

# The 4<sup>th</sup> amendment and the secrecy paradigm

- Originally created to regulate federal government which had only minimal role in law enforcement.
- Even today it is used to decide when and how government can gather information about citizens.
- Government needs to justify to a court why it has a reason to be interested in person's information.



# The 4<sup>th</sup> amendment and the secrecy paradigm (cont.)

- Problem: Amendment applies only when there is a “reasonable expectation of privacy”. Nowadays this means almost total secrecy.
- Outside of the 4<sup>th</sup> amendment there are hardly any limitations to what government can do to gather information.

# The 4<sup>th</sup> amendment and the secrecy paradigm (cont.)

- What the reasonable expectation of privacy means today?
- Is it wise to legislate technology based on laws that were written centuries ago? Is there an alternative option?

# The 3<sup>rd</sup> party doctrine

- U.S. Supreme Court: If your data is in hands of 3<sup>rd</sup> parties you don't have a reasonable expectation of privacy and no 4<sup>th</sup> amendment protection.
  - Government can gather huge amounts of data without restrictions or oversight.
- ISP records, cloud data, credit card and banking records, possibly medical records...

## The 3<sup>rd</sup> party doctrine (cont.)

- Stems from assumption-of-risk-doctrine: if you tell a secret to someone, you assume a risk that he can choose to betray you.
  - Faulty reasoning because doctrine is used to *force* 3<sup>rd</sup> parties to reveal secrets.
- Doctrine limits the benefits that technology gives to criminals but at the same time it gives immense powers to the government.

## The 3<sup>rd</sup> party doctrine (cont.)

- How to evaluate the privacy of information that is shared with 3<sup>rd</sup> parties?