

Generational interpretations and expectations of privacy

In the last few years, privacy has evolved to become a topic of concern for more and more people. Recent studies have also shown that people have stopped using a particular product or service because they were worried about how it used their personal data. However, what is less clear is whether this is a concern for all generations or does the common perception that young people do not care about their privacy hold some element of truth? William Long, Geraldine Scali and Francesca Blythe, Partner, Senior Associate and Associate respectively at Sidley Austin LLP, explore this question.

Introduction

As technology develops so does our dependency on it. In order to run your entire life from your smart device (as so many young people do), you undoubtedly need to disclose a considerable amount of data. Based on the large volumes of information that young people are disclosing, many think that they adopt a cavalier approach to their data security. However, are they being careless or is there a lack of understanding of the concept of privacy and thus a lack of awareness of the implications of disclosing such vast amounts of data online?

Privacy concerns

In fact, some studies over the last few years actually indicate that the younger generations are relatively more privacy conscious than the older generations. However, the interpretations and expectations of privacy of the young are likely to be very different from those in older generations. For example, for

teenagers it may be that due to their limited understanding of privacy they are only acting in relation to their immediate concerns, such as managing what is disclosed to their parents and teachers¹. Other studies have shown that the younger generations are both failing to appreciate how wide the access to their personal data is, and to consider the potential longer-term implications of their disclosures, for example, their future employability or their credit scoring. Indeed, a study by the Pew Research Center in 2013² found that only 9% of teenagers said they were very concerned about third parties accessing their personal data whilst another 60% reported that they are not too concerned or not at all concerned. Likewise, research conducted by the UK Information Commissioner's Office³ (ICO) found that almost 60% of the young people they spoke to never considered that what they disclosed online could be seen by other people in the future.

Understanding the value of data

One issue appears to be a lack of understanding of how one's data are collected online and used for promotional purposes. Many youths assume that if they activate their privacy settings on their social media platforms that they are being vigilant. However, it is not just the social media platforms that are accessing personal data. Search engines such as Google are also using personal data to offer users increasingly personalised results that anticipate their queries based on previous activity. If the understanding is not there, then how can younger users effectively manipulate their privacy settings to safeguard their privacy? Educating younger generations to

increase their awareness of privacy is therefore an important issue that needs to be addressed by policy makers.

Data protection reform

In the EU, the protection of individuals' privacy is governed principally by the EU Data Protection Directive 95/46/EC⁴ ('the Directive'), which is currently under review and may be replaced by the proposed EU Data Protection Regulation⁵ ('the Regulation'). However, the Directive fails to distinguish between privacy protection for adults and children. That is not to say that the issues surrounding the online privacy of the younger generation have not been recognised. In 2011, an initial Resolution was adopted by the European Parliament in relation to the reform of EU data protection laws and the Regulation. Within the Resolution was the suggestion that media literacy be included in formal education to teach young people how to act responsibly online. This has not been included in the Regulation, although there is a specific reference to the processing of children's personal data. The draft provisions require organisations to obtain parental or guardian consent before marketing to anyone under the age of 13. However, if reliable age verification is needed, surely this will require organisations to collect further personal data so the efficacy of this provision is debatable.

There is also the inclusion of a new and somewhat controversial right to erasure of an individual's data. This gives individuals a right to have their personal data erased where the data are no longer necessary or where they withdrew consent, although certain exemptions also apply. So this provision could potentially provide young people with the ability to

effectively erase any youthful indiscretions going forward. Although how this will be effectively enforced in reality is still to be ascertained, particularly in light of figures indicating that between 2010 and 2020, the amount of digital information created and replicated in the world will grow to an almost inconceivable 35 trillion gigabytes. This is exemplified in the challenges Google and other search engines are facing following the recent judgment by the Court of Justice of the European Union (CJEU) in relation to individuals' right to be forgotten⁶. Whilst this right is not express under the Directive (as it is in the Regulation), the CJEU inferred (from the principles relating to data quality⁷) that where data is inadequate, irrelevant, or inaccurate, an individual may request deletion of the data from the search engine provider. Since the judgment in May 2014, Google claims to have removed over half a million links from search results of which 1 in 10 of these have come from the UK⁸. However, for a search engine to fulfill the request, the impact on an individual's privacy must be greater than the public's right to find the information. Will the indiscretions of 14 year olds in 10 years' time fulfill this criteria and who makes this decision? Moreover, this does not tackle the immediate issue with regards to the general lack of privacy awareness.

Privacy icons

The Regulation has attempted to address the lack of understanding about how personal data is being used by the introduction of prescribed icons (similar to those found on food labels) to represent certain standardised information. The icons include, for example, whether personal data is encrypted

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and whether it is transferred to commercial third parties. However, the icons in the Regulation do not appear to be that clear, for example, the icon intended to show whether personal data are retained beyond the minimum time needed for the processing is an image of three individuals and a magnifying glass. If anything, the icons may arguably confuse rather than increase transparency. A further attempt at education has been made by the ICO which has developed a website targeted specifically at teenagers. The website contains top tips for privacy, template letters of complaint and real life stories. However, the success of this website is dependent on teenagers using it because if teenagers do not know it exists, the benefit of it is minimal.

Conclusion

So the concerns that younger generations do not care about their privacy may in fact be based on the perceived lack of knowledge and education. It appears that due to a lack of education on privacy, younger generations have a misconception as to the value of their data, what their data is used for now and what it may be used for in the future. So whilst research shows young people do care about their privacy, it further shows that their knowledge and understanding of it is somewhat limited. The problem is that whilst efforts are being made by policy makers to increase privacy awareness amongst young people they appear to continue to fall short of what is required in the ever accelerating digital age.

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4. European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
5. Proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data on the free movement of such data. The proposed Regulation is supposed to be adopted in 2015.
6. Google Spain SL and Google Inc v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González C-131/12.
7. Section 1 Article 6 of the Directive.
8. 'Thousands of Britons Seek Right to be Forgotten', BBC News, 12 October 2014. Available from <http://www.bbc.co.uk/news/uk-29586700>