

Improving Online Agreements: “It’s Not Rocket Science!”



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EXECUTIVE SUMMARY – IMPROVING ONLINE AGREEMENTS: “IT’S NOT ROCKET SCIENCE!”¹

Too many consumers do not read or understand online agreements. It’s bad for consumers. It’s bad for business. Adding short plain language explanations to online agreements improves them. We provide some guidelines to help organizations do this.

So there it is, our lengthy report “in a nutshell.” Now, here it is at length:

Important Online Agreements Are Seldom Read and Often Not Understood

The rights and obligations assumed by consumers through online agreements are important to them. More ‘rights aware’ consumers check for some specific terms and conditions. Still, consumers don’t read online contracts in their entirety, so at best they do not thoroughly understand them. This can result in financial loss, unwanted obligations, disputes with product and service providers, or unexpected/unwanted use of personal information, compromising their privacy.

This Can’t Be A Surprise To Anyone

Consumers cite lack of time to read and laziness among reasons for not reading these agreements. But more often online agreements go unread because they are too long, too complex or difficult to understand, and viewed to be so one-sided that consumers assume they have no choice but to just click “I Agree.” Reading the terms is futile. Consumers cite lack of trust in the motives behind how corporations draft and display their online agreements. They use terms like “trickery,” “self-serving,” and “cya.”²

Most Consumers Are Vulnerable In This Regard

Vulnerability in consumers is often assumed to refer to those with limited education and/or financial means. In the case of online agreements, vulnerability has a broader scope. Most users are at risk from online agreements. The length, complexity, legalese, and one-sidedness of online agreements make consumers vulnerable. Too often they are ignorant of their side of the deal and its responsibilities.

Many Organizations Do Not Shine...

Too many businesses have paid too little attention to the significance to their customers and themselves of ignoring this situation. Businesses have shareholders and profits to worry about. They must follow laws and regulations. Business managers must deal with lawyers who draft these agreements and who, in doing so, are presumed to be protecting the business. Consequently it seems that the decision-makers in many organizations find it easier to go along to get along, and no more. They may take a simplistic view of self-interest, undermining their relationship with their customers, who believe they have the right to make informed decisions.

It’s easier, right? But be aware: consumers are uncomfortable with their ignorance or comfortable these agreements are meaningless, or both, and, in any case, these conditions lead to increased business risk.

¹ Final note from a member of the Consumers Council of Canada’s Public Interest Network (PIN), to the question: “Do you have anything else to add?” The Council consults the PIN online about important public and consumer policy issues being considered by government, corporations and consumer organizations. PIN participants form a national volunteer network of thoughtful, knowledgeable Canadian consumers.

² In plain language that’s “cover your ass.”

Does Apple Inc. truly believe that iTunes Store users read the 7,200 word Terms & Conditions? It does contain important information, including that the user does not own the software, it is just licensed, as well as all details around Family Sharing.³ It would take an average reader, at 300 words per minute, 24 minutes to just read the document, much less understand it. And that is just for one service, albeit a key one. It's no wonder consumers lack trust in these agreements, or think they can be disregarded. Of course Apple could reduce it by 14 words if they chose to remove the ban on using it in *"the development, design, manufacture, or production of nuclear, missile, or chemical or biological weapons."*⁴

... Yet, Some Companies Do.

Despite this, many organizations see their way clear to better practices, and more clearly inform consumers, helping them understand their deal.

Contrast Apple with Shopify, Inc. the Canadian company supplying some of the most innovative e-commerce software available, enabling great numbers of small (and some very large) businesses easy access to sell their goods on the Internet. Their Terms of Service is 4,400 words long, but that includes plain language section summaries and a listing of changes in the terms over time. Arguably a business's deal to use the services of Shopify is a complex one, involving the processes of the underlying e-commerce system to be used by a business. Apple, by comparison, is laying out terms and conditions for a typical Canadian with an iPhone or iPod, and possibly iTunes on their laptop. Shopify's customer base is business, presumably accustomed to the world of contracts, so why is Shopify's deal simpler? Perhaps their customers demand it. Perhaps it speaks to how Shopify does business.

This research found much evidence of businesses trying to improve their agreements and how they're offered.

Perhaps this research can help more organizations improve their online agreements willingly, in accordance with their statements on the importance of and their commitment to transparency and consumer privacy.

There Are Simple, Effective Ways To Improve Online Agreements

Organizations have several ways to relatively easily and effectively improve their online agreements, to the benefit of their customers and themselves. Why don't more do so? For some it may be a matter of priority. For some it's difficult dealing with lawyers, who need strong work partners in the enterprise to do their job. Some probably would prefer their customers not know all the details of a Privacy Policy and how their information is being used with unseen third parties. But some see how improved online agreements can help them serve their customers better by clarifying the commitment made to them. There is evidence of companies big and small, in Canada and elsewhere, trying to better state for themselves and their customers the essence of their products and services, as defined by the agreements they make.

So there are best practices emerging in the marketplace for improving online agreements.

This report brings together 'book learning,' expert views and observed practices into a list of guidelines for easily improving online agreements and incrementally improving the Canadian Internet marketplace.

What We Did

We spoke to and surveyed consumers, interviewed people from many perspectives with expertise about the issue, researched best practices (and bad), read the research, looked at other countries, and through this iterated down to 12 recommendations an organization can look to use to improve their online agreements.

³ Having said that, Apple does deserve kudos for its commitment to its privacy policy display.

⁴ <http://www.apple.com/legal/internet-services/itunes/ca/terms.html>

We found that consumers want plain language presented a bit at a time, ideally tied to the sections or terms relevant or of concern to them.

This is a guide for organizations that want to do better and want to make the Canadian Internet a better experience for Canadian consumers and Canadian business. We know consumers want better. Organizations, primarily business, can do better, so this is a challenge to those willing to join those already in the lead.

What We Recommend – Essentially, The Obvious

We recommend 12 guidelines for online agreements in general. Of those, the following three (or four), if presented in manageable/small bites of plain language, will make a significant difference to businesses and consumers. The effort to implement would be nominal, assuming management knows its customers, potential customers and the essence of how their online agreements truly affect them.

- Produce a Summary of Salient Points (typically less than half a page) OR⁵ create Plain Language Section Summaries (Inline or Alongside the Agreement)
- Summarize/Highlight Changes (considerably less than half a page)
- Detailed Table of Contents

The remaining eight guidelines, still important, are:

- Plain Language for New or Revised Agreement/Notices
- Scenarios for Key Terms & Concepts, and Examples
- Link References to Online Agreements Where/When Relevant
- Notification on Website of Change in Agreement
- Allow Consumer to Save/Print/Send Online Agreement
- Write Headings/Titles in the “Consumer Voice”
- Draw Design of Legal Pages from Same Design as Rest of Website
- Indicate Split Consent for Privacy Choices

Interestingly, of the 12 recommendations, the first three (ignoring the Plain Section Summaries) are most appropriate for mobile, with the addition of two others: one, the ability to print send and/or save is particularly useful for mobile; and two, there is one problem specific to mobile that should be corrected first. Where a web page, from an app or the web, does not display properly on a mobile device, fix that first. It’s not tough to tell. It is obvious. This should be fixed before other mobile issues.

These Are First Steps

Increasing attention is coming to the privacy and e-commerce fields. The opportunities for business and consumers are significant. What we are looking at here are basic changes – a first step for many. As companies look to leverage personal information and consumers transact more online, the risk and the attendant need for a better understanding by consumers of what they are providing and their obligations will increase, too. Solutions in this field will need to be broader and more integrated with technology and consumers’ risk tolerance and understanding. Furthermore, much work is being done around the globe by organizations/associations looking to improve online agreements in much more sophisticated, and ideally

⁵ This does not preclude doing both.

broader, ways – everything from privacy icons to common terms and automated analyzers of terms for consumers.⁶

Two Concluding Views

We highlight two views, gathered during our research on our approach and guidelines:

One idea taken from the combined comments of two of our expert Key Informants: *“This is just table stakes,”* remarked one privacy consultant; *“A baseline”* said another.

But this is our favourite, from one of our Public Interest Network members:

*“Nothing I wholly object to and a great many proposals of significant merit. Go for it.”*⁷

How Canadian.

Assistance From The Canadian Internet Registration Authority

And while the Consumers Council of Canada conducted this research and produced this report, this work would not have been possible without the significant financial support and patience of the Community Investment Program of the Canadian Internet Registration Authority.

⁶ Will artificial intelligence one day do what business managers and lawyers seemed unable to accomplish together? Maybe such systems will interpret contracts, much as good computerized spelling and grammar checking and a thesaurus can help refine the work of writers and editors?

⁷ Consumers Council of Canada Public Interest Network (PIN) Survey to determine consumer perspective issues and insights.

A FEW WORDS ABOUT WORDS

Throughout this document we refer to the plethora of contracts, terms and policies offered over the Internet as ‘online agreements.’ These include Privacy Policy Notices, End User License Agreements (EULAs), and Terms & Conditions (Terms of Service, or Terms of Use). We will refer to them collectively except where there are individual distinctions, which happens more commonly with Privacy Policy Notices.

PRIVACY POLICY OR PRIVACY POLICY NOTICE

*“A **privacy policy** is a statement or a legal document (in **privacy law**) that discloses some or all of the ways a party gathers, uses, discloses, and manages a customer or client's data. It fulfills a legal requirement to protect a customer or client's **privacy**.”⁸*

The policy is the manifestation of what the organization does regarding privacy, and the notice is the explanation of it, typically for these purposes on a website, in most instances in the footer.

It is important to note that these are not the policies of an organization, but the notice they use to convey them. They are found on sites where an organization gathers any personal information, and can refer to all ways in which an organization gathers and uses an individual’s personal information, not just from the website.

Many regulators in Canada deal with the issue of privacy, the primary one being the Office of the Privacy Commissioner of Canada. The applicable legislation/regulation may depend on the type of organization (private, government, not for profit), the location (which province) or the nature of the information gathered.

In most cases for commercial enterprises collecting personal information in Canada, the relevant legislation is the Personal Information Protection and Electronic Documents Act (PIPEDA) and within that it is primarily Schedule 1 of PIPEDA that drives the structure and nature of Privacy Policy Notices.

Under PIPEDA, personal information is defined as, “*information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.*”⁹ This can be a fairly broadly applied term, but the extent of that application is outside the scope of this project.

TERMS OF SERVICE, TERMS & CONDITIONS, TERMS OF USE

*“**Terms of service** (also known as **terms of use** and **terms and conditions**, commonly abbreviated as **ToS** or **TOS** and **TOU**) are **rules** which one must agree to abide by in order to use a **service**. Terms of service can also be merely a **disclaimer**, especially regarding the use of websites.”¹⁰*

END USER LICENSE AGREEMENT (EULA)

“An End User License Agreement (EULA) is a legal contract between a software application author or publisher and the user of that application.”¹¹

Typically EULAs are “click through,” which means the user must click to accept, before proceeding to use software. Sometimes they are called “Clickwrap” alluding to the old process of a license applying to a piece of software as soon as the shrink wrap of its packaging is removed, back in the days when software had a “firmware” or “removable media” component to it – typically an EPROM, floppy disk or CD-/DVD-ROM. A problem with this type of agreement has been that the consumer cannot read it until after buying, opening and sometimes installing the software.

⁸ http://en.wikipedia.org/wiki/Privacy_policy

⁹ https://www.priv.gc.ca/resource/fs-fi/02_05_d_54_ati_01_e.asp

¹⁰ http://en.wikipedia.org/wiki/Terms_of_service

¹¹ <http://searchcio.techtarget.com/definition/End-User-License-Agreement>

INTRODUCTION

In the words of one respondent to the Internet public opinion survey conducted to assist this research:

"Oh my goodness...please people...take out the legalese and legal jargon in this policy information packets, terms and conditions and end user agreements. It is obvious that to read every one that one might come across on a regular basis is IMPOSSIBLE. I only keep my eye out on a site when they seem suspicious to me, but if it is a generally trusted site in my mind, I don't pay any attention at all. But at the end of the day, I don't think YOU PEOPLE who write these documents up will really change the way you do business, so THE CONSUMER needs to be proactive and don't sign up for any business on a site if he or she is leery about their potential. I mean lots of this is common sense-I only do business with those sites/companies that I feel good about or feel that I can trust. But if a site or company would change their procedures about the design and presentation of their consumer awareness documents, then what I would do is:

1) Right at the very top of the document put "the most important facts and info" about rights, violations and costs associated with signing on with that particular site. Example, "If you sign up with us it will cost you \$10.00."

2) Then once you have informed the reader about salient points as you call them, then you can write up the rest in your legalese, wordiness verbiage that you spend lots of money to get written up.

Kindest regards...please, I mean well...but I have to tell you that I am a HAPPILY MARRIED woman and the only reason that I am is because I talk little to my husband, only telling him what is important for him to hear. It's not rocket science!"¹²

Make it simple and relevant and I will trust you more, she clearly implies.¹³

We'd be interested in meaningful responses from executives trying to explain why they don't, or can't, do this.

Background

Personal information, in other words an individual's privacy, has become a commodity coveted by business in today's world of big data. E-commerce is growing in leaps and bounds. The combination of these two factors continues to have an increasing effect on the ability of a consumer to ensure that their consumer rights are maintained. The proliferation of online pricing issues, false reviews, uncertain warranty claims and returns, and varying business practices of online stores, make for uncharted waters for many consumers. They are faced with online agreements that they know are important, but give up in the face of complexity, length and one-sidedness. All that coupled with an individual's desire to provide, in many cases, their personal information in return for benefit, not necessarily knowing the risks, is a recipe for significant individual and broad-based consumer harm.

There is increasing interactivity with websites and provision of personal information even when not purchasing. Facebook's privacy practices were highly contentious and widely discussed and criticized a couple of years back. This concern continues, albeit somewhat muted. Yet, for many consumers, it expands only as other social media sites look to use their information, primarily to market to them, often with a remarkably intimate knowledge of their demographics and personal information – information these organizations have synthesized in ways unforeseen by consumers in their use of social media and other websites.

¹² See survey details in Appendices 3 and 4

¹³ While we do not comment on the efficacy or appropriateness of such attitudes and behaviour in marriage, we do suggest it is an apt metaphor for what we believe would work best in solving the problems we begin to discuss in the next paragraph.

The Problem

Simply put, online agreements/notices are rarely read and business too often pays attention to meeting requirements of legislation and regulation, and little more. This leaves consumers less informed and less understanding of an organization's online agreements to which they are ostensibly party and liable. Yet the need for consumers to understand online agreements is increasing.

At worst, consumer rights are being breached; at minimum, ignored. How can anyone suggest that a consumer can make effective choices when presented with long, complex, important agreements in small type in one wide column or otherwise poorly displayed on a desktop computer or tiny smartphone screen?

Opportunity

We believe there are organizations that have scope to improve their online agreements and have the will to do so. We have provided practical guidelines they can use to do this. We believe that they can benefit when consumers understand their rights and responsibilities under an agreement.

