The Yale Law Journal

TO: All J.D. and M.S.L. Candidates at Yale Law School
FROM: The *Yale Law Journal* Volume 127 Notes and Comments Committee (Anthony Sampson, Patrick Baker, Samir Doshi, James Durling, Meredith Foster, Joaquin Gonzalez, Annika Mizel, Max Harris Siegel, and Arjun Ramamurti)
RE: Comments Submission Guidelines
DATE: August 4, 2017

I. Introduction

We invite and encourage all Yale Law School J.D. and M.S.L. students to submit a Comment for publication in Volume 127 of the *Yale Law Journal*. We are strongly committed to increasing the number of Comments we publish and to publishing a wide variety of Comments that reflect the diversity of intellectual interests at the law school.

Students may publish up to one Comment and one Note within Volume 127, but may not publish more than one of either.

The remaining submission dates ("drop dates") for the 2017 Fall Term are **Friday, September 1, at 5PM; and Friday, October 20, at 5PM.**

Please refer to the rest of this memorandum for guidance on developing and submitting your Comment. The Notes and Comments Committee takes its commitment to blind review seriously. To preserve anonymity, all questions regarding the Comments submissions process and requests for Comments Development Editors should be directed to Managing Editors Erin van Wesenbeeck (erin.vanwesenbeeck@yale.edu) or Kyle Victor (kyle.victor@yale.edu). Please do not contact any member of the Notes and Comments Committee regarding your submission.

II. Developing Your Comment

What is a Comment?

A Comment is a short piece that presents an original and concise argument. A Comment should have a strong, clear thesis and minimal literature review.

Comments can come in many forms. The *Journal* has published case Comments (evaluating a particular court decision), practitioner-oriented Comments, Comments that surveyed or critiqued

changing jurisprudence, and those that identified tensions or gaps in both modern and long-established doctrines. Many of the Comments published in the *Journal* have been based on ideas that authors have encountered in their work in clinics, over the summer, or as research assistants. The diversity in the breadth and scope of Comments underscores the fact that any piece with a clear thesis presenting an original and concise argument can be a successful Comment.

Resources for Developing Your Comment

Comments Development Editors

The Notes and Comments Committee is committed to working one-on-one with students to develop their writing. You can request a Comments Development Editor (CDE) who will work with you on any stage of Comment development, and who will be recused from voting on your piece. We highly encourage you to take advantage of this resource. There will be a deadline for requesting a CDE before each drop date. This deadline will be publicized via Wall email. After submission, the Notes and Comments Committee sends some authors whose Comments are not accepted a Revise & Resubmit letter. If you receive a Revise & Resubmit letter, your CDE can continue to work with you on revising the piece for resubmission. We encourage you to submit a Comment earlier rather than later so that you will have the opportunity to revise and resubmit at subsequent drop dates.

Other Resources

We encourage students to review our **Common Suggestions for Notes and Comments** and our **Guide to Writing a Note or Comment Based on Summer, Clinical, or RA Work**, both of which are available on our website here.

III. Policies on Comments Submission, Review, and Acceptance

Submitting a Comment

All Comments must be submitted through the *Journal*'s electronic submission process available on our website here – http://ylj.yalelawjournal.org/authors/index.html. You may submit your Comment at any time. The Notes and Comments Committee, however, will not begin reviewing any Comments until the drop date. Students having difficulty with the submission process should email Managing Editors Erin van Wesenbeeck (erin.vanwesenbeeck@yale.edu) and Kyle Victor (kyle.victor@yale.edu) with questions at least 24 hours before the submission deadline.

How and What to Submit

Please note there is a **3,500-word limit** for new submissions. Although this is not a hard word limit, please be mindful that the more you go over the limit, the less favorably the Committee will regard your work. Submission materials must include the following items and must be uploaded into the appropriate fields on our website in Microsoft Word format:

1. **Submission field.** Upload your Comment, without your name on it, into this field. This document must include a word count, including footnotes, in the header.

