



The Yale Law Journal

TO: All J.D. and M.S.L. Candidates at Yale Law School
FROM: The *Yale Law Journal* Volume 128 Notes and Comments Committee (Christine Smith, Yena Lee, Matt Nguyen, Eliza Pan, Bill Powell, Giovanni Sanchez, Daniel Strunk, and Zoe Jacoby)
RE: Comments Submission Guidelines
DATE: January 30, 2018

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 128 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.

The spring 2018 submission deadlines, or “drop dates,” are: **Friday, February 16, at 5 PM; Friday, April 6, at 5 PM; and Sunday, June 17, at 12 PM.**

The remaining submission deadlines for Volume 128 will be announced later in the year.

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 Jordan Goldberg (jordan.r.goldberg@yale.edu) or Aaron Roper (aaron.roper@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.

Comments published in previous volumes of the *Journal* provide examples of excellent student

scholarship. Recent examples include:

- Charles C. Bridge, Comment, *The Bostic Question*, 126 YALE L.J. 824 (2017), http://www.yalelawjournal.org/pdf/i.894.Bridge.907_822ocpsz.pdf.
- Grace E. Hart, Comment, *State Legislative Drafting Manuals and Statutory Interpretation*, 126 YALE L.J. 262 (2016), http://www.yalelawjournal.org/pdf/HartPDFRevisedFinal_a43w3wzs.pdf.
- Joshua Revesz, Comment, *Ideological Imbalance and the Preemptory Challenge*, 125 YALE L.J. 2182 (2016), http://www.yalelawjournal.org/pdf/i.2535.Revesz.2549_nb3q1wht.pdf.

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 at 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. The deadlines for requesting a CDE are **Monday, March 26** for the April 6 drop date and **Friday, June 1** for the June 17 drop date. CDEs are not available for the February 16 drop date.

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 take advantage of this resource and to submit a Comment earlier rather than later so that you will have the opportunity to revise and resubmit at subsequent drop dates.

Please note that CDEs will be recused from discussing and voting on Comments to which they are assigned. **It is important that you do not contact a Notes and Comments Editor directly to request his or her assistance in developing your Comment.** Instead, email Managing Editors Jordan Goldberg and Aaron Roper to request a CDE. In your email, please include (1) the nature of your request, such as “general submissions advice”; (2) a brief description of your Comment’s topic or proposed topic; (3) any preferences you have about working with a particular Comments Editor; (4) the names of any Comments Editors who might be able to identify you as the author of the submission, and would thus be recused from considering your submission; and (5) the draft of your Comment if you would like to receive feedback on a full draft. CDEs will be assigned to authors on a first-come, first-served basis.

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: <http://www.yalelawjournal.org/student-submissions>.

III. POLICIES ON REVIEWING AND ACCEPTING COMMENTS

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 deliberations.

To preserve the anonymity critical to the Committee's review of submissions, you should not discuss any aspect of your Comment or the submissions process with members of the Committee apart from your CDE, if applicable.

The Notes and Comments Committee will not consider submissions that contain identifying information about the author. Prior to uploading any documents, please double check to make sure that you have removed all self-identifying references from your documents (except the Submission Form, which is the only document that should contain identifying information). 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.

The Committee recommends that you refrain from publishing your Comment on SSRN while it is under consideration. Publishing on SSRN increases the likelihood that Committee members will become aware of your piece and thus be recused from deliberation. If you have questions about this recommendation that are specific to your piece, please reach out to Managing Editors Jordan Goldberg (jordan.r.goldberg@yale.edu) and Aaron Roper (aaron.roper@yale.edu).

Comments Revision

All students who have submitted a Comment will be notified promptly of the Committee's decision, which will entail one of the following: (1) acceptance of the Comment; (2) a request to revise and resubmit the Comment; or (3) a rejection. Students who receive a request to resubmit the Comment will also receive a Revise & Resubmit letter (R&R), which evaluates the strengths and weaknesses of the Comment and provides constructive feedback on how the author should revise the Comment to increase the likelihood of acceptance. If you receive an R&R and have not previously worked with a CDE, you can request a CDE to review the suggestions contained in the R&R.

IV. Policies on Comments Submission, Review, and Acceptance

Eligibility

Only J.D. and M.S.L. candidates at Yale Law School are eligible to submit Comments. Students may submit co-written Comments if all authors are J.D. or M.S.L. candidates. Students who have already acquired a J.D. or its foreign equivalent may *not* submit a Comment but are welcome to submit Articles, Essays, and *YLJ Forum* pieces. Students may publish up to one Comment and

one Note within Volume 128, but may not publish more than one of either.

Submitting a Comment

All Comments must be submitted through the *Journal's* electronic submission process available on our website: <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 Jordan Goldberg (jordan.r.goldberg@yale.edu) and Aaron Roper (aaron.roper@yale.edu).

How and What To Submit

Comments being submitted for the first time to Volume 128 should be within the 3,000 to 5,000 word range. The Committee will not review first-time submissions that exceed 5,000 words. This word limit includes text and footnotes. There is no word limit for resubmitted Comments. However, **a Comment that is submitted for the first time to Volume 128 must adhere to the 5,000-word limit, even if the Comment was submitted to a previous Volume.**

Please note that this is a change from prior policy. The Committee believes that the new word range more accurately reflects the length of a typical successful Comment, and that a hard word cap imposes greater parity among first-time submissions. The Committee has accepted Comments at both extremes of the range. **Quantity is not correlated with quality, and we strongly encourage you to avoid making your submission longer than necessary.**

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 field:** Upload your Submission Form into this field. Members of the Notes and Comments Committee will never gain access to the contents of this form, and your personal information will not be used to evaluate your Comment. Your information will be held in strict confidence by the Managing Editors, and only the Managing Editors will know the identity of authors whose Comments are not accepted. Your information may be used at an aggregate level to help the Committee better understand the composition of the submissions pool, but it will not be linked to you as an identified or unidentified individual. The Submission Form is available at <http://www.yalelawjournal.org/student-submissions>.
- 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.

5. Resubmit Memo 1, Resubmit Memo 2, Resubmit Memo 3 fields: If you have previously submitted your Comment, upload a Resubmission Memorandum for each Revise and Resubmit Letter. The Resubmission Memorandum should describe how the Comment has changed, and why these changes have improved or strengthened the Comment. Of special interest to the Committee is how the author has chosen to implement suggestions offered in past Revise & Resubmit letters. A page or less should suffice.

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.

We very much look forward to receiving and reading your submissions. Please feel free to contact Managing Editors Jordan Goldberg (jordan.r.goldberg@yale.edu) and Aaron Roper (aaron.roper@yale.edu) if you have any questions.

Best wishes,

The *Yale Law Journal* Volume 128 Notes and Comments Committee

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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 create a regulated property regime in personal data. Indeed, this would seem to be 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

¹ 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>; 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?_r=0.

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 SOCIAL RESEARCH 248 (2002).

Rotenberg's 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 Pamela Samuelson, *Privacy As Intellectual Property?*, 52 STAN. L. REV. 1125 (2000); 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.

⁷ Paul M. Schwartz, *Property, Privacy, and Personal Data*, 117 HARV. L. REV. 2055 (2004); Edward J. Janger, *Privacy Property, Information Costs, and the Anticommons*, 54 HASTINGS L.J. 899 (2003); 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); Vera Bergelson, *It's Personal but Is It Mine? Toward Property Rights in Personal Information*, 37 U.C. DAVIS L. REV. 379 (2003); see also NADEZHDA PURTOVA, *PROPERTY RIGHTS IN PERSONAL DATA: A EUROPEAN PERSPECTIVE* (2011).