

A Care Ethics Analysis on the Morality of the We-Vibe Producers

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On my honor as a University student, I have neither given nor received unauthorized aid on this assignment as defined by the Honor Guidelines for Thesis-Related Assignments.

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Introduction

In 2016, the smart sex toy company We-Vibe and its parent, Standard Innovation, were sued by a customer alleging that her smart device collected and transmitted intimate, personally-identifiable data without her knowledge. The smart sex toy “spying” on its users made national headlines in the midst of growing suspicion of Internet of Things devices in general. The We-Vibe scandal is often used as an example of the need for informed consent, viewing the situation from a legal perspective. Similar privacy-related circumstances with other Internet of Things devices also look into the legality of companies’ actions or serve to warn users about potential privacy violations.

These views, however, fail to consider the morality of the We-Vibe producers’ actions in this context. If we neglect the moral dimensions to this problem, then we lose the opportunity to understand, as potential producers and users, the moral challenges associated with the growing and unregulated area of the Internet of Things. I will demonstrate that We-Vibe producers’ actions were immoral by analyzing the specific practices of data collection and identifiability, which failed to provide the care users expected in the situation. The care ethics framework will provide a structured way to analyze the morality of the producers by providing specific criteria to evaluate their actions.

Background

To start broadly, the Internet of Things (IOT) is a term that refers to “smart” devices that combine sensors, actuators, and information processors with communication protocols, enabling “increased automation or action-at-a-distance” (Allhoff, 2018, p. 55). IOT is rapidly increasing; research states, “by 2020, 20–50 billion things are estimated to be connected as part of the IoT”

(Allhoff, 2018, pg 55). Common examples of other Internet of Things devices are smart speakers that can respond to users when spoken to or doorknobs that can be locked from a user's app. We-Vibe's devices were considered to be in the IoT because they used the Bluetooth communication protocol to pair with the corresponding app, We-Connect, to enable remote control of the device.

The 2016 class action lawsuit filed against Standard Innovation alleged that the device "wrongfully collected highly sensitive personal information about its customers' usage habits" (*We-Vibe Settlement*, 2017 p. 82). Through the We-Connect app, the company was able to collect data on "the date and time of each use, the vibration intensity level selected by the user, the vibration mode or pattern selected by the user and, where available, the email address of customers who registered with We-Connect" (*We-Vibe Settlement*, 2017, p.84). Standard Innovation ultimately settled the suit, updating its privacy policy and agreeing to pay \$3.7 million to customers who used the We-Connect app with the We-Vibe products (Burns, 2017).

Literature Review

As the Internet of Things has exploded in popularity, related research has also experienced a good deal of growth. Ethical issues within IoT specifically is a growing domain, as new research on the safety and health-related consequences of it has become more prominent. The majority of current analyses focus on the possible ethical issues that arise or how the IoT space should be structured for optimal user and producer happiness. If the IoT producers' actions are analyzed, it is only from a legal or user-perception stand point, which fails to examine the morality of the producer's decisions.

In *The Internet of Things: Foundational Ethical Issues*, Allhoff and Henschke discuss five issues that are present across all IoT applications: informed consent, privacy, information

security, physical security, and trust. They briefly discuss all five problems and how they could manifest themselves. Their final note is on the interconnectedness of these five issues and the possibility for even more issues stemming from the existing ones. While they go so far as to mention the We-Vibe case, they do so only through the legal lens of We-Vibe failing to inform users about its data collection practices, with no mention of the morality of the producers.

From a broader perspective, *Information Exposure from Consumer IoT Devices* discusses a series of experiments performed by tracking common IoT devices and where their data goes. The main takeaways were that 89% of devices communicate to parties other than the device producers and that “a passive eavesdropper can reliably infer user and device behavior” from 37% of devices (Ren, 2019, p. 1). While they discovered this alarming rate of security and privacy issues in basic IoT devices, the authors stopped at these observations, making no moral judgement of the producers agreeing to share customer data with multiple other parties.

Uncovering where IoT devices are sending collected data and highlighting foundational ethical issues of this space are important to forming this area of technology. However, research of ethical analysis can provide a better understanding of other, less defined, aspects of IoT. Specifically, analyzing the morality of the producers in these situations will provide significant value as this field continues to grow and change. By focusing on the aforementioned We-Vibe lawsuit and using a framework of care ethics, I seek to provide a descriptive and normative assessment of the morality of the producer’s actions.

