

# Social Media vs. Privacy and Personality Rights

*Some context*

**Presented by:** Bob Nakano, Partner  
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# Privacy in the News

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- Toronto Sidewalk Labs
- Amazon Alexa
- Facebook
  - US \$550 million class action
- 23andMe
  - Drug development using DNA of clients

# Classic Legal Issues (I)



- Canada's Constitution

- Section 8

- “Everyone has the right to be secure against unreasonable search or seizure.”

- Expectation of privacy

- Motor vehicle / personal searches

- Hotel rooms

- Telephone communications

## Classic Legal Issues (II)

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- *Jones v. Tsiges* (2012 Ont.)
  - Improper access by one bank employee of banking and personal information of another bank employee
  - Invasion of privacy
  - Publicly placing in false light
    - *Yenovkian v. Gulian* (2019 Ont.)
  - Public disclosure of embarrassing private facts
  - Appropriation of a person's name or likeness

# Canadian Laws

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- Federal

- *Privacy Act*

- Collection of personal information by Federal government

- *Personal Information Protection and Electronic Documents (PIPEDA) Act*

- Collection of personal information by private companies

- Privacy Commissioner

- Provincial

- *Freedom of Information and Protection of Privacy Act (Ontario)*



# Other Jurisdictions

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- Europe

- *General Data Protection Regulations (GDPR), 2018*

- Use, protection, disclosure and consent requirements for personal data
    - Right to be forgotten

- United States

- *California Privacy Act, (2019)*

# Social Media Contracts (I)



## o User Agreements / Terms of Service

You or the owner of your User Content still own the copyright in User Content sent to us, but by submitting User Content via the Services, you hereby grant us an unconditional irrevocable, non-exclusive, royalty-free, fully transferable, perpetual worldwide licence to use, modify, adapt, reproduce, make derivative works of, publish and/or transmit, and/or distribute and to authorise other users of the Services and other third-parties to view, access, use, download, modify, adapt, reproduce, make derivative works of, publish and/or transmit your User Content in any format and on any platform, either now known or hereinafter invented.

You further grant us a royalty-free license to use your user name, image, voice, and likeness to identify you as the source of any of your User Content; provided, however, that your ability to provide an image, voice, and likeness may be subject to limitations due to age restrictions.

### o TikTok User-Generated Content Terms



# Social Media Contracts (II)



## ○ Use of Information

### How we use your information

We generally use the information we collect:

to fulfill requests for products, services, ...

... to send promotional materials from us or on behalf of our affiliates...

... to support the social functions of the Platform, including to permit you and other users to connect with each other...

... to use User Content as part of our advertising and marketing campaigns...

... to understand how you use the Platform, including across your devices

... for any other purposes disclosed to you....

## ○ TikTok Sharing of Information Terms





# Social Media Contracts (III)



## ○ Sharing of Information

### How we share your information

We share the categories of personal information listed above with service providers and business partners ... for business purposes, including research, ... advertising, analytics.

- TikTok Sharing of Information Terms

# Social Media Contracts (IV)



- Courts' views of aspects of social media
  - R. v. Craig (2016 BC Court of Appeal)
    - Criminal case – online Nexopia messages between Craig and a minor
    - Court upheld Craig's constitutional expectation of privacy in the social media messages, so messages were not allowed as evidence
  - Douez v. Facebook (2017 Supreme Court)
    - Douez, BC resident, sued Facebook in class action as part of a consent breach of BC's Privacy Act
    - Some terms of Facebook's policies (choice of jurisdiction) were not enforceable

# Personality Rights

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- Common law rights / trademarks
  - Elvis Presley
- Appropriation of a person's name or likeness
  - *Jones v. Tsige* (2012 Ont.)

# Privacy Breaches and Actions

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- Breaches
  - Account hacks / theft
  - Social media targeting
  - Data breach by company
  - Misappropriation of private data
- Action / Remedy
  - Evaluate source of breach
  - Legal action / Legislation / Jurisdiction
  - Check account / device settings



# Emerging Technologies

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- Smart home devices
- Artificial Intelligence (AI) systems
- 5G networks
- Smart cars
- DNA Profiling
  - GED Match



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**Questions?  
Thank you!**



# Contact Us

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