In the interest of understanding and usability, we have prepared a companion booklet for use by businesses/organizations looking to implement some of our recommendations. The booklet focuses on the key recommendations giving examples and benefits.

OUR INTEREST IN IMPROVED ONLINE AGREEMENTS¹⁴

In an ideal marketplace there is perfect information. Our intent is an improved Canadian Internet experience, resulting from improved online agreements and the resulting benefit to consumers, and business. We want to help expand the trust required for a healthy, sustainable Internet environment. In such an improved marketplace, consumers can make better decisions, making them financially better off, more secure in the use of their personal information, more knowing of their rights and responsibilities, and more comfortable with risks they assume.

The Consumers Council of Canada's mission is to work towards an improved marketplace for consumers in Canada. In this case, the marketplace we are concerned about is the one Canadians experience on the Internet. How? Through *"what one company can do one at a time in the absence of common standards."*¹⁵ One may argue that there are some standards in place today, and not unreasonably so. Our position is that the standards are inadequate, if the objective is a reasonable degree of consumer understanding, and do not achieve what consumers want, or what so many businesses and organizations say is important to them. In many cases just meeting regulation is inadequate to meet many organizations' stated commitments to transparency and protection of their customers' privacy.

When all parties to an agreement understand the terms and conditions, their rights and responsibilities (and the implications), the marketplace will be better and fairer. It will be more trusted, and more efficient. This is increasingly important in the context of the unruly, global Internet. However, currently consumers typically have a weak, risk-burdened understanding of such terms and agreement. Canadians need to be able to understand what they are doing when they release any personal information or conduct business on the Internet. Increasing the trust relationship between users and Canadian Internet sites clearly works toward a better Internet.

The primary factors that led the Council to conduct this research were:

- An increased awareness of the issues relating to consumers not understanding agreements gleaned from previous research on online reputation, privacy, Unsolicited Telecommunication Rules (telemarketing), creditors insurance, cyber threats on mobile devices, and smartphone retail apps.
- A heightened awareness of privacy amongst consumers, in the news media, and consumer groups, particularly as related to the 'economics of personal information,' a term cited by the Privacy Commissioner of Canada in recent cross-country consultations.¹⁶
- Anecdotal incidences of frustration in dealing with contracts, and the harm that results, particularly recently with telecommunications companies and consumer problems being confronted by the Commissioner for Complaints for Telecommunications Services (CCTS).
- The potential benefit of helping consumers make better purchase decisions in respect of their rights and responsibilities as consumers.
- Recent legislation regarding changes to privacy law.

The research sought to identify the reasons consumers don't read online agreements much, the effect of this, and informed practical ways that organizations can improve online agreements to assist consumers.

The genesis of the Council's interest in improving online agreements is grounded in work done several years ago in the area of Creditors Insurance. We spent time examining a Drafting Manual put together by Autorité des marchés financiers in Quebec designed to assist financial services organizations in drafting their Distribution

¹⁴ Frankly, this subject matter would be less urgent if organizations paid as much attention to the graphic design, structure of presentation and user interface of their online agreements as they do to that of their marketing pages.

¹⁵ Bill Jensen, The Future of Work, The Jensen Group, IBM Social Business VIP, "Future of Work" Futurist

¹⁶ From January 2015 consultation

Guides, a standardized way of conveying information about financial products. This Drafting Manual dealt very much with the design and wording of the content in Distribution Guides.

We liked the Drafting Manual because it brought considerable thought to the way in which information was presented, not the specific content, other than to use good grammar and effective wording, for example. What we have developed had its genesis there, but moved more toward the display of agreements and away from the writing, typography and wording of agreements. The change was not surprising, as this report has a broader objective to produce outcomes currently less prescribed than by regulation.

OBJECTIVES

Our intent in this project at a high level is to make the Canadian Internet experience better for consumers. How? By increasing consumers understanding of what they are getting into when they engage on the Internet through such activities as social media, provide information through a website/purchase, etc., or agree to an online license – through the provision of more usable, relevant and understandable online agreements.

There is a view that “*companies can compete on privacy*” notes one Key Informant, a professor of law at a major U.S. university. We believe that ultimately there can be competition on privacy and terms, but the state of this today remains uncertain. We are starting to see evidence of it in Canada, sadly in the negative as consumers move (perhaps only temporarily) from such companies as Home Depot¹⁷ and Target¹⁸ after their data breaches. A question remains, however: Will clearer statements of policy significantly enhance a company’s market position? Do other consumer satisfaction policies suggest an answer to that question? For example, there is evidence that returns policy can affect a store customer’s happiness/satisfaction.¹⁹

As one Key Informant noted about our recommendations, the guidelines are focused on readability and conspicuousness. The question is: Will it get read and understood? The general consensus of our Key Informants and consumers surveyed is ‘yes,’ plain language in manageable chunks is better.

This project’s objective is to develop practical guidelines for the improved display of online agreements (i.e., EULA, Terms of Use/Service, Privacy Policy) to improve understanding of increasingly important terms and conditions and privacy considerations relevant to most Canadians, expanding the trust required for a healthy, sustainable Internet environment and marketplace. Keep in mind that most Canadians are vulnerable when it comes to such agreements.

Developing guidelines to solve a common problem like this follows our commitment of working together with consumers, business, government, and regulatory organizations. Such guidelines will require a consumer responsibility, as well, in reading and heeding such online agreements once they are in place.

Objectives For Consumers

Consumers will read key points in agreements that are relevant to them. They will understand implications, based on explanations, or just read it, when otherwise they may not have.

Consumers will be more aware of changes to their responsibilities, without having to remember to re-engage with a lengthy document they didn’t read properly or at all the first time. So many agreements are subject to terms changing at will, and made binding with no clear indication to the other party, namely the consumer.

Consumers will make better decisions. That decision may still be to buy that product or enter that social media site, not liking the terms, but at least they have a better chance of knowing the terms of agreement. Then later if certain things happen they may be bummed, but won’t be confused.

Consumers will benefit from a better understanding of what they are ‘signing,’ or agreeing to tacitly. Knowledge of relevant terms means better decisions. Better decisions mean less harm. They will know what they have at risk.

¹⁷ <http://www.theglobeandmail.com/report-on-business/international-business/us-business/home-depot-facing-lawsuits-in-canada-us-over-data-breach/article21745020/>

¹⁸ http://www.huffingtonpost.ca/2014/01/20/target-data-breach-canada_n_4633618.html

¹⁹ NY Times article – 91% say it is important. http://www.nytimes.com/allbusiness/AB4353479_primary.html
<http://business.time.com/2012/09/04/why-a-good-return-policy-is-so-important-for-retailers/>

Consumers will see the competitive benefits of organizations' privacy and agreements. As one Key Informant put it, they will "see what they give up to get."²⁰

Objectives For Organizations

We want organizations to bring more than just their lawyers to the table when publishing/displaying their online agreements. We want organizations to make their online agreements more findable, usable and relevant. After all, the agreement defines the product or service.

Ideally organizations will see the benefit of competing on terms related to online agreements, and value the increased trust this appears to engender.

Clear and understood agreements can more readily allow organizations to compete on terms and privacy. Consumers can see the benefits of certain terms in agreements, particularly in the protection of privacy while delivering the benefits of 'Big Data' to consumers.

Organizations can gain more of their customers' trust by producing clearer agreements. We believe that many consumers do not trust companies, in part because of the way they convey their agreements.

²⁰ Key Informant – Director of Innovation

ONLINE AGREEMENT STAKEHOLDERS

Who are the stakeholders in this arena? Who is interested in this work, and how does it affect them? They are:

- Canadian Consumers and their Advocates
- Canadian Organizations with an Internet Presence
- Privacy Regulators
- Consumer Protection Regulators
- Academics
- Media
- Lawyers (The Legal Profession)

CONSUMERS AND THEIR ADVOCATES

Consumers often don't know the implications of not understanding agreements to which they can be held. They don't know what they don't and can't know. Anyone who buys anything online, anyone who is on social media or contributes personal information through a website, anyone downloading is subject to these online agreements. They ignore agreements, with appreciating the consequences, for a variety of reasons.

Knowledge of the implications of online agreements matters to consumers because they are party to a legal agreement, which can have significant financial or privacy considerations. A consumer's exposure to risk is increasing as they do more online, and the protection of their privacy grows to be a more complex problem to manage, as businesses aggregate and synthesize personal information in a collective effort commonly referred to as 'Big Data.' The economics of personal data, and the privacy implications, is a key area of interest to the Office of the Privacy Commissioner of Canada.²¹ It should be of key interest to all Canadians, and as consumers they should have a better understanding of what they are getting and what they are giving up. They need to better understand Big Data/Privacy transactions. And a basic idea of consumer protection – “buyer beware” – depends on the assumption contracts are read and can be understood.

CANADIAN ORGANIZATIONS WITH AN INTERNET PRESENCE

Any organization that provides an online product or solicits information of a personal nature on its website will be party to at least one of the online agreements we define here. Typically, for-profit organizations will have more at stake.

This report is not about developing a path to regulation. This research and its resulting recommendations matter to those organizations that want to improve on their own terms.

It matters to other organizations as well, because ideally there will be increased pressure to improve their online agreements, even if they don't want to. It matters because this may help organizations work with their lawyers to bring these agreements to consumers in a more understandable way.

PRIVACY REGULATORS

Privacy regulators, primarily the Office of the Privacy Commissioner of Canada are responsible for privacy of personal information in Canada.

²¹ OPC Consultation, Toronto, January 2015.

Promoting public awareness is a big part of the OPC's role. Any effort that can reasonably be expected to improve awareness and understanding of Privacy Policy Notices is of interest to them.

CONSUMER PROTECTION REGULATORS

Most consumer protection legislation, including laws governing contracts, is the domain of ministries of provincial governments with consumer protection responsibilities. Their interest would be in the effect of online contracts, reducing complaints, and managing their costs of enforcement and making new law.

ACADEMICS

Academics coming from consumer protection, privacy, and e-commerce all have an interest in this. They have done significant research into this very convoluted area where actions and behaviour often belie what research of opinion and intent indicates.

Academics are leading in several areas with types of potential solutions to all types of online agreements/notices. Academics from the legal, privacy and consumer protection field will have an interest, particularly those involved in providing input as Key Informants.

We believe academics in this area have a keen interest in the results of these changes, and the degree to which they are taken up and why. The majority of the academics we spoke to as Key Informants were strongly supportive and hopeful regarding our recommendations.

MEDIA

The media, particularly media covering technology and consumer or legal issues related to problems with online agreements will be interested. Particularly the consumer-protection-oriented media will have an interest in simplifying online agreements, and in those companies willing to lead the change. We will approach various media as we look to publicize our recommendations, upon publication, and then periodically during the year following publication as we revise this document based on experience.

LAWYERS

Lawyers draft agreements. Several of our Key Informants, some lawyers themselves, place much of the blame for the unintelligibility of agreements at the feet of the lawyers. Not that they are doing anything wrong. They are protecting their clients with legal agreements, which unfortunately have a history of unintelligibility. As one PIN Interviewee said *"Business people won't say boo to the lawyers."*

Many consumers don't understand the lawyer's role, as witnessed by many of the following comments gleaned from our surveys and interviews:

"Finally, these agreements are written by lawyers for lawyers. Too long. Ridiculous language."

"My default position is that the language will have been drafted by lawyers from the supplier, protect their position, and not provide any room for input or flexibility."

"Every policy that is written by lawyers instead of average people favours the company over the consumer. Therefore all are bad."

"Have graphic artists create them, not lawyers."

The plain language movement has a significant effect on lawyers and their work. As well, any organization looking to make their online agreements clearer will need to consult with lawyers, given the importance of such agreements to organizations.

METHODOLOGY

SECONDARY RESEARCH / ENVIRONMENTAL SCAN

Initial research involved a review of material available online, and in print, on ways in which organizations are implementing online agreements and consumer groups are advocating change and assisting in this regard. We reviewed what can be done to help consumers make better use of agreements for purchasing decisions, to identify the issues and establish a general overview of the players, environment, drivers, scenarios and industry.

A literature review was conducted to help better define the scope of the research and to develop a fuller picture of the issue of consumers finding information in online agreements. The review helped identify the range of issues related to the research topic and relevant to consumers. Published reports, presentations, research papers, Internet sources, and media in the following areas were examined:

- Privacy
- EULAs
- Terms of Use
- Consumers
- Guidelines
- Frameworks
- Standards
- Online agreement assessment tools
- Consumer Efforts with Projects to Improve Online Agreements

PRIMARY RESEARCH

Key Informants

Throughout this research a number of Key Informants were interviewed.

Select Key Informants' views were solicited to help shape some research, highlight background issues and subject matter, and provide some assistance about what might be appropriate recommendations, particularly in the privacy, security, and application development areas. Their comments, where relevant and notable, were generally paraphrased, and sometimes noted verbatim in the report.

Several Key Informants were interviewed twice, initially as we were looking for issues and first blush guideline examples, and then in the second round as we narrowed our recommendations to those with the most benefit to consumers first, and then to business.

Key Informants included the following:

- Legal professors/academics from U.S. law schools dealing with consumer and privacy research, as well as a legal professor from a Canadian business school focused on privacy issues
- Experts in innovation, business simplification, usability and measurement
- Regulators in the field of privacy and financial services
- Consumer advocates for online agreement improvements
- Developers of online technology tools to improve agreements

- Experts academically and in the implementation of online agreement improvement methods and services and technology
- A privacy consultant and former Chief Privacy Officer of a global organization
- Privacy researchers

Where we cite in this report any Key Informant verbatim we note their position, rather than identify the individual.

Review Of Online Agreements

Online agreements were gathered through aggregating search technologies, along with supporting databases. We searched for and reviewed privacy policy notices, user license agreements and terms of use/service in determining potential best practices.

Public Interest Network Surveys (PIN)

The Public Interest Network of the Consumers Council of Canada was used to collect responses to two questionnaires.

Survey One

A survey to solicit issues, insights and potential recommendations regarding improved online agreements, solely through open-ended queries.

Survey Two

A survey to solicit open-ended detailed responses to our key recommendations, akin to what we would expect from a focus group.

Telephone Interview Follow-ups

We followed up with telephone interviews with several PIN survey respondents who offered to further their comments in an interview. Their comments were particularly useful in coming up with a couple of the main recommendations. Their comments have been included here verbatim to the extent possible and where relevant.

The Council consults the PIN online about important public and consumer policy issues being considered by government, corporations and consumer organizations. The Council hosts the PIN.

PIN participants form a national network of thoughtful, knowledgeable Canadian consumers. They volunteered to join the network and respond to surveys regarding consumer issues. Potential members complete a short questionnaire to provide basic demographic information.

PIN participants are:

- Educated and informed consumers at the community level;
- Aware of consumer and public policy issues;
- Often have been involved and influential in their communities of interest;
- Often have expressed opinions and taken a stand on issues.

