

# Legal Forum: How to draft an online privacy policy

BY DANIEL KHAZZAM, SPECIAL TO THE GAZETTE AUGUST 7, 2012 2:15 PM



Montreal lawyer Daniel Khazzam explains how to draft an online privacy policy.

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As individuals become increasingly aware of how little knowledge and control they often have over their personal information online, it is crucial that all businesses, both small and large, provide users of their websites or services with complete and detailed privacy policies.

While it is certainly tempting for a startup or a small business operating here in Quebec to simply use a generic privacy policy template, or to look at the privacy policy of a similar business in order to adapt a template for one's own needs, keep in mind that most businesses

function differently from one another in some material way and are often geared towards the laws of distinct jurisdictions.

Any template and even this article must serve as information only and cannot serve as a legal opinion. A proper privacy policy should always be reviewed by legal counsel.

While there are numerous aspects of privacy law that all companies must abide by when handling personal information, here is a list of what any company should consider when drafting a privacy policy for its website or online service in order to conform to privacy laws in Quebec.

- 1) Your privacy policy should be clear and easily understood by your users. If the website or service caters to a younger audience, the language of the policy should be adjusted so that users can truly understand how their personal information will be dealt with and provide meaningful consent.
- 2) Make sure that your privacy policy is brought to the attention of your users and is consented to. Having a link to the policy visible at all times on your website is a step in the right direction, but there should be a mechanism whereby the user indicates his or her acceptance before being able to use the website or service in a material way. If users access your service through a mobile platform, make sure that an acceptance mechanism is visibly integrated into the application or interface.
- 3) Someone within your organization should be responsible for the protection of personal information. This person – or group -- must maintain the confidentiality of the personal information and ensure its security. Your privacy policy should also inform the user how to contact your organization for requests of access and rectification regarding their personal information, and where such information is located.
- 4) The privacy policy must detail how you collect, store, use and communicate your users' personal information. Under Quebec law, "personal information" includes any information which relates to an individual and allows that individual to be identified, be it written, graphic, taped, visual, computerized or other. Remember that you cannot collect, store, use or communicate any personal information of an individual without that individual's consent, save under certain exceptional circumstances provided by law, and such consent must be for a specific purpose.
- 5) Most web hosting software automatically tracks and logs certain information about users accessing a website or service such as the user's geographic location, IP address, operating system, web browser, pages viewed, etc. If you collect this information by virtue of a user merely accessing the website or service, this must be explained in the privacy policy.
- 6) Collecting certain information about your users is also beneficial in the event of future litigation. Make sure that your privacy policy outlines how personal information may be collected, stored, used and communicated in order to enforce the terms of use of your website or service, including disputes, and to comply with applicable laws.
- 7) The storage of personal information must also be addressed. Electronic data stored in servers is usually mirrored in backup servers. If a user wishes to delete his or her personal account on your website or service, the data must not persist in backup servers indefinitely. Your privacy policy should require that such data be deleted within a reasonable amount of time unless the user consents to its subsequent use.
- 8) If your website or service tracks personal information, through the use of cookies, for example, this must be explicitly brought to the attention of the user. Be clear about what tracking mechanisms (e.g. cookies, Flash cookies, web beacons, etc.) your website or service employs, what personal information they gather and why they are being used. Also, keep in mind that you generally cannot refuse a user access to your website or service on the basis that the user does not disclose his or her personal information, including via cookies, unless the personal information is necessary to conclude or perform

a contract. Does this mean that you cannot require a user to enable cookies in order to use your website or service? Not necessarily. If an aspect of your website involves the conclusion or performance of a contract (e.g. e-commerce), then you may require the user to enable cookies for that portion.

9) Your organization is responsible for the personal information it collects throughout the lifecycle of the information. If you communicate personal information to third parties, for example for data storage or payment processing, this must also be brought to the attention of the user. If the third party is located outside of Quebec, you must take reasonable steps to ensure that the personal information communicated is only used for the purposes consented to and is not

communicated to others without the user's consent. Having the third party agree to this contractually is helpful but one should still consider the confidentiality and security of the personal information communicated and choose third-party organizations carefully.

10) Some organizations "anonymize" the personal information they have on their users by removing information which serves to identify them personally and replacing it with anonymous identifiers such as a numeric figure in order to share the anonymized information with third-party advertisers. In fact, most businesses that offer their users free access to their websites or services rely on revenue generated by advertisements (e.g. Facebook). In order to offer advertisers effective means of reaching intended audiences, such organizations will often share anonymized information about their users. Be mindful that the threshold of anonymized information (i.e. the point at which information is no longer personal) is not clear. When data about a user is aggregated and analyzed, the user may still be identifiable with some degree of accuracy. In all cases, it is best to elaborate exactly how anonymized information about your users may be shared with third-party advertisers in your privacy policy.

Always remember that having a complete and detailed privacy policy not only goes far in terms of respecting applicable laws but also reassures your users that they have the full picture

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