

# The Privacy Struggle: How Consumers Advocate for Change

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## **The Privacy Struggle: How Consumers Advocate for Change**

Today, personal data is collected, processed, and distributed in a plethora of ways. Increasingly complex, scalable, and distributed technologies such as data mining, browser cookies, computer vision, mobile apps, and biometrics are just a few among many such methods. Personal data may enable both corporations and government to provide value to consumers and society, but also provide opportunities for misuse and intrusion of privacy. Most consumers readily trust their data to companies, exposing themselves to leaks of private information, or identity theft. Between 2017 and 2020, over 8 billion records were breached; many held sensitive data such as medical records or bank information (Puranik, 2019). In the Facebook-Cambridge Analytica Scandal, both leaked and sold consumer information was used to influence political processes (Confessore, 2018). In 2013, Edward Snowden exposed information about the National Security Agency's surveillance programs and apparent intrusion of personal privacy (Greenwald et al., 2013). The ways in which consumers organize and rise to challenge the most intrusive data practices are constantly evolving and play an important role in holding government and corporations accountable.

In the first two decades after the internet took on a recognizable form in 1990, privacy advocates lacked a common cause and largely belonged either to disorganized activist networks or acted alone with various strategies. In the past decade, however, high-profile incidents such as the Snowden leaks have helped privacy advocates bolster their message and gain a critical mass of concerned consumers who care about data privacy. Organized advocacy groups, such as Californians for Consumer Privacy and Privacy International, work together as allies to cause legislative change (Carson, 2013). New policies imposed by regulatory organizations and governments such as CCPA and GDPR have led to the professionalization of the privacy

industry, the emergence of various cybersecurity tech companies, and growing numbers of privacy ombudsmen investigating corporations (Bolson, 2018). While their main function remains as an intermediary between consumers and governments for policy change, privacy advocacy groups also hold the power to influence consumers' choices through media. Initially, increased public awareness of data privacy issues generated by high-profile leaks gave privacy advocacy groups legitimacy. Now, success for privacy advocacy groups largely depends on transmitting messages that resonate with the broader public through media. To keep pace with technological innovations, privacy advocates, privacy professionals, and official regulators must work together to keep set data protection standards and prevent data misuse.

## **Review of Research**

Researchers have studied the competition to set data privacy standards. Colin Bennet (2008) analyzes the individuals and groups worldwide who challenged intrusive government and corporate surveillance practices before 2008. Through interviews with self-identified privacy advocates, Bennet explores who they are, how they organize and define the privacy problem, and the strategies they use to create change. Bennet credits a "group-government intermediation" pattern for the development of privacy rights but also notes that these groups are often disparate. He argues that, unlike the human rights movement, privacy advocates do not constitute a uniform movement as they lack a common cause. Finally, he argues that if privacy advocates can more effectively broadcast their message to the public, these "loose coalitions" may transform into an organized social movement worldwide. Much of Bennet's argument has proven to be right in the past decade.

Obar, Zube, and Lampe (2013) analyze how advocacy groups in the United States use social media to facilitate civic engagement and collective action. Through a survey of 169 individuals belonging to 53 different advocacy groups across various interest areas, they identify which social media platforms are used and how they aid advocacy groups in their organizational goals. Obar, Zube, and Lampe argue that social media creates an “engaging feedback loop” for advocacies that not only strengthens outreach efforts but also allows for fast collective mobilization. Facebook and Twitter ranked as the top two most used social media platforms for both community outreach and mobilization and Youtube ranked last for both in their survey. Obar, Zube, and Lampe found Youtube’s rank to be surprising, as they assumed carefully edited videos would be effective media to spread information. They suggest that the shorter videos, short text, and greater networking capabilities of Facebook and Twitter are possible explanations for this result. They also found that the cost-effectiveness of social media, enabling advocacies to do more for less, provides a significant advantage over the traditional tools of advocacy. Obar, Zube, and Lampe speculate that the increased engagement and mobilization from social media may lead to real political and ideological change and suggest further studies can build on their research. Since 2013, social media platforms such as Facebook and Twitter have grown both in size and functionality. The trends identified by Obar, Zube, and Lampe are precursors to the trigger words used by advocacy groups on media platforms today.

