

What Privacy Attys Should Read, Watch As Summer Dims

By **Allison Grande**

Law360, New York (August 23, 2016, 12:51 PM ET) -- With the usually lazy days of summer quickly drawing to a close, privacy attorneys don't have much time left to kick back and take a break before courts, Congress and client demands shift back into full gear.

Because the topic of privacy is so ingrained in our culture — from questions about what exactly Facebook and Google are doing with our data to placing wagers on which company will announce a data breach this week — pop culture offers a wealth of commentary on the hot-button issue, from a popular TV show about the world of cyberhacks to classic books and films exploring the consequences of surveillance.

Here, lawyers recommend some privacy-centric books, movies and TV shows to take in before the dog days of summer slip away.

'Mr. Robot'

The overwhelming leisure pick for privacy attorneys is "Mr. Robot," a television series on USA Network about a man named Elliot Alderson who works at a cybersecurity company and is recruited by a mysterious insurrectionary anarchist known as Mr. Robot to join his team of hackers.

"Privacy lawyers should watch ... 'Mr. Robot,' as it depicts how some hacks are accomplished, physical and administrative controls can be bypassed, and what some current defenses look like in practice," Troutman Sanders LLP partner Mark Mao said. "Not only is it a well-written psychological drama, but the writers clearly have a good understanding of the data security industry, and what organizations and cybersecurity vendors do and can do."

The show's reliably realistic depiction of the cybersecurity industry — from its illustration of how some hackers are motivated by vigilantism rather than financial gain and its true-to-life demonstration of the ripple effects of a devastating cyberattack on a major corporation — consistently earns the show high marks not only among critics but also privacy and information security pros.

"'Mr. Robot' is a blast to watch if you work in technology and deal with privacy and data security issues for a living," BakerHostetler counsel Melinda McLellan said. "The show's creative team portrays sophisticated hacks as realistically as possible, and they feature characters exploiting modern security vulnerabilities that privacy lawyers grapple with on a daily basis. In that respect, it's educational for the general public and relatable for infosec professionals."

The show, which stars Rami Malek as Alderson and Christian Slater as Mr. Robot, is currently in the middle of its second season and has been renewed for a third season, which is set to air in 2017.

'The Conversation'

A 1974 psychological thriller film written, produced and directed by Francis Ford Coppola, "The Conversation" centers on a surveillance expert, played by Gene Hackman, who closely guards his own privacy while spending his career tapping into the private conversations of others.

After using analog bugging and wiretap technology to listen in on a couple on the streets of San Francisco, Hackman's character struggles to unravel the mystery behind their words and to deal with the potential consequences of turning over the audio to his client.

"As a privacy litigator, I often have to argue cases involving the application of older privacy statutes, enacted in the age of directional microphones, binocular spying and landline wiretaps, as they intersect with modern mobile/web/digital/social media business models," Cooley LLP privacy and data protection practice group chairman Michael Rhodes said. "This movie takes us back to that earlier period of time."

'Minority Report'

Set in the year 2054, this mystery thriller tells the story of a futuristic police force that stops murderers before they act by using psychics called "precogs" who receive visions of future crimes. The film touches on a range of issues pertinent to privacy professionals, including the power of predictive data and how biometrics can be used to keep track of citizens.

" 'Minority Report' continues to be prophetic," Covington & Burling LLP data privacy and cybersecurity chair Kurt Wimmer said.

In one of the most memorable scenes in the movie, which was released in 2002, the police department's chief, played by Tom Cruise, is barraged with targeted ads that match his mood and situation as he walks through a mall, an image often conjured up by speakers at modern-day presentations on the topic of how retailers are increasingly using facial recognition technology to gather intel on shoppers' patterns and behaviors.

"The movie depicts the dangers of biometric identification," said Daniel J. Solove, the John Marshall Harlan Research Professor of Law at the George Washington University Law School. "If our biometric data fell into the wrong hands, would we need to resort to rather extreme means of replacing our biometric identifiers?"

'The Social Network'

The 2010 film tells the story of the founding of the social media site that would become known simply as Facebook.

From how predecessor "Facemash" sparked the brainchild of Harvard University student Mark Zuckerberg to the debate over who should be given credit for the company's overwhelming success, "The Social Network" offers privacy pros a glimpse into the roots of one of the most talked-about and scrutinized organizations in their field.

"The first movie that comes to mind for any privacy lawyer is the drama about the creation of Facebook," Hughes Hubbard & Reed LLP data privacy and cybersecurity group co-head Dennis Klein said. "Nothing has created more privacy issues than Facebook."

'The Imitation Game'

This 2014 historical drama tells the story of real-life British mathematician Alan Turing, who in the movie is portrayed by Benedict Cumberbatch, and his team that decrypted German intelligence codes for the British government during World War II.

