

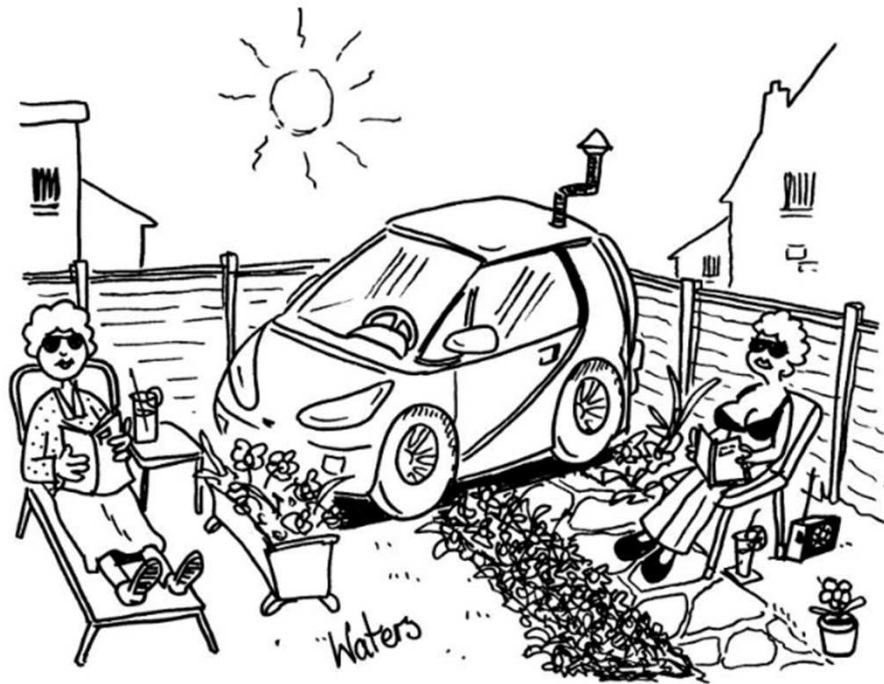


Privacy Update, Risks and Opportunities
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Privacy and Cars



Some folk treat their smart car as if it were their home.

- Geolocation information about a vehicle's location
- Biometric data about a driver's physical characteristics
- Details about driving behaviour

Personal Information = Information About an Identifiable Individual



PIPEDA #2010-006, *Rapid-oil-change shop unnecessarily scanned customers' vehicle registration information*



X. c. Triangle Investigation Agency Ltd., no 04 18 50, 31 janvier 2007, C. Constant
Syndicat de Autobus Terremont Itée (CSN) c. Autobus Terremont Itée, 2010 QCCA 1050



Privacy Investigation: The Toronto Police Service's use of Mobile Licence Plate Technology to find Stolen Vehicles (April 29, 2003)



Personal Information = Information About an Identifiable Individual (cont'd)



- British Columbia Information and Privacy Commissioner (“BCIPC”), Investigation Report F12-04 - Use of *Automated Licence Plate Recognition Technology by the Victoria Police Department (Re)*, 2012 BCIPC 23 (CanLII).
- *Leon’s Furniture Limited v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94 (CanLII).





OVERVIEW OF RECENT AMENDMENTS ON CONSENT

Consent under PIPEDA

- May vary (implied or express), depending on the **sensitivity** of information
- The “**reasonable expectations**” of the individual are also relevant.
- The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, “**except where inappropriate**”
- s. 5 (3) includes a catch-all reasonableness test:
 - “An organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances”

Recent Amendments – Bill S-4 *Digital Privacy Act*

Original wording (4.3.2, schedule 1)

To make the consent meaningful, the purposes must be stated in such a manner that the **individual can reasonably understand** how the information will be used or disclosed

New wording post S-4 (6.1 PIPEDA)

The consent of an individual is only valid **if it is reasonable to expect** that an individual to whom the organization's activities are directed would understand the nature, purpose and consequences of the collection, use or disclosure of the personal information to which he or she is consenting

