

Website Privacy Policy Updates – Tell Them About It

Digital Media and Data Privacy Law Blog

By Elizabeth Spainhour on 11.12.2015

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You may have noticed our law firm’s website recently posted a notice announcing a change to our website’s privacy policy. You may have seen other website publishers do something similar from time to time, as well. Do you wonder why?

Announcing a change to your website privacy policy is important for at least two reasons.

First, if your privacy policy tells the public that you will announce changes, then you need to announce changes. After all, your company’s privacy policy is a contract between your company and users of the website. You need to live up to the promises made in the policy or a regulator may take notice (see below). It is generally acceptable to make changes to your website privacy policy after it is first published, but you should tell users that you reserve the right to do so.

Second, agreeing to announce a website privacy policy change and then making the announcement of a change is a best “fair information” practice, and one the Federal Trade Commission advises you to follow. Website users who come to your company’s website and submit personal information in reliance on your earlier published privacy policy may make a different choice about continuing to use your site and submitting personal data once the new policy goes into effect. Letting users know about changes to the privacy policy allows them to make informed choices about their personal information. In fact, if a change is significant – for example, if your company starts sharing or using already collected personal data for a new and unexpected purpose – a more prominent notice, and possibly consent, may be required.

A 2014 letter from the FTC staff related to Facebook’s acquisition of WhatsApp is instructive on the issue of website privacy policy changes. In that letter, a top FTC regulator advised the companies that regardless of the acquisition by Facebook, WhatsApp was required to honor its more protective privacy policies with regard to consumer data it had collected, and that if it failed to do so, both companies could be subject to enforcement. The letter notes that prior FTC decisions made clear that “absent affirmative express consent by a consumer, a company cannot use data in a manner that is *materially inconsistent* with promises made at the time the data was collected, and that such use of data could be an unfair practice under Section 5 [of the FTC Act].”

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One other useful nugget from the 2014 letter about *prospective* policy changes: the FTC “recommended” to Facebook and WhatsApp that if they chose to change how they collected, used, and shared newly collected data from users, they should offer consumers an opportunity to opt out of the changes or make clear to consumers that they have an opportunity to stop using the service.

So what did our law firm change in our privacy policy? Our site uses Google Analytics, and we had an external link to its privacy policy. That link changed, so we updated the link and the “updated as of” date.