

Editorial

Bridget Treacy explains why the evolution of privacy practices is becoming a 'virtuous' circle, for Volume 10, Issue 1 of Privacy & Data Protection

Data protection continues to feature in the media with the announcement this week that Facebook has amended its global privacy notice.

At a glance, it seems extraordinary that the fact of changes to a privacy notice should feature in the mainstream media when the majority of consumers admit to never reading privacy notices. Upon closer inspection, it becomes quickly apparent that the action Facebook took in amending its privacy notice was not entirely self-motivated. The company's privacy practices were investigated by the Canadian Privacy Commissioner after a complaint from the Canadian Internet Policy and Public Interest Clinic ('CIPPIC'). That investigation focused on the nature and extent of the data collected by Facebook, its purposes for using the data, with whom the data are shared, for how long the data are kept, and what Facebook tells its users about its data protection practices. If there is a familiar tone to the scope of this investigation, it is because these are the basic data protection issues that all organisations must focus on. Elsewhere in the marketplace, we see a growing trend for organisations to do just that: revisit basic data protection principles, particularly where they seek to use personal data more creatively.

As the Facebook story illustrates, companies are not entirely self motivated in reviewing their privacy practices. Other factors are influencing this back to basics review. Key amongst them is the increasingly public profile of privacy regulators. Many organisations remain sceptical of the real level of influence that privacy regulators yield, particularly given the universally acknowledged weaknesses in their enforcement powers. However, privacy regulators have become adept at using the media to draw attention to poor privacy practices, and to help promote their enforcement agenda more generally. In a world in which reputation is all, public relations expertise and skill in handling the media are powerful tools.

These tools are harnessed not just by regulators, but also by privacy advocates and other guardians of civil society. The CIPPIC complained to the Canadian Privacy Commissioner, making some 24 allegations about Facebook's privacy practices. The subject matter of the complaints ranged from Facebook's default privacy settings, to its collection and use of individuals' personal information for advertising purposes and the disclosure of personal data to third party application developers. At the heart of many of the complaints were the issues of consumer

knowledge and consent. Not all complaints were found to have merit, but the Canadian Privacy Commissioner upheld the majority of the complaints, and published detailed findings.

Faced with such an investigation, and given the attendant publicity, cynics might argue that Facebook had little choice but to go out of its way to co-operate with the regulator. However, the motivation for the change is largely irrelevant. What is of relevance, and part of a wider trend, is the fact that organisations are all too conscious of consumers' growing awareness of privacy issues. Facebook appears to have provided a textbook example of how constructive and open discussion with the regulator can bring tangible benefits. Far from appearing beleaguered, Facebook appears to have seized the initiative. It has taken immediate steps to change some practices, notably by improving communication about privacy practices. Facebook has successfully explained to the regulator that other issues, such as re-engineering its application platform to prevent application developers from accessing information without users' express consent, will take further time to resolve. Above all, Facebook appears responsive to the concerns of consumers.

The role of privacy and consumer advocates in challenging privacy practices should not be underestimated. Privacy advocates are not a new phenomenon, but the online world gives them a louder, and ultimately more powerful, voice to challenge the use of new technology and new privacy practices. Arguably, as a consequence of the greater visibility regulators and privacy advocates bring to privacy issues, individuals are increasingly aware that they have rights in their personal data, and that privacy is all too easily (and irretrievably) compromised.

So, it could be that we are witnessing the evolution of some sort of privacy virtuous circle, facilitated by the online world, in which individuals, consumer advocates, regulators, and companies, react and interact to influence each others' behaviour as it affects the privacy interests at its centre. In any event, individuals, advocates and regulators, will continue to challenge data protection practices, using the media where relevant. Smart organisations are thinking carefully and proactively about their data protection practices — hopefully avoiding the full glare of the media spotlight

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