The Council tries to balance the PIN but does not seek to build a statistically representative sample of Canadians. PIN participants may be more educated with higher incomes than the general Canadian population. As active, aware, critical and informed consumers, PIN participants can offer insights into issues and future trends emerging among Canadian consumers. The PIN as a group we believe has an older demographic. Given this and

their consumer focus their insights are often more useful in identification of issues, suggestions for improvements, and comments on recommendations. But for a broader look at Internet users relying on online agreements, mobile use and views on recommendations we turned to a more extensive, and demographically representative sample through a survey of Canadian Internet users.

Survey Of Canadian Internet Users

We conducted a survey of 388 Canadians soliciting feedback on our key recommendations, both quantitatively and qualitatively. See Appendix 3 for a complete list of questions and quantitative results. The survey was conducted online, incorporating consumers familiar with the Internet from all provinces and territories, age ranges, incomes and a representative split on gender.

The survey was considered to determine general views on whether, and the degree to which, our recommended guidelines would be useful. Ranking within sets of recommendations focused on specific issues, notably those dealing with online agreements being too long, and those dealing with online agreements being too difficult to understand, as noted in our initial environmental scan and PIN surveys.

Guiding Principles And Guidelines

Based on Key Informants and the initial PIN survey we developed Guiding Principles and an initial set of recommendations. We then vetted both through Key Informants on an iterative basis, and the PIN and survey of Canadian Internet Users.

SCOPE COMMENTS

Our project work will relate solely to Canadians in surveying their experience, but our solicitation of suggestions was not limited to just Canada. Several Key Informants were from the United States and Europe.

We have addressed this work to recommendations that do not change existing agreements. Where we recommend any wording changes it will apply only to Privacy Policy Notices. The enforceability of existing contracts is not considered in determining any change. We do not deal with the issue of enforceability. While courts do indicate that online agreements are legal, there are some questions about specific terms. The clarification of these terms would benefit business and consumers.

SUBSEQUENT MEASUREMENT

We will set up a mechanism to receive confirmation from organizations willing to attempt/implement these recommendations, with a commitment to contact them one year hence.

In the month following the release of the final report we will e-mail a recommendations booklet directly from the Council to a selection of Canadian organizations that we believe could benefit from these recommendations, and make public through our website and social media the names of those organizations.

We will compare one year hence and make the results known, through our website and social media and the media, and to the organizations we initially approached including CIRA.

We will prepare a summary of changes made, and seek to interview a selection of those that made a significant change, and those that didn't but in our opinion should have, publicizing our results through channels similar to those noted above.

WHAT ORGANIZATIONS DO & WHY

What many companies do with their online agreements is quite visible – meet minimum requirements, often only what they are obligated to do under legislation and regulation.

An organization’s online agreements are just that – online, visible and available. Determining whether an organization adheres to their agreements has not been a subject of this research. We looked at improving the display of such agreements. Where we looked for what organizations do, it was to determine best practices or what might be considered effective methods of online agreement display.

The research did not develop a scorecard of compliance by Canadian companies of applicable disclosure laws and regulations. We were looking for effectiveness of communication to consumers.

As one of our Key Informants, a U.S. law school professor said, there is a “decision asymmetry” here. These agreements are more important to business than they are to an individual consumer. Typically a consumer is one side to one of these agreements. The organization can be one side of an agreement in millions of instances.

Examples of best practices are included in the recommendations section. We did not look to the overall quality of a policy, because the variables for a business are too much to consider. As we note, business should determine what display recommendations would work for them based on their organization and consumers and look to how that is implemented. Generally, one recommendation does not require the implementation of another.

One PIN interviewee commented on an approach to changing organizations:

“They need to be embarrassed into caring.”

SOME GOOD PRACTICES

We include summaries and a selection of comments resulting from both of the Public Interest Network (PIN) surveys we conducted during this project. For this PIN survey question and for others we have tended to include a sizeable number of specific responses. We believe that this information is quite useful, particularly as it comes from typically rather educated consumers and is in their voice. As we mention in the methodology, we tend to ask open-ended questions of our PIN looking for qualitative responses, not quantitative. We do not suggest that these answers in the Specific Responses sections are representative of the majority of users, nor representative of all PIN respondents, just that they are rich with information that organizations would do well to heed. They are typically put down with some thought.

Can you give us an example of a GOOD online agreement or privacy policy, and what you liked about it? If it was on a mobile device please note that.

The majority of respondents have not encountered what they would consider a good agreement. Those that have done so cited short and understandable agreements as a key criterion. We asked this question expecting to get almost no response. We got more than we expected. Ironically, one of the reasons that people indicate they don’t have a good example is because they “don’t read them.” Specific responses include:

“A great example of agreement/policy explanation by the service provider is Dropbox. Their client-facing materials on their privacy policy are in simple language that are easy to understand, and draws attention to things people would feel are relevant – making them both informative and easy to digest. Given the nature of their product and service, this is a very good thing.”

“Not really, as I don't read them!”

“Can't think of one but if I had to, it would be concise and short, easy to understand, and if I needed to, I'd be directed to a more detailed version elsewhere.”

“Blackberry. Simple and transparent.”

“The American website for Best Buy is better than the Canadian one because it is much shorter, however, the Canadian website allows the individual to click on a specific section if there is something they are interested in.”

Some Best Practices

No one organization demonstrated or displayed all of what we are suggesting in our guideline recommendations. But we have listed below a few that stand out, based on their display, and to some degree on their words, but we do not opine here on the “good or bad” of specific conditions or terms, particularly in the Terms of Service/Use.

We did find best practices for the guidelines we suggest and in doing so found some online agreements that are definitely accountable. We note here some of those overall good examples incorporating several features identical or similar to our recommendations, as well as some we considered, but dropped from our list for various reasons.

It may be suggested that the resources of such large organizations put them at an advantage in creating and displaying these online agreements. However, we believe the biggest resources necessary are an understanding of one’s business proposition and their customers, and a reasonable amount of time to design the changes. As well, there will be the obligatory discussion with the lawyers.

DuckDuckGo

We start out with DuckDuckGo, a search engine with an unusual business proposition, because they compete on privacy. That is their business proposition:

“ We don’t collect or share personal information. That’s our privacy policy in a nutshell. The rest of this page tries to explain why you should care.”²²

Not only do they protect your privacy (completely) they educate consumers about the reasons why.

[DuckDuckGo Privacy Policy](#)

Shopify

Shopify, Canada’s much publicized e-commerce enabler, provides sophisticated e-commerce functionality for virtually anyone or any business. They even have an AppStore for customers to augment their base installations.

Their Privacy Policy Notice and Terms of Use share many exemplars; plain language, short explanations of each of the sections in a casual informative way, listing of all changes to the agreements, and presented in a style that still suggests “legal” but without the tiny font, single screen wide column of text, sans headings so typical of websites’ legal pages. The Privacy Policy even has its own summary.

Shopify also provides a free tool any organization can use to create a Terms of Service, Privacy Policy, or a Returns Policy. Interestingly, a Returns Policy was considered to be an important part of the information consumers want from their organizations. Consequently, we think that such clear policies around the returns process can be a competitive advantage for some organizations that had previously managed it on an ad hoc basis.

[Shopify Terms of Service](#)

[Shopify Privacy](#)

[Shopify e-commerce Policy Generator](#)

²² <https://duckduckgo.com/privacy>

Google Privacy Policy

Regardless of one's views on what Google does with information, the way in which they display their agreements is more extensive and effective than most. Every version of each type of agreement is available, each blacklined compared to the immediately prior version. Scenarios are made available as mouseovers in their Privacy Policy Notice. They make it easy to send oneself a copy of the agreement. There is a simple, hyperlinked Table of Contents.

[Google Privacy](#)

Wepay

Wepay has a Canadian policy, unusual in an American organization. A plain language agreement with summaries in plain/simple language highlights key items, and third-party use of personal information is clearly displayed.

[WePay Privacy Canada](#)

fiverr

While it does have a reputation that is less than stellar in its business proposition, it does have well laid out online agreements. It has a summary of salient points (they call it "main Terms, in a nutshell"), plain language, note agreement changes, and even highlight in yellow one item in the summary dealing with a particularly sensitive issue. The Privacy Policy has a summary called "The Short Version."

https://www.fiverr.com/terms_of_service [fiverr Privacy Policy](#)

We Transfer

Its presentation is unique and clear. All the policies are in one place, and there is a rather cavalier approach to summaries. We like this, if the context suits the business. They clearly have a sense of humour. We would not recommend it for any financial institution.

[WeTransfer](#)

LinkedIn

While the headings used have no consumer voice, they are short and clear. They have summaries, clear change notifications and the text is in plain language. The columns are narrower because of the split column summaries. The Privacy Policy has an opening summary, although it is very general. Their descriptions of choices in the policy are very clear. But perhaps most interestingly, they have a video (which we highly recommend) at the top of each agreement. They make effective use of icons at the top of their privacy Policy.

[LinkedIn Privacy Policy and Video](#) [LinkedIn User Agreement and Video](#)

Kickstarter

Kickstarter's agreements are well laid out, and summaries are clear. Headlines are in strong consumer voice, there is a link to the prior version of terms for projects before a certain date. There is good use of bold to highlight within the agreement, and there is a highlighted section in green regarding the important part about how projects work – which would be unique to their site and agreement.

[Kickstarter Terms of Use](#)

SOME NOT SO GOOD PRACTICES

PIN Question – Can you give us an example of a POOR online agreement or privacy policy, and what you didn't like about it? If it was on a mobile device please note that.

Most respondents either did not provide an example or stated that all of the agreements they encounter are poor. Those that did provide examples cited dense legal language and long difficult to read agreements as issues, as well as complaining about websites that track users. However, Facebook tops the list of those cited as an example of a poor online agreement/notice. We believe that much of this comes from a heightened awareness of Facebook's privacy issues due to the extensive media coverage and efforts of the Office of the Privacy Commissioner of Canada to change Facebook's privacy policy.

We are not intending to pick on any company here as in our view being 'good' or 'bad,' but just highlighting a consumer perception. Such perceptions may linger long after they are no longer true. Poor online agreements can accumulate as an enduring legacy of a company in the minds of consumers. Specific responses included:

"Every policy that is written by lawyers instead of average people favours the company over the consumer. Therefore all are bad."

"I don't like any that include terms that they may share info with associated companies, sites or other interests."

"Anything from Microsoft. Hard to find and hard to read."²³

"Dislike online agreements that track your usage. Sometimes you have no choice particularly if you are using 'free' software."

"Java for desktop."^{24 25}

Facebook: "It's too long and reading between the lines: it's entirely my responsibility to manage my privacy; Facebook is not liable or accountable at all / nearly never."

"Facebook – because the information is fragmented and it doesn't end up by saying – and this is what we CAN do whether you like it or not."

²³ This was a bit surprising given that Microsoft has its Privacy Policy and Terms of Use at the bottom of virtually every web page it serves to the Internet. The agreement itself is difficult to read, but not difficult to find, but locating a specific term or clause or condition is another matter. That's hard to do.

²⁴ <http://www.zdnet.com/article/a-close-look-at-how-oracle-installs-deceptive-software-with-java-updates/>

²⁵ Java installs other software, most commonly the Ask.com search bar, in a seemingly deceptive manner.

WHAT CONSUMERS DO & WHY

"Few things are more common on the Internet than the lengthy, largely incomprehensible, online contracts that are often buried at the bottom of webpages with a simple link to "terms." These agreements sometimes run dozens of pages if printed out and may transfer all responsibility and liability to the user, while selecting a jurisdiction clause that is advantageous to the website and inconvenient to most users.

Consumers regularly agree to these contracts (sometimes proactively by clicking that they agree) and most other times by impliedly agreeing to the terms by using the website, but the enforceability of all the terms within the agreement remains an open question."²⁶

General Internet Use

Survey of Canadian Internet Users

In our Internet survey of Canadians we asked how often they engaged in certain activities on the Internet. Among those we asked, the most common activities included banking, social media, research purchases, and purchase goods/services. These four also stand out as presenting higher risk of either money or personal information in their use.

Consumers Generally Do Not Wholly Read Online Agreements

Survey of Canadian Internet Users

Our survey of Canadian Internet Users asked how often they read the various types of online agreements. The results follow:

Privacy policies: Overwhelmingly either rarely or sometimes read by users, not often "never" read. This indicates that users are on the whole discerning about which privacy policies they read, mostly due to concern about the use of information, or the sensitivity of said information. Privacy policies deal primarily with personal information, so this makes sense.

Terms and conditions: Results skewed heavily toward users "sometimes" reading the documents, indicating that the majority of users will read terms for only certain websites, ignoring those they don't deem important. There is still concern for use of information and sensitivity, similar to privacy policies, but users are also concerned about their personal trust in a website. This may be due to the idea that the terms of service are especially important to get the overall view of what a consumer is giving a company in exchange for using their website/software.

EULAs: Read less often than the other two, and this may be due to tending to be longer and more complicated, or the user is focused on reaching whatever product the agreement protects. Also, they were skewed much more heavily towards the 'never' reading end of the scale, indicating that users place a lower value on EULAs or that they are motivated to get through them quickly, or they really provide no choice and seen to be one-sided. The stated reasons are very close to those regarding terms and conditions. Many users are concerned about the amount of money and sensitive information at stake. Most will skip a EULA to get to the product if they don't have a solid and specific reason to read it, and potential loss of money or privacy is the most prevalent.

²⁶ Geist, M., September 2014, An Overview of Technology Law from the Perspective of Public Policy-Oriented Consumer Interest Research (PPOCIR) September 2014 Michael Geist

The First PIN Survey

QUESTION: If you, like the majority of consumers, rarely read online agreements or privacy policies please tell us why you don't. Otherwise, please tell us why you do.

As expected, the vast majority of respondents do not read agreements. These are the main root reasons why respondents rarely read online Agreements/Notices:

1. Are too long.
2. Are too complicated and difficult to understand.
3. Are one-sided and provide little or no choice if you want to see the product, service or website.

Many noted that they are a waste of time, which we believe results from any one, or combination, of the three reasons above. Some admitted to laziness as an excuse.

It was interesting that several respondents, independently and without prompting, listed all three of these reasons for not reading them. Those sections below noted in bold are examples of such responses. We have included a significant number of responses to this and other questions in this section. The words of the respondents are worth reading in coming to a sense of the reasons these online agreements are not read often or understood very well. Specific responses included:

"They are way too long and generally complicated and confusing."

"I try to at least scan them. However, sometimes with online agents such as Bell Canada help lines, the technician will tell me to click "I agree" without giving me time to read it. Finally, these agreements are written by lawyers for lawyers. Too long. Ridiculous language."

"Usually, it is a time issue or I really have no choice but agree to it. If I do not, then I cannot use the program.They really have us over a barrel – either agree to it or don't download the program."

"Too long and complex. Too many to deal with. Too one-sided. Consumers only have the option to accept. Saying no means you don't get the service."

