



Disclosures in Privacy Policies: Does “notice and consent” work?

Rishab Bailey, Smriti Parsheera,
Faiza Rahman and Renuka Sane

National Institute of Public Finance and Policy

Supported by the Omidyar Network



What is consent?

- Law says - “When two or more persons are said to consent *when they agree upon the same thing in the same sense.*”
- Three key requirements:
 - Age should be 18 or above
 - Consent should be free and voluntary e.g no pressure/ threat
 - Person should not be of unsound mind

Is consent broken in the context of privacy policies?

- “Notice and consent” framework - Foundation of modern data protection laws. But does it work?
 - People do not read privacy policies
 - People usually stick with the default settings
 - Too many entities collecting your data - how do you keep track of what you consented to?
 - Can individuals really judge the possible future harms that may be caused by disclosing some data today?
 - Can a company inform users about all possible uses of data at the time of collection?
 - Privacy policies are binary in nature - take it or leave it!



Consent exercise I :

- UberDoc, a fully owned subsidiary of Uber, can be used to book doctor appointments with their partner clinics. Can Uber share live updates of your trip status with UberDoc to inform the clinic of a delay in arrival?
- Yes
- No
- Can't say

- **Answer: Yes. Uber does share its information with subsidiaries/affiliates and business partners**
- Line 221-222: “We may also share your information with our affiliates, subsidiaries and business partners, or legal reasons or in the event of a dispute.”



Consent exercise II:

- Hard Rock Cafe, which is Paytm's business partner, requests Paytm for your transaction data to check if you frequent bars – so that the Cafe can sign you up for loyalty discounts. Can Paytm share this information?
 - Yes
 - No
 - Can't say
- **Answer: Paytm does not share information with third parties unless under a legal requirement**
- Line 18-22: “We will not sell, share or rent your personal information to any 3rd party...any emails and / or SMS sent by Paytm will only be in connection with the provision of agreed services and products and this Privacy Policy”



Consent exercise III:

- You create a WhatsApp group to organise a protest against a new government policy. Apprehending trouble, the police write to WhatsApp requesting them to provide information on all group members. Can WhatsApp provide this information to the police?
- Yes
- No
- Can't say

- Answer: **Whatsapp's policy mentions that it may share information with law enforcement**
- Line 238-241: "We may collect, use, preserve, and share your information if we have a good-faith belief that it is reasonably necessary to: (a) respond pursuant to applicable law or regulations, to legal process, or to government requests; .."

What does our study do?



- How much do users typically understand of what they sign up for?
 - How do privacy policies fare in terms of readability, access and design?
 - Do people understand what is contained in a privacy policy?
 - Can notice and consent mechanisms work to protect privacy?
- How did assess ?
 - Analyse 5 privacy policies of popular online services - both Indian and foreign
 - Quiz English speaking students (*155 respondents at five universities in and around New Delhi*) to judge comprehension of policies.
 - Survey tested 10 basic principles of any privacy law - collection, permitted use, sharing with third party, use by affiliated entities, sharing with government, data breach notification, access to own data, data retention, ability to seek clarifications, exporting of data

Readability (Ease of reading)

| | Readability | Level of Reading | Reading Ease |
|----------|----------------|------------------|--------------|
| Uber | Difficult | College | 16.44 |
| WhatsApp | Difficult | College | 36.56 |
| Google | Very Difficult | University | 18.30 |
| Flipkart | Difficult | College | 41.03 |
| Paytm | Very Difficult | University | 20.55 |

Reader's Digest has a readability score of about 65, Harry Potter books have a readability score of 80.6, while the Harvard Law Review has a readability score in the low 30s (Lively, 2015).

Readability : possible problems

- **Ambiguity** : Use of vague/undefined terms such “ordinary course”, “we consider necessary”, etc.
 - Eg: WhatsApp → “*we do not retain your messages **in the ordinary course of providing our services to you***”
- **Legal and technical terminology**: Use of terms such as “third-party”, “affiliate”, “business partner”, “profiling”, etc.
 - Eg: Paytm → “ *We reserve the right to communicate your personal information to **any third party that makes a legally-compliant request for its disclosure.***”
- **Unclear disclosures**:
 - WhatsApp’s → “we offer end to end encryption for our Services, which is on by default, ...End to end encryption means that your messages are encrypted to protect against us and third parties from reading them.”

Visual presentation (Design and structure)



- **Lack of consistency in design or text-heavy nature**
 - Eg: Uber → Multiple sections, headings in bold, margin notes, summaries of sections, click-throughs for more information
 - Eg: Paytm → No click-throughs or layered information, sections demarcated with bold font in titles
 - Eg: Google → Uses layered information or pop-ups – Critical terms or phrases are highlighted or underlined and moving a cursor over them opens a pop-up or sidebar with a simpler explanation.

