

Information Privacy Protection in the Era of Emerging Technologies: Limitations of the Informed Consent Principle and Proposed Amendments

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Abstract

The current information privacy policy is generally structured based on the notice-and-choice (or informed consent) principle which contains two core privacy theories. One is that the goal of information privacy is to ensure that personal control over an individual's personal data is fully protected. The other theory is based on the assumption that in the free market, the individual, the person who controls personal data and the person who uses personal data will eventually strike a balance between the protection of privacy and the interests of using personal data.

However, the traditional notice-and-choice principle has faced difficulties in protecting privacy to resist threats caused by new technologies. The notice-and-choice protects individual privacy from the angle that collectors shall obtain the individual's consent "at the time" when the data is collected in order to ensure that such individual's "control interest" over his own data is protected. However, when the application of new technologies aims to explore new opportunities in "reusing" personal data for a new purpose which might be different from the original purpose of collection, the traditional notice-and-choice notion appears to be insufficient to protect individual privacy because the notice lacks a mechanism in dealing with privacy problems when personal data are reused. On the other hand, enforcing the notice-and-choice principle could place

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unnecessary burden on data collectors and data users when the principle universally requires them to obtain consents from data subjects which does not guarantee privacy protection and is likely to adversely impede innovation of new technologies. It is therefore important in the new era of new technologies that the traditional privacy protection notion be amended and/or supplemented in order to properly deal with new privacy concerns.

This article proposes a privacy theory which, unlike traditional theory wherein only personal control interest is considered, takes into consideration of other information privacy interests as well as the potential privacy harms associated with such interests. This article locates other privacy interests and harms that should be evaluated—including the interest of intimacy and secrecy. One of the advantages of including other privacy interests is to find the right balance between privacy protection and technology innovation when the various interests are comprehensively evaluated.

Furthermore, this article examines the current Taiwan Personal Data Protection Act to evaluate whether the provisions that were written following the notice-and-choice principle are appropriate in resolving privacy concerns caused by new technologies. When several deficiencies under the current law are pointed out, this article applies the proposed privacy theory in several cases to demonstrate that the proposed theory is feasible in supplementing the traditional notice-and-choice principle in the new technology era.

Keywords: Information Privacy, Personal Data/Personal Information, Informed Consent Principle, Notice-and-Choice Principle, Big Data Technology, Privacy Policy, Personal Data/Information Protection Act.