Several other researchers have studied consumers and advocacy groups in their struggles for data privacy. In a study of consumers, government agencies, companies, and advocacies, Hemphill (2019) concludes that self-regulatory organizations have advantages over public regulation in the tech industry. Acquisti and Loewenstein (2013) found that consumers report caring about their privacy, but the actual value they place on the privacy of their data varies

greatly depending on the default options provided by tech companies. Examining the interest group struggle that culminated in CCPA in 2018, Alpert (2020) maintains that big tech is still insufficiently regulated. Hurwitz and Jaffer (2020) contend that disorganized privacy advocates seeking immediate change often push positions that are counterproductive in the long run. These studies all highlight important issues and trends that consumers and advocacy groups must consider when challenging intrusive data practices and holding corporations accountable.

### **The rise of civil society privacy advocacy groups**

Data privacy is an issue of considerable scope that involves a multitude of interconnected political and social issues. How privacy advocates organize mirrors this diversity of goals, causing advocacy structures to vary widely across the world. Individual activists, organized advocacy groups, and government regulators all play important roles in the fight against companies and business associations to set data protection standards, but their relative importance varies based on political systems. Many countries established small data protection and privacy agencies around the turn of the century in anticipation of privacy issues after the proliferation of the internet. Some of these agencies have strong regulatory powers while others are small advisory-type bodies. The number of privacy-specific advocacy groups in a country correlates with the strength of the country's default privacy regulatory agency (Bennet, 2008). For example, in Canada, Australia, and most European countries government agencies are still the primary promoters of privacy standards and may choose to involve certain advocacy groups. Other countries, such as the United States, do not have any such privacy-specific regulatory agencies. In these countries, civil society advocacy groups, usually non-profit NGOs, are the main promoters of privacy and new policy development.

In the first two decades after the advent of the internet in 1990, privacy advocates lacked a common cause and largely belonged either to fragmented activist networks or acted alone with various strategies. Many early campaigns against privacy infractions were organized in isolation by individuals who took the initiative to advocate for what they believed to be the public good. For example, Mark Rotenberg, the eventual founder of the Electronic Privacy Information Center (EPIC), began his journey as a privacy advocate by campaigning against the Lotus MarketPlace, which collected information on 120 million consumers (Gurak, 1999). Simon Davies, a British academic, initiated the campaign against Australia Card in the 1990s (Davies, 2004). Eventually, consumers concerned about surveillance and privacy issues such as Rotenberg and Davies began to form small circles of self-proclaimed privacy advocates. In an interview with Colin Bennett, Davies, the founder of Privacy International (PI), describes the initial meetings of PI as “informal conversations among disparate individuals about the need for international [privacy] coordination” (Bennett, 2008). In his personal blog, Davies describes the initial vision of PI as a “global watchdog” umbrella organization that would work with privacy advocates worldwide and assist in building and strengthening privacy advocacy groups (Davies, 2015). Despite this vision, PI’s membership base did not grow significantly in the late 1990s and 2000s. The organizational structure they sought to establish did not come to fruition (Davies, 2015; Bennett, 2008). Gus Hosein, an early member of PI, described the organization before 2006 as “a small fish trying to pretend it’s a big one... it is in reality just three people and we all do our own thing trying to keep up on all the battles that are going on” (Bennett, 2008). Other privacy advocacy groups such as EPIC, the Privacy Rights Clearinghouse, and many others faced similar challenges to PI before 2008. Their struggles are well documented by Colin Bennett in his book, “The Privacy Advocates: Resisting the Spread of Surveillance.”

