Chapter 5.8
How Much is Too Much?
How Marketing Professionals can Avoid Violating Privacy Laws by Understanding the Privacy Principles

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ABSTRACT

A marketeer's point of view is presented in this chapter. Although legal restrictions safeguard processes and restrict annoying intrusive techniques, protecting customers, it can be argued that responsible privacy practices in the marketing profession will add value for consumers. As businesses compete with greater intensity to provide the customer with control over areas such as product offerings, services provided, and account management, privacy standards, being an important part of the customer-company relationship, formulate the grounds upon which businesses compete to provide greater customer control.

INTRODUCTION

The numbers were staggering. Over "45 million credit and debit cards, from transactions going back as long ago as 2002" were captured by criminals who had used complex technology to hack into the computer system of Winners – a North American department store chain with numerous outlets in Canada and the United States (Roseman, 2007). The effect, according to a report released by the privacy commissioners of Canada and the province of Alberta was that hundreds of thousands of Canadian and American consumers had their personal data misappropriated and were at risk of identity theft and other related problems (Office of the Privacy Commissioner, 2007). More worrisomely, the store had not exercised the restraint

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required by Canada's comprehensive privacy law, the Personal Information Protection and Electronic Documents Act (or "PIPEDA" or the "PIPED Act"), and had unwittingly exacerbated the situation. The company had "collected too much personal information from customers, kept it for too long and relied on weak technology to protect it, according to a joint probe" released by the privacy commissioners (Office of the Privacy Commissioner, 2007). Given events such as the breach at Winners, one can understand the reasons for increased interest in consumer privacy in Canada.

The advent of new technology has made personal data globally mobile and made remote access possible for thieves and fraudsters internationally. In this light, Canada and numerous other nations have enacted privacy legislation to combat the threat of privacy breaches like the one at Winners. The PIPED Act came to force for the public sector in 2001 but has been in force for the private sector since 2004 (PIPEDA, 2000). The legislation, compelled by pressures from the European Union to develop more comprehensive privacy laws, elaborates on a number of principles that private sector businesses must follow and has created methods for recourse by individuals who feel their privacy, known as data protection in Europe, has been violated (European Directive 95/46/EC). The legal implications of electronic intrusion and new privacy laws can be understood as both a threat and an opportunity, as it has increased the cost of acquiring and managing personal information while spurring the creation of marketing practices that are more respectful of consumers' privacy concerns (Robinson & Large, 2004, p. 49).

In fact, it can be argued that responsible privacy practices in the marketing profession will add value for consumers while helping to avoid future breaches, like the one at Winners. The privacy principles elaborated in PIPEDA will both help to protect vulnerable consumers from the threat of electronic intrusion while having a mixed impact on the marketing profession. By examining the three years' worth of available case law, one can understand the costs and benefits of privacy laws and the necessity of privacy legislation in light of electronic threats. Indeed, privacy will be one of the defining human rights issues of the 21st century given that technological advances and the increased disclosure of personal information will make those who control personal information, namely businesses and governments, increasingly powerful. The marketing profession will play a pivotal role in democratizing privacy rights and discouraging electronic intrusion by actively supporting privacy legislation and other government endeavours to protect the citizen's privacy interests (NB: An implied right to privacy exists in Canada and many other countries (Canadian Charter of Rights, 1982, s.7)).

BACKGROUND: THE PRIVACY PRINCIPLES IN ACTION

The privacy principles elaborated in PIPEDA serve as a guide to businesses and others who are subject to the Act. The privacy principles apply to all personal information that is "collected, used, or disclosed by an organization in the private sector" (Tacit, 2003, p.1). Personal information, according to the Canadian Act, includes information about any "identifiable individual, other than an individual's name, title, business address or telephone number as an employee of an organization" (Tacit, 2003, p.1). Exceptions are included for artistic and journalistic pursuits, and other areas of public interest where privacy law could be prohibitive to a socially beneficial activity (Tacit, 2003, p.3).

Those who are subject to PIPEDA must therefore attempt to develop business practices that are consistent with the Act's spirit. The privacy principles, developed by the Canadian Standards Association and inspired by a similar set of OECD principles, include: (1) limiting collection, (2) accuracy and completeness, (3) identifying