



April 20, 2018

Office of the Privacy Commissioner

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RE: Draft OPC Position on Online Reputation

The Canadian Marketing Association (CMA) commends the Office of the Privacy Commissioner (OPC) for tackling the implications of online reputation and how digital footprints can have an impact on individuals' privacy. We are pleased to offer commentary on the *Draft OPC Position on Online Reputation* released by your office in January 2018. CMA also submitted remarks to the OPC's position paper released in 2016.

We were pleased to see the 2018 paper recognizing that online reputation is not entirely about privacy. This subject cannot be examined only through a privacy lens as there are other considerations that go beyond the privacy aspect, including, but not limited to, social norms and personal safety. Moreover, the publication and public availability of some personal information is the result of a range of laws and practices designed to achieve particular public policy objectives related to such broad subject areas as public awareness of key developments, the openness of judicial processes and the freedom of expression.

CMA would like to address the following areas and proposed solutions outlined in the OPC's draft position:

Legal Considerations

Canada's *Personal Information Protection and Electronic Documents Act* (PIPEDA) already establishes a workable framework for the management of online reputation based on a fair information practices approach, imposing a number of relevant obligations on organizations that collect, use or disclose personal information, as well as creating relevant rights for individuals relevant to the treatment of their personal information. For example, the law already includes the following important rights and obligations:

- A consent framework that restricts the collection, use and disclosure of personal information to the parameters of consent provided by the affected individual.
- The requirement that an individual must be able to understand the nature, purposes and consequences of such consent.
- The right of individuals to withdraw consent at any time, subject to legal and contractual restrictions and reasonable notice.
- The requirement that collection of personal information be limited to that which is necessary for the purposes identified by the organization.
- The requirement that personal information be collected by fair and lawful means.

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- The requirement that personal information be retained for only as long as necessary for the fulfilment of the identified purposes.
 - The requirement that personal information be as accurate, complete and up-to-date as is necessary for the purpose for which it is to be used.
 - The right of individuals to access personal information that organizations hold about them, and the right to challenge the accuracy and completeness of such information.

While the OPC has taken the position that PIPEDA currently offers the 'right to be forgotten' (RtbF) concept some applicability, the analysis and arguments made in the draft position paper do raise broader policy concerns that should be addressed and clarified. For example:

- Is reputation the same as privacy? Should the same expectations of accuracy, completeness, etc. be applied? Addressing this question is critical to assessing the applicability of PIPEDA.
- Canada already has laws that deal with reputation which apply both online and offline. How does PIPEDA complement or compete with those laws? For example, there are other frameworks like Human Rights Laws that are also relied upon to protect individuals from discrimination based on a number of prohibited grounds that could arise from the online reputation of an individual.
- In what circumstances should individuals be responsible for resolving disputes with another party directly, rather than doing it through an intermediary?

While CMA supports the OPC's initiative to address consumer concerns and practical realities of issues surrounding Canadians' online reputation, we are also mindful that Parliament has yet to spell out its position with respect to the RtbF and has yet to codify any such right in PIPEDA. As an Agent of Parliament, the OPC should respectfully defer to Parliament on this matter, and not prematurely finalize a policy position on this important and complicated matter. No additional responsibilities on organizations that do not find applicability under the current law should be imposed.

Youth

The CMA has long recognized that special consideration need be given to the collection, use and disclosure of personal information respecting vulnerable groups, and this is reflected in the CMA's [Code of Ethics and Standards of Practice](#). CMA members believe that special attention needs to be given to the sensitive issues surrounding data-collection and marketing to children and teenagers. See [CMA's guidelines on marketing to children and teenagers](#).

Children and teenagers, are increasingly exposed and reliant on the Internet, and are sharing a great deal of personal information on social media and other Internet based platforms. Protecting vulnerable groups starts with good educational tools and programming. This also feeds into the reality that over the long-term there is a need for some level of personal accountability; as children become teens and then adults they need to be better equipped.

Public Education

Given the above challenges, public education is key. The OPC has an important legislative mandate to promote public education, digital literacy, and critical thinking, in addition to playing a role in helping develop individuals' awareness on what information is appropriate to share.

CMA encourages the OPC to collaborate with organizations with expertise on this subject and related privacy issues and to help them fund and organize educational events. Organizations also have an important role to play in protecting and educating consumers on their privacy rights and responsibilities.

Reputable organizations consider it their responsibility to give their customers the information and basic tools necessary to protect their privacy. This is done, for example, through giving consumers options on controlling their own privacy settings and providing simple explanatory notes on how to do so. They also have a responsibility for being transparent with customers in all interactions, including when explaining when and how data and personal information about them will be used.

While organizations and the government have a responsibility to ensure a certain degree of protection to consumers in the online world, individuals also have a primary role to play in protecting themselves and their families. Much of the debate respecting online reputation focuses on self-posted or peer-posted personal information on social media platforms. These platforms include many controls that allow individuals to manage the availability and uses of such information. Individuals should empower themselves by understanding as much as possible about how to protect their online reputation.

Parents have an important role to play in protecting their children's personal information. While every parent has their own ideas on what privacy means to them and their children and what they are comfortable with sharing online, at a certain point it's necessary for each individual to assess the potential negative outcomes. This can be done through educating themselves about how certain technologies work and the potential ways in which their information could be misused by others.

Conclusion

As noted above, PIPEDA already imposes a number of relevant obligations on organizations, and gives individuals a number of important rights, including the right to access their personal information and to "challenge the accuracy and completeness of the information and have it amended as appropriate".

Organizations already have policies in place to ensure compliance with these and other requirements of PIPEDA, and to the extent that some do not, investigation and enforcement processes are available to promote compliance. Many online websites and services have long-established policies and procedures for addressing information that users or administrators no longer wish to share or have displayed, for example, the ability to delete an individual's own posts upon request, or the ability to remove user comments that violate privacy policies or terms of use.

As such, a RtbF where search engine operators would become responsible for protecting and removing an individuals' personal data is not necessary in Canada. Taking as a case study the European "model", the onerous responsibilities of assessing and deciding upon the merits of requests to access information, and the added costs to develop and implement an appropriate policy, are left to search engine operators and not to the original publisher. Facing uncertain liability, search engine operators may err in favour of removing information upon request, even if the public has a legitimate right to know. The original publisher, it seems, ought to be the more appropriate target for correcting, updating, or removing irrelevant, incorrect, or excessive information.

While CMA supports the OPC's initiative to address consumer concerns and practical realities of issues surrounding Canadians' online reputation, it is important to note once more that we are also mindful that Parliament has yet to spell out its position with respect to the RtbF and has yet to identify whether there is a gap in PIPEDA which should be filled by a new and prescribed RtbF such as was done in the EU. **As an Agent of Parliament, the OPC should respectfully defer to Parliament on this matter, and not prematurely finalize a policy position on this important and complicated matter.**

Sincerely,

Cristina Onosé

Director, Government Relations
Canadian Marketing Association

About the CMA: The Canadian Marketing Association (CMA) embraces Canada's major business sectors and all marketing disciplines, channels and technologies. The Association's members make a significant contribution to the economy through the sale of goods and services, investments in media and new marketing technologies and employment for Canadians. CMA's national advocacy efforts are designed to create an environment in which consumer protections are respected and responsible marketing can succeed.