In the past decade, high-profile incidents have helped privacy advocates and advocacy groups bolster their message and gain a critical mass of concerned consumers who care about data privacy. In a 2013 interview with the International Association of Privacy Professionals (IAPP), Justin Brookman, the director of the Consumer Privacy Project stated, “five years ago, for example, the public really wasn’t engaged in the conversation about privacy at all...the issues weren’t intuitive to them, and the message wasn’t getting out” (CDT 2016; Carson, 2013). In 2013, Edward Snowden exposed information about the National Security Agency’s (NSA) surveillance programs and apparent intrusion of personal privacy (Greenwald et al., 2013). Brookman suggests that this leaked information about the NSA’s data practices may have helped privacy advocates strengthen their message. Chris Calabrese of the American Civil Liberties Union (ACLU) believes that privacy advocates were hyper-focused on privacy in the wake of the Snowden leaks (ACLU, 2021; Carson, 2013). Chris Hoofnagle, a professor at the Berkeley Center for Law and Technology, suggests that privacy advocacy groups are generally experiencing more influence than they did previously. Referencing his own 2010 study, he argues this change may be because “the most privacy-concerned age group is the 30-to-49-year-olds” who are “now at the point in their careers where they are rising to leadership positions” (Hoofnagle et al, 2010; Carson, 2013). Citing a 2013 partnership of six major advocacy groups, Simon Davies and Colin Bennet conclude that privacy advocates are far more successful than before because they are far more strategic than before (Carson, 2013). Large coalitions of advocacy groups targeting specific goals have replaced disjointed groups with meager financial resources. The European Consumers Organisation (BEUC), which brings together almost 45 consumer rights advocacy groups in 32 countries, is a current example of a successful umbrella organization the likes of which PI was unable to create in the early 2000s. As awareness of

privacy increased, advocates “with interests in privacy politics began to constitute a highly heterogeneous group” (Ruohonen, 2019). Many powerful advocacy organizations not specific to privacy now also include protecting privacy as one of their missions.

The Facebook-Cambridge Analytica Scandal is a more recent incident with similar effects to the Snowden leaks. In this scandal, both leaked and sold consumer information was used to influence political processes (Lapowsky, 2019). Cameron Kerry, the leader of the Obama administration task force which established the Consumer Privacy Bill of Rights, believes the “Cambridge Analytica stories have unleashed even more intense public attention [than the Snowden leaks]” (Kerry, 2018). In the wake of the scandal, the hashtags “#DeleteFacebook” and “#WheresZuck” began trending on Twitter. Many celebrities such as Cher advocated for boycotting Facebook and demanded accountability from Mark Zuckerberg, Facebook’s CEO (Confessore, 2018). This Facebook scandal opened an opportunity for privacy advocates to harness the heightened public awareness and anger into a movement for new privacy policies. Alastair Mactaggart, a California real estate developer, credits a conversation with a Google engineer about big tech’s data collection practices for inspiring his drive to cause change (Fung, 2019). Despite being a political novice, Mactaggart went on to found Californians for Consumer Privacy, the advocacy group that sponsored the California Consumer Privacy Act ballot referendum signed by more than 629,000 Californians (CCP, 2020; California DOJ, 2020). Scandals, data breaches, and privacy leaks have only become more frequent in recent years. The public backlash against tech companies that collect and sell personal data has been termed “techlash.” Techlash continues to give privacy advocacy groups legitimacy and drive policy change worldwide.



## **GDPR and CCPA: how consumer advocacy influences legislation**

The European Union has long set the standards for data protection, internet privacy, and surveillance. By 1995 almost all EU member countries had an official data protection authority. The EU assembled the Article 29 Working Party, consisting of one representative from each of these authorities, to create the 1995 European Data Protection Directive (Directive 95/46/EC), which gave individuals the right to control the collection and distribution of their personal data (EDPS, 2021). This directive became the de facto international standard because it applied equally to any company doing business in the EU. In the mid-2000s, new data collection methods allowed companies and business associations (CBAs) to exploit loopholes in Directive 95/46/EC and create “data havens” (Atikcan et al., 2019). The Article 29 Working Party reported that the “rapid development of information technology makes it necessary to check and to adapt the instruments of data protection” (EC, 2006). The United Kingdom Information Commissioner’s Office reported that the directive “will not suffice in the long term... in the face of new challenges, including globalisation, the ongoing march of technological capability and the changing ways that personal data is used” (Robinson et al., 2009). The EU created the European Data Protection Supervisor (EDPS) to update the directive. A decade-long struggle ensued between CBAs, EU data protection authorities, and advocacy groups which resulted in the General Data Protection Regulation (GDPR).

