Issues Paper: Federal Court Opinion on Wiretapping

How often do you read the fine print of the Terms of Use or Privacy Policy for a company? Unless you are a law professor, or someone who has a large amount of time on hand, authors who write the fine print figure out that around 90% of readers will stop reading paragraphs that are long and uninteresting. Most people just give up (Randel, 2010). Verizon Wireless has started selling customer information including geographical locations, app usage, web applications, etc. and customers are raising awareness of Verizon violating the federal wiretapping law (McCullagh, 2013). Verizon Wireless’ main argument is that users being a part of the distribution of information can always “opt out at any time” (McCullagh, 2013). Verizon believes they are following the federal wiretapping law, but based on the federal court opinion on wiretapping, they are not. Customers that are unaware of the situation are defaulted to opting in towards distributing their own information, even when Verizon explains it within their Privacy Policy.

Verizon Wireless’ customers are upset due to the fact that Verizon are not getting the proper consent from them. As the judge from the 2003 In Re Pharmatrak says, "consent can only be implied when the surrounding circumstances convincingly show that the party knew about and consented to the interception" (McCallagh, 2012). There is an option to "opt out" described by Verizon, but the default option is to opt in. Without customers knowing the default setting, they are inclined to be a part of this data sharing operation without actively consenting it. Hanni Fakhour, a staff attorney at the Electronic Frontier Foundation says, "I don't see any substantive difference between collecting content from one person and turning it over to someone, and collecting it from multiple people, aggregating that information and then turning the aggregated data over to someone else…In the end, there is still a capturing of content from the user at some point – and that's what the potential (Wiretap Act) problem is" (Virgo, 2012). The main problem with transferring information like this is not the fact that information is being turned over to companies, but actively consenting with the customer’s knowledge of what is happening. Companies like Verizon Wireless should take more actions in informing customers, especially when invading a user's privacy or tapping into their data.

Within the privacy policy of Verizon, there is a fine text talking about them selling user data, but just how many people are going to spend the time approximately 5800 words to find such specific and hard to detect words (Verizon, 2013)? Having the default to opting in, the customers are not properly informed when signing with Verizon and rarely will you see customers read the entire privacy policy to know that. Their privacy policy may be available and accessible, but customers have to be aware and consent, knowing the conditions of the program. Customers should have the capability to opt in and opt out through their own decision. The only notification the company made to customers about the new privacy change was a simple email informing customers that everything they do on their phones is being tracked and sold, targeting them with ads (Constine, 2011). Those emails could have easily been sent to a user's junk or spam folder. Sending messages out via email might not inform every customer, and by having the default set to opting in, customers won't know they have the choice to not be a part of the data distribution that Verizon is being a part of.

Although Verizon has caused customers to complain about selling their data, Verizon is justified in doing so. Technically, they aren’t doing this program without the consent of their customers (Virgo, 2012). There is no legal issue against what they are doing because the customers are at fault for not being aware of the privacy policy. Ryan Radia, an associate director of technology studies at the Competitive Enterprise Institute, said that actions taken by Verizon are "sufficient to satisfy the Wiretap Act" because it puts the customers on notice (McCullagh, 2012). Verizon Wireless has an option to opt out of the program which they have notified all Verizon users. There has been a confirmed email with the title, “Important notice about how Verizon Wireless uses information” (Constine, 2011). This email explains all the details on the program and what it entails. The email is very simple to understand explain, “Why am I getting this notice?...What information are we talking about?...Is my information shared?”...etc. and includes examples of each situation (Constine, 2011). Verizon can argue comfortably that they have done the necessary actions to notifying customers and informing them about the data sharing process.

Though Verizon has made a valid argument, there are major factors that are not taken a part of. For instance, their claims about reading the privacy policy before signing the contract are only effective to customers after the update in the policy. The customers before the privacy change were most at fault because they were only notified through email which could have been ignored, deleted, or even sent directly to spam. “Most people only get automated billing notice emails from their wireless provider, so this will probably be ignored or overlooked by the majority of Verizon’s users” (Constine, 2011). No matter how thorough the email is, whether it contains all the information or none, it won’t make a difference if the email never reaches the user. Also, for the people that sign up through Verizon, most people won’t spend hours reading around 5800 words on the privacy policy of a company. This should be something that is directly announced or written down blandly so customers know the option of opting in and out from the start. People should be able to consent on free will of Verizon’s program.

Verizon Wireless has cause a major controversy in the new update to the privacy policy. As these actions are being placed, a major question has been brought up. With all these ideas in mind, is Verizon acting ethically towards its mobile customers? Verizon is forcing the customers that are not aware of the program to be a part of it by having the default to opting in. This is very unethical because their privacy and information can be accessed by different companies and can be shared without an ounce of the customer’s awareness. The default setting should be set to opting out, and if the users are comfortable with the idea about sharing their data, then they can be a part of the program. Even if Verizon states their program within the privacy policy, there are major factors that have to be considered when informing their mobile customers.

References

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