"I find them too long and wordy . . . they need to be summarized"

"Too lengthy and complicated. If I really need the service I have to accept T&C provided. They are not negotiable, anyway."

*"I do not think I have ever read an online agreement **because they are simply too long to read.** I usually begin to skim over it quickly and then get very bored and feel that none of the information can or will ever help me. I feel like the agreements are there to protect the companies and that it is their obligation to provide such an agreement to satisfy regulators, so I feel forced to just accept it and move on. Also, I feel that because they are doing it to fulfill a regulatory requirement or protect themselves from potential lawsuits, I feel that all agreements are more or less the same so I just skip over it. Also, the type is small, **most of the info does not seem relevant to my everyday use of the service/product.** And the number one reason would also be that I simply feel **I have NO CHOICE but to agree** if I want their service, so I just agree."*

"KEEP: My default position is that the language will have been drafted by lawyers from the supplier, protect their position, and not provide any room for input or flexibility."

"Too long. We need to go with the Aussie system of optimal disclosure rather than full disclosure, i.e., give me what I need to know in 6 paragraphs or less."

*"I rarely read online agreements or privacy policies for **three reasons: the length of the agreement/policy, technical or legal jargon used and no choice.** First the length of the agreement/policy is rarely less than a couple of pages/scrolls. To read through the document line by line in order to gain a thorough understanding of what you are committing to requires a great deal of time and patience. Like many consumers, I visit more than one site a day and have other items on my list of things to do than visiting a particular site. For a time starved consumer, this task becomes onerous and becomes one more hurdle to jump before the purpose of their visit is achieved. Secondly, the technical or legal jargon*

used in these agreements, while improving, does little to help clarify what is being proposed to the consumer or what rights the consumer is compromising in order to gain access to the site. Essentially, the consumer is committed to an agreement/policy without a clear understanding of what they have agreed to. Finally, in order to gain access to the site, a consumer must agree to the terms. In practice, there is no choice for the consumer. If a consumer disagrees with any or all of the terms proposed, they are denied access to the service. There is no ability to negotiate or other options provided except to surrender their right to privacy, redress, etc. In contrast, when a consumer is asked for additional information at a physical checkout, such as their postal code or email, they can decline and still receive service. It's a Catch 22; there is no other option but to agree, so why bother reading the online agreement or privacy policy."

*"There are two major reasons why I would not go through online agreements as thoroughly as I would a contract or a loan agreement: 1. **They are extremely long and the language used is not very average user friendly.** It's as if they are designed in such a way that any rational normal person would not be able to go through it and that is what the companies rely on. In addition if you are online and you spend all that time reading the text then most probably the site would just time you out and you would have to start the process all over again. 2. They all say almost the same thing and even if they didn't, there are so many users that have agreed to them and are using the services that it makes no sense even if you don't completely agree with one or more clauses as **the only option you have is to whether agree to ALL clauses without question or disagree** and forfeit the service."*

*"I don't read them. **I accept because I want to use the service** (e.g. Air Canada) I guess I make an assumption (perhaps wrongly) that they will not abuse the info they gain from me – sell it to other businesses. **The few time I have read the statements I find it to be too dense, too long, not understandable.** Plain language would be a good idea – but I suspect the lawyers do not agree."*

"Read some, especially where I suspect 'bundled' software may be included"

"Usually they are unclear or written with legalize. It would be more useful if an edited account of the salient matters appeared for consideration"

"I generally DO read them, particularly to find out if my email address will be sold to the dreaded so-called 'third parties we think you might be interested in'."

"They are gooble-dee-gook. They are written from the companies' perspective and not mine."

One thing we find disturbing in the responses above is how employees of an organization can hold in disregard agreements that their management will hold consumers to. At least one PIN respondent indicated that they have been told to just "Click Agree/Accept" when they are installing software during a technical support call. It may be the second time the consumer installed the software and, ostensibly, would have already read the agreement to which he or she agreed. We wonder whether organizations would be willing to direct their customer/technical service reps to ask customers to read an agreement before clicking "I Agree" and wait while they do it. Logically they should, given that they expect people to read them.

Why They Rarely Read The Whole Thing

Jeff Sauro, a web usability and measurement expert had the opportunity to log data of thousands of web users as they installed software. 2,500 users spent a median of six seconds on the agreement.²⁷

As he puts it:

"Why spend a lot of time reading something you have no choice about. "Accept" and "Don't Accept" don't count as real choices: if you want to use the software, you HAVE to accept the agreement. Click "Don't accept," and the software doesn't load."²⁸

His findings concur with what our respondents tell us (and vice-versa).

²⁷ Do Users Read License Agreements?: Measuring Usability. (n.d.). Do users read license agreements?: Measuring usability. [Web page] Retrieved from <http://www.measuringusability.com/blog/eula.php>

²⁸ Ibid

Consumers Do Check Online Agreements For Certain Companies/Industries Or Certain Products/Services

From the First PIN Survey

Are there certain online agreements or policies that you ensure you do read? If so, what are they, and why? (for instance, agreements from certain companies, or for certain products or services).

Many do not read any agreements, those that do usually fall into one of two categories: reading only very short agreements or reading ones that involve sensitive information or money. Respondents were more inclined to read agreements/notices where they had money at stake, from banks, insurance companies and telecommunications services providers. Many respondents took time to read online agreements/notices where they had personal information they were concerned about. Some are concerned where they do not know the company. Specific responses include:

"Yes. agreements or policies from the banks, insurance companies, warranties on expensive products, information on drugs or service contracts."

"Insurance exclusions."

"I do look out for phrases indicating that my info may be shared with other entities, and I usually refuse such arrangements."

"Insurance companies, credit card companies, banks."

"I am more likely to read agreements when actually paying for a service. I am also more likely to read the agreement when it is short and to the point."

"Companies that I don't know."

"My cell phone provider and any app going to my cell phone."

"The rare incidents where I will read or decline the policy is if I am unfamiliar with the site (i.e. Etsy) or the site has a history of routinely changing its terms (i.e. Facebook) to the detriment of the user. In this case, I will carefully consider the terms of the policy or agreement before using or entering the site. Also, for some online sites (i.e. Zulily, JustFab) they require you to join as a free member and give over information prior to looking at the products or services they offer. I would read their online agreements carefully or just decline the chance to proceed further."

"Anything of importance i.e., that involves money, financial transactions, liability, government rules and regulations etc. those are extremely important and, compared to the free online agreements, more condense and easier to understand."

"I read to ensure that my information will not be sold/given to third parties, used for any purpose other than what I registered for or added to the company's (and affiliated companies) mailing list."

"I read phone and cable agreements because I am suspicious of the industry."

"I always read policies where I am spending money or giving a credit card number. Generally, for other websites, I don't bother as I can always unsubscribe if I choose to with little to no harm done."

"Bank card etc. is carefully read, with a magnifying glass!!"

"I am most likely to look at service configurations that may help me secure my privacy. But I have to take on faith that these configurations accomplish what I expect them to do and that there are not hidden processes associated with them that are mandated by the incomprehensible and lengthy terms of service and privacy agreements."

"Perhaps more vigilant if purchasing something expensive or buying a service such as computer software – I want to know how to terminate such agreements."

Consumers Do Check Certain Sections And/Or Terms

From the First PIN Survey

What sections, or terms, of online agreements or privacy policies are of most relevance, or present the most risk, to you? Why?

On the whole the sections of most relevance to consumers from their perspective tend to be those dealing with whom their personal data, such as an email address, is shared with or sold to. Also, any policies that can easily cost the consumer money are valued. Respondents were also concerned about clauses regarding termination. The degree of interest regarding privacy clauses is interesting, appearing top of mind for more respondents than clauses relating to Terms of Service and End User License Agreements. Specific responses include:

"Liability. The least relevant are the sections that outlining how I cannot use their products (e.g., for my financial gain)."

"Sections that deal with how the company will handle problems with the product."

"Email solicitation I am careful to click no I am not interested or email fills with updates and ads."

"Exclusions."

"There are probably many – most dealing with cost, penalties, use of personal information and privacy."

"Sharing the information with third parties because my personal information can be distributed without my consent."

"The section regarding 'who owns my data', 'how my data will be stored', and 'who is allowed to read my data' are most important to me."

"Anything that involves tracking my behaviour – such as knowing if I am on a phone call."

"In terms of online agreements, the terms relating to "Restrictions on Returns or Refunds." In contrast to buying an item at a physical store, the condition, fit or appearance of an item cannot be confirmed until the consumer receives its delivery. Some stores (ex: Forever21) make the return process easy by allowing the customer to return items if for any reason they are not satisfied. This minimizes the risk of being stuck with a purchase that did not meet expectations. Other stores make the process of redress or returns very difficult. A personal example is my experience with Nine West Canada. It is taking three months and counting to get resolution on a purchase for which my account was charged but I received two left foot shoes. In regards to Privacy Policies, the greatest risk posed is in how the company shares my information and how my personal information is protected. The sharing of information opens the door to unwanted solicitation from other affiliated companies (although with Antispam legislation they may be reduced) and increases the possibility of my information falling into the wrong hands (phishing or fraud). This leads to the other risk of protection of personal information. There seems to be no guarantee either with online or physical stores that a customer's credit and personal information will not be compromised. The privacy policy states how the company will protect your information but there is no way for a consumer to verify the strength of their practices."

"Health and financial information."

"1. The type of personal information collected. 2. How will this personal information be used. 3. Exit clause (if any). 4. Option to keep my personal information private."

"Most risk is the amount and type of access they want to my personal data (phone function, contacts, etc.). I am also concerned about any add-ons or permission to share any of my personal information with 3rd party marketers. I also do not agree to share my location information."

"I won't use a website that requires I allow third party trackers (cookies, beacons, etc.) or seeks my permission to share my information with "selected partners..... But I'm not going to sign something that gives any software the right to come and poke around in my machines."

"Termination clauses I've been burnt in the past."

“Sharing information with third parties and retention schedules; because I’m never agreeing to sharing my information with third parties and I don’t want an organization to hold onto my information indefinitely.”

“Whether or not my email address will be sold to a third party. I choose what mail I want to receive. I don’t want another entity choosing for me.”

“Penalties for early termination (mortgages for instance, or memberships, etc.) – will potentially cost me and I must weigh this.”

Consumers Do Less On Mobile, Especially Where They Have To Read Agreements.

From the First PIN Survey

Do you deal with mobile agreements or privacy policies any differently than other online agreements? If so, why? How? (Specifically this might relate to what one is doing when using a mobile device, where you might be when you need to read it, and the difference in the size and nature of the screen and input mechanisms.)

Where they declined to act on mobile some cited small screens and mobile-unfriendly text as reasons to not read an agreement or avoid transacting online at all. Where they do deal differently, it typically results in not transacting on mobile. Many do not use mobile for issues that deal with money. Clearly there is an issue with screen size causing many to avoid mobile transactions that would cause them to need to read an agreement. Specific responses include:

“Do not deal with agreements on my phone because it is too small to read or will cost too much or take too much time to download. I go to my larger computer for that purpose.”

“As a consumer, I do not necessarily differentiate between these. I have specific and will seek out information on any agreement text if I feel the need to.”

“Yes. I am much more careful with mobile policies than say, shopping online from a box-store.”

“I would not agree to one from my mobile device - I would wait until I was on my laptop or computer instead...doesn’t feel as secure on the phone compared to other devices. Also difficult to read [smaller screen]”

“I’m even less likely to read a mobile agreement or privacy policy because it’s too much and too long for a smaller screen and if I’m doing something on my mobile device, then I’m usually in a hurry so I don’t have time to read. If the agreement/ privacy policy seems too long or ridiculous, i.e. fishy, then I just won’t download the app because it’s not worth the trouble.”

“I tend not to use mobile apps, such as LinkedIn – where they automatically scoop your information into their application whether you actually give them permission to use it or not – e.g. whether you actually send invitations to people in your address book. In fact, I have just encountered a problem with this today and will likely cancel my Linked In account.”

“Some differences – mostly use mobile apps for non monetary items – e.g. maps, GPS, news, yellow pages. Use my own computer on my own protected Wi-Fi for banking and purchases.”

From the Survey of Canadian Internet Users

Use on Mobile

Overwhelmingly the most common usage of mobile is social media. The next most common, banking, is a task we may assume is performed fairly regularly, if infrequently, by most people. Gaming, another popular use, is one of the very publicized functions of mobile devices.

CONSUMER RIGHTS, PRIVACY AND HARMS

Consumers have rights, and the abuse or neglect (intentionally or otherwise) of these can cause real harm. Consumers do need to take some responsibility in ensuring their rights are protected.

In determining the harms and effect on consumers it is useful to consider the state of the marketplace in relation to the well-known, globally recognized International Consumer Rights and the Right to Privacy.

INTERNATIONAL CONSUMER RIGHTS

In 1962, John F. Kennedy, in a landmark speech, outlined four rights of consumers. These were: The right to safety; The right to be informed; The right to choose; and The right to be heard²⁹

In 1985, the United Nations, through the United Nations Guidelines for Consumer Protection, expanded these to eight basic rights. Those eight basic rights and the right to privacy form the basis for the Consumers Council of Canada's focus on the rights and responsibilities of consumers.³⁰ See Appendix 5 for a full list and description.

Research by the Council addresses these nine basic rights. In summary, three of the eight initial rights were particularly relevant to this research, as was the right to privacy. The findings of this research address each of these four. All rights areas are potentially bettered for most consumers by the implementation of some of our recommendations.

It is arguable, quite reasonably, that contracts can relate to any of the Consumer Rights. We are taking a stricter analysis in order to focus on key issues, and perhaps the more common ones arising.

The following lists the key rights most relevant to the provision and use of online agreements. Unless specifically noted the comments relate to all types of online agreements.

Right to Information

The right to be given the facts needed to make an informed choice, to be protected against misleading advertising or labeling. Perfect markets have perfect information. Access to information is a cornerstone of online agreements. Online agreements provide the facts needed to make an informed choice.

Right to Choice

The right to choose products and services at competitive prices with an assurance of satisfactory quality. Online agreements contain information regarding price, and quality and definition of what is received. If a consumer cannot understand this, they can't make proper choices about pricing and quality. Agreements help keep competitive prices.

²⁹ John F. Kennedy: Special Message to the Congress on Protecting the Consumer Interest. (n.d.). John F. Kennedy: Special message to the congress on protecting the consumer interest. [Web page] Retrieved from <http://www.presidency.ucsb.edu/ws/?pid=9108-axzz1uOhMC2H>

³⁰ Consumers Council of Canada | Charter of Consumer Rights. (n.d.). Consumers Council of Canada | charter of consumer rights. [Web page] Retrieved from http://www.consumerscouncil.com/index.cfm?pagePath=About_Us/Consumer_Rights&id=1825

Right to Redress

The right to be compensated for misrepresentation, shoddy goods or unsatisfactory services. A key component of contracts and online agreements is redress, for EULAs, Terms of Services and Privacy Policies. Consumers need to read these agreements and sections on redress, but it can be difficult given they way they are presented.

