

Does Your Website Privacy Policy Need Some Love?

BY ANNIE L. ROBERTSON

Everyone does it, especially startups. You need a privacy policy for your website, and your legal budget is limited. Hop onto Facebook (or Google, or Amazon) — cut, paste and voilà! — your startup has a shiny new privacy policy. If it works for Facebook, it must be good enough for your company, right? Not quite.

There is more to privacy policies than first meets the eye, and an inaccurate policy can lead to regulatory fines or even litigation. So show your privacy policy some love, take a second look and consider the following questions.

IS THE PRIVACY POLICY ACCURATE AND COMPREHENSIVE?

The purpose of a privacy policy is to describe how a website, mobile app or other online service uses, stores and shares information received from users.

The policy should accurately and completely describe what your company actually does with the collected information, which may differ from what Facebook or other companies do with the information they collect.

The policy should describe the type of information your company collects, including a clear definition of the “personally identifiable information” it collects. Personally identifiable information is data that could potentially be used on its own or in conjunction with other information to identify, contact or locate a specific individual. Name, date of birth, place of birth, email address, home address, phone number, biometric information and social security number are all examples of personally identifiable information.

The policy should describe how your company 1) collects information; 2) stores information; 3) protects information (including a description of who has access to it); 4) shares or transfers information; and 5) disposes of information.

The policy should tell consumers about any choices they have with respect to the collection, use and sharing of personal information. For example, if consumers can turn off location tracking, describe this in the policy. In any event, describe whether and how the website or mobile app responds to do-not-track signals.

If your company collects information or uses information in an unusual or unexpected manner (from the consumer’s perspective), make sure to highlight this in the policy.

The policy should include its effective date and a statement telling consumers who

to contact with questions or concerns about the policy.

Finally, the policy should tell consumers how they will be notified about material changes to the policy.

Bottom line: Be accurate and complete. If a mobile app tracks users’ locations, do not say that it does not. If your company uses “history-sniffing” technology to collect information about third-party sites consumers have visited, clearly disclose this in the privacy policy.

HAVE YOUR COMPANY’S COLLECTION OR RETENTION PRACTICES CHANGED?

If your company’s practices have changed since the initial effective date of the privacy policy, it may be time to update your privacy policy and notify your users of new and changed practices.

Make sure your company conducts ongoing monitoring of its information practices.

IS THE PRIVACY POLICY CLEAR AND CONCISE?

A privacy policy should be easy to access, read and understand. Use familiar words, omit surplus words, use short sentences, prefer the active voice and do not use legalese (e.g., use trumps utilize; car trumps automobile). Write for an audience of 10-year-olds.

IS THE PRIVACY POLICY CONSPICUOUSLY POSTED?

A direct link to the privacy policy should be located on a homepage or the first significant webpage. The link should include the word “policy” and be in a contrasting color or otherwise distinguishable (e.g., in all caps, bold text or in a larger-size font).

Alternatively, users can click to consent to the privacy policy prior to their first use, download or access of your website or mobile app prior to or concurrent with the collection of personal information.

WHAT FEDERAL AND STATE LAWS AND REGULATIONS APPLY TO MY POLICY?

Various U.S. federal and state laws, agency rules and regulations may require your company to post a privacy policy or have implications with respect to your company’s privacy policy (not to mention foreign laws and regulations).

For example, pursuant to the Children’s Online Protection Privacy Act (COPPA), if your website is directed at children and collects any personal information from children 13 years or younger, your company must post a COPPA-compliant privacy policy.

The Federal Trade Commission (FTC) has authority to prevent unfair or deceptive acts in or affecting commerce. The FTC recommends that all websites and online services post privacy policies online describing the operator’s information practices. The FTC has become more aggressive in wielding its enforcement powers related to inaccurate or misleading statements in privacy policies.

California law requires an operator of a commercial website or online service that collects personally identifiable information through the Internet about consumers residing in California to post a privacy policy. Other states have also enacted laws applicable to privacy policies or have taken enforcement actions premised upon privacy policies. ■



Annie L. Robertson is an attorney at Lane Powell, where she advises clients on a wide range of business transactional matters, including data security and privacy policy matters. She can be reached at 503-778-2176 or robertsona@lanepowell.com