

History of consent and privacy policies

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Abstract—This paper covers the historical, current, and future state of consenting to data harvesting in online services. It focuses on Canadian privacy laws and their implication for online citizens. By examining the legal framework and its practical applications, this paper offers insights into how individuals can better understand their privacy rights when engaging with online platforms.

Keywords—consent, privacy policies, online services

I. INTRODUCTION

Knowing what you are saying yes to on the internet is critical in the age of data harvesting. The Privacy Act and The Personal Information Protection and Electronic Documents Act (PIPEDA) are both sets of laws in place to protect Canadian citizens and their personal information. The PIPEDA is especially important because it regulates how businesses can use and store data. One of the ten principles set out in the Act is that of consent. In this paper, I will discuss the historical, current, and future aspects of online consumer consent, along with the associated controversies. I aim to help you make better, informed decisions the next time you agree to terms online.

II. THE PAST

In 1983 the Privacy Act was put into legislation in Canada. It gave individuals the rights over their personal information with respect to the government. The PIPEDA was implemented fully in 2004, it governed how the private sector could use personal information. The act protected a person's information and records about their age, ID, and other identifying features. It also protected their opinions, comments, and social status [1]. Since this act, when a company wants to store or use your personal information they must ask for permission and get your meaningful consent [2].

The internet was just in its infancy and the concept of harvesting data for targeted ads wasn't something on anyone's mind. Since the internet was still not in widespread use privacy policies didn't apply to many online services. As the internet became more important, and more applications had more access to personal data, online services had to get consent to store the data that they were getting. When companies started using the data that they stored they also had to get consent.

Whenever an online service needed to get consent, the process was slightly different from getting consent from a physical service. Normally to give consent for a physical service you sign the form that has the information you are consenting

to. An online service confirming that you have given consent is slightly more complicated because there is nothing to sign.

Companies still had to abide by the laws set out in the PIPEDA though. The major hurdle was, to make the user's consent meaningful, the user must have understood what they are consenting to. It is only considered valid if it is reasonable to expect that your customers has understood the nature, purpose and consequences of the collection, use or disclosure of their personal information [2]. The normal solution to giving informed consent was and still is to provide a document with all the information and have the person click a box that they have read it.

III. THE PRESENT

A. Current state

Currently, the PIPEDA has not had a substantial update since the Act was introduced in 2004, so all the same rules apply to online services. Which in turn means that almost all the same solutions to giving informed consent are implemented. Show the document and have the user click that they have read and understood the document. Some online services instead of instantly showing you the document give you a hyperlink to click along with the box that you have read the information.

The definition of meaningful consent also has not changed in any meaningful ways since the implementation of the PIPEDA. So, all things have stayed stagnant when it comes to getting consent from users of online services.

B. The controversy

The controversy of giving consent to these online services is wrapped up in the concept of meaningful consent. To be meaningful the customer must understand what they are consenting to. This has led almost all online services to have very long privacy policies to explain everything so their customers can understand what they are consenting to. Nili Steinfeld researched the topic of privacy policies and found that the average policy of "top site" was 2400 words in length [3].

Long policies make sense because to inform someone to a full understanding you need a lot of words. If companies held back, they run the risk of under-informing their customers and opening themselves up to a lawsuit, because they did not inform their users thus not allowing them to give meaningful consent.

On the flip side, the long privacy policies mean a shocking lack of people are reading them [4]. Complex legal and technical terms used to make sure a company does not open itself up to a

lawsuit can in turn make the policy less understandable [5]. Undermining the concept that they are giving meaningful consent.

The controversy surrounding consent for privacy policies centers on the challenge of ensuring that users fully understand what they are agreeing to. Companies are required to provide comprehensive explanations regarding the use of user data, resulting in lengthy and complex privacy policies. However, the necessity for thorough explanations often renders these policies difficult, if not impossible, for users to comprehend fully. As a result, obtaining consent becomes less meaningful.

IV. THE FUTURE

As technology continues to advance, the PIPEDA, designed to protect consumers, must undergo frequent updates to remain relevant. However, legal frameworks often lag behind technological innovations, emphasizing the need for an agile legislative system. Currently, there is a pressing need for a more precise definition of malpractice in acquiring consent, as individuals are increasingly susceptible to manipulation, resulting in decisions they might not have otherwise made [6].

As data becomes increasingly integral to our daily lives, online services continually seek user consent to collect and utilize their data. While Canadian laws may not always keep pace with evolving digital landscapes, there is optimism due to the progressive stance on personal privacy within the European Union.

V. CONCLUSION

The current state of privacy policies reflects the efforts of online services to protect themselves within the framework of longstanding laws. However, many consumers and online citizens lack a clear understanding of the agreements they

enter. This disparity between the complexity of privacy policies and the need for informed consent presents a significant challenge. The future of online service privacy policies hinges on potential changes in government regulations, which will play a crucial role in shaping digital privacy standards.

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