




2002

RIDER TO STUDENT NOTE: PRIVACY WARS IN CYBERSPACE

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Recommended Citation

Jeanette Teh, *RIDER TO STUDENT NOTE: PRIVACY WARS IN CYBERSPACE*, 4 *YALE J.L. & TECH* (2002).
Available at: <https://digitalcommons.law.yale.edu/yjolt/vol4/iss1/3>

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RIDER TO STUDENT NOTE

**PRIVACY WARS IN CYBERSPACE:
AN EXAMINATION OF THE LEGAL AND
BUSINESS TENSIONS IN INFORMATION PRIVACY**

JEANETTE TEH[†]

RIDER 1

Page 64 first paragraph, third line, after the word broad, add the following footnote (which would be footnote number 193):

Since the initial writing of this paper, the Privacy Commissioner has released a number of findings regarding PIPEDA's application. In his September 21, 2001 decision entitled "Selling of Information on physicians' prescribing patterns", the Commissioner held that personal information would not be interpreted so broadly as to include physicians' prescriptions or prescribing patterns. He further stated that other work products such as legal opinions or documents written in the course of employment would not be protected as "personal information". www.privcom.gc.ca/cf-dc_010921_e.asp (last accessed Nov. 21, 2002).

RIDER 2

Page 65, after the first full paragraph beginning with "This vague definition...", add the following footnote in the last line after the last word "traceability":

This challenged has already arisen in the early findings of the Privacy Commissioner. In one decision, "Musician objects to collection of salary information by

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professional organization” issued July 23, 2000, at www.privcom.gc.ca/cf-dc/cf-dc_010723_04_e.asp (last accessed Nov. 21, 2002), the Commissioner held that as the professional organization which had the legal authority to collect the salary allotment of a company’s entertainment budget, the information was not identifiable even though the musician complainant was the only entertainer in that establishment. In contrast, in a later decision issued November 20, 2001 decision entitled “A broadcaster accused of collecting personal information via Web site”, at www.privcom.gc.ca/cf-dc/cf-dc_0111220_e.asp (last accessed Nov. 21, 2002), the potential of a computer’s NETBIOS (a “friendly” name related to its Internet Protocol) to identify an individual was deemed to be identifiable, and thus, personal information contrary to the Act. For a more detailed discussion of these decisions, see Beardwood, John, *Tea Leaves and Goat Entrails: A Review of the Privacy Commissioner’s Significant Findings under New Canadian Privacy Legislation*, COMPUTER UND RECHT INTERNATIONAL JOURNAL, June 2002.

RIDER 3

Page 81, after the first paragraph, add in the following paragraph:

This principle was confirmed in the decision “Telephone company demands identification from new subscribers”¹. In this decision, the Commissioner held that although a reasonable person would consider it appropriate for the telephone company to collect personal identification in order to run a credit check, the company did not state this purpose explicitly to prospective customers, thus, contravening the Act.

¹ Issued November 8, 2001. See www.privcom.gc.ca/cf-dc/cf-dc_011108_e.asp (last accessed Nov. 21, 2002).

RIDER 4

Page 81, after the first paragraph under subheading (c), add in the following paragraph:

A further limitation of consent was articulated in the Commissioner's April 26, 2002 decision², where he asserted that future legal requirements that are not yet enacted do not constitute a necessary purpose for the collection of personal information. This was due to the fact that there was no current legal necessity for such collection nor would a reasonable person consider such collection appropriate.

RIDER 5

Page 89, before heading 3, add in the following paragraph:

The Privacy Commissioner has recently taken a very strong stance against the use of opt-out consent in his recent decisions. In a finding against Air Canada on March 11, 2002, he found that information for the use and disclosure of information customized according to the individual plan members' purchasing habits and preferences was sufficiently sensitive to warrant obtaining positive opt-in consent³. While the practice of using plan members' information to of advertise products, services and special promotions is unobjectionable, a reasonable person would not expect that this practice be extended to the "tailoring" of information to the individual's potentially sensitive personal or professional interests, uses of or preferences for certain products and services, and financial status without the individual's positive consent.

The Commissioner concludes by stating that he has a "very low opinion of opt-out consent" and intends to ensure that any circumstances where opt-out consent is

2 "Bank accused of inappropriately demanding birthdates from account applicants". www.privcom.gc.ca/cf-dc/cf-dc_020426_e.asp (last accessed Nov. 21, 2002).

3 "Air Canada allows 1% of Aeroplan membership to "opt out" of information sharing practices". http://www.privcom.gc.ca/cf-dc/cf-dc_020320_e.asp (last accessed Nov. 21, 2002).

permitted “remain limited, with due regard both to the sensitivity of the information at issue and to the reasonable expectation of the individuals”⁴.

RIDER 6

Page 90, at the end of the first paragraph under heading 4, add in the following sentence:

Even the Commissioner’s decisions are sparsely written and the names of the organizations or companies omitted in his findings.

4 *Id.*