2. **Preemption Memo field.** Upload a Preemption Memo, without your name on it, into this

field. There is no set length for the Preemption Memo, but it should demonstrate that your argument is original. A sample preemption memo appears below. For a tutorial on preemption checking, see: http://library.law.yale.edu/research/preemption-checking. Please note that we conduct preemption checks of each piece prior to acceptance.

3. Submission Form. The Submission Form is a Google form that can be accessed from the Comment submissions upload page. It is also available here. The Submission Form will be accessible only to the Managing Editors, Erin van Wesenbeeck and Kyle Victor.

4. R&R 1, R&R 2, R&R 3 fields. If you have previously submitted your Comment, please upload any previous Revise & Resubmit letter(s) associated with your submission. If you do not upload a Revise & Resubmit letter from a prior version of your current submission, the Notes and Comments Committee will not consider your submission.

Source Corroboration

All citations, including datasets, must be capable of being corroborated by the *Journal*. In addition, authors must obtain prior, written permission for the use and publication of any non-public material, including but not limited to quotes or paraphrases from interviews, non-public court documents or records of adjudication, and non-public data. This proviso is particularly important if your Comment is the product of clinical work or a research assistantship. The Notes and Comments Committee will determine whether such permission is acceptable.

Blind Review

The Committee is strongly committed to impartial, blind review. Comments are reviewed without knowledge of the author's name or other identifying information, and authors' identities are only revealed to the Committee after a Comment has been accepted. Any Committee member who can identify a Comment's author with confidence will be recused from the Committee's deliberations on the Comment. To that end, please do not discuss any aspect of your Comment or the submissions process with Anthony Sampson, Patrick Baker, Samir Doshi, James Durling, Meredith Foster, Joaquin Gonzalez, Annika Mizel, Max Harris Siegel, or Arjun Ramamurti, unless they have been assigned to you as your CDE.

It is your responsibility to remove all identifying information from your submission.
Prior to uploading any documents, please double check to make sure that you have removed all self-identifying references from your documents. For all documents, please select "File" and then "Properties" on Microsoft Word and remove your name from the "Author" field. Because Committee members who can identify a submission's author must recuse themselves from considering that piece, accidentally leaving in identifying information may disadvantage a submission or even preclude its publication.

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We very much look forward to receiving and reading your submissions. Please feel free to contact Managing Editors Erin van Wesenbeeck (erin.vanwesenbeeck@yale.edu) and Kyle Victor (kyle.victor@yale.edu) if you have any questions.

Best wishes,

The *Yale Law Journal* Volume 127 Notes and Comments Committee

Anthony Sampson, Patrick Baker, Samir Doshi, James Durling, Meredith Foster, Joaquin Gonzalez, Annika Mizel, Max Harris Siegel, and Arjun Ramamurti

Sample Preemption Memo

The EU General Data Protection Regulation: Toward a Property Regime for Protecting Data Privacy

This Comment explores a recently released draft EU Regulation (a form of legislation binding on all EU member states as law) that would overhaul European data privacy law. Though the legislation will likely not be passed for another year, its strict consumer-protection rights and harsh penalty scheme has provoked some controversy. The Regulation's "right to be forgotten," which would require corporations to delete an individual's personal data upon request, has proven especially controversial.[1]

The draft Regulation has thus far received only limited scholarly attention. Most of the commentary has focused on the implications of the "right to be forgotten" for free speech rights,[2] the implications of the draft Regulation's consumer rights for antitrust law,[3] or simply comparing the EU perspective with that of the U.S.[4]

My Comment takes a different approach. By highlighting the draft Regulation's unique rights-and-remedies scheme, I seek to situate the legislation in a broader debate about whether data privacy should be protected through a property regime (in which consumer hold entitlements to their own personal information). I argue that the draft Regulation in effect creates such a regime, even though it is framed in human rights, not property rights, terms. This is the first work of scholarship or commentary to advance the argument that the draft Regulation, if implemented, would created a regulated property regime in personal data. Indeed, this would seem to the first example of such a regime ever to be created.

