

The pandemic has compelled Canadians to use the Internet more than ever – for work, study, information, entertainment, shopping, interacting with others, etc. the Internet gives access to some 1.88 billion websites. 1.2 billion Google searches are conducted each year. 70 million publications are released on WordPress each month. More than 306 billion emails are exchanged daily. Almost 350,000 ephemeral publications are released on Instagram each minute.

Those numbers are dizzying... and worrisome. Indeed, large-scale Internet use has consequences on the exercise of the right to privacy. An unimaginable quantity of personal information is currently collected online, used or sold by companies, whereas the persons concerned have very little control over those activities.

This situation is of ever greater concern to consumers here and elsewhere. Our report offers a Canadian perspective on the issue.

Our study includes an overview of the various definitions and conceptions of privacy as proposed by certain authors or adopted by the European, American and Canadian legal systems. Generally, we observe that personal information protection is now perceived as the dominant and priority aspect of consumer privacy protection online, although the distinction between information considered private and public is more and more complex.

After studying the literature to draw a portrait of consumers' various concerns about their online privacy, and of privacy protection measures and behaviours that consumers can adopt, we report the results of a survey conducted in winter 2020 among 1,500 Canadians and of interviews with some of the respondents. Unsurprisingly, consumers are very concerned about unauthorized access and use of their online personal financial information, and fears of identity theft are ubiquitous. Opinions are less definite and more confused regarding other online privacy risks (tracking and profiling, targeted advertising, spam, dangerous behaviours on social media, etc.).

The paucity of online privacy protection behaviours adopted by consumers is also surprising (and worrisome). Many consumers say they're highly concerned, but feel powerless, convinced they can't really change things, that their personal information is bound to be collected by companies, governments and hackers, however Internet users try to avoid this situation. And the feeling of powerlessness entails at times a certain wilful blindness...

La force d'un réseau

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Consumers have two major defensive weapons: laws protecting personal information in the private sector and confidentiality improvement technologies available online. Our report's chapters on the subject point out important weaknesses in those two resources.

In the case of technologies improving online confidentiality, the problems are mainly related to their very low notoriety. Relatively few Canadians know about private search engines, private Web browsers, password managers or private virtual networks, although using those tools would address some of their concerns. And even less people have used those technologies! Their contribution thus remains marginal. In addition, consumers' attitude to them casts doubt about the situation changing any time soon. Many consumers are distrustful, expressing doubt about the tools' operation or usefulness. Others don't feel competent to use them. The websites of certain providers don't necessarily reassure them or inform them adequately, because the documentation therein is either too incomplete or too complex to be accessible. Nevertheless, our report identifies some providers' excellent initiatives to raise consumers' awareness and inform them.

The four laws pertaining to the private sector present major application limitations, so that some of the rights asserted are somewhat utopian. The central aspect of those laws remains consumers' right to review a company's handling of their personal information. The current laws are flagrantly inadequate for remedying the fact that the unequal balance of power and information between the parties opposes the exercise of that right of review. How can a consumer make informed choices without being able to understand and evaluate the practices of companies requesting his or her consent, and without being able to negotiate with those companies or reject their request without thereby giving up access to the goods, services or contents offered? That consent is very often neither informed nor free.

Lawmakers seem to be aware that the current laws are obsolete. Two bills aiming to reform Quebec and federal laws were tabled in 2020. The first bill was adopted. The second one died on the order paper. Certain additions address or would have addressed consumer concerns, notably regarding the security of personal information held by companies. But other concerns remain unanswered. And the proposed changes barely address consent issues, unfortunately.

After interviewing and obtaining the viewpoints of two professors specializing in the handling of online personal information and in artificial intelligence, we conclude our report with a series of recommendations pertaining mainly to the protection of personal information in the private sector. We identify certain necessary changes to be made, such as adopting an approach that focuses on the recognition and protection of personal rights, and establishing an obligation for companies to provide by default the highest level of personal information protection.

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