



Holding Your Feet to the Fire: The Value of Privacy Advocates

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Why is Privacy Advocacy Important?



- **Hidden nature** of privacy invasions
- **Law lags technology** and business practices
- **Complaints-based enforcement regime** - but individual victims don't have time or energy
- The **Power Imbalance**
- **Privacy Commissioners** have conflicting roles



Why Important?

- **Hidden nature** of privacy invasions
 - don't know that you are being spied on
 - video cameras, etc.
 - don't know that you are being profiled
 - privacy policies are often unclear and uninformative
 - don't know when your personal info. has been unwittingly disclosed to ID thieves as a result of negligence by a business, unless the business sees fit to let you know
 - no law requiring disclosure of security breaches (as in USA)



Why Important?

- **Law lags** technology and business practices
 - impossible to anticipate all technological advances and new uses of technology
 - anti-legislation/regulation bias
 - don't want to impede development of new technologies
 - need clear proof that market forces won't suffice
 - hard to turn back the clock
 - cost to business
 - vested interests
 - need to build privacy into design of business models



Why Important?

- **Individual victims** don't have time or energy
 - even if aware, who has time to follow up?
 - complaints are the exception:
 - either exceptional circumstance (damages incurred), or
 - exceptional individual (willing to make effort)



Why Important?

- **The Power Imbalance**
 - information = power
 - those spying tend to be those in positions of power
 - subjects of surveillance, if aware, tend to be:
 - nonchalant and trusting
 - children – credulous
 - inured to it
 - too busy/pressured to take on a new challenge
 - skeptical of their ability to make a difference
 - concerned about repercussions of advocacy



Why Important?

- **Privacy Commissioners** have many different roles, sometimes conflicting:
 - not pure advocates:
 - educators, advisors to business and government, mediators, arm-twisters, investigators, decision-makers, enforcers...
 - ombuds role seen as predominant
 - cooperative approach preferred to adversarial
 - high proportion of settled complaints
 - recognize need for vibrant privacy advocacy community



Advocacy Approaches

- **Establishing rights**
 - legislative advocacy/reform; standards-setting
- **Exercising rights**
 - complaints; litigation
- **Exposing violations**
 - holding violators accountable: naming names,
 - research reports; public demonstrations; campaigns
- **Encouraging privacy-friendly laws and policies**
 - cooperative approaches: persuasion, negotiation, etc.
 - research reports; public opinion surveys; campaigns



Establishing Rights

- Legislative Advocacy
 - PIPA, PIPEDA legislative reviews
 - Health privacy legislation
- Precedent-setting Litigation/Complaints
 - *Lawson v. Accusearch* (jurisdiction)
 - *canada.com* (“comparable protection”)
 - *InfoCanada* (re-personalized information)



Exercising Rights

- PIPA, PIPEDA complaints
 - holding companies accountable under the law
 - *Englander v. TELUS*
 - *MBNA*
 - *Ticketmaster*
 - *Winners/HomeSense*
 - *iCom*



Exposing Violations

- Using publications, websites, blogs, media, etc. to promote transparency and accountability
 - naming names
 - publishing research reports
 - *CIPPIC* study of the Canadian data-brokerage industry
 - *CIPPIC* study of retailer compliance with PIPEDA
 - *CIPPIC* study of DRM and PIPEDA compliance
 - *PI* Privacy Ranking of Internet Service Co's
 - *Wired News* ISP survey
 - public theatre; demonstrations
 - CCTV cameras; Walmart use of RFIDs/"spychips"; PI "Big Brother" awards



Encouraging Privacy

- Engaging with industry
 - improving privacy policies/practices
- Multi-stakeholder collaboration
 - CSA Code
 - Code of Practice for Consumer Protection in Electronic Commerce
 - Principles for Electronic Authentication
- Research Reports/Opinion Surveys
- Campaigns



Privacy Advocates

- key element of “market forces”
 - discipline bad actors
 - help to achieve marketplace fairness
- make privacy laws work
 - correct market failures
- push for clarification of the law
 - greater certainty in marketplace
- can help businesses profit from privacy

CIPPIC Research Projects



2006: On the Data Trail: How detailed information about you gets into the hands of organizations with whom you have no relationship

Compliance with Canadian Data Protection Laws: Are Retailers Measuring Up?

2007: Digital Rights Management and Consumer Privacy

2008: Online Privacy Threats



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