

**Fair Information Practices
and the Architecture of Privacy
(What Larry Doesn't Get)
by Marc Rotenberg**



Abstract: *Fair Information Practices and the Architecture of Privacy*

In his book *Code and Other Laws of Cyberspace*, Larry Lessig states that "code is law," or in other words, that decisions regarding the architecture of the evolving communications infrastructure exercise control over individuals in much the same way as does legal code and should, therefore, be subject to democratic considerations such as accountability and public participation. In his book, Lessig argues for market-based privacy protection techniques and specifically supports the "Platform for Privacy Preferences" (P3P) standard developed by a group of private companies known as the World Wide Web Consortium.

In this article, Marc Rotenberg offers a pointed critique of Lessig's book. Rotenberg analyzes Lessig's reading of the relevant caselaw and history of the privacy issue and finds both wanting. He offers a discussion of technologies which are privacy-enhancing and privacy-invading and notes that the P3P standard which Lessig supports is moribund. Rotenberg concludes that Lessig's discussion of privacy in *Code* is not only not helpful in advancing the debate about privacy standards but may actually be harmful to that debate.



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