

Global IT Law
Privacy
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Privacy Case Study

BigTel is Canada's largest telecom provider with nearly 40% of the wireless market. The company enjoys the number one position in all of its key services: wireless, broadband Internet, local phone, and television (broadcast distribution). The company offers significant discounts for subscribers that purchase all four services and the majority of them do.

BigTel has announced new plans to enhance its subscribers' experience by providing more relevant advertising to them on all of its services. The company already collects vast amounts of data including viewing habits, Internet activities, location information, device details, and social communications. It plans to use that information to develop detailed profiles of its subscribers. Subscribers will be categorized in aggregate according to their interests and the advertisers will be able to target their ads to the relevant category. Since BigTel does not currently have the data analytics capabilities for the service, it will transfer the subscriber data to U.S.-based DataTarget.

BigTel says that it takes privacy very seriously. It has offered to remove any customer from the relevant advertising program upon request.

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Please consider the following questions:

1. Do BigTel's plans fall within commonly-used privacy laws?
2. If so, do you think the plan is compliant with the law?
3. If it is not compliant, what changes would you recommend?

Privacy Law Principles

OECD Privacy Principles

- Established in 1980
- Non-binding but ultimately serve as the basis for many national rules
- Updated in 2011
- Served as framework for APEC Privacy Framework

EU Data Protection Directive

- 1995 – the EU adopts the Data Protection Directive
 - A Directive sets a minimal standard.
 - Broad spectrum of levels of adoption throughout the continent.
 - Directive premised on FIPPs
 - The Fair Information Practices – Notice, Access, Choice, Security and Enforcement
 - In the EU – also purpose specification, minimization, proportionality
 - Sets jurisdictional boundaries and relies upon the work of DPAs

EU Data Protection Directive

- European member states adopt data protection laws.
- EU Charter of Rights now includes privacy and data protection.
 - Therefore court can strike down Directives.
 - Digital Rights Ireland.

EU Data Protection Directive

- Data may not be sent beyond the EU – unless specific exceptions apply:
 - Specific agreement (safe harbor)
 - Adequate country (Israel, Canada)
 - Consent
 - Internal compliance programs.
- Faces substantial challenges in the age of cloud computing.