Right to Privacy

The right to privacy particularly as it applies to personal information. Privacy policy notices, sometimes included within terms and conditions, relate directly to protection of a consumer's right to privacy. Consumers must take steps to protect their privacy, and know what information they provide. They must assess the level of privacy risk they are willing to take. They may require tools to assist them in doing so. It is these Privacy Policy Notices that provide detailed information consumers must know in order to protect their privacy. This is particularly important as consumers are willing to give up some personal information in exchange for benefit, but they must know what is to be provided and for what benefit.

HARM RESULTS FROM LACK OF UNDERSTANDING OF ONLINE AGREEMENTS

No doubt, consumers suffer harm from not knowing their agreements and associated terms. It is clear from our surveys that consumers do have an interest in knowing the terms but can't spend the considerable time it would take to get relevant and important information. So, they play the odds of being harmed. Many of our PIN respondents said they suffered harm, and anecdotal stories are not in short supply. Consumers know they have to agree to get the software or use the site, and because of the length and complexity of agreements often don't read enough to get all the details. We believe consumers often have to make choices about accepting terms they don't know, making them uncomfortable or putting them at risk.

PIN Question: Have you ever been caught by unexpected terms of an online agreement or privacy policy? Can you tell us the story, what could have prevented it, what you did to rectify it, and what were the eventual implications?

Most have never been caught out by not reading an agreement, at least to their knowledge. Of the respondents, at least 10 percent had a problem significant enough to note and that is an issue, not just a concern. Many noted issues with Facebook, in that they were surprised or caught out by their privacy practices. This appeared to be more of a concern than an actual incident that caused financial or privacy harm. Specific responses included:

"Facebook messenger, which appeared to invade my privacy more than I desired. I deleted the app."

"Yes – a significant penalty clause that wasn't highlighted."

"Yes, Microsoft One-drive has a policy in place that allows them to review any of your files to check if they break terms and conditions. I was unaware of this when I signed up."

"Yes – between two provinces. Huge cost to use online as we were out of province."

"Yes – registration in their program meant that I agree to contacted by the affiliated organizations which was a deal breaker for me."

"I downloaded an app (sorry but I forgot which one) and discovered it was ransacking my phone. I uninstalled the app as soon as I figured out what happened, and then posted a warning on FB about the app (as I did with FB's Messenger)."

"Cannot be sure. I know I have let in some unwanted programs and commitments in the past and I suspect it was through unread agreements"

"Yes. Termination of a Bell Mobile agreement. It was costly – \$900."

"Yes:

1. Facebook didn't indicate they would own my images and data indefinitely when I closed my account (+6

years ago). However, I'm not willing to reactivate my account to change anything because of the difficulty involved in closing it again. If I had known Facebook owned my information before I closed it, then I would have deleted my image and changed (as much as possible) my information to nonsense."

"Only with Facebook but fortunately, I don't have anything on there that is a secret, and it does not have my real birthday, nor information on where I live."

"I think the insidious thing about these agreements is that the uses of personal information are mostly unknown to the consumer who enters into these agreements.... I use Facebook very little. Still based on their advertising targeting, I can tell they can discern far more about me than I am comfortable with. And since I don't really know how they use the information they have, I am very disturbed by that."

OkCupid And Facebook

Two key examples of harm to consumers resulted from Facebook and OkCupid pushing limits with their members. Both effectively had agreements that allowed 'experimentation' on their members, but the details were unknown to or not understood by members.

OkCupid

The experiments run by OkCupid took pairs of people with low match ratings determined by their matching system and told the users they had a high match rating. It had only a marginal effect, proving the strength of their real rating system, and that people rely on the real facts, not the stated rating.

The problems with this are many. Firstly, when one joins a website such as OkCupid, there is a measure of trust involved. Blatantly lying to the consumer causes a breach of that trust. Furthermore, even if this is a relatively small and contained group, causing people to meet up for dates blindly could lead to major harm or emotional trauma. Looking for a partner is a very emotionally charged exercise, and deliberately setting people up on bad dates can only cause emotional damage.

There was some outcry. The founder of OkCupid, who revealed the experiment in a blog post, was unapologetic and maintained that such experiments are fine and common on the Internet.³¹

Facebook

Facebook ran 'experiments' that changed the type of content users saw (positive/negative) posted by their friends and measured their output of posts in terms of positivity and negativity. They manipulated content to be more negative or positive than they would normally get, and determined that, effectively, bad news causes more negative posts.^{32 33}

The potential for harm seems likely to have been less severe at an individual level than the OkCupid experiment, but it was more widespread. Conditioning users to experience certain emotions is a process fraught with risk. None of the users consented to being used in such a manner, and it is a significant breach of the trust users place in Facebook when they post their photos, videos and statuses.

The outcry was intense. Many people had no idea that experimentation in this manner was legal, or that Facebook could do it covertly. As Facebook is such a widely used service, the experiment affected 700,000 people and was a major news item. The lead researcher later stated that in hindsight, it might not have been

³¹ <http://blog.okcupid.com/index.php/we-experiment-on-human-beings/>

³² <http://www.theguardian.com/technology/2014/jun/29/facebook-users-emotions-news-feeds>

³³ <http://www.wsj.com/articles/furor-erupts-over-facebook-experiment-on-users-1404085840>

worth the privacy breach to get the data. Facebook has since tightened their internal checks on their experimentation, but the details are still not open to the public.³⁴

³⁴ <http://www.theguardian.com/technology/2014/oct/02/facebook-sorry-secret-psychological-experiment-users>

WHAT CONSUMERS HAVE TOLD US WOULD HELP

We surveyed two groups of Canadians, one the Consumer Council of Canada's Public Interest Network (the PIN), and the other, a Canada wide demographically diverse sample of 388 Canadians.³⁵ This group is familiar with Internet use, and we solicited their thoughts on what would help them understand better the online agreements to which they are parties. Following are the results in both a summarized fashion, and with specific excerpts for question in each of the surveys.

Another "to the point" quotation from a respondent to our survey of Canadian Internet Users:

"TRANSPARENCY...Is that too much to ask..."

WAYS TO IMPROVE - GENERAL

PIN Survey Questions And Responses

The PIN questions below were open ended to solicit significant response, as we generally look to the PIN for issues, insights and recommendations of interest or concern to consumers.

How can online agreements or privacy policies be better summarized or structured?

There were clear, main points made: keep the agreements simple without too much legal language, use plain language, keep them short, focus on key points or summaries, and use larger font sizes. One respondent suggested that consumers should be "lured with rhetorical questions," which did become one of our recommended guidelines regarding using the "Consumer Voice" in headlines. One respondent presaged another recommended guideline with the question: "Could the specific permissions regarding use of personal info/data be in their own section and really clear as to what information will be collected and for what purposes." More specific responses included:

"Limit the length of the agreement and phrase it in non legalese terms."

"Like I said, three clear bullets, get to the point, quickly."

"Brief Top three to five key points. Option to go further."

"Plain language, more concise with less verbiage. The government should be stepping in to provide some protection from these companies. There should be one common one for all programs."

"Perhaps there could be bold-faced headings that deal with specific topical areas."

"Short and sweet with language that can be understood by a common person."

"Larger fonts, less legal language, shorter sentences that are easy to comprehend."

"I would place all the negative stuff at the top. From the beginning they should be upfront about what they will be doing with your information. And they should be very clear about how you can cancel your account and confirm that all your information will be wiped. Some websites allow you to unsubscribe but they do not let you remove your information. I would like to see shorter agreements, relevant headings, and information about what will and will not be erased from their website after you delete your profile or account."

"Rather than a tick box, I think they'd be more useful if they were teased better. Lured with rhetorical questions. Would you like to learn more about how we're going to use this information? click here. Read your rights to xxx. The "I have read, understand and accept" language discourages click-throughs. But it's rarely in the provider's interest to make such a change."

"Be well organized re: information and content, informative, but summarize and get to the point."

³⁵ <https://www.surveymonkey.com/mp/audience/our-survey-respondents/>

"If they were shorter and simpler, I might read them"

"Provide opt-in option to consent for additional contact; cookies etc."

"Could the specific permissions regarding use of personal info/data be in their own section and really clear as to what information will be collected and for what purposes. Also, it would be good to have a section that clearly indicates whether any 3rd parties will have access to my data/info and exactly what uses they will have of my data. This section must show how to opt out, and it needs to be easy. Another clear section could be details on any intellectual property i.e. how the app or other info can be used (so I can easily see how to comply with copyrights). Perhaps these 3 things and what laws will apply (e.g. Ontario or California or...) could be in a front section, as well as any other non-standard clauses that might be included in the agreement. Then the rest of the legalize could follow."

"I have seen some in plain English rather than legalese that are exemplary – like we don't use trackers, we don't collect identifiable information, we don't sell information that would allow a user to be identified. And we keep the copyright and can revoke the licence if we catch you doing us dirt, but otherwise you're clear to use it on as many machines as you've paid for."

"More standardization in sections, content and phrasing."

"- Clickable headings or topics to easily gain information on specific issues of interest

- Plain English; minimal or no legalese

- Short; less than 3-minutes to read

- Put most important or common concerns near the top

- Put a contact email or phone number near the top"

"I think the information has to be presented as part of a decision making process a user enters for implementing privacy features. I think there must be a clear declarative statement of exactly how a business will use the information they collect, with no option to evolve the contract with the consumer without their well-informed consent. However, many features of online privacy will never be fairly achieved through contract. We need some basic rules. When you dropped a letter in the mail you knew the postman could be criminally prosecuted for opening it and examining its contents."

"They need to be user centric. Once you click a button, it needs to say – by clicking this, you are giving us permission to do thus and such. Do you wish to proceed? YES OR NO."

"Any statements should have positive and negative consequences spelled out."

"Tell the consumer about any monetary risks, right up front – be honest."

How can online agreements and policies be displayed better graphically? (e.g., Better fonts, bigger fonts, tables, use of bold or italics, etc.)

By far, the most common recommendation is for larger font sizes. There was also a decided support for bolded or otherwise distinguished headings of important sections either within the document or in a summary. Specific responses included:

"VERY large fonts and all on ONE screen. Bold for key phrases."

"Have graphic artists create them, not lawyers."

"Use of bold letters for significant Ts & Cs."

"Larger fonts, highlight key points."

"The main points or headings should be in bold to attract attention to important elements of the agreement or policy. The font should be sans serif or one that is easily legible. The content should be grouped according the term/heading and could perhaps have a expand/collapse option so that the consumer can quickly scan all subject headings for the agreement and only expand those that are relevant or unclear."

"Please no grey colour

- Clickable headings for subtopics or aspects of the privacy policy

- The above are particularly important for mobile policies"

How can online agreements and policies be customized for individual consumers or for certain types of consumers?

Many respondents did not answer this question; those that did focused primarily on length and were based on applicability to a user's situation or desires. Specific responses included:

"Show me clauses that applicable just to me."

"Write heading like: If you plan to share photos, If you choose to delete your account, How your information will be used."

"Not sure, except to indicate changes from previously-signed agreement."

"Perhaps offering a zoom in/out function would allow consumers to vary the size of print to one that is most comfortable. Also a glossary of terms may help to clarify certain conditions for those that have difficulty with the language of the agreement/policy."

"Make the agreement short, pithy and general in nature covering only the highlights – with a button to push for complete details if desired."

"By default, provide the user with a short and simple policy or agreement. Then provide links for further information for those who are interested in reading more."

"They could ask you to rate yourself on a scale of 1 to 10 as to how much you are worried about privacy. Then it could suggest what you should agree to and perhaps whether you ought to use this app or not."

Survey Of Canadian Internet Users

These answers came later in the research and were in response to questions designed to determine which of certain solutions to specific problems would be best, and why. Most questions on this survey were closed ended, but these were three of the few open-ended questions giving more insight to recommendations of this group.

In response to solutions relating to Online Agreements being too complex, and proposed guidelines as solutions

We asked which two of the recommendations relating to dealing with the complexity issue they would find most useful. Over 65% of respondents selected the use of plain language for new agreements, and the other three leading choices had the support of about 30% of respondents. Those recommendations were the use of plain language summaries, scenarios for key items and concepts, and more use of the design of the rest of the site in the online agreement sections.

It was interesting to note that in 34 of 95 open-ended answers of the 388 respondents, the word easy or easier was used – and "easier to understand" was common. Clearly it is top of mind for users. Specific responses included:

"Just like to see examples used to show me what to expect."

"Easy to understand when plain language is used as well as scenarios people can relate to."

"Plain language is easier to read than having to look up difficult legal terms."

"Plain language should shorten the documents since there will be less 'cover their ass' legal jargon. Inline summaries will help if people are finding it difficult to follow along."

"It takes forever to read the agreements that most times I find myself just skimming them. Who has a spare half hour and a magnifying glass handy to go over everything! I have better things to do. I feel guilty when I don't at least skim the agreement because it says I must before I proceed!"

"If it is written in plain language, it can be read quickly and understood. The terms should be designed well so that they are easy to scroll through, and the best way to do that is to make it the same as the rest of the site."

"Stop confusing people. Don't get all technical we're not all lawyers."

"Most of it is too long, too small print and of course sounds like written by a lawyer to confuse the rest of us."

"Scenarios help me understand some of the more confusing points. While plain language is written so a normal human being and not someone fluent in lawyer speak can understand."

In response to solutions relating to Online Agreements being too long

We asked which of the recommendations designed to help resolve the length they would find most useful. The Summary of Salient Points was the preferred choice, with more than 50% in support, although a Detailed Table of Contents was only marginally behind. Being able to get to the points that were most important is key. A Table of Contents helps that, respondents said. Not surprisingly, provision of an indication of average time to read was a clear third, at less than 28%. Specific responses included:

"A table of contents would allow the user to quickly find and read the sections they are most concerned with."

"This allows for a decision whether to read the FULL agreement or just the salient points, or a mix of the two."

"You could very easily go to the section that concerns you the most."

"It's important to be able to find the point you're looking for and be able to read it in a reasonable amount of time."

"Shortens my reading time and gives me the key points up front. I could then decide if I needed a point expanded on."

"User doesn't have to plow thru all the content."

"Then I can judge if it is worth the time to read the entire document."

"Summaries help you know what to expect from that area and see if it's relevant to read the whole thing or if the summary is good enough to get an idea of what you're agreeing to."

"So you can at least read the most important parts."

In response to solutions relating to convenience

We asked which two of the recommendations related to increasing convenience they thought most useful. There was no clear leader. Increasing font size, including summary of changes, notification of change, and the option to Print/Save or Send, all hovered in the mid-30% range, with the placing of links to the agreements where most needed clearly the trailing preference at only 22%. Specific responses included:

"Knowing if there are changes makes it easier to decide if I terminating the agree is a better option."

"So you have a record to refer to later."

