

Internet Intermediaries and Privacy – Ana Fielder

The civil society supports the OECD work on internet intermediaries, which has the objective to determine which policy frameworks are best suited to fulfil the goals of the Seoul Declaration, including that of strengthening confidence and security through policies that “ensure the protection of digital identities and personal data as well as the privacy of individuals online”. Civil society has previously expressed support for the effective implementation of the OECD privacy Guidelines as a good starting point to address privacy concerns arising with Internet Intermediaries.

One of the key issues, from a civil society perspective, is the manipulation of user consent. As long as Internet intermediaries treat even the most serious privacy violations as justified by reference to default settings, browse-wrap agreements, or complex and obscurely placed privacy notices that virtually no user reads, no real privacy protection can be achieved. Genuine consent is a more complicated concept than most Internet intermediaries (and indeed data protection agencies) seem willing to acknowledge. At a minimum, genuine consent needs to be informed, identifiable, given freely and retractable. The latest science of behavioural economics should be considered in evaluating the adequacy of consent techniques.

Regarding the role of default settings, CSISAC commends the OECD for recognizing that sharing of personal information in a network environment necessarily raises privacy concerns. The recent Facebook fiasco, for example, makes this point clearly. More generally, the problem is seen in the complex choices that confront users on ‘control panels’ or ‘dashboards’ that enable companies to establish the privacy default settings they want, and not necessarily what users want or need. Therefore, the user interface with these controls is an issue for policy and regulatory consideration. In this respect, we wish to highlight Canada’s data protection statute, PIPEDA, which provides a step in the right direction for addressing such issues, by requiring entities and organizations to adopt forms of consent appropriate to the circumstances in question.

Finally, Internet intermediaries themselves can play an important role in fostering healthy privacy practices amongst users by upholding Fair Information Practices and complying with international and national previous standards so as to ensure that users are able to exercise meaningful control over the personal information that they provide. The Madrid Privacy Declaration provides additional, useful ideas from civil society about privacy safeguards and the role of Internet intermediaries.

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