BUSINESS ANALYTICS AND PRIVACY-RELATED RISKS

Borden Ladner Gervais LLP (BLG) sponsored a great panel at the IAPP Canada Privacy Symposium 2016 entitled "**Business Analytics and Privacy-related Risks**". The panel was moderated by **John Russo, CPO, Equifax Canada** and the panelists included **Sepideh Alavi** and **Éloïse Gratton** from BLG and **Paul Plofchan, CIPP/US, CPO, ADT**. If you attended, we hope you found the session informative and relevant to your business. If you missed the session, below is a re-cap of key topics.

Canadian businesses have been capturing and analyzing large amounts of data for years, and they are now at the point where they want to use this data. For instance, they are looking to sell analytic tools allowing others to obtain more insights into their (actual or potential) customers or to provide more personalized products, services or advertising, both online (i.e. mobile) and offline, sometimes even using location data. In the era of Big Data, new business models and marketing techniques are emerging, including facial recognition and personalization; they are reaching new levels of sophistication, as well as dynamic pricing practices.

Businesses need to consider whether:

- Personal information is properly "de-identified;"

- What type of information should be considered "sensitive" in various contexts (first party vs. third party targeted advertising, personalization, online services, etc.);

- How to obtain valid consent in compliance with the "reasonable expectations" of customers (a notion which is quite subjective and even more challenging in light of recent PIPEDA amendments through Bill S-4, *Digital Privacy Act*); and

- How to deal with technological innovation, shifting social norms and building customer trust through proper privacy practices.

The panel discussed how analytics projects get authorized within organizations. Two recent findings issued by the Office of the Privacy Commissioner which pertain to data analytics in the context of advertising were reviewed: PIPEDA Report of Findings #2015-001[1] (Bell's Relevant Ads Program) and PIPEDA Case Summary #2009-004[2] (No Consent Required for Using Publicly Available Personal Information Matched with Geographically Specific Demographic Statistics).

The panel also referred to recent data analytic reports that have been published in Canada as well as in the U.S. In Canada, the 2012 OPC report "**The Age of Predictive Analytics: From Patterns to Predictions**"[3] and for the U.S., the January 2016 FTC Report "**Big Data: A tool for Inclusion or Exclusion**"[4] as well as the more recent (May 2016) White House Report "**Big Data: A Report on Algorithmic Systems, Opportunity, and Civil Rights**"[5]. The panel exchanged ideas on the key legal and privacy challenges when conducting business analytics, and when personal information is or should be considered as fully anonymized under applicable Canadian and U.S. laws.

It was also discussed whether individuals should be entitled to consent to their information being used for new analytic purposes and if so, what type of consent should be obtained and in which situations. The panel described various challenges when obtaining consent, and proposed different data flow scenarios which may be useful when identifying the relevant privacy risks.

With new innovative technologies, businesses have to ensure that their practices are legally compliant, as well as ethical, fair and reasonable.

To learn more about this presentation or other privacy related hot topics, contact **Éloïse Gratton** at **egratton@blg.com** or visit, **blg.com/privacy**

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1   https://www.priv.gc.ca/cf-dc/2015/2015_001_0407_e.asp
2   https://www.priv.gc.ca/cf-dc/2009/2009_004_0109_e.asp
3   https://www.priv.gc.ca/information/research-recherche/2012/pa_201208_e.asp
4   https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf
5   https://www.whitehouse.gov/sites/default/files/microsites/ostp/2016_0504_data_discrimination.pdf

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