"You want to be kept up to date on changes to the agreement."

"It would be nice to save for personal records, but still wouldn't make it any more likely to read at that time. Summary of changes would be more likely to be read."

"Find important cancellation policies and contact info."

"It's frustrating to get to the very end of the purchase process, and discover unacceptable Terms and/or EULAs. A Summary of Changes to agreement makes it much quicker to see what has changed."

"It would be easier to read and a summary would be helpful as you wouldn't have to reread the entire document."

"I would really like the ability to save or print an agreement because I would be able to easily access it and know that it hasn't been altered. Especially if it is a site I don't trust."

"TRANSPARENCY...Is that too much to ask..."

"It's always good to get a notification of a change so that we only read the change without having to read the whole document until you find the change."

“By placing links where they should be, I can go there right away if I need more info.”

General Responses From Internet Survey – Any Final Comments?

In our survey of Canadians and their Internet activities and views on our draft recommendations, we solicited final comments. Following is a selection from them, mostly addressing the most supported recommendations. There is clear support for brevity, printouts, and highlights. Specific responses included:

“I would read them if they were shorter and in plain language.”

“If the areas are highlighted, this would bring attention to the eye of the reader. Allowing them to make the decision if it is important to carry on reading.”

“I think the idea of putting a summary of points before the full agreement would ensure people knew what they were agreeing to and that it would actually be read.”

“Highlight some things that might be different from most agreements.”

“Tumblr did a good job with their terms and conditions and getting a large number of people to read it by making the summarizations entertaining and adding in humour.”

“A brief summary would be ideal, followed by the actual details, if anyone wants to actually read further.”

General Responses From The PIN – Any Final Comments?

Overall response to the recommended guidelines in our second PIN survey was positive. Respondents agreed that the suggestions that remain in the final recommendations are useful and worth pursuing. We did pull some recommended guidelines and combine some as a result of the previous round of surveys and discussion.

There were a few who expressed their inherent distrust of the large organizations that distribute these agreements, and expressed that some change must come from them. Many were appreciative of this project’s efforts on behalf of consumers. Also, some readers expressed a belief that the most important thing to increase readership of these agreements is to make the agreements themselves shorter and easier to understand, rather than focus on peripheral improvements.

The first response related below is of special note, with the PIN respondent saying too much responsibility is being placed on the consumer. We tend to agree, and would prefer to have some of these recommendations laid out in a more prescriptive manner by an authority with more bite than the Consumers Council of Canada, but movement in that direction appears to be coming slowly. Specific responses include:

“This is a very difficult area and while disclosure and consent are key principles that need to be maintained, I do think we are putting too much responsibility on the consumer. Tougher privacy rules or requirements for privacy impact assessments to ensure that these agreements are consistent with privacy regulations and principles might be better – the agreement should only be the last line of defence – privacy should be imbedded in the design of the site or service or product.”

“Granular presentation, with a link to overview presentation ubiquitously available seems a good approach. I understand that the goal is to provide practical guidance. I’m thinking that simplified guidance needs to always be linked to full disclosure and there needs to be some very concise way of expressing the relationship of the simplified guidance to the complete disclosure. I expect service providers are going to want their liability covered, and users need to be left better off than they would have been had they not read the agreement, but never with the misapprehension that the simplified guidance can be taken as a replacement for reading the agreement.”

“As noted, the emphasis needs to be on simplifying agreements themselves. Yes, the other recommendations are helpful but the core must be simplification of excessively complex agreements.”

“I never trust a written contract by any large organization because I always feel there’s an intent to deceive. Very rarely do I find otherwise.”

WAYS TO IMPROVE MOBILE

We asked in both the PIN survey and the survey of Canadian Internet Users for ways to improve presentations of agreements on mobile devices.

From The Initial PIN Survey

PIN Question: How can online agreements or privacy policies be improved for mobile devices?

The majority of those that responded suggested large fonts, short, simple, and mobile-friendly navigation. However, a few mentioned that mobile devices can be inherently difficult to read from and this affects the agreements negatively. A significant number essentially said they had no idea. Specific responses included:

"Make it readable."

"Short and to the point."

"Easy to scroll through."

"They could have single window large font displays for each policy point and only if they agree to the information on the first window will they go on to the next and so on. This would force the policy makers to write simple English and keep the policy short and concise."

"For mobile devices, companies should have to justify why they need access to each piece and type of data (and that it helps them sell their services to us or sell targeted marketing to us, etc. are not acceptable reasons)."

"They have to be short. Use a chart or table format for easier navigation between topics within the privacy policy/agreement."

"Integrate consumer choices in affordable ways into mobile device setups. There could be more common standards that are supported at the devices and operating system level and required to gain access to the major app stores."

"Hard to say. I don't find it easy to read much at all on my iPhone."

"Make them super short."

From Survey Of Canadian Internet Users

For the following question we summarized a considerable number of open-ended responses to see what the key issues were around mobile as it relates to potential solutions. We wanted their view of what a solution would be, with a view to determining which of the regular recommendations/guidelines we believe would apply.

What one thing would you do to increase the probability that people will read an agreement on a smartphone?

Not surprisingly, keep it short (25%), use plain language (21%) and especially for mobile: use a bigger font size (22%) were three of the four prominent suggestions. Not only did many want it short they also wanted it summarized, simplified or highlighted (17%).

WHAT WE FOUND

CONSUMER BEHAVIOUR

- *Readers often ignore online agreements for a small set of fairly consistent reasons.* None of this is new to us. It is consistent with other research and surveys, conventional wisdom and just plain common sense.
- *People are interested in the content of such agreements, but have neither the time, nor make the considerable effort necessary to understand/decipher what they often believe to be a one-sided, no-choice agreement.* They just click to agree, or tacitly accept by not clicking to review Terms of Use or Privacy Policy links.
- *Mobile is different,* seen as riskier and consumers are more aware of issues, often either scaling down risky behaviour on mobile, or in some cases proceeding without knowledge of risks.

CONSUMER PREFERENCES

- *Consumers state more than anything else they want plain language agreements,* but their actions indicate they want plain language in summary, highlights or at least considerably shorter. Plain language delivered in smaller, more relevant and context sensitive chunks.
- *Consumers' preferred solutions for mobile largely overlapped with desktop solutions.*

WHAT EXISTS

- Much has been done already that can be copied/borrowed/stolen by Canadian organizations looking to make an easy effective change. Exemplars and best practices exist.
- There are many organizations, typically volunteer and not for profit, looking to create utopian and broad based integrated solutions, but fewer providing advice on what could be easily implemented, short-term win solutions.

OPPORTUNITIES

- There is clear scope for improvement in clarity and consumer decision making with a minimum of effort on the part of organizations. Business may benefit through improved competitive positioning.
- Opportunities in mobile are more difficult to resolve, and changes in general will help mobile. Mobile still has problem of small fonts when users are referred to sites not yet adapted to display on mobile devices.
- There is a match between some simple solutions and what the majority of Canadian consumers believe would be useful.
- Such recommendations would be best if principles based, and a set of Guiding Principles would be appropriate.
- There may be scope for Canadian organizations to compete in the arena of privacy and other online agreements.

GUIDING PRINCIPLES

We discussed among ourselves and with our Key Informants the idea of basing practical guidelines on some Guiding Principles – neither regulatory, nor prescriptive, nor even truly innovative. We wanted guidelines that produced no unreasonable barrier to an organization, and avoided unexpected resistance from their lawyers.

In discussions early on with Key Informants (and one regulator in particular), we determined that our guidelines would be principles-based and neither directive nor prescriptive. As a result, we sent out an initial set of Guiding Principles and revised these as we proceeded, as well as deferring or eliminating potential recommendations that did not fall within these guiding principles. Following are those Guiding Principles.

THE GUIDING PRINCIPLES

1. Must be practical. Should meet the common sense test.
2. Should not require a significant legal review.
3. Will not require any significant graphic design.
4. Will require no significant new technologies.
5. Principle-based, not strict requirements.
6. Will have been proven in use.
7. The implementation of any guideline will not require the implementation, either first, or simultaneously of any other guideline.
8. Must be consumer focused and provide value, reasonably obvious to any consumer looking to understand.
9. Will generally not focus on the lowest common denominator. A reasonable person test is adequate.
10. Will not conflict with any regulation or legislation, (e.g., Privacy and Accessibility).

DEVELOPING GUIDELINES

Our recommendations are not for organizations that would throw up artificial or spurious barriers because really they wouldn't want to improve their online agreements, they don't see doing so to their benefit, and they are already following 'requirements.' This is not our target audience ... yet.

We suffered some criticism from Key Informants, including one in particular for whom we have tremendous respect. But we stuck to keeping it practical. His concern was that our recommendations while well thought out and practical are safe, cautious and cautiously safe.³⁶ We agree. Otherwise they have little hope of adoption in this arena.

Interestingly one Key Informant in the regulatory field strongly suggested we go for principles-based recommendations.

Five of our Key Informants were lawyers. Four of them clearly indicated to varying degrees that businesses would want to review any such changes with their lawyers, and that the lawyers would in many cases want the same.

"I wonder about the legal status of the summary, and whether or not it would replace the longer agreements, or at least be the main place that courts will look to, in the event of the dispute. From my perspective that would be a welcome development but I would expect pushback from organizations and their legal counsel that would be wary that their more fulsome terms would in fact be ignored." Associate Professor, Law & Privacy

"Nothing overly conflicting with other agreements, but lawyers may require terms such as:..." Lawyer, Electronic Transactions & Privacy

"Most of these will be run by legal." US Professor of Law, ecommerce

With these recommendations/guidelines, we are looking to increase users' understanding and decision-making by overcoming their main issues with online agreements. Those being too long, too confusing, and one-sided, as determined through the PIN survey and discussion with Key Informants, whose comments are presented along with the detailed guidelines in the next section.

We listened to consumers and to our Key Informants, researched what is being done elsewhere, thought about it and went back to Key Informants and the PIN and Canadian consumers with a view to determining recommendations that fit the Guiding Principles. Subsequently we moved from 23 recommendations down to 12, through a combination of elimination, suggested deferral, and combination.

Unintended Consequences

We believe we should address a comment made by one Key Informant, a Usability Expert, who warned against the risk of unintended consequences, citing issues with Food Labels (in the U.S.) – and substitutions of ingredients not measured on the label, but just as harmful, or more so. We thought about this, concerned that there could be particular damage we had not foreseen. We believe the risk of this is low, because Food Labels are the outcome of regulatory requirements, whereas our recommended guidelines are voluntary and the outcomes malleable and subject to ready improvement. We would assume that any organization that had something to hide would simply choose to ignore our recommendations.

³⁶ Bill Jensen, Key Informant

THE GUIDELINES

"I would read them if they were shorter and in plain language."³⁷

"Companies need a Vice President in charge of Plain Language."³⁸

THE TWELVE RECOMMENDED GUIDELINES

Following are summarized recommendations that we believe can improve the decision making of consumers and increase the ability of businesses to compete in the area of online agreements. Happier customers are typically a good thing for business. These recommendations will be published in a condensed version for organizations considering implementation.

1. Summary of Salient Points
2. Summary/Highlights of Changes from Prior Version
3. Detailed Table of Contents
4. Plain Language For New Or Revised Agreements
5. Scenarios for Key Terms & Concepts, And Examples
6. Claim Language Section Summaries (Inline Or Alongside Agreement)
7. Link References from Relevant Pages
8. Notification of Change in Agreement
9. Allow Reader to Save/Print/Send Agreement
10. Right Headings/Titles in the "Consumer Voice"
11. Drawer Design from Remainder of Site for Online Agreements
12. Indicate Split Consent for Privacy Choices
13. Mobile – The Same Yet Different, and More

³⁷ PIN Survey respondent

³⁸ PIN Interviewee

THE DETAILED GUIDELINES

For each of the recommended guidelines listed in this section we have noted:

- *Description and implementation considerations:* A description of the guideline, followed by issues or context that may be relevant and, perhaps most importantly, the need for any particular legal review or applicability to one type of online agreement more than another. Because of the Privacy Policy Notice having a fundamental difference in nature from the other two types of agreements, there are times when the applicability or treatment will differ between them.
- *Benefits to the Organization:* These benefits can vary, from more people understanding key points of the contract, because many consumers mention they look for specific items and terms when reviewing online agreements, to an increased level of trust in the contracting organization. Assuming more people understand agreements and their role, there will be more efficient transactions in the marketplace and, ostensibly, happier businesses and consumers. We assume that organizations looking to implement these guidelines are doing so in the spirit of transparency. Many consumers do not trust what business states in their agreements or policies, and perhaps more specifically believe that they seek to hide terms that they don't want consumers to see. If an organization is not looking to be completely transparent and helpful in enabling their consumers to understand their online agreements, our comments about organizational benefits will not apply.
- *Examples:* We gave clickable examples of organizations that do it well, at least relating to that particular recommendation. We do not address the context of these examples directly or whether the terms, conditions or policies are good, bad or indifferent. Having said that, where an agreement was obviously problematic in regard to terms or content, we tried to find other examples.
- *Survey of Canadian Internet Users:* For several of our key final recommendations, and some that were eventually rejected, we asked Canadian Internet Users whether they thought these recommended guidelines would be useful in helping consumers better understand online agreements and make better decisions. We note their general response to each guideline.
- *PIN Question:* In our second PIN Survey several open-ended questions were asked for most of our recommended guidelines. We list the question, phrased as a guideline description, summarize the responses and include specific responses of particular interest, or uniqueness.
- *PIN Follow Up Interviews:* Subsequent to our initial PIN Survey we had several follow-up interviews with select respondents. Suggestions for certain solutions and comments on these were heard through these interviews, and we include some relevant excerpts from these interviews.
- *Key Informants:* In general our Key Respondents were in support of our guidelines individually, although most had a select few they thought would be of most benefit. None were considered to be of negative value.

We have not for any of these guidelines given graphic representations of how we think any one guideline would be implemented. Instead, we have preferred to present what we think of as good examples of such recommendations. The graphic design and any underlying technology will be that currently in place in any particular organization.

GUIDELINE 1: SUMMARY OF SALIENT POINTS

This recommended feature is a summary placed ahead of the document that would highlight or summarize points considered to be particularly relevant to a consumer – an Executive Summary of sorts for a consumer. It can vary from organization to organization, and can deal with more sensitive topics like sharing data with third parties, restrictions and limitations, remedies, penalties, and monitoring of use. It will of course vary by type of online agreement. It is important to note that this will not replace the actual agreement. As fiverr’s site puts it, these are the “Main Terms, in a nutshell.”

With many Internet products and services consumers have to do a lot of work to understand what we would call “the business proposition.” They don’t really understand what the product or service really is, and that starts specifically with the key exchanges of value — what’s the transaction, what’s in trade.