"It's great drama but also sends the clear message that there is nothing that humans devise for security that cannot be beaten by other humans, and to think otherwise is a dangerous form of hubris," said Colin Zick, co-chair of Foley Hoag LLP's privacy and data security practice.

'The Trial'

If a good read is what you're after, privacy pros recommend looking no further than this classic by Franz Kafka, which centers on a man who is arrested without being given a reason and then is put on trial based on a dossier of information that officials have compiled on him.

"This is akin to how Big Data can operate today," Solove said about the novel, which was published in 1925. " 'The Trial' captures the sense of helplessness, frustration and powerlessness when large institutions with inscrutable purposes use personal data and deny people the right to participate."

'The Digital Person'

The themes inherent in Kafka's novel were picked up by Solove in his 2006 book, "The Digital Person: Technology and Privacy in the Information Age," which privacy attorneys flagged as more than worth the read for those interested in how information is being gathered and used to make a wide variety of decisions and predictions about consumers today.

"At the time this book came out, people hadn't been thinking about these issues the way they do now," said Morrison & Foerster LLP global privacy and data security group co-chair Andrew Serwin. "They thought of things like having a picture that was taken of you appearing in a newspaper. This book is really one of the first that looks at privacy in the context of the vast amounts of information that is being gathered on people now and how information is key."

'The Immortal Life of Henrietta Lacks'

The themes flushed out in Solove's book are driven home by this 2010 Rebecca Skloot book, the true story about a poor black tobacco farmer whose cells — which were taken and given to medical researchers without her knowledge or consent while she was being treated for cancer in the 1950s — came to form the basis of a cell line that has been propagated, commercialized and used in biomedical research to this day.

"It's incredibly thought-provoking on a number of levels, not least of which is how private our bodies are," Hughes Hubbard data privacy and cybersecurity group co-head Seth Rothman said.

'IBM and the Holocaust'

An engaging nonfiction work by investigative journalist Edwin Black, originally published in 2001, "IBM and the Holocaust: The Strategic Alliance between Nazi Germany and America's Most Powerful Corporation" chronicles the way that the Nazis used punch-card technology developed by IBM to combine and organize personal information from a variety of sources to identify and locate Jews throughout Europe.

"When European data protection authorities seek to rely on the legacy of World War II in explaining their strict approach to privacy, this book really provides an antidote," said Boris Segalis, the U.S. co-chairman of Norton Rose Fulbright's data protection, privacy and cybersecurity practice group.

'Ready Player One'

In this dystopian novel set in 2044, people escape the grim reality of a world gripped by an energy crisis causing widespread social problems and economic stagnation by plugging into OASIS, a widely accessible virtual universe.

Pillsbury Winthrop Shaw Pittman LLP partner Brian Finch noted that besides being an "amazing story" about the power of the virtual world, picking up this 2011 Ernest Cline novel will also give attorneys a leg up for 2018, when a film adaptation directed by Steven Spielberg is slated to be released.

'The Cipher'

Another top fiction pick is this 2015 work by John C. Ford, who is the managing director of editorial services at corporate communications firm Baretz+Brunelle.

The book follows the saga of a man who hatches a plot to protect his neighbor from government agents bent on obtaining the answer to an encryption riddle — unlocked by the neighbor — that has the power to expose every piece of data and electronic secret in the world.

"[It's] not the usual stuff lawyers read," said Craig A. Newman, a partner with Patterson Belknap Webb & Tyler LLP and chair of its privacy and data security group. "It's fascinating, fun and even your kids will like it."

'The Circle'

Also in the fiction genre, Dave Eggers' 2013 novel follows a woman who is hired to work for the Circle, the world's most powerful internet company. But as she becomes further ingrained in her dream job, the protagonist soon learns that there's more to this California-based data aggregation giant than meets the eye.

"If I were heading to the beach next week, I'd take Dave Eggers' book 'The Circle,' " Wimmer said.

A Play to Keep in Mind: 'Privacy'

While "Privacy" concluded its limited off-Broadway run at The Public Theater in New York City earlier this month, critics and privacy professionals lauded play that explores the digital trail left behind by a man as he moves through life.

"[This play] could not have been more on point," said Lisa Sotto, head of Hunton & Williams LLP's privacy and data security practice. "It is a must-see for every privacy professional and pulls together into a two-hour performance nearly every aspect of every issue we tackle every day."

While no longer on stage at The Public Theater, it's not out of the realm of possibility that the show by British playwright James Graham — which came to New York after a stint in London — could return to the stage one day.

"The real significance of 'Privacy' ... is its appeal and relevance to general audiences," Hogan Lovells partner Christopher Wolf said in a review of the play that he wrote during its West End run in 2014. "Once an esoteric and technical issue for a focused few, privacy and 'Privacy' have mainstream interest."

--Editing by Katherine Rautenberg and Patricia K. Cole.