



ICTs under scrutiny for breaching user privacy

Information and communication technology (ICT) companies are being increasingly confronted to a dilemma between their legal and social responsibilities. On the one hand, they must abide by laws and administrative requirements in the countries where they operate. This means allowing access to their infrastructures and databases containing private data of their clients as part of countries' exigencies linked with national security and the fight against global terrorism. On the other hand, the social responsibility of these companies entails the prevention of violations as well as complicity in violations to human rights, such as the right to privacy, freedom of expression and the protection of private data. The recent revelations made by Edward Snowden have exacerbated this tension.

Over a year after the first revelations by Edward Snowden in 'The Guardian'¹ and 'Der Spiegel'² on the existence of PRISM and other NSA mass surveillance programmes were made public³, ICT companies continue to face the negative reputational impacts related to failures in protecting users' private data. The mass surveillance programmes used by the American government agencies gather, systematically and indiscriminately, colossal amounts of personal data on individuals, companies and states (including US allies) via the collection and storing of emails, activities on social networks, Skype conversations and messaging, phone calls and related metadata. The massive scale of such data collection constitutes the reason why such agencies have been accused of breaching the right to privacy, a fundamental human right⁴.

Most of the companies involved in these privacy allegations belong to the following three sectors: Software & IT Services North America (33 companies), Telecommunications Europe (26) and Telecommunications North America (9). 15% of companies in the North American Software & IT services sector, 11% in the European Telecom sector, and 22% in the North American Telecom sector were involved in such privacy-breaching allegations. These companies constitute the most profitable companies among their peers in their respective sectors. Issues related to violations of the human right to privacy and freedom of expression are analysed by Vigeo within the Human Rights domain under the 'Respect for the right to privacy and freedom of expression' sustainability driver.

In addition, internet-based services companies can receive requests from government authorities to remove, block, or filter content, or deactivate individual user accounts. This can be ongoing (such as China) or event driven during elections or protests (e.g. Arab Spring).



In this respect, in February 2011, Vigeo issued a positive alert to investors when Google enabled Egyptians to use the Twitter service without using casual internet services, which were shut down in Egypt by the government. This illustrates how freedom of expression is also an important issue for the ICT sector, that is commonly linked with the right to privacy in the literature.

Following this, in March 2013, the Global Network Initiative announced the launch of a two-year collaboration on freedom of expression and privacy with the Telecommunications Industry Dialogue, a group of telecom operators created with the objective of forming a dialogue with key stakeholders based on a set of Guiding Principles on telecommunications and freedom of expression and privacy. In September 2014, the French State Council also published a report⁵, proposing, among others, the support of collective action intended to stop infringement to personal data and the development of devices and clear rules for complaints and dispute resolution related to the use of digital technologies.

Companies breaching their customers' right to privacy due to non-transparent cooperation with governmental agencies that are accused of mass surveillance activities may constitute serious reputational risks. In addition, for the North American ICT sector, there are increasing legal risks, as trials have already been conducted in the wake of the PRISM case. The 'IT and Innovation Foundation' estimation made in November 2013 estimated that the US IT industry could lose at least USD 21 billion in the following three years if foreign customers lose trust in American companies⁶. In addition to customers loss of trust, risks might also involve difficulties in accessing or maintaining steady revenues in foreign markets such as China. Companies from the Technology Hardware sector, such as Cisco Systems, stated that concerns about privacy represent a factor to be taken into consideration when explaining the considerable drop in sales in China for the third quarter of 2013 after the outbreak of the PRISM scandal.

ICTs involved in these controversies are often under the legal obligation to cooperate with governmental requests, which are often backed by court warrants. All the same, these companies' reputation suffers from such cooperation⁷ as they are often accused by NGOs and civil society of not taking enough efforts to protect their customers' private data. In the case of the Telecommunications sectors, privacy advocates accused Telecom companies of cooperating beyond legal requirements. Verizon, BT Group and Vodafone were reported to have given the British Government Communications Headquarters confidential unlimited access to their network of cables that are said to carry much of the world's phone calls and internet traffic⁸. In addition, American Telecom companies are also reported to receive governmental payment for their cooperation.



Following these allegations, two companies from the North American Telecom sector (Verizon and AT&T), three companies from the European Telecom sector (BT, Vodafone and Orange), along with three companies from the North American Software sector (Google, IBM and Yahoo!) have been excluded from Vigeo's Sustainability Indices in May 2014. These Indices include the best scoring companies based on their CSR performance as compared to their peers in their respective sectors. Furthermore, thousands of European users joined an online campaign by Maximilian Schrems, an Austrian lawyer, to sue Facebook in the European equivalent of a class action over alleged violations of privacy rights and laws, including via collaboration with the NSA within the context of the PRISM programme. The lawyer restricted the number of participants to 25,000 Facebook users although the supporters joining the online campaign largely exceeded that number⁹.

The reactions of ICT companies to the PRISM scandal have gone beyond reassuring public statements, highlighting that cooperation with governmental data requests is an unavoidable requirement of the law, and that this cooperation does not transcend such a legal framework¹⁰.

In June 2013, Apple and other ICT giants followed the footsteps of Google by publishing their first transparency reports listing the number and countries of data requests from governments¹¹ (80% of companies in the Software North American sector, 33% of in the European Telecom sector and 100% in the North American Telecom sector were involved in allegations).

ICT companies took a more pro-active stance after the negative reputational impact of these allegations on companies' sales became more tangible¹² in the fourth quarter of 2013, as estimated by the 'IT and Innovation Foundation'. In December 2013 a highly mediated public campaign to lobby the Obama administration and the US federal government to reform surveillance laws was organised by eight technology companies, namely, Microsoft, Yahoo!, AOL, Facebook, Twitter, LinkedIn, Google and Apple¹³ (accounting for 80% of companies in the Software North America sector that are involved in the allegations). The campaign included a plan to regulate online spying, a request to the American government to initiate an international effort in this sense, and an open letter to President Obama and the Congress urging governmental reform and clear restriction by law of surveillance practices. These companies also launched a dedicated website with signatures and formalised statements from these Companies' CEOs or other top executives¹⁴. Vigeo signalled to investors this initiative to mitigate the impacts of the privacy allegations via confirmation alerts (December 2013) for Yahoo!, Microsoft and Google and an upgrading alert for Apple.



In March 2014, some of these CEOs and executives met with the US President to discuss the effect of the PRISM scandal on their companies' performances and to continue lobbying for a reform of surveillance laws¹⁵. Following this, in April 2014, Congress passed a reform bill banning arbitrary collection of data by governmental agencies. However, even this bill has been criticised by some civil liberties groups, tech coalitions and some congressmen for not tackling seriously all mass surveillance issues¹⁶. However, these lobbying efforts, along with the pressure from the national and international public opinion, probably contributed to pressing for this reform adopted by the US government and can thus be considered as a corrective measure and a best practice within the ICT sectors. Another outcome of such lobbying was already apparent in March 2014 when the US Commerce Department announced its 'intent' to hand control of internet to a wider net community and declared that it wants a new controlling body made both of private companies and government officials in a multi-stakeholder approach¹⁷.

In the face of mass surveillance programmes, transparency, formalised policies to protect users' private data and measures such as the scrutiny of governmental requests before passing client data (as recommended by the UN¹⁸), seem to remain the best tools at the disposition of ICT companies to insure the respect of the right to privacy in the context of these allegations.



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