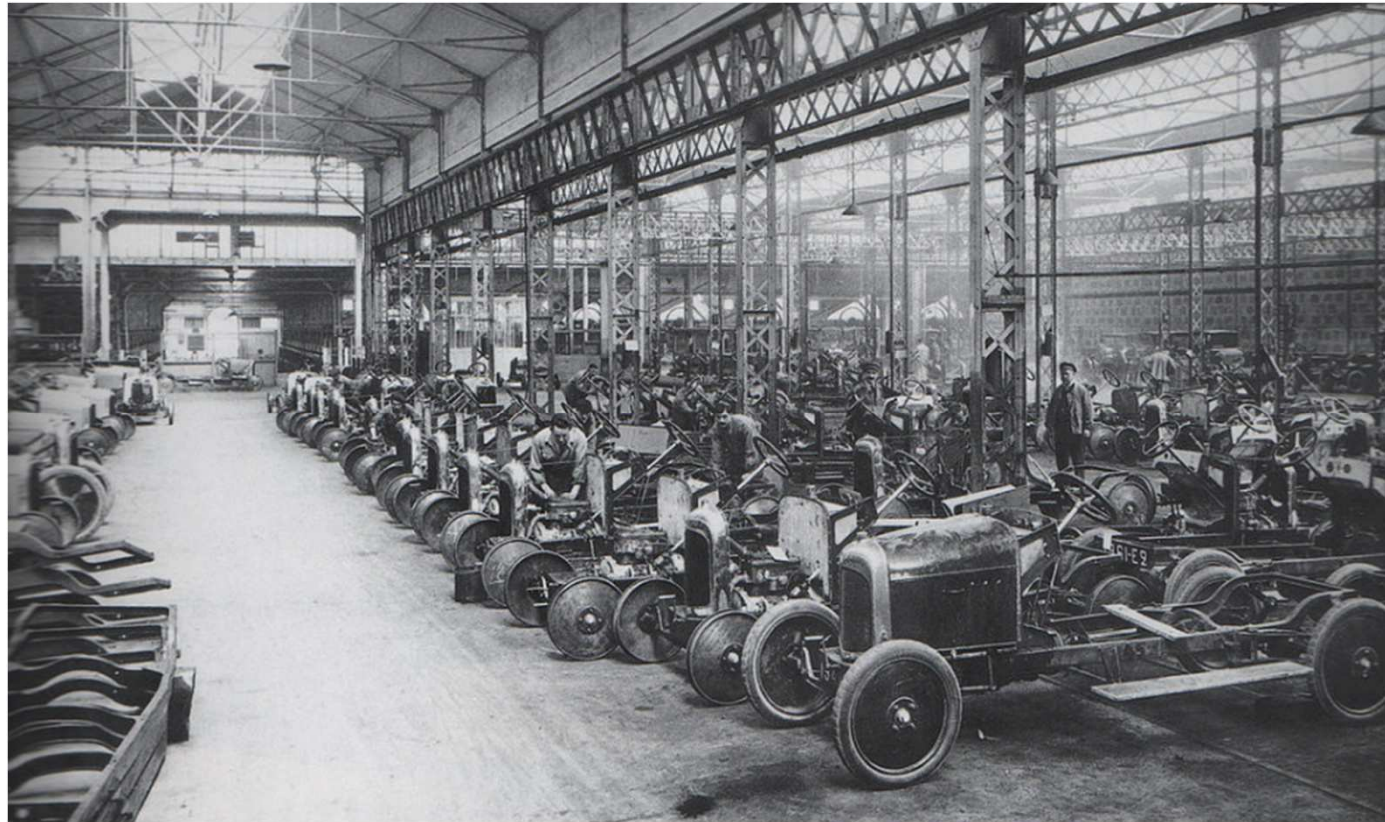
Challenges with Consent-Based Model

- Inadequacy of privacy policies as a means of communicating choices
- Consent challenged by technological changes



Consultation on Consent
(May – July 2016)

Implications for the Automotive Industry?



Transparency and Obtaining Consent

“A major challenge in this environment is how to convey meaningful information about privacy risks in order to inform the user’s decision whether or not to provide consent.(...). **Research funded by the OPC on the connected car found privacy information provided to consumers to be so woefully inadequate as to make meaningful consent impossible.**”

Office of the Privacy Commissioner, Consent and Privacy (May 2016) at p. 8.



Marketing Activities

- Estimates of remaining oil life
- Tire pressure calculations



- Information about collisions and driving information (speed)
- GPS geo-location information and past destinations
- Driver behaviour

Alliance of Automobile Manufacturers :

“For many, information about where and how they drive is private”

Managing Law Enforcement Requests

- **Government agencies**
 - Traffic violations being issued without law enforcement officers on the scene
 - Federal agencies having the ability to track the drivers' activities in a car or driver behaviour
- **Emergency services**



Insurance Industry and Legal Claims



- New **PIPEDA** s. 7(3)(d.1) and (d.2) allow disclosure of personal information without consent to another organization:
 - To investigate a breach of an agreement or a contravention of a law **where it is reasonable to expect that obtaining the consent from the individual for the disclosure would compromise the investigation**
 - For the purposes of detecting or suppressing fraud





BIG DATA RISKS AND OPPORTUNITIES

Business Analytics and Data Flow Scenarios

Scenario	Collection	Process	Use	Consent Required?
1	From individual	Analyzed (individual or aggregate basis)	Re-applied and used on same individual	Probably
2 ↓	From individual	Analyzed in aggregate	Knowledge and trend shared with third parties (no use)	No
3	in aggregate, knowledge, trends	(May be analyzed)	Trend applied and used on individual basis	Maybe



GETTING READY: MANDATORY BREACH NOTIFICATION REQUIREMENTS

New Breach Notification Requirement

- If reasonable to believe that the breach creates a real risk of significant harm to an individual
- “**Significant harm**”: bodily harm, humiliation, damage to reputation or relationships, loss of employment, business or professional opportunities, financial loss, ~~identity theft, negative effects on the credit record and damage to or loss of property~~
- Failing to report: fines of CAD\$100,000 (indictable offence) and CAD \$10,000 (summary conviction).





UPCOMING PRIVACY ISSUES

Privacy Issues to Keep on Your Radar

- **Internet of things**
- **Wearables**
- **Autonomous vehicles**
 - Data from autonomous vehicles could convey sensitive information
 - Cameras used to monitor the driver



Questions?

THANK YOU!

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