Privacy advocacy groups influenced GDPR by surveying public opinion, evaluating CBA data practices, and reporting to public regulatory authorities. In 2011, EDPS requested several advocacy groups to review an initial draft of GDPR. BEUC conducted a consumer survey in which “64% of users [felt] that information on the processing of their data is not yet satisfactory” (BEUC, 2011). BEUC suggested modifications such as a “privacy and security by default

principle” (BEUC, 2011). A coalition of 22 U.S. consumer privacy advocacy groups suggested EDPS further “restrict the circumstances for ‘blanket’ consent [on webpages]” (USCO, 2012). Several European advocacies suggested incentivizing tech industry self-regulation. After many iterations of negotiations between EDPS and advocacy groups, the European Parliament voted in plenary by a 621-10-22 margin to support a draft of GDPR in 2014 (EDPS, 2021). Many CBAs including Google, Microsoft, IBM, Insurance Europe, and European Banking Federation began lobbying against GDPR and proposing amendments. CBAs’ lobbying budgets outweighed those of advocacy groups by over 194 million euros (Ruohonen, 2019). However, advocacy groups had more legitimacy from the public and political backing than CBA lobbyists (Ruohonen, 2019). Despite CBAs’ efforts, little change was made to GDPR. It was adopted by the EU in 2016 and went into effect in 2018.

In the United States, advocacy groups must play the primary role to drive legislative change. By exerting social and political pressure, Californians for Consumer Privacy (CCP) fueled the California Consumer Privacy Act (CCPA) from start to finish. In California, corporations spend hundreds of millions of dollars lobbying the state legislature seeking to thwart the public interest and “carve out exemptions for themselves from California law” (Hiltzik, 2020). According to the Constitution of California, as a form of direct democracy, an initiative can be placed on the election ballot by a petition signed by registered voters. Seemingly out of nowhere, Alastair Mactaggart decided to fight back against big tech. He says that “it was literally a shower thought” that inspired him to file his own ballot initiative with the preliminary language of CCPA (Fung, 2019; FPF, 2020). Mactaggart aimed to mimic GDPR. He describes his vision as a “tell me what you know about me, stop selling it, keep it safe” kind of initiative (Luna, 2018). Mactaggart founded CCP in 2018 and funded his ballot initiative himself,

spending almost four million dollars to collect the preliminary 365,880 signatures required to present the initiative to the California state senate (Adler, 2018; FPF; 2020). The state senate revised the initiative into California Senate Bill No. 1121 (S.B. 1121), which passed by a 22-13 vote to be reviewed by the California Assembly (FPF, 2020). CCP was given 180 days to collect approximately 300,000 more signatures to officially place S.B 1121 on the November 2018 California ballot to be voted directly into law by state residents (FPF, 2020). Realizing he needed more support, Mactaggart allied CCP with other advocacy groups to help collect signatures. The Washington Post estimates that corporate opponents spent up to 100 million dollars to campaign against the bill and prevent it from getting the requisite amount of signatures (Inzaurrealde, 2018). Mactaggart describes being fearful of “someone coming along in the dead of night and sticking a knife in [the bill]” (Fung, 2019). Corporate lobbyists were partially successful. They realized that “if voted into law directly by voters through a ballot initiative, the law [would] be much harder to amend than if those same provisions [were] passed by the California Legislature” (FPF, 2020). CCP reported a deal to withdraw the ballot initiative and allow the state legislature to pass the law in 2018. The CCPA went into effect in January 2020. CCP along with a coalition of 34 other advocacy groups petitioned the Federal Trade Commission to pass a nationwide privacy law in 2019 (IAPP, 2020).