A Summary of Salient Points may include the organization’s business proposition. For example:

“We provide you news without charge about shiny widgets so, with your agreement, we can attract and identify your interest in them and provide online advertisers with information about your interest, so they can present ads to you related to your interest in shiny widgets whenever you visit our site or use a search engine. The seller of shiny widgets pays us for the information you provide to us about yourself, and that’s why we can offer this service to you without charging you money.”

Of course, different consumers often consider different points relevant or particularly important.

Implementation will be different for different types of online agreements, EULAs, terms and conditions, and privacy policy notice. It is easier to comment on Privacy Policy Notices than a Terms of Service or EULA. Look to Shopify for a good example of how individual agreement terms for a very important part of a business operation can be summarized.

This summary in real use might be described using a variety of terms including ‘General Terms,’ ‘Summary,’ ‘Key Points.’

We certainly found a high level of interest among consumers in how their data is used and where it goes, particularly to third parties. They were concerned about whether their information is used for marketing. They were concerned about information regarding credit cards. So the nature of the business and the nature of the information are factors that make a consumer aware or concerned. Management knows what is important to their clients and (potential) customers.

When caught between the lawyers and a hard place, with some lawyers insisting on long, court-tested-legalese, to gain protection even as management seeks transparent language that will build trust with their customers, the Summary of Salient Points can meet all objectives, we believe, and reduce conflict. In many case the lawyers may want phrasing to deal with the separate comments in the summary. Following is an example from the Skype Terms of Use:

“It is important that you read the entirety of and understand this document. There are, however, a few key points that we need to emphasize.”³⁹

The content can vary, but issues such as the following are relevant to consumers for Terms of Use/Service and EULAs:

- Prices, expiration of credits

³⁹ <http://www.skype.com/en/legal/tou/> Subsequent to the conclusion of the research, Microsoft consolidated its ‘Privacy Policy and Service Agreement’ across its products and services. The quotation referenced is from their previous terms, applicable only to Skype.

- Termination costs or fees
- Remedies (returns and warranties) and support
- Age and location restrictions
- Ownership of rights – is this a license to the product or an outright purchase
- Limitations, restrictions, inappropriate use

For Privacy Policy Notices the following are particularly important to consumers:

- Third-party use of personal information, and conditions on which it is shared
- Use of personal information for marketing information, email solicitations
- Length of time personal information is kept
- Sharing/use of location information
- Use of credit card numbers, and financial information and its protection
- Clear listing of purpose for which information is used

There are choices that can be made by consumers at the time, or thereafter, of assent to an online agreement. Inclusion of such choices would be a key part of these summaries. In one interesting point, a PIN respondent in commenting on the notion of a Table of Contents suggested that:

“Maybe a table of contents of the RISKS.”

Benefits to Organization

Consumers will better understand an organization’s ‘business proposition,’ the lack of understanding of which is not an uncommon problem. This is especially so with Internet products and services operating within new business models to deliver part of what might have once been ‘bricks and mortar’ solutions paid for in some new way.

Consumers can be guided to certain sections in an agreement. Respondents to our survey indicate that such a summary can cause them to read more closely certain sections or terms.

We believe that the trust in an organization can increase when such summaries are made available and consumers better understand, and ideally make better decisions. We believe that businesses do not want problem customers who end up in a transaction not knowing the consequences and end up costing a business time and money. This can be particularly problematic in the area of redress and remedies.

Transparent organizations that make commitments to a consumers’ privacy can more comfortably rely that their actions do meet their commitments.

We believe that such behaviour can be noted, possibly even heralded, in an organization’s Corporate Social Responsibility report.

Examples

[Shopify Privacy Policy](#)

[Fiverr Terms](#)

[Starzoogle TOS](#)

Survey of Canadian Internet Users

Respondents were hugely positive about the usefulness of such a guideline. 55% of respondents said this change would be very useful, with a further 36% saying it would be somewhat useful. All comments were positive, with the exception of one user being cautious about people reading only the summary and not the entire document. (Of course, the evidence is that almost no one reads the entire documents, anyway. Realistically, consumers and businesses cannot rely on this to happen.) Specific responses included:

“Very useful – but the danger here is that people might just read the ‘highlights’ and not read the rest of the document.”

“Be nice if these were highlighted like in yellow to stand out.”

PIN Question re: Specific Guideline

This suggestion received overwhelming support from the respondents. The general response was that consumers would be much more likely to read a summary than the entire agreement. Several compared it to an Executive Summary. However, some concerns were raised about the trustworthiness of the summary, and whether it would be complete and impartial. Notable specific responses and objections included:

“I like this – we are looking for executive summaries these days – I personally would be the kind of consumer to read these.”

“Agree. An executive summary of the main points of the agreement would help the reader to quickly get through the terms while allowing a more detailed description to be available if the reader so chooses. A risk to this setup is that organizations may bury items in the details that are of concern to consumers or that may put a different light on possible risks to consumers. Copywriters for these agreements may not be able to capture the significance of what is being asked of the consumer in a concise statement.”

“Agree completely.”

“Sometimes helpful, but only if you trust the site.”

“Nice idea, but concerned that these will not be enforceable, just the details that follow. Would prefer shorter plain language agreement.”

“I think this is the best possible idea. Very few people will read and scroll through a seemingly never-ending post of legalese. A synopsis or even executive summary style entry would be great.”

“Agree. Australia has had the concept of ‘optimal’ disclosure versus ‘full’ disclosure for years. This is the same principle.”

“A temptation for cunning omissions, allowing a plea of bad judgment if challenged. I would guess this is too risky.”

PIN Follow Up Interviews

In several follow up interviews with PIN Survey respondents there was strong support/push for something akin to a Summary of Salient Points. One suggested it’s comparable to what is available on prescription drug monographs. Following are excerpts from those discussions:

“Is this in human terms that people can understand? Now they are far too complex-state ‘here is what you need to understand.’”

“What is gained by my reading? Why should I read?”

“Look at leaflet regarding drug options.”

“‘Dosify’⁴⁰ the info’ they should make a commitment to community with the public.”

⁴⁰ Uncertainty remains as to whether dosify is a real word. We seriously doubt it, but we like it. We interpret it to mean “Parcel out in small doses.”

“Need summary of salient points.” “This is an important part of..., People must see the need and the reason for the sign off.” Note “key summary and the acceptance points.” “The reason why you need to...” “This is why you are signing the document.”

“Say it in simple terms... not like Facebook, should be fully explained. This is how it will affect you.”

“Terms that affect you. Want it clear. People don’t know where these things are. Here is the guts of the thing. Lean on companies. They have to make it simpler with the public in mind.”

“Write exclusions in plain language.”

Key Informants

Heavily supported by Key Informants. Some do question whether legal is an issue, or at least a serious consideration. This caused us to change our Guiding Principles as it was such an important point based on what we heard from the PIN, KI’s and consumers from our Canada-wide survey. The conclusion was that lawyers would want to peruse any such summary adding appropriate wording to ensure consumers know the summary is not the actual agreement. Following are excerpts from those discussions:

“ I wonder about the legal status of the summary, and whether or not it would replace the longer agreements, or at least be the main place that courts will look to, in the event of the dispute. From my perspective that would be a welcome development but I would expect pushback from organizations and their legal counsel that would be wary that their more fulsome terms would in fact be ignored.” Associate Professor, Law & Privacy

“Put summary on top.” “One of the top two, three or four things that they need to pay attention.” “Before you sign, do any of these cover you?” Bill Jensen

Organizations would “need help to select points. We need a very good definition of salient.” Internet Usability & Accessibility Expert

“What to expect... exclusions and limitations, these have impact, please validate. Consequences. Setting the context. Identify most concerns for consumers.” Financial Regulator

“This would be extremely helpful for users. To make it simpler to implement for organizations perhaps an appendix to the guidelines could list key categories that are often sensitive for users as a prompt.” Privacy Researcher

“Perfect way of approaching problem. Highlighting...” and consumers “can read the rest” if they want.” Director of Innovation

“I tend to think that this is the most useful thing that can be provided to a user – it’s an opportunity for them to set their mind at ease, and for an organization to instantly build trust. Assumes, of course, that the organization is good at identifying the salient points ... having a summary that misses a key point would be incredibly problematic.” Senior Analyst, Privacy Regulator

GUIDELINE 2: SUMMARY/HIGHLIGHTS OF CHANGE FROM PRIOR VERSION

Make clear in a section at the top of the agreement (or notice) the changes from the prior version. All changes or just key changes may be noted. This information may also be included in the Notification of Change that would appear at the top of a home page – noted as a separate guideline recommendation below. An organization can apply filters similar to those they would use in the Summary of Salient Points, in order to determine to what degree and how the changes would be noted.

Management is in the best position to indicate the most relevant changes, or whether to include all changes. In all cases it should be notes (if indeed it is the case that these changes are the highlights summary and may not include all). It is what they think are the most relevant to their customers. The balance point is to introduce an element of trust without damaging the fundamental legal agreement. This would precede the online agreement and not be part of it, with an accompanying statement to that effect.

In a summary of changes, we believe that only the key changes would be highlighted, as many changes may be trivial, but required legally, and of little note to consumers.

This is different from organizations that leave a trail of changes from each agreement, typically at the bottom of the agreement. We encountered examples of this, and some organizations may consider it an effective way to convey Privacy Policy changes that might alert a consumer to changes in the way that his or her personal information is being used, from the time that they initially provided such information.

Benefits to Organization

Why wouldn't an organization want to let consumers know what has changed in their agreements? To us, and to many of the consumers and Key Informants we surveyed and spoke with, it is important to keep updated on what their obligations are and to satisfy most organizations' commitment to transparency.

Examples

[Shopify Terms of Service](#)

[Shopify Privacy Policy Notice](#)

[Target US Privacy](#)

Survey of Canadian Internet Users

A summary or highlights of changes was highly supported by respondents. 50% of respondents thought the idea very useful, while a further 40% characterized it as somewhat useful. Many of the same issues and suggestions as the last question were raised. Specific responses include:

"Summaries are helpful. If I want details, I can read what concerns me."

"More things to read that have no effect on what I'm agreeing to"

"Then the whole agreement does not need to be reread."

PIN Question re: Specific Guideline

Most respondents were in favour of this suggestion, but made a few comments. There is some concern about whether the added length would further annoy readers or discourage them from reading the entire agreement. Specific responses included:

"May lengthen agreement and thus repel readers."

"Good idea provided there is a "don't notify me again" check box. Otherwise it becomes annoying."

“How is the prior version known? What about an agreement marked with any changes made within the last year? I think we’re talking about “good practice” here. Bad actors will just relaunch services to avoid this, but it would work for a lot of the services trying to remain brand continuity. And I suppose a brand change would trigger to many consumers a potential change of service proposition. But did consumers who went from ING Direct to Tangerine expect that? I guess they should have been wary, and I suppose a practice of proactive notification and marked changes might have helped them.”

“Good idea. Older people like me can be quite forgetful.”

“Critical to have this.”

“Agree. That way I could see changes in service. If they’re better or worse, then I expect financial compensation up or down as a result.”

“By all means do the notification of change, but that should not be the primary method of notification.”

PIN Interviewees and Key Informants

There was strong support for this from Key Informants, and specifically from one of the PIN Interviewees.

“If changes are made, tell me the change.”- DG (PIN Interviewee)

*“Great idea and also could serve as the point in which consumers indicate their renewed agreement.”
Associate Professor, Law & Privacy*

“Very important, and easier for the user than the blackline in some ways, although less thorough. As these two serve a similar purpose, are you going to prioritize them in the recommendations?” Privacy Researcher

GUIDELINE 3: DETAILED TABLE OF CONTENTS

Many users know the areas of concern and importance to them, but have trouble finding specific sections of interest or concern. A Table of Contents hyperlinked to the relevant sections accommodates this, particularly for long documents. Ensure that easy navigation back to the top is available.

Examples

[BMO Privacy](#)

[Groupon US Terms of Use](#) but not [Groupon Canada Terms & Conditions](#)

[Shaw TOS](#)

[23andMe](#)

[Bell Mobility TOS](#)

[Globe and Mail TOS](#)

Benefits to Organization

If a business wants to gauge whether this idea will deliver a benefit, we suggest a rather novel approach. Maybe test the idea by requiring all documents written within the organization (used by employees and the public, including marketing material) to have neither a Table of Contents nor page numbers. For those organizations wondering if their online agreements should have headings, we would suggest a ban on any paragraph headings on all internal and external documents. We believe the benefits would be immediately obvious.

Survey of Canadian Internet Users

The guideline of a detailed Table of Contents received very strong support from respondents, 48% and 40% for very useful and somewhat useful respectively. Overall, it was one of the recommendations receiving the strongest support of its usefulness. One respondent did have a concern as to whether it might have an unintended consequence:

“Again, very useful, but the danger being that the entire document might not be read and understood fully.”

PIN Question re: Specific Guideline

Most respondents were in favour of a table of contents. There was strong support for the headings to be hyperlinked, allowing consumers to navigate easily to the detailed part of the agreement. About 20% disagreed with some minor concern, citing the idea that an agreement with a table of contents would be too long for most to read, and that most consumers would not know specifically what they are looking for.

Notable specific responses:

“Not too important – some organization and headings help with bolding but not sure about the value of TOC.”

“Disagree. Rather than use a Table of Contents, hyperlinks could be added to the summary of points in order to limit the length of the agreement.”

“Agree completely. Again, the complexity and legalese of most online agreements are major reasons that those agreements are not read in full. That's not good for consumers or for the online provider. Providing a table of contents provides an opportunity for consumers to zone in on the areas that they are most concerned or interested in and will provide a better idea of the comprehensive nature of the agreement.”

“Ugh. If it needs a table of contents, I am not likely to use the site. It means there is too much to read. Maybe a table of contents of the RISKS?”

"The notion of synopsis/summary that helps someone dig deeper for detail as suggested in my response to question 5 would accommodate this. I don't know. It might be an improvement if a summary was offered that served as a table of contents was presented, that, in turn, facilitated paths to more information and the contract detail and the detail itself. A time on the page evaluation and some instance of inquiry might help evaluate whether the agreement had actually been reviewed, and be a better test of this than an "I agree" button."

"Only useful if it has links and you can go 'back' to the TOC easily."

"Hyper links certainly save painstaking scrolling through stuff you are not interested in."

"Yes will a hyperlink to the section."

"Moot point here. Most consumers really only have a general idea of what they are looking for. Maybe a frontice piece would help – but beware it may only add to the confusion."

"Agree – ideally will link from ToC to point in terms."

"Agreed. This is a great idea especially since the document is so long and difficult to maneuver. Having an Index whether with or without hyperlinks would greatly help target the attention of the reader to the areas that matter to them. In addition to the indexing it would also be great if a standard index and document headings can be suggested so that if you have read one ToC carefully you would know exactly where to go for the next one and the one after that etc."

"Agreed. But why are there long agreement in the first place?"

"Excellent , as above, link this to the summary too."

"Yes. And when implementing this requirement you should consult a seasoned information architect to help construe finer details on how to recommend structuring and classifying the information."

"Good idea a person then could concentrate on what is the most important to him/her."