A central goal of this Comment is to also breathe new life into the debate about data-privacy-as-property, which was quite robust in the early 2000s but has since stagnated. Parts I describes some of the work in this area, including Lawrence Lessig's arguments in favor of a free-market data-property regime,[5] Jessica Litman's, Pamela Samuelson's, and Marc Rotenberg's

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[1] Tom Brewster, *Facebook: EU's 'Right To Be Forgotten' Will Enforce More User Tracking*, TECH WEEK EUROPE (Dec. 6, 2012), http://www.techweekeurope.co.uk/news/facebook-europe-right-to-be-forgotten-tracking-101253; Natasha Singer, *Data Protection Laws, An Ocean Apart*, N.Y. TIMES (Feb. 2, 2013), http://www.nytimes.com/2013/02/03/technology/consumer-data-protection-laws-an-ocean-apart.html; Matt Warman, *Digital 'Right to be Forgotten' Will be Made EU Law*, TELEGRAPH (Jan. 25 2012), http://www.telegraph.co.uk/technology/news/9038589/Digital-right-to-be-forgotten-will-be-made-EU-law.html.

[2] *See* Jeffrey Rosen, *The Right to Be Forgotten*, 64 STAN. L. REV. ONLINE 88 (2012); Jasmine E. McNealy, Note, *The Emerging Conflict Between Newsworthiness and the Right to Be Forgotten*, 39 N. KY. L. REV. 119 (2012).

[3] Peter Swire & Yianni Lagos, *Why the Right to Data Portability Likely Reduces Consumer Welfare: Antitrust and Privacy Critique*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2159157.

[4] Steven C. Bennett, *The "Right to Be Forgotten": Reconciling EU and U.S. Perspectives*, 30 BERKELEY J. INT'L L. 161 (2012).

[5] LAWRENCE LESSIG, CODE AND OTHER LAWS OF CYBERSPACE 122-35, 159-63 (1999); Lawrence Lessig, *The Architecture of Privacy*, 1 VAND. J. ENT. L. & PRAC. 56, 63-64 (1999); Lawrence Lessig, *Privacy as Property*, 69 SOC. RES. 248 (2002).

arguments against such a regime,[6] and Paul Schwartz's, Edward Janger's, Timothy Sparapani's, and Vera Bergelson's arguments for a highly regulated regime in data property.[7] By advancing the argument that the draft Regulation in effect would implement a data-property regime similar to those proposed by Schwartz et al., the Comment suggests that the prospect of propertizing personal data remains worthy of discussion.

[6] *See* Jessica Litman, *Information Privacy/Information Property*, 52 STAN. L. REV. 1283 (2000); Marc Rotenberg, *Fair Information Practices and the Architecture of Privacy (What Larry Doesn't Get)*, 2001 STAN. TECH. L. REV. 1; Pamela Samuelson, *Privacy As Intellectual Property?*, 52 STAN. L. REV. 1125 (2000).

[7] Vera Bergelson, *It's Personal but Is It Mine? Toward Property Rights in Personal Information*, 37 U.C. DAVIS L. REV. 379 (2003); Edward J. Janger, *Privacy Property, Information Costs, and the Anticommons*, 54 HASTINGS L.J. 899 (2003); Paul M. Schwartz, *Property, Privacy, and Personal Data*, 117 HARV. L. REV. 2055 (2004); Timothy D. Sparapani, *Putting Consumers at the Heart of the Social Media Revolution: Toward A Personal Property Interest to Protect Privacy*, 90 N.C. L. REV. 1309 (2012); *see also* NADEZHDA PURTOVA, PROPERTY RIGHTS IN PERSONAL DATA: A EUROPEAN PERSPECTIVE (2011).