

EU-U.S. and Swiss-U.S. Privacy Shield Arbitrator

Kenneth A. Bamberger
University of California, Berkeley

- Current Employer-Title** The Rosalinde and Arthur Gilbert Foundation Professor of Law
University of California
- Profession** Law Professor, Faculty Director; Berkeley Center for Law and Technology
- Work History** University of California, Berkeley, School of Law: The Rosalinde and Arthur Gilbert Professor of Law, 2016 - Present; Professor of Law, 2011 - 2016; Assistant Professor of Law, 2005-2011; Associate, then Counsel, Wilmer Cutler Pickering Hale and Dorr LLP, 2002 – 2005; Law Clerk, Justice David H. Souter, Supreme Court of the United States, 2000 -2001; Bristow Fellow, Office of the Solicitor General, U.S. Department of Justice, 1999-2000; Law Clerk, Judge Amalya L. Kearse, U. S. Court of Appeals (Second Circuit), 1998 - 1999; Summer Associate, Ropes & Gray, 1998; Summer Associate, Jenner & Block, 1997; Summer Associate, Cahill Gordon & Reindel, 1996.
- Experience & Expertise in U.S. Privacy Law and EU Data Protection Law** I am a law professor who researches and writes extensively on information privacy and data protection, with a particular comparative focus on the United States and Europe. I have written numerous scholarly articles and a book, as well as more popular forms of writing, on the subject.
- My recent coauthored book, *PRIVACY ON THE GROUND: DRIVING CORPORATE BEHAVIOR IN THE UNITED STATES AND EUROPE*, (MIT 2015), examines in depth the legal privacy regimes and corporate privacy practices in the US and four European jurisdictions governed by the EU framework, and draws lessons for US law, and assessments regarding the new GDPR's implementation in Europe. The book was launched at the 2015 Conference of International Data Protection Commissioners, and in light of its impact, my co-author and I received the 2016 Privacy Leadership Award from the International Association of Privacy Professionals.
- I also speak frequently, both in the United States and Europe, about information privacy and data protection. I am a Faculty Director of the Berkeley Center for Law and Technology. And, I have served on the Program Committee for the European Privacy Law Scholars Conference (PLSC), and participated frequently in the U.S. Privacy Law Scholars Conference.
- Experience & Training in Alternative Dispute Resolution** I have significant experience with litigation, especially appellate litigation, including serving as a judicial clerk in both the U.S. Court of Appeals for the Second Circuit and the U.S. Supreme Court, and working for four and one half years as an attorney in the Department of Justice and the Wilmer Hale firm. I have no training or experience in arbitration.

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Professional Licenses	Admitted to the Bars of: New York State, 2001; The Commonwealth of Massachusetts, 1999 (inactive); The District of Columbia, 2002; The Supreme Court of the United States, 2003.
Education	Harvard Law School (JD, 1998); Cambridge University (Henry Fellow, 1990- 1991), Harvard College (BA 1990).
Languages	English (native); French (conversational)
Publications, Speeches & Testimony	<p><u>Book</u> PRIVACY ON THE GROUND: DRIVING CORPORATE BEHAVIOR IN THE UNITED STATES AND EUROPE (with D. Mulligan) (MIT Press: Nov. 2015), Awarded 2016 Privacy Leadership Award by the International Association of Privacy Professionals (IAPP).</p> <p><u>Articles and Chapters</u> Saving Governance-by-Design, 106 CALIFORNIA LAW REVIEW (forthcoming 2018) (with D. Mulligan). Platform Market Power, 32 BERKELEY TECHNOLOGY LAW JOURNAL (with Orly Lobel) (2018). Public Values, Private Infrastructure and the Internet of Things: the Case of Automobiles, 9 JOURNAL OF LAW & ECONOMIC REGULATION 7 (with D. Mulligan) (2016), Published in Korean translation as: 공적 가치, 사적 기반 그리고 IoT: 자동차 사례를 중심으로; Honorable Mention, 2017 Future of Privacy Forum Privacy Papers Award. Privacy in Europe: Initial Data on Governance Choices and Corporate Practices, 81 GEORGE WASHINGTON UNIVERSITY LAW REVIEW, (with D. Mulligan) (2013), Awarded 2013 Future of Privacy Forum Privacy Papers Award. What Regulators Can Do to Advance Privacy Through Design, COMMUNICATIONS OF THE ACM, vol. 56 (with D. Mulligan) (2013). PIA Requirements and Privacy Decisionmaking in U.S. Government Agencies, in PRIVACY IMPACT ASSESSMENTS: ENGAGING STAKEHOLDERS IN PROTECTING PRIVACY (De Hert and Wright, eds.) (with D. Mulligan) (2012). New Governance, Chief Privacy Officers, and the Corporate Management of Information Privacy in the United States, 33 LAW AND POLICY 477 (with D. Mulligan) (2011). Privacy on the Books and on the Ground, 63 STANFORD LAW REVIEW 247 (with D. Mulligan) (2011), Awarded 2011 Future of Privacy Forum Privacy Papers Award. Technologies of Compliance: Risk and Regulation in a Digital Age, 88 TEXAS LAW REVIEW 669 (2010). Privacy Decisionmaking in Administrative Agencies, 75 UNIVERSITY OF CHICAGO LAW REVIEW 75 (with D. Mulligan) (2008). Importers as Regulators: Product Safety in a Globalized World, in COGLIANESE & ZARING, EDS., IMPORT SAFETY: GOVERNANCE CHALLENGES IN THE GLOBAL ECONOMY (with A. Guzman) (2010). Chevron's Two Steps, 95 VIRGINIA LAW REVIEW 611 (with P. Strauss) (2009). Normative Canons in the Review of Administrative Policymaking, 118 YALE LAW JOURNAL 64 (2008). Keeping Imports Safe: A Proposal for Discriminatory Regulation of International</p>