The different processes that resulted in GDPR and CCPA reflect the multitude of methods by which advocacy groups influence change. In Europe, official regulatory agencies led the fight for GDPR and *chose* to proactively involve advocacy groups. In the United States, advocacy groups played the primary role in drafting new data protection standards, fighting against corporations who oppose them, and lobbying government regulators to enshrine those standards in law.

## **The professionalization of the privacy industry**

CCPA and GDPR have led to the professionalization of the privacy industry. Various cybersecurity and data management companies have emerged to help companies comply with new privacy policies. John Hughes of IAPP believes “complex requirements these laws place on privacy pros calls for scalable, efficient technology and operational know-how... clearly the market is responding” (Hughes, 2020). In 2016, there were 44 privacy tech vendors in the Privacy Tech Vendor Report (Hughes, 2020). By 2020, there were over 400. For example, SplitByte claims to provide a decentralized data protection method to ensure a true safe harbor for data (SplitByte, 2021). Their technology would allow companies to safely avoid reputation damage from sending notifications to consumers in the event of a major data breach under GDPR. Outside of the entrepreneurial landscape, the number of privacy professionals is also rising. IAPP, the world’s largest network of privacy professionals, reports its membership has grown over 400 percent in the last decade (Bolson, 2018). Official ombudsmen and regulators who investigate potential GDPR violations are growing in numbers as well (Carswell, 2020).

## **Advocacy group influence through media**

Some advocacy groups have identified trigger words that incite strong public reactions and use these to shape public perception. In the struggle for CCPA, public outrage on social media and TV from the Facebook-Cambridge Analytica scandal gave CCP the legitimacy to push CCPA into reality. Some advocacy groups have tried to reverse engineer this process. For example, in January 2021, WhatsApp, a messaging platform owned by Facebook, updated its privacy policy and has faced immense backlash. Multiple advocacy groups, along with a tweet

from Elon Musk, highlighted privacy concerns and encouraged users to switch to competing apps. Soon after, millions of users deleted their WhatsApp accounts and switched to apps like Telegram and Signal. In India, where more than 400 million WhatsApp users live, downloads of WhatsApp fell by thirty percent while alternate messaging apps rose by forty percent (Phartiyal, 2021a). A survey conducted by LocalCircles indicates that only eighteen percent of Indian WhatsApp users may continue to use the platform under the new privacy policy (Soni, 2021). For many users, who also have Facebook accounts, the updated privacy policy makes little difference. However, the trigger words used in the media by influential figures and groups regarding ideas like deception and secrecy were enough to cause mass concern among the public and ditch WhatsApp. Fueled by public concern, multiple petitions were filed in New Delhi courts. On February 24th, 2021 new laws regulating social media companies such as WhatsApp and Facebook were announced (Phartiyal, 2021b; Singh, 2021). Facebook and WhatsApp have indicated they may slightly modify their privacy policies. Considering their significant investments and majority user base in India, a new strategy is likely on the horizon.

## **Conclusion**

As evidenced by GDPR and CCPA, privacy advocates play a crucial role in challenging the most intrusive data practices and building systems to protect consumer privacy. Over the past three decades, privacy advocacy efforts have transformed from disparate groups of activists to a worldwide privacy movement led by advocacy group coalitions. Social media is an effective method to not only spread awareness of privacy issues but also mobilize consumers to demand change. New legislation regulating data practices has created a fast-growing market for privacy tech companies. Because of the COVID-19 pandemic, social and economic dependence on the

internet is greater than ever; hence more data is now being collected than ever. New technology such as quantum computing and 5G offer new ways to collect and misuse data. Concerned consumers, privacy advocates, privacy professionals, and government regulators must continue to work together to hold corporations accountable.

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