article includes a photograph of Adam Bain and Amie Gulov-Singh. The caption reads: "Adam Bain, left, and Amie Gulov-Singh are helping to lead MySpace's effort to mine profile pages for ad purposes." The photo credit is "Noah Berger for The New York Times".

The article also includes a "Next Article in Technology (3 of 14)" section, an "Afternoon Update" section, and a "MOST POPULAR - TECHNOLOGY" section. The "MOST POPULAR - TECHNOLOGY" section lists 10 items, including "I.B.M. to Offer Office Software Free in Challenge to Microsoft's Line", "Microsoft Ruling May Bode Ill for Other Companies", "MySpace to Discuss Effort to Customize Ads", "Digital Domain: A Window of Opportunity for Macs, Soon to Close", "AOL Moving Headquarters to New York", "European Court Rejects Microsoft Antitrust Appeal", "New Social Sites Cater to People of a Certain Age", "State of the Art: Making Over the iPod Family (Again)", "Novelties: While in the Kitchen, Stir the Stew and Surf the Web", and "AOL to Move Headquarters to New York".

"your permanent record", Hoofnagle

ISD, Sept. 17, 2007

- No general online privacy rules
- No data-broker specific privacy rules
  - But, there are rules for use of data in employment, tenant, and credit contexts
- Therefore, must look to caselaw (Federal Trade Commission decisions)
  - Is the practice unfair or deceptive?
    - **Unfair = substantial, unavoidable consumer injury**
      - E.g. A company promises not to sell personal data, and later changes its policy without notice or consent
    - **Deceptive = misrepresentation that causes consumer detriment**
      - ~ Notice = fair game

# Privacy notice of Facebook

- “You post User Content (as defined in the Facebook Terms of Use) on the Site at your own risk.”
- “Facebook may also collect information about you from other sources...”
- If the ownership of...Facebook...were to change, your user information may be transferred to the new owner...your user information would remain subject to the...pre-existing Privacy Policy.
- “We reserve the right to change our Privacy Policy and our Terms of Use at any time.”

# Why should we care?

- Identity Theft and Stalking
- Social Forgiveness
  - Society's "right to hope for tolerant forgiveness or overlooking of past foolishnesses, errors, humiliations, or minor sins--in short, the Christian notion of the possibility of redemption."
    - Vance Packard, *The Naked Society* (1964)
- Predatory Exploitation of Personal Information
  - e.g. targeting elderly, vulnerable
- Government Use of Personal Information
  - Privacy Act loophole
- Third-Party Interests

# Why...con't

- **Use of Courts/Voluntary Cooperation.**
  - In *Greidinger v. Davis*, the 4th Circuit held that public disclosure of the SSN for voting registration—even with use restrictions on the information—
- **Errors Have A Greater Effect**
  - *Paul v. Davis*, police circulated flyers with an individual's picture and erroneous conviction for theft.
- **Sophistication of Litigants**

# Perm. Record Proposals

- Treat paper, electronic records differently
- Limit bulk release of data
- Minimization
- Use Limitations
- Redact unique identifiers
  - SSN, DOB