



Tracking Consumers Online: *Privacy Laws and Behavioural Targeting*

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Goals & Outcomes

- **Goals:**
 - Review privacy laws
 - Recent cases
 - Highlight risks

- **Outcomes**
 - Understand legal framework
 - Get foundation for policy discussion to come



Privacy Laws

- *Personal Information Protection and Electronic Documents Act (PIPEDA)*
- *Personal Information Protection Act (B.C.)*
- *Personal Information Protection Act (Alta)*
- *Civil Code + Act respecting protection of personal info in the private sector (Quebec)*



PIPEDA – 10 Principles

1. Accountability
2. Identifying purposes
3. Consent
4. Limiting collection
5. Limiting use, disclosure and retention
6. Accuracy
7. Safeguards
8. Openness
9. Individual access
10. Challenging compliance



PIPEDA – key requirements

- 4.3 Knowledge & Consent
 - Make reasonable effort to tell - clarity
 - Identify purposes
 - Sensitivity will determine form of consent
 - Opt-out ok ONLY IF:
 - Easy, accessible, understandable, not sensitive
 - Opt-in required if sensitive



PIPEDA – Key requirements

- Limiting Principle
 - Limit collection, use, disclosure, retention to what is necessary for purpose
 - Fair and lawful means
 - Driven by identified purposes = clarity in consent essential



PIPEDA – key requirements

- **Accountability**
 - Privacy officer, policies, training
 - Transfers for processing – locally or cross-border
- **Openness**
 - Trust, clarity, accuracy – identify purposes
- **Safeguards**
 - Risks to user; liability to business
- **Retention – “as long as necessary”**
 - Tip: keep it short



Courts & Commissions

- *Lawson v. Accusearch* [2007] 4 F.C.R. 314
 - Federal Commissioner has power to investigate foreign companies collecting in/from Canada
- *Telecom Decision CRTC 2003-33*
 - *Telecommunications Act* objective: to contribute to the protection of privacy
 - CRTC may apply higher standards than PCC



Courts & Commissions

- **Facebook** – Report of Findings
 - Reasonable to require users to consent to a certain amount of advertising in a free service
 - No more PRIMARY vs. SECONDARY purpose?
 - Sensitivity still counts
 - Aggregating PI & serving ads = use
 - Time-of-collection notification



Courts & Commissions

PIPEDA Case Summary #2009-10

Bell Canada - Deep Packet Inspection

- Consent
- Identify purposes
- Limit
- Clarity, availability - openness
- IP addresses linked to invariable ID
linked to internet activities = PI



Review

- Technology changes - Privacy laws remain
- Commissioners have jurisdiction regardless of your office location
- IP address is probably PI – definitely if linked with PI
- Risks to user = liability to collector
- Get ready for breach notification



Who Am I?

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