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Title:	Privacy When Form Doesn't Follow Function
Abstract:	Scholars and policy makers have long recognized the key role that design plays in protecting privacy, but efforts to explain why design is important and how it affects privacy have been muddled and inconsistent. This article argues that this confusion arises because "design" has many different meanings, with different privacy implications, in a way that hasn't been fully appreciated by scholars. Design exists along at least three dimensions: process versus result, plan versus creation, and form versus function. While the literature on privacy and design has recognized and grappled (sometimes implicitly) with the first two dimensions, the third has been unappreciated. Yet this is where the most critical privacy problems arise. Design can refer both to how something looks and is experienced by a user—its form—or how it works and what it does under the surface—its function. In the physical world, though, these two conceptions of design are connected, since an object's form is inherently limited by its function. That's why a padlock is hard and chunky and made of metal: without that form, it could not accomplish its function of keeping things secure. So people have come, over the centuries, to associate form and function and to infer function from form. Software, however, decouples these two conceptions of design, since a computer can show one thing to a user while doing something else entirely. Some of the most pervasive privacy problems, like online tracking and profiling, stem from this misalignment between form and function, since companies can collect, use, and disseminate information without any formal indication that that will occur. Recognizing this third dimension of design, then, can help policy makers identify the most likely privacy problems and fashion reforms directed at inducing realignment.