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[*Trade*](#), 96 CALIFORNIA LAW REVIEW 1405 (with A. Guzman) (2008).
[*Global Terror, Private Infrastructure, and Domestic Governance*](#), in 2 GLOBALIZATION COMES HOME: HOW THE UNITED STATES IS BEING TRANSFORMED BY GLOBALIZATION (2008).
[*Regulation as Delegation: Private Firms, Decisionmaking, and Accountability in the Administrative State*](#), 56 DUKE LAW JOURNAL 377 (2006).
[*Provisional Precedent: Protecting Flexibility in Administrative Policymaking*](#), 77 N.Y.U. LAW REVIEW 1272 (2002).
[*Note, Deference to Legislative Fact Determinations in First Amendment Cases After Turner Broadcasting*](#), 111 HARVARD LAW REVIEW 2312 (1998).

Shorter Works

[*Teenagers Already Know the Key to Protecting Your Privacy*](#), TIME.COM (with D. Mulligan) (Mar 29, 2017).
[*Is Your Data Really Safer in Europe?*](#), CHRISTIAN SCIENCE MONITOR (with D. Mulligan) (June 6, 2016).
[*The Triumph of the Privacy Profession: An Interview with Bamberger and Mulligan*](#), Interview by Daniel Solove, *TeachPrivacy* (March 23, 2016).
[*Apple v. FBI: Just One Battle in the 'Design Wars'*](#), THE RECORDER (with D. Mulligan) (March 21, 2016, p.6) (republished at law.com).
[*"The Modern Privacy Function: Balancing Strategy with the Operational"*](#), *Privacy Perspectives: Ideas and Insights on Data Protection*, (with D. Mulligan) (April 8, 2013).
[*"Why Are German and U.S. Practices So Similar, If Their Regulatory Structures Are So Different?"*](#), *Privacy Perspectives: Ideas and Insights on Data Protection*, (with D. Mulligan) (March 28, 2013).
[*"Operationalizing Privacy: How Empowered Is Your Privacy Office?"*](#), *Privacy Perspectives: Ideas and Insights on Data Protection*, (with D. Mulligan) (February 27, 2013).

Select Recent Presentations

- "Privacy, Big Data, and Lock-In," Berkeley Center for Law and Technology Silicon Valley Privacy Forum. (April 2018)
- "Privacy and Sustainable Governance," Berkeley Sustainable Business and Investment Forum, Haas School of Business (November 2017)
- "Using the Full Privacy Toolkit," Panel with EU regulator Karolina Mojzesowicz and Israeli Chief Privacy Regulator Alon Bachar, Cyberweek, Tel Aviv University, (June 2017)
- "The Coming Design Wars," Conference, Privacy By Design: Can Engineers And Organizations Do It?, Tel Aviv University, Haifa University, and Hewlett Packard Enterprise (April 2017)
- "Platform Market Power," Conference, Regulation of Internet Platforms: Public and Private Governance, UC Berkeley School of Law (April 2017)
- "Data Privacy in India: What you Need to Know," Webinar, US-India Business Council (January 2017)
- "Privacy on the Ground," Faculty Scholarship Workshop, Boston University School of Law (November 2016)
- "Jewish Copyright Law: a Story of Legal Competition in the Face of Technological Change – Comments on Neal Netanel's *From Maimonides to*

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Microsoft,” Haifa University Law School (May 2016)

- Comments on receipt of the 2016 Privacy Leadership Award, International Association of Privacy Professionals (IAPP) Global Privacy Summit, Washington DC (April 2016)
- *Keynote Address*, “Professionalism as a Regulatory Tool,” International Association of Privacy Professionals (IAPP) Global Privacy Summit, Washington DC (April 2016)
- “Regulatory Choices And Privacy Consequences,” CPDP Computers, Privacy and Data Protection: Invisibilities and Infrastructures, Brussels, Belgium (January 2016)
- “Data, Dignity and Technology - Exploring Digital Ethics,” CPDP Computers, Privacy and Data Protection: Invisibilities and Infrastructures, Brussels, Belgium (January 2016)
- “Privacy on the Ground,” Haifa University CyberForum (January 2016)
- “Privacy on the Ground,” Book Launch Event and Panel, Center for Democracy and Technology, Washington DC (December 2015)
- “From the Bookshelf to the Battlefield: Two New Books that Have Transformed the Privacy Landscape,” University of Amsterdam School of Law, Institute for Information Law Conference, Amsterdam, Netherlands (October 2015)
- “The Privacy Professional in the 21st Century,” Meeting of the Confederation of European Data Protection Officers, International Conference of Data Protection Commissioners, Amsterdam, Netherlands (October 2015)
- “Privacy on the Ground,” Book Launch Panel, Tel Aviv University, Buchmann School of Law, Cegla Center for the Interdisciplinary Study of Law, Fischer Center for Corporate Governance and Capital Markets Regulation, Safra Center for Ethics, Tel Aviv, Israel (September 2015)
- “The Coming Design Wars,” Berkeley Center for Law and Technology Silicon Valley Privacy Forum. (April 2015)
- White House Workshop on Big Data: Values and Governance, Berkeley, CA (January 2015)

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