Conceptual Framework

Objective analysis of the morality of We-Vibe and its data-collecting actions is made possible by utilizing the theory of care ethics. With a focus on empathy for those someone has a

relationship with, care ethics will demonstrate these duties of care that were expected of the We-Vibe producers.

Relatively new to the ethical theory landscape, care ethics was developed in 1982 by Carol Gilligan and Nel Noddings and differs greatly from the pre-existing field of normative ethics (van de Poel, 2011). Instead of blanket rules, care ethics focuses on the interconnectivity and relationships within networks of people to determine the moral obligations of those involved. The principal idea of this framework is that people owe a “duty of care” to those they are in relationship with (van de Poel, 2011). The extent of this duty depends on the context of each relationship.

Explicitly defining care is dependent on those contexts, but some overarching criteria have been made by leading theorists in the field. Joan Tronto, one the most well-known scholars of care ethics, defined care as, ““a species of activity that includes everything we do to maintain, contain, and repair our 'world' so that we can live in it as well as possible. That world includes our bodies, ourselves, and our environment”” (Sander-Staudt, n.d.). To lessen the vagueness of that definition, Tronto identified different phases of care itself. She defined them as:

- (1) attentiveness, a proclivity to become aware of need;
- (2) responsibility, a willingness to respond and take care of need;
- (3) competence, the skill of providing good and successful care; and
- (4) responsiveness, consideration of the position of others as they see it and recognition of the potential for abuse in care. (Sander-Staudt, n.d.)

In order to have successfully given “good care,” all four elements of care must be completed and “integrated into an appropriate whole” (Tronto, 1993, p. 136).

In the fourth step, the mention of the “position of others” references the necessary consideration of the power dynamics in the relationship when determining the morality of actions. Identifying vulnerability and dependence in a relationship is a crucial part to responsiveness. Take, for example, a situation between a doctor and a patient. The doctor not only should administer good care, but should be aware of the authoritative position he or she has in the patient’s mind. This awareness will manifest itself as extra caution on the doctor’s behalf to ensure the appropriate care is given in a manner that increases its potential for success.

For my research paper, I will apply the conceptual framework of care ethics to the We-Vibe case in order to enable a clearer analysis of the morality of the producers. The subsequent sections will define the relationship of those involved with respect to care and will walk the case through all four steps of care to see whether appropriate care was given.

Analysis

The producers at We-Vibe failed to integrate all four phases of care in their treatment of device users. Particularly, both their failure to fully disclose their use of sensitive data and their deception on the identifiability of the data disregarded multiple elements of the care ethics framework. Since all four elements are needed to constitute “good care,” the lack of even a single element renders one’s actions immoral. The following paragraphs individually analyze the collection and lack of anonymization of users’ data in regards to the criteria for each element of care ethics.

Data Collection

We-Vibe’s action of collecting intimate user data without users’ awareness was immoral when analyzing the situation with care ethics. In order to understand the moral issue of collecting

data, additional background is needed. By pairing the We-Connect app to We-Vibe devices, We-Vibe was able to intercept communications between phone and device. It was through this interception that data surrounding the vibration setting, date, and time of use was collected. This was done without the users' consent and in spite of the producers' awareness of the sensitive nature of this data.

The first phase in the care ethics framework that I will use to analyze the data collection practice is "awareness." In a statement in response to the looming lawsuit, the Marketing Communication Manager at We-Vibe, Denny Alexander, said, "given the intimate nature of our products, the privacy and security of our customers' data is of utmost importance to our company" (Channick, 2016). Anderson's mention of the "intimate nature" of the devices and customer data indicates We-Vibe's awareness of the taboo and private culture of their industry. This awareness does address the first phase of the care ethics framework, which stipulates that a need for care must first be recognized. Tronto summarizes that, "if we are not attentive to the needs of others, then we cannot possibly address those needs" (1993, p. 127). By stating the mindfulness of the cultural sentiments on its area of the market, Anderson shows that We-Vibe was alert to the users' need for discretion with their sensitive devices and data.

That being said, awareness becomes useless if it is not followed by the next phase of care ethics: responsibility. Defined as "a willingness to respond and take care of need" and being "embedded in a set of implicit cultural practices," We-Vibe's failure to act on the customers' implicit practice of discretion directly violated the element of responsibility and appears in its own privacy policy (Sander-Staudt, n.d.; Tronto, 1993, p. 132). We-Vibe's privacy policy prior to the lawsuit said that, "like most websites and apps, we gather "cookies" and certain other information automatically and store it in log files to maximize your website and app experience"

(2016). Important in this quotation is the “like most websites and apps” part, since it does not mention the connection to the device—misleading the users on the type of data collected. Data collected from a sports reporting app, for example, will have significantly less cultural sensitivity than an app that controls a sex toy; and it would be reasonable to expect that the two would have different data collection practices. Additionally, the “certain other information” is pointedly vague and downplays the intimacy of the data it was collecting. We-Vibe producers’ misleading and vague privacy policy on the type of data they collect is decidedly not on par with the transparency levels that customers needed, which indicates that We-Vibe failed to demonstrate the second phase of care.

