Chapter XIV

Comparative Analysis of International Approaches to the Protection of Online Privacy

Peter O'Connor, Essec Business School, France

Abstract

The Web provides unprecedented opportunities for Web site operators to implicitly and explicitly gather highly detailed personal data about site visitors, resulting in a real and pressing threat to privacy. Approaches to protecting such personal data differ greatly throughout the world. To generalize greatly, most countries follow one of two diametrically opposed philosophies—the self-regulation approach epitomized by the United States, or the comprehensive omnibus legislative approach mandated by the European Union. In practice, of course, the situation is not so black and white as most countries utilize elements of both approaches. This chapter explains the background and importance of protecting the privacy of personal data, contrasts the two major philosophical approaches to protection mentioned above, performs a comparative analysis of the

current situation throughout the world, and highlights how the legislative approach is being adopted as the de facto standard throughout the world. The use of trust marks as an alternative to the self-regulation or legislative approach is also discussed, while the effectiveness of each of these efforts is also examined.

Introduction

One of the major advantages of using the Web as an e-commerce medium is its ability to tailor sales and marketing messages to the individual online consumer. To facilitate this process, many Web sites encourage users to register, define preferences, and then subsequently add value by providing content specifically tailored to these interests (Metz, 2001). Some sites go further by tracking user actions—how often they visit, what pages they view, what products they buy— and using this "click-stream" data to refine profiles based on actual behavior rather than stated preferences (Weber, 2000). According to Internet & American Life (2000), nearly 75% of users find it useful when Web sites remember basic information about them and use it to provide better service.

However, from the consumer perspective, such personalized service comes at a price—"the death of privacy" (Weber, 2000). As Andy Grove (1998), chairman of Intel, points out,

> *At the heart of the Internet culture is a force that wants to find out everything about you. And once it has found out everything about you and two hundred million others, that's a very valuable asset, and people will be tempted to trade and do commerce with that asset. (p. 2)*

Completing a retail transaction on the Web requires that certain personal data (for example, name, address, and billing information) be divulged. Problems arise when these data are used for purposes subsequent to the transaction for which they were collected—a process known as the secondary use of data (Hoffman et al., 1999). Such secondary uses can be internal, such as placing the consumer on the company's mailing list and subsequently marketing additional products or services to them, or external, such as the sale, lease, or other transfer of data to third parties. In the physical world, secondary use is generally limited to inferring broad characteristics about groups of consumers (such as geography or demographics) and drawing generalizations across such groups. However, with

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