

## IMPORTANCE OF ESTABLISHING INTERNAL AND EXTERNAL PROCEDURES FOR DATA COLLECTION, ANALYTICS AND SECURITY FOR START-UPS

by Richard S. Eisert and Paavana L. Kumar

Technology start-ups have a host of issues on their plate at inception – developing their products, defining their brand, and honing a marketing strategy. For many start-ups, privacy issues may not be at the top of the to-do list, or even on the list at all. However, few technology companies can afford to ignore them. As technologies – particularly those that enable data collection - become more innovative and diverse, the corresponding privacy considerations become more wide-ranging and complex.

### PRIVACY BY DESIGN

Regulators have been quick to recognize the privacy implications of recent industry developments. In particular, the FTC has recommended a “privacy by design” approach: new businesses should build in consumers’ privacy protections from the start through every stage of the development process. In an age where various tech platforms solicit increasingly sensitive data from customers, new businesses gathering any sort of information that could be deemed personally identifying information (PII) need to make sure they are instituting the appropriate privacy procedures from the outset in order to protect their customers’ information and stay on the right side of the law. This task has become even more daunting as the definition of PII has broadened from traditional categories like names and credit card numbers to even data like IP addresses – which previously had not been considered PII in the United States but now may be in some cases.

As privacy legislation grows in order to catch up with the technology it is intended to regulate, almost no business will be immune from these considerations. In the United States, even though federal privacy laws are generally sector specific, with specific regulations in place governing discreet issues like security in the financial and healthcare industries, and protection of children’s information online, the scope and number of such laws are rapidly expanding and state-enacted privacy law can be remarkably broad in scope. For example, California enacted legislation several years ago requiring any application developer collecting PII from California residents to maintain a comprehensive privacy policy under the California Online Privacy Protection Act (OPPA). The state recently expanded this legislation to require companies and online services to disclose how they respond to “do not track” signals from web browsers, as well as certain third party data collection activities. As privacy regulations become more comprehensive, virtually all companies, regardless of their sector, will need to have appropriate privacy policies in place. In addition, globally oriented start-ups will need to affirmatively build in policies that address international regulations governing data collection and transfer.

## BEST PRACTICES FOR NEW BUSINESS

The legal landscape has been further complicated by a number of new self-regulatory policies and other guidance documents. In 2010, the Digital Advertising Alliance (DAA) launched the Self-Regulatory Principles for Online Behavioral Advertising, based on principles enumerated by the FTC and intended to give consumers greater transparency and control over the collection and use of their data. In 2013, the DAA released additional guidelines for the Application of Self-Regulatory Principles to the Mobile Environment. In addition, the FTC has published a number of business guides on protecting PII; most recently, in 2012, “Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers” and “Marketing your Mobile App: Get it right from the start.” These recommendations lay out standard guidelines for businesses to comply with privacy laws, such as ensuring data practices are transparent, protecting children’s’ privacy, keeping data secure, and collecting sensitive information only with users’ consent.

## CONCLUSION

In sum, tech start-ups

- 1) Have a responsibility to assess how they are collecting user data, and to ensure they abide by applicable regulations (and potentially even self-regulatory obligations) in gathering, transferring and storing that data;
- 2) Need to consider whether they are appropriately obtaining consent from and communicating their policies to customers; and
- 3) Need to have a dedicated privacy team to establish both internal and external procedures for data collection, analytics and security.

In this way, start-ups will best position themselves to avoid a security breach or consumer lawsuit – either of which could be fatal to the life and success of the new business.

## ABOUT THE AUTHORS



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