While failing the second element of care ethics ensures the failure of the remaining two elements, both elements deserve their own analysis. The third phase of the framework addresses the competence of the care-giver, positing that “good care” demands *appropriate* response to identified needs (Tronto, 1993). Given the presence of a class action lawsuit over its data collection, it is sufficed to say that the care-receivers (the users) did not agree with the competence of We-Vibe in addressing their need. In an exhibit of this lawsuit, the prosecutors make the point that:

[The] Defendant never obtained consent from any of its customers before intercepting, monitoring, collecting, and transmitting their Usage Information. To the contrary, Defendant concealed its actual data collection policies from its customers knowing (i) that a personal vibrator that monitors, collects, and transmits highly sensitive and intimate usage data back to the manufacturer is worth significantly less than a personal vibrator that does not, and (ii) most, if not all, of its customers would not have purchased a We-

Vibe in the first place had they known that it would monitor, collect, and transmit their Usage Information. (*N.P. v Standard Innovation*, 2016, p. 181)

Drawing attention to point two of the above quotation further highlights the failure of We-Vibe to offer competent care to its customers. If users would not have purchased the device had they known about the data collection practices, then they should have been aware up front about the device so they could make their preferred decision. We-Vibe's "concealment" of its practices was not the appropriate way of addressing the user's need for sensitivity; this failure to successfully care rendered their care-giving incompetent.

The last element of the care ethics framework focuses on the power dynamics inherent within relationships of care and the responsiveness of the care-giver. We-Vibe, wielding the power in this producer-consumer relationship, needed to be "alert to the possibilities for abuse that arise" with the vulnerabilities of creating products for people to use (Tronto, 1993, p. 135). The producers have the power as the care-giver in the producer-consumer relationship because the consumers are reliant on them for, in this case, a functioning device that upholds their implicit cultural practices. This introduces an aspect of vulnerability for customers because they have to trust the producers to truthfully deliver on those ideals. While Anderson mentioned the alertness to the sensitivity of its devices, the company's lack of informed consent and its concealment of data practices, as mentioned in the excerpt above, did not address the user's need of privacy and actually demonstrated its abuse of power. Knowing that what they were doing was against customers' wishes and going so far as to "conceal" them suggests that the We-Vibe producers did not simply ignore the possibility of abuse, but knowingly took advantage of their power in the relationship, which constitutes a failure of the final element of care.

I have argued that collecting sensitive data without informing the users is immoral. A statement from We-Vibe's Marketing Communication Manager, We-Vibe's privacy policy, and the class action lawsuit displays the failure to address each element of care ethics. However, some might think that this data collection is necessary for the company to provide good care to its users via data-driven improved products. In fact, We-Vibe itself took up a similar stance, with Alexander mentioning to a Forbes Magazine contributor,

“It's a private, insular world, [mostly] without the benefit of consumer insights,”

Alexander said. When it comes to data on users' preferred settings and such, a mass-aggregated version serves "only to validate and reaffirm" what designers have previously learned from experts and testers, he added. “It gives us a general sense of users' [vibration] intensity levels, steadiness of mode, and whether we're marketing to the right people.” (Burns, 2017)

The “private, insular world” of the sex toy industry makes it harder for producers to understand what exactly their customers want or like in a product. As with most product development processes, data-driven customer feedback is crucial to improving marketing and the product itself—ultimately to increase the customer's satisfaction with it.

While product improvements are valuable, it does not provide a valid enough argument for secretly collecting extremely personal and intimate information from unwitting users. In fact, this view fails to consider the producer-consumer relationship of care We-Vibe was engaged in with its users. As Anderson mentioned, We-Vibe does have alternative ways of gaining insight into customer preferences by way of “experts and testers.” Though it may not be as robust as customer data, it does not violate the users' cultural practices nor abuses the power We-Vibe has in the situation. This means that We-Vibe had alternative means of getting product feedback yet

still chose to record users' device data without their consent. Not offering users the choice or awareness of the data collection practices abused the power We-Vibe had by producing the device. Thus, I stand by my original claim on the immorality of the We-Vibe producers to secretly collect data from their devices.

