

Case #6b. WhatsApp Data-Sharing Plan with Facebook

Synopsis: Case #6a invites you to apply a property rights and social contract framework to judge how Facebook should respond to the NGOs and government agencies who are challenging its policies and practices regarding user information.

NOTE: Read this case thoroughly; it is not only about privacy!

By Sam Schechner and Yoree Koh Aug. 29, 2016 Wall Street Journal

European privacy regulators are investigating messaging service **WhatsApp**'s plan to share user information including phone numbers with its parent, **Facebook** Inc., adding to pressure on both sides of the Atlantic over the social media firm's privacy practices. More than 1 billion people in over 180 countries use *WhatsApp* to stay in touch with friends and family, anytime and anywhere. *WhatsApp* is free and offers simple, secure, reliable messaging and calling, available on phones all over the world.

A European Union body called the **Article 29 Working Party** representing the bloc's 28 national data-protection authorities said Monday that its members were following "with great vigilance" changes to WhatsApp's privacy policy last week. The new policy disclosed the plan to share data with Facebook, while giving only existing WhatsApp users the ability to opt out of part of the data-sharing, setting off complaints from privacy activists in the U.S. and Europe.

"What's at stake is individual control of one's data when they are combined by internet giants," the **Article 29 Working Party** said in an emailed statement.

Britain's privacy regulator last week that it was also planning to look into the issue, saying that some users "may be concerned by the lack of control."

Consumer privacy advocates Electronic Privacy Information Center and the **Center for Digital Democracy** in the U.S. on Monday filed a complaint with the **U.S. Federal Trade Commission**, alleging that the change represents an about-face on WhatsApp's previous promise to consumers that "nothing would change" when the social network acquired the messaging startup in 2014.

[NOTE: The FTC is a bipartisan federal agency with a unique dual mission to protect consumers and promote competition.]

The **Electronic Privacy Information Center** and the **Center for Digital Democracy** complaint filed with the FTC charges that the proposed changes to use WhatsApp user data for "marketing practices" constitutes "unfair and deceptive trade practices."

WhatsApp said it “complies with applicable laws,” adding that “we look forward to answering any questions regulators or other stakeholders have about this update.”

The pushback from **European regulators (Article 29 Working Party)** opens a new front in Facebook’s privacy battles. **Germany’s Federal Cartel Office (GFTO)** earlier this year said it is investigating whether Facebook Inc. abuses its dominance as a social network to harvest personal information. France’s privacy watchdog has threatened to fine Facebook Inc. if it doesn’t change how it handles data about its users.

Facebook has said it complies with European privacy laws and has won appeals of privacy cases against it in Belgium and Brussels in recent months as well.

Last week’s change in WhatsApp’s privacy policy struck a chord because the service has long touted its privacy credentials.

Under the new WhatsApp privacy policy, existing users have 30 days to agree to the new sharing, but can as part of that process opt out of letting Facebook use the data for marketing purposes. The complaint alleges that that requirement goes against a 2012 FTC consent order that demands the company use an “opt-in” process when changing its privacy policy.

WhatsApp disputed the characterization, saying that it both asks for content from all users, and offers “industry leading choice to existing users over how their data is used.”

Finally, it is worth noting that in July 2018, Facebook shares dropped 20% in one day when it was revealed that growth of new customers had slow and the company had been slow to take advantage of its new acquisitions like WhatsApp

Questions:

NOTE: To answer these questions, you need to go to the websites of Electronic Privacy Information Center and the Center for Digital Democracy to see their mission and goals and how they operate.

1. (1.5) What property rights conflicts are raised in this case:

Show conflicts in this form:

_____ **right to** _____

versus

_____ **right to** _____

2. (2) Referring where appropriate to the rights issues identified in Q1,
 - (a) how does WhatsApp's define its social contract?
 - (b) how do the NGOs define WhatsApp's social contract?

3. (2) If you were WhatsApp, what would be your response to Electronic Privacy Information Center and the Center for Digital Democracy complaint filed with the FTC charges that the proposed changes to use WhatsApp user data for "marketing practices" constitutes "unfair and deceptive trade practices?"
 - (a) in the FTC and GFTO and to the Article 29 Working Party?
 - (b) in the media (as that is where this fight will also proceed)?

4. (2.5) Would there be a benefit to WhatsApp of trying to sit down with Electronic Privacy Information Center and the Center for Digital Democracy to develop a policy both the NGOs and WhatsApp could agree on, or is the adversarial nature of their relationship inevitable? **In answering this question, you must refer to the discussion of NGO strategy in Module 6 and the websites of the two NGOs.**

Maximum length 400 words