RESPONSIBLE REASONABLE USE WHEN CONSENT IS NOT FULLY EFFECTIVE

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The Nature of Data and Use Has Changed Over the Past 45 Years

• 1971
  • Mainframe era, data and systems were one in the same
  • Sensors were people not objects
  • Application of probability to large data sets still in the future

• 2016
  • Processing now takes place at the level of the individual
  • Internet of Things makes every object a data collection sensor
  • Probability is applied to data sets continuously
Privacy Law and Protecting Individuals

• Privacy law comprises both privacy (narrowly defined) and data protection
  • Privacy narrowly defined is about individual autonomy and family life
    • Very important to assure trust
  • Data protection includes the impact of data processing on the full range individual and societal interests such as health, education, competitive markets

• Privacy law typically designed to achieve both objectives
  • Protect autonomy
  • Assure data is used in an appropriate manner

• People are not served if controllers can’t figure out when data use is in balance
Challenge

• The volume and velocity of data challenge individuals’ abilities to govern data
  • Individual control important but not sufficient

• Yet data is used in a much more robust manner

• That creates real benefits and creates potential harms

• So data must be governed even if consent is not fully effective
Legal Models That Go Beyond Consent

• U.S. sector specific laws such as the Fair Credit Reporting Act
• Canadian law includes the concept of implied consent
• Many laws, such as Australia’s include flexibility based on meeting reasonable expectations
• EU level European law includes balancing processes for assuring data used beyond individual expectations is fair
Accountable Processes for Assuring Accountability

- Comprehensive assessment processes when consent is not fully effective as a governing methodology
- Particularly useful for learning with data (example big data)
- Assessments include analysis of both benefits and risks to all stakeholders, with emphasis on individuals
  - That process works best when both risks and benefits are identified
  - These assessment processes go beyond legacy privacy assessments
Governance Beyond Consent Does Not Mean Less Protection

• Assessments must be conducted with integrity --- not gamed to meet controller’s interests

• Organizations must stand ready to demonstrate assessment processes to regulators and accountability agents to assure integrity

• IAF has written a series of papers related to assuring protection while conducting big data processing
IAF Going Forward

• Implied consent governance project in Canada
• Legitimate interests assessment process in Europe
• Support national debate in Colombia on Legitimate interests
• Demonstrate linkage between legitimate interests and assessment criteria for unfair practices in the United States
• Demonstration projects for ethical big data assessments based on legitimate interests
Bottom-line

• APEC Privacy Framework is designed to assure both the economic benefits of electronic commerce and individual protections

• Guidance on assessments when consent is not fully effective may be useful to assure protection when doing processes such as big data