Identifiability

Another aspect of We-Vibe's smart sex toy privacy scandal was the falsehoods surrounding the identifiability of the data collected from the devices. Making the data personally identifiable violates the moral standards set by the care ethics framework. For reference, the data that was collected each time the device was used included the user's email address in the record. This instance is in direct contradiction to We-Vibe's own privacy policy, which, when describing how collected data was used, stated, "We use this information in the aggregate and it will not be traced to an individual" (We-Vibe, 2016). Not being individually traceable, like the policy says, does not align with the presence of customers' emails in the data logs. Applying the four phases of the care ethics framework to the data identifiability will highlight, at a finer level, the immorality of the We-Vibe producers in this situation.

The first phase of care ethics demands that the care-givers were aware of the need of the care-receivers. We-Vibe's explicit mention of data anonymity in its insistence that "it will not be traced to an individual" suggests that it was aware of customers' desire for discretion, given that the extension of the sentence was not entirely necessary. The first part of that sentence, using "information in the aggregate," implicitly suggests that individual-level data will not be used or available. Therefore, the following confirmation of lack of traceability further emphasizes that We-Vibe producers were aware of the customers' need for anonymity of data, which sufficiently addresses the first element of care ethics.

The second element of care ethics regards actually responding to the need that was brought to attention. Referencing a statement posted to We-Vibe's blog shows that We-Vibe did indeed use the information in aggregate form. The related part of the post wrote, "As a matter of practice, we use this data in an aggregate, non-identifiable form. ... And vibration intensity data is used for the purposes of helping us better understand how—in the aggregate—our product features are utilized" (We-Vibe, 2016). Given the emphasis on "aggregate" in two different nearby sentences and the fact that this post came from the company itself, it can be assumed that We-Vibe actually followed this practice of aggregation. This aggregation was used by We-Vibe in order to address the customers' need of anonymity, which demonstrates We-Vibe taking responsibility for the known need. The We-Vibe producers' willingness to respond to the users' need they identified successfully addresses the second phase of care ethics.

The third phase of care ethics is when the producers run into problems. Here, the producers are expected not only to provide care but also to have that care be adequate and competent. And it is that definition of "good care" that the We-Vibe producers' failed to achieve with respect to their handling of users' need for anonymity. The plaintiffs' motion for preliminary approval of class action settlement details more of the user sentiment surrounding this mishandling.

Notwithstanding these representations of security and confidentiality, Standard Innovation collected individual-level usage information—often tied to users' personally identifiable email addresses—and as a result, Plaintiffs allege Standard Innovation breached its customers' trust, devalued their purchases (given that few, if any, consumers would knowingly purchase a vibrator that was subject to constant surveillance), and violated federal and state law in the process. (*We-Vibe Settlement*, 2017, p.84-85)

The plaintiff's mention of the individual-level of data collection and subsequent feelings of mistrust by the users indicates that the users did not believe that aggregation was enough to anonymize the clearly identifiable data. Through the sentiment expressed in the settlement document, the care-receivers did not believe that We-Vibe's response of aggregation to the need of anonymity constituted successful care. Thus, We-Vibe failed the competency phase of care ethics.

That excerpt from the motion for settlement highlights not only lack of competency, but also lack of responsiveness, the fourth phase of care ethics. "Breaching customers' trust" and "devaluing their purchase"—not to mention threats of illegality—are powerful ways to describe how the users felt taken advantage of in their vulnerable position as the consumer in the relationship. As a producer, We-Vibe had the basic responsibility to create a product that consumers could trust and would not regret purchasing. From the plaintiff's claim, it is clear to see that the customers regretted their use of the We-Vibe products—indicating We-Vibe's failure as a producer. By taking advantage of the power dynamic and ignoring the abuse of user vulnerability, We-Vibe failed the fourth and final step of responsiveness in the care ethics framework, rendering its actions immoral.

Conclusion

Though We-Vibe eventually settled the case, the morality of the producers was never called into question during that time. I have sought to rectify that negligence by examining their actions through the lens of care ethics. I have argued that it was immoral for the producers to collect data that was personally identifiable. Especially relevant as the Internet of Things increases its presence, understanding the power dynamics in a producer-consumer relationship

and potential immorality is critical for any potential user or producer to be aware of. The four phases of the care ethics framework can help provide a means to judge potential courses of action for producers, or the morality of products for consumers, ultimately promoting ethical decisions from both sides of the equation.

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