They aren’t getting meaningful consent

The Personal Information Protection and Electronic Documents Act (PIPEDA) is the act in Canada that does exactly like its name would imply. Pipeda 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]. Specifically, this act applies to companies and not to the government, there is another act for them. This act lay the groundwork for data protection in Canada. Without it there would be nothing stopping companies doing what ever they like with the data they collect from us.

The biggest hurtle that companies face when it comes to Pipeda is meaningful consent. Organizations are required to obtain meaningful consent for the collection, use and disclosure of personal information [2]. This part of Pipeda causes the most disruption because of the act also defines meaningful consent. To make consent meaningful, people must understand what they are consenting to. It is only considered valid if it is reasonable to expect that your customers will understand the nature, purpose and consequences of the collection, use or disclosure of their personal information [2]. This language has led to one major problem privacy policies are too long.

Nili Steinfeld researched whether or not people actually read (whether people read) privacy policies and found that the average policy of “top site” was 2400 words in length [3]. With an adult reading speed reading a privacy policy would take you 10 minutes. When signing up for an account to buy tickets or book a dinner reservation, no one wants or has that time. Privacy policies need to be shorter. I almost never read privacy policies, which is normal a shocking lack of people are reading them [4]. This is a big problem because is it meaningful consent if no one is reading them?

Another problem that comes up from the language within Pipeda is companies used very technical and complex language within their privacy policies. These complicated language makes the policies less understandable [5]. Needing your customer to understand what they are consenting to is an important part of meaningful consent. Using big, fancy, but maybe technically correct words hurts the understandability of the policies damaging the ability to give meaningful consent to your users.

Even the Office of the Privacy Commissioner of Canada is saying there is a pressing need for a more precise definition of malpractice in acquiring consent. People are increasingly susceptible to manipulation, resulting in decisions they might not have otherwise made [6]. Companies are hiding what their privacy policies actually allow them to do with our data. They keep the policies long and complicated, reducing how many people read or understand what they say. Some companies even hide the policy making it hard to find the information.

Being able to have access to the privacy policy of a company’s service is an obvious first step. Unfortunately, some companies fail to even do that. A study was done on the readability of menstruation-tracking smartphone apps, the authors found that in some apps, users would have to navigate through several screens to find these documents if made available at all. Others would need to access the developer’s website or the app store to locate them. Others still were unavailable, requiring communication directly with the company [7]. Needless to say, it is impossible to get meaningful consent when the information is not available. Hiding your information behind difficult ways to access it should not be acceptable. If you want to sign up for a service and have to wait for the company to get back to you with their privacy policy that company expects no customer to actually go through with that process.

We should not be fooled into thinking our privacy is being respected. A paper was written about how privacy policies affect our perceived privacy, in it the authors wrote that customers value enforcement clauses the most [8]. This value makes sense on a surface level. You would like to know that the company has a plan for how they are going to use and keep your data. Unfortunately, this perception of companies having a plan making us feel like our privacy is more respected doesn’t consider the fact that the company can still say they are selling your data. What should make you feel better is what the company plans to do with your data not that the company has a plan. If the plan is to sell your financial data to the highest bidder, the fact that they have said plan should not make you feel respected.

Lots of solutions have been put forward to fix these problems with privacy policies. A paper was written for the medical industry explaining how to must effectively get meaningful consent. The authors wrote that the consent process must highlight in simple language (and across a variety of languages) what the terms and conditions/privacy policy document imply. Introducing a quiz on the statements could be a beneficial step in identifying what users know and understand about the terms and conditions [9]. A quiz would be a great way of making sure that people have actually understood what they have read. But it would be a huge time sink if you have to study a privacy policy in order to use a service. Especially if that privacy policy took 10 minutes to read. Highlighting in simple language what the privacy policy implies is the bases for my idea and one of the Privacy Commissioners guidelines.

The Office of the Privacy Commissioner of Canada has additional guidelines to obtaining meaningful consent. Unfortunately, these guidelines are not law but should be. The guidelines explain that companies must emphasize key elements when getting meaningful consent. Companies must allow individuals to control the level of detail they get and when. Companies must provide individuals with clear options to say ‘yes’ or ‘no’. Lastly companies must make consent a dynamic and ongoing process [10]. The importance of emphasizing key elements I think should be put into law. Specifically, the key elements should be emphasized with simple language. This would force companies to give an abstract or overview of the privacy policy. This would be less to read to get a general understanding of how the company is going to use your data but if you wanted more information you could read the full legal policy in all its technical glory.