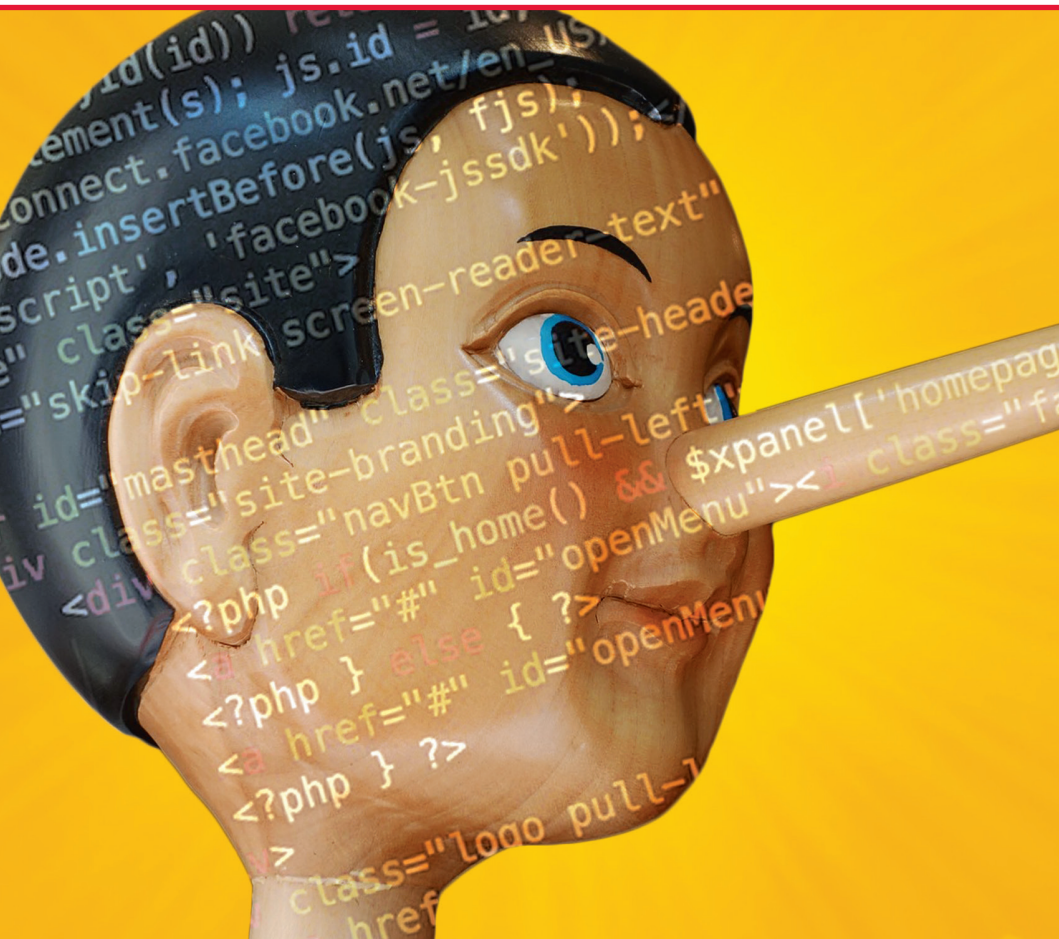


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THE FIFTEENTH ANNUAL SPRING LECTURE

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Forthright Code

PAUL OHM

Professor of Law

Georgetown University Law Center

Commentator:

Sharon Israel

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THURSDAY, MARCH 22, 2018

THE CORONADO CLUB

919 Milam Street, Houston, Texas

Reception 5:30 p.m., Lecture 6:15 p.m.

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Paul Ohm is Professor of Law at the Georgetown University Law Center. He specializes in communications and technology law and serves as a faculty director for the Center on Privacy and Technology at Georgetown.