Uber's privacy policy: Margin notes and summaries

INTRODUCTION

DATA COLLECTIONS AND USES

CHOICE AND TRANSPARENCY

UPDATES TO THIS POLICY

Scope

SUMMARY

This policy applies to users of Uber's services anywhere in the world, including users of Uber's apps, websites, features or other services.

This policy describes how Uber and its affiliates collect and use personal information to provide our services. This policy applies to all users of our apps, websites, features or other services anywhere in the world, unless covered by a separate privacy policy such as the [Uber Freight Privacy Policy](#). This policy specifically applies to:

- **Riders:** users who request or receive transportation
- **Drivers:** users who provide transportation individually or through partner transportation companies
- **Delivery Recipients:** users who request deliveries of food or other items
- **Delivery Partners:** users who provide delivery services

This policy also applies to those who provide information to Uber in connection with an application to use our services, or whose information Uber otherwise receives in connection with its services (such as contact information of individuals associated with UberEats restaurant partners). All those subject to this policy are referred to as "users" for purposes of this policy.

The practices described in this policy are subject to applicable laws in the places in which we operate. This means that we only engage in the practices described in this policy in a particular country or region if permitted under the laws of those places. Please contact us if you have questions on our practices in your country or region.

Paytm's policy: No click-throughs & sections demarcated



V. Cookie Policy

1. Please note that a "cookie" is a small piece of information stored by a web server on a web browser so it can be later read back from that browser.
2. We may use cookie and tracking technology depending on the features offered.
3. No Personal Data will be collected via cookies and other tracking technology; however, if you previously provided Personal Data, cookies may be tied to such information.

VI. Links to other websites

Our website may contain links to other websites which are not maintained by us. This privacy policy only applies to us. You are requested to read the other websites' privacy policies when visiting these websites.

VII. Reasonable Security Practices and Procedures

We take various steps and measures to protect the security of your Personal Data from misuse, loss, unauthorised access, modification or disclosure. We use latest secure server layers encryption and access control on our systems. Our safety and security processes are audited by a third party cyber security audit agency from time to time.

We have provided multiple levels of security to safeguard your app by Login/Logout option and AppLock feature that can be enabled by you.

Access (Languages and clicks)

Table 2 Access to the policies

| Online service | (1) Number of clicks | (2) Length Pages (A4) | (3) Words | (4) Language | (5) Readability Reading ease |
|----------------|-------------------------|-----------------------------|--------------|-----------------|------------------------------------|
| Uber | 2 | 11 | 3,355 | Eng. | 16.44 |
| WhatsApp | 2 | 10 | 3,352 | Eng. | 36.56 |
| Google | 1 | 9 | 2,890 | Eng., Ind. | 18.30 |
| Flipkart | 1 | 5 | 1,767 | Eng. | 41.03 |
| PayTM | 3 | 3 | 819 | Eng. | 20.55 |

- Google → The only company amongst those studied to provide privacy policy in a language other than English. Uber's website can be accessed in Hindu but the privacy policy is only available in English.
- All the policies studied can be accessed through 1-3 clicks from the main page. The links are however not always highlighted or easily visible.



Overview of the analysis:

- Flipkart has the highest number of “unspecified” terms in their policy. This is followed by Paytm.
- No one has specified provisions related to data breach notification (Q6).
- Only Uber and Google provide access to own data (Q7). The other three have not specified provisions related to the same.
- Data is either always retained after deleting the account (Q8), or provisions are not specified.
- No one (except Google) has specified provisions related to export of data (Q10)

Survey Results

| | Average Score |
|-----------------|---------------|
| Overall average | 5.30 |
| By policy | |
| Flipkart | 5.31 |
| Google | 5.36 |
| Paytm | 5.54 |
| Uber | 5.88 |
| WhatsApp | 4.65 |
| By study area | |
| Non-law | 5.3 |
| Law | 5.2 |
| By degree | |
| Under graduate | 5.1 |
| Post graduate | 5.3 |

Conclusion



Study demonstrates:

- Policies have excessive legalese and ambiguous language
- Complex factors at play - length of policy; clarity of legal terms; ex-ante perceptions of respondents
- Policies are primarily written to address legal requirements and avoid liability claims

When provisions are clearly drafted, or when users can be expected to find the answers in the policy, they are more likely to evaluate the questions correctly. However, when terms whose meaning is not precisely defined are used (such as “third-party” and “affiliate”, for example), then respondents make mistakes.

Is notice and consent framework broken because of the way in which it is currently designed?

Areas for further research



The study raises the following questions for further research:

- What drives user understanding of privacy policies? Whether factors such as *age, education, intelligence quotient, comfort with English, urbanisation, familiarity with Internet-based services*, all play a role in how individuals evaluate what is on offer?
- How should privacy policies be designed so that users are able to understand them?