In his scholarly work, Professor Ohm tries to build new interdisciplinary bridges between law and computer science. Much of his scholarship focuses on how evolving technology disrupts individual privacy. His article, *Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization*, 57 UCLA L. REV. 1701 (2010), sparked an international debate about the need to reshape dramatically the way we regulate privacy. Professor Ohm is commonly cited and quoted by news organizations including the New York Times, the Wall Street Journal, and NPR.

Professor Ohm began his academic career on the faculty of the University of Colorado Law School, where he also served as Associate Dean for Academic Affairs and Faculty Director for the Silicon Flatirons Center. From 2012 to 2013, Professor Ohm served as Senior Policy Advisor to the Federal Trade Commission. Before becoming a professor, he served as an Honors Program trial attorney in the U.S. Department of Justice's Computer Crime and Intellectual Property Section. Before that, he clerked for Judge Betty Fletcher of the United States Court of Appeals for the Ninth Circuit and Judge

Mariana Pfaelzer of the United States District Court for the Central District of California. He is a graduate of the UCLA School of Law.

Before attending law school, Professor Ohm worked for several years as a computer programmer and network systems administrator after earning undergraduate degrees in computer science and electrical engineering from Yale University. Today he continues to write thousands of lines of python and perl code each year. Professor Ohm blogs at *Freedom to Tinker*.

Recent Scholarship and Works in Progress: *The Surveillance Regulation Toolkit: Thinking Beyond Probable Cause*, in THE CAMBRIDGE HANDBOOK OF SURVEILLANCE LAW (David Gray & Stephen Henderson eds., Cambridge University Press forthcoming); *Proof of Work: Learning from Computer Scientific Approaches to Desirable Inefficiency* (working paper with Jonathan Frankel); *The Silver Lining to Internet Balkanization*, UCLA L. REV. DISCOURSE __ (forthcoming); *Regulating Software When Everything Has Software*, 84 GEO. WASH. L. REV. 1672-1702 (2016) (with Blake Reid); *We Couldn't Kill the Internet If We Tried*, 130 HARV. L. REV. F. 79-85 (2016); *Sensitive Information*, 88 S. CAL. L. REV. 1125-1196 (2015); *The Life of Riley (v. California)*, 48 TEX. TECH L. REV. 133-142 (2015); *Response: The Underwhelming Benefits of Big Data*, 161 U. PA. L. REV. PENUMBRA 339-346 (2013).

Forthright Code

We want our software not to lie to us. The Federal Trade Commission and state attorneys general have long enforced laws prohibiting “deceptive acts or practices,” and recently, they have started bringing actions against companies for deploying “deceptive code” or “deceptive design.”

But as every parent knows, not lying is not the same thing as being honest and forthright. Even when software isn't deceptive, far too often it still is not as honest as it could be, giving rise to consumer harm, power imbalances, and a worrisome restructuring of society. With increasing and troubling frequency, software hides the full truth, in order to control or manipulate us.

What if regulators and law enforcement agencies could mandate not just non-deceptiveness but also forthrightness from our code? Companies might be punished for prominently displaying a button saying, “Yes, I agree,” while making the “No, I disagree” choice hard-to-spot and hard-to-click. It might become illegal to bury a privacy-enhancing choice behind four clicks, when the default choice requires none.

In this lecture, Professor Paul Ohm will lay out the case for a new law obligating developers to use forthright code.

A new obligation for forthrightness must strike a fine legal balance, protecting consumers against new perils of our software-mediated age without treading too much on First Amendment expression. We ought to try to strike this balance, Professor Ohm will argue, especially in light of looming new challenges from artificial intelligence. AI systems are prone to discriminate and otherwise act unfairly, and it is hard to understand what is going on in these opaque and complex systems. Forthrightness goes farther than recent calls for “explainability” or “interpretability” by requiring a deeper, more fundamental demonstration of fairness than these proposals — one which will help us distinguish between fundamentally fair systems and those that are merely surrounded by a thin veneer of fairness.

THE ANDREWS KURTH KENYON LECTURES

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