Key Informants

Overall, as with PIN members and Canadian Internet Users this had very high and broad support.

"A good idea, but I see it as going hand in hand with another requirement to reduce length. Otherwise I worry it will provide legitimacy to create even longer agreements. Hyperlinking and interactivity are of course essential." Associate Professor, Law & Privacy

"Better than a complex technology search." Privacy Researcher

"Might be worth mentioning that this is a particularly powerful tactic when combined with 'consumer voice' headings." Senior Analyst – Privacy Regulator

"One of the most important." - Lawyer, Electronic Transactions & Privacy

"Very good, very necessary. I would also suggest plain language titles for sections as a recommendation here. BMO isn't bad, of the examples you provide although the terms are "privacy speak" but Groupon has things like "Modification" "Force Majeure" and "Assignment" that won't mean much to the average user." Privacy Researcher

GUIDELINE 4: PLAIN LANGUAGE IN NEW/OR REVISED AGREEMENT/NOTICES

Plain language can solve many problems of readability and understanding. This is well documented. However, all we are suggesting is that it be used for new agreements, (and possibly revised ones) as this would not incur any extra legal review (other than what would normally be required for a new agreement).

Everybody wants it. We believe that many don't know it's there - for example, in financial services agreements and terms. All say they want it, but plain never seems to be plain enough. We think that plain language with shorter pieces, or chunks if you prefer, is what works. This seems to be borne out by our discussions with a variety of Key Informants and users.

One would assume that organizations should ask themselves, "Under what conditions would we not put any new agreement into plain language." While contracts need to be precise, they also need to be understood.

Benefits to Organization

It may lead organizations to more plain language documents, a trend that will only increase. From our research, plain language, especially in shorter summaries, chunks, or highlights, increases understanding and trust.

Examples

[Tumblr Privacy Policy](#)

[Shaw Canada Terms of Use](#)

[Mailchimp Terms of Service](#)

[Shopify Canada Terms of Service](#)

Survey of Canadian Internet Users

Over 93% of respondents listed plain language as either very useful or somewhat useful, and only 1.5% believed it not to be useful. This was the most heavily supported suggestion of all those suggested. Given the quantitative nature of this survey, we could not readily determine how important shorter agreements were.⁴¹ Notable specific responses included:

"While I typically can understand contractual language to a point, I often worry that there is something hidden in lengthy contracts filled with legalese. Plain language would be easier to read, and would ease my concerns."

"Language should be simple and easy to read – if it were – perhaps more would read the agreement(s) in full."

"Plain language would encourage people to read agreements more thoroughly."

"I think if terms and such were shorter and to the point people would both understand better and might actually bother to read them through."

"Sometimes the language is what puts me off from continuing to read because I get lost and confused."

PIN Question re: Specific Guideline

Drafting new agreements in plain language had very strong support. However, there was a prevailing view that it still needs to be short. The vast majority of respondents agreed that the inclusion of plain language was an important, almost necessary step towards getting consumers to read online agreements. There were, however,

⁴¹ Shorter was often mentioned as a recommendation by Key Informants and the PIN respondents.

concerns expressed by many as to whether the length of the agreements might still prevent the majority of consumers from reading them. Notable specific responses included:

“Agree, and it should be brief and to the point.”

“Plain language makes sense in all documents especially now that we have many people that English is not their first language.”

“Agree. Plain language will help a reader to understand what is at stake or being asked of them. However, the agreement should still be kept short enough so that it is not too onerous to read and can be read in a reasonably short period.”

“Agree. But ... a lengthy agreement, even in plain language, with a clock ticking (to buy tickets for example) will still be ignored. Highlight the RISKS.”

“Yes, I think this is one of the main reasons people don't read EULAs.”

“This is critical although brevity would also help.”

“Plain language means ‘Reader's Digest’ and no higher education level.”

“This would be useful. The real issue is of intent. Does the party offering the agreement really wish to be clear and helpful or does it want to simply take advantage over the other party?”

“This can be done in at least two ways. There can be a plain language statement of the point and purpose followed by boilerplate language that might be required for legal purposes. Or the whole thing can be plain language, but might not be possible.”

“Agree. There are a lot of people in Canada for whom English is a second language.”

“Absolutely agree. Is it possible that legal agreements are deliberately written to be difficult to read and understand to discourage the general public from reading them?”

“Agree totally with this recommendation. It makes it easier for most people to understand and is particularly important for seniors, vulnerable Canadians, the immigrant population.”

Key Informants

There was consistent strong support for the use of plain language from most, if not all, of the Key Informants. Many recognize, though, that it is often not as easy to draft agreements in plain language as legalese and could be time consuming or problematic. For example, one specific response:

“Nice in theory... challenging to apply day to day since the notion of plain language varies very much from one person to the other...” Financial Regulator

GUIDELINE 5: SCENARIOS FOR KEY TERMS & CONCEPTS, AND EXAMPLES

Users understand better when key term definitions are readily available and explanations are made clear in ways that may affect them in their context. They can be made available as mouseovers, in a separate column, or even inline if they are differentiated in the design and noted at the beginning of the agreement. Scenarios give examples of where a term or clause may apply and are separate from the legal agreement or policy. Care must be taken to ensure that readers do not assume that these examples are all inclusive.

There are two key issues regarding implementation. (1) We suggest that this applies, when providing contextual examples, more to Privacy Policy Notices than Term of Use/Service and EULAs. (2) When dealing with online agreements other than Privacy Policy Notices, it may be preferable to keep the text to exposing definitions of key terms and concepts, rather than providing contextual examples.

This is probably the least practiced of the guidelines we are recommending.

Benefits to Organization

A clearer understanding of terms of agreement will lead to a clearer understanding of an agreement. From a Privacy Policy Notice perspective, the ability to clearly give examples of effect of the policy and the benefits is not unlike what the marketing department does. Organizations are increasingly focused on how to leverage Big Data. It is often stated these connections are for the benefit of consumers. Explaining these benefits to consumers in context and how the synthesis of their data will help the organization serve them better could be the beginnings of competing on privacy terms. In the business of search engines, DuckDuckGo clearly competes by offering more privacy to its users; it collects no information in the hope users will 'flock' to them solely for this reason. We believe that organizations that offer more transparency concerning current and future uses of personal information have an opportunity to earn the trust of consumers and develop a competitive advantage for attracting business.

Example

[Google Privacy Policy](#)

Survey of Canadian Internet Users

Over 87% of respondents put this suggestion as either very or somewhat useful. Most said that examples and scenarios are very helpful for comprehension, and can significantly clarify the document for the average reader. One as noted below significantly disagreed, suggesting it would only complicate matters. Two key points arise: (1) Make sure that adding this feature does not overcomplicate, because adding context is not simple, and (2) Adding navigation may require review to ensure it fits the website's interface, navigation and usability. This could be why there is a paucity of examples in use, and to our knowledge in only Privacy Policy Notices.

"You have to know about this feature to access it and many just don't realize that it is even there."

"Examples are helpful."

"I find examples very helpful to illustrate concepts."

"Ten out ten."

"What??, can you make it more complicated?"

"Using analogies often helps increase understanding I've found, this would be a really good idea."

"This would definitely encourage reading that fine print!!"

PIN Question re: Specific Guideline

Most respondents agree that scenarios would be beneficial to consumer understanding. The main issues are the clarity and readability of the examples themselves, and concerns that this might lead to longer agreements, thereby defeating the purpose. Notable specific responses include:

"Helpful – with features changing so quickly, consumers need context and reference points to understand these terms."

"Agree. This provides greater insight into the terms."

"Agree to examples as long as done with mouse over."

"Scenarios or a point form summary should be mandatory and be presented before being obliged to click on the "Agree" button. They should also always be available for reference. In many cases the agreement "disappears" once you click on the Agree button."

"I like what you suggest; however, if this will lengthen the agreement, I believe most people will just scroll through and 'accept'."

"What I really want to know is where I am vulnerable. Highlights those sections in plain language with examples."

"...I think the point is that scenarios may add understanding, but they also are part of the meaning of the agreement ... or will an agreement need a whole section on the limits of applicability of scenarios? But it could be helpful in many cases to get scenario information in context, if it does not compromise a user's understanding of the 'actual agreement.'"

"Very good idea and much more helpful than having to click a link and wonder how easily you can get back to the same spot."

"I think this would help people to understand exactly what the agreement is referencing. Obviously, not all users have the same level of knowledge and won't understand unless it is put into terms to which they can relate."

"Yes. It might make sense to require that scenarios be given for any term that has economic consequences to the consumer: price, cancellation charges, taxes, etc."

"This would certainly help understand the key elements of an agreement."

Key Informants

There was general support for this recommendation. There was a question over the difference in treatment of the differing types of online agreements, which was addressed in implementation issues. In dealing with examples there was the concern that the examples may be seen as the entirety. This is an issue that must be considered by management as they draft it. This is something that they do as a matter of course in their dealings with consumers regularly.

"Good idea – what am I really consenting to." Privacy Researcher

"I'm not sure about this one. I find the Google example a bit difficult to navigate. I would opt for plain language over complicated language and scenarios, which is what Google seems to have right now." Associate Professor, Law & Privacy

"This is an excellent idea and would be very helpful for users. OK, if it doesn't add length to the documents. Worried about the fact that people limit themselves to the examples given and not the concept illustrated by the examples." Financial Regulator

"I've always liked Google's efforts in this area; might be tricky, but it's useful (especially for those organizations that offer particularly complex services)." Senior Analyst, Privacy Regulator

GUIDELINE 6: PLAIN LANGUAGE SECTION SUMMARIES (INLINE OR ALONGSIDE)

Not unlike scenarios, these are highlighted explanations, in line with the agreement copy, or to the side. Generally, this is a plain language explanation of the detailed “legalese” section. They explain more clearly, than a Scenario, which provides context. In practice, we have seen (and include below) examples of both inline and split column implementations. We have a decided preference for the split column because it creates narrower columns for the agreement (almost invariably a good thing), and highlights more clearly the separation of the legal agreement and the section summaries/explanations. It may require some minor changes regarding interface and graphic design.

Typically the plain language text for each section is preceded by a phrase such as *“Basically...,”* or *“Which Means.”*

However, not all sections need to be augmented by a plain language summary. Witness Mailchimp’s Terms of Service where they have noted only relevant or salient sections, arguably combining this guideline with the Summary of Salient Points.

Benefits to Organization

For organizations that want to give consumers plain language in smaller chunks, this is a simple way to do it. Consumers will immediately and clearly see the relevance of all sections, assuming the wording is clear, which is where the most effort should go in drafting.

Examples

[Tumblr Privacy](#)

[Mailchimp TOS](#)

[Shopify Terms of Service](#)

PIN Question re: Specific Guideline

Responses to this section were split fairly evenly between those who believe it is a good idea to improve clarity and those who believe the extra text may confuse the reader. Also, there was considerable support for the idea that having both a plain language and a legalese section could make the document unclear as to which section is legally binding, and that the legalese section should be dropped entirely. It was noted that if the agreement is in plain language that these summaries would not be necessary. This would not be the case. Plain language documents are not necessarily shorter, just clearer. The increased readability and narrower columns, one with less text may give a perception of shorter agreements. Length regardless of plain language or typical “legalese” is a problem for consumers. Notable specific responses include:

“Agree completely. Having to understand the 'legalese' of such agreements is a major reason that most would not read the agreement in it's entirety.”

“Since most of us do not have law degrees this makes sense.”

“Good idea to use side by side columns to keep overall length under control.”

“If summaries can be written in plain language, why can't the agreement be written that way to begin with? Again, this stems from the lawyers' choice of language based on precedent. But if jurisdictions are calling into question the legal entitlement to domicile agreements outside the place where a user is accepting an agreement, then how will any of the legal language be understood and interpreted? Is anyone taking an approach other than to seek refuge in trying to artificially domicile agreements?”

“This sounds convoluted. Prefer to just have the contract written in plain language.”

“Would be helpful but ensuring it is understood that it is in fact not part of the agreement just a plain explanation – aka easy-to-read explanation.”

“No, the plain language should be the legal document. Otherwise we are into claims and counterclaims about which language governs. Lawyers and others need to know and be trained that plain language is the only language to be used.”

“This may possibly make any document even more cumbersome and lengthy. In principle, it is a good idea, as long as the explanations are short and concise.”

“This could be beneficial but it might also appear confusing.”

“Yes, this too will assist the consumer.”

“This should not be necessary if agreement in plain language. It may only confuse the reader.”

Survey of Canadian Internet Users

90% of respondents saw the recommendation as somewhat or very useful. However, it was much more balanced towards the somewhat useful side. This could well be because, as stated in some comments, many respondents believed that the agreement itself should not need to be translated.

“My concern is that the plain language, as an interpretation, may not be seen as binding in a legal dispute if I rely upon the interpretation. If it is binding, then it would be ‘very useful.’”

“Language should be simple and easy to read – if it were – perhaps more would read the agreement(s) in full. A separate side column will only encourage people to skip over it and not read it fully ... IF they even notice a side column.”

“It just means more reading.”

“I prefer this configuration.”

“A paraphrased version would be helpful but still wouldn't guarantee people more consistently reading contracts, it would make sense to have the overall contracts be shorter as well.”

GUIDELINE 7: LINK REFERENCES FROM RELEVANT PAGES

When information is gathered, particularly personal information, place a link to the Privacy Policy Notice precisely where the information is gathered. Where individuals are transacting, make the Terms and EULAs more apparent, ideally with a list of salient points on the page and a clear reference to the actual document.

At the same time consider making Terms of Service/Use and Privacy Policy references more prominent on the website, given that people have to remember to go see them to see whether they change. This, of course, should only be considered in light of the navigation and interface of the website.

For some Terms of Use or Service or EULAs this may not be as useful as the consumer has already agreed to the Terms or the EULA. However, it will be less the case for Privacy Policy Notices as the notice can be linked when such information is given. Ideally, these links will be placed next to entry boxes where personal information is entered.

As to the navigational method of getting to the agreement from the link, that will be determined by the nature of the application and interface, and underlying technology, on the website.

When dealing with Terms of Use and/or EULAs consider having a link to these documents on the first step of a purchase or licensing process, as well as the last one where the consumer ultimately clicks OK. In some cases, a link on every page during the purchase process, and a prominent relevant position, (subject to usability requirements) would be beneficial. The key would be to determine at what point a consumer would want information from an agreement, and ensure that they have easy and immediate access.

Benefits to Organization

Information delivered 'just-in-time', is typically more effective. On an assembly line, inventory parts and the appropriate tool to affix such parts are made available at the time they are needed. This is a clear benefit to a company. A similar benefit would accrue to a company if the right tools, in this case information, are delivered to the individual at the time that they need them to make a decision around their privacy. Ostensibly, it is good for everyone involved when consumers making good decisions about their privacy.

Examples

[timetrade US TC](#)

Survey of Canadian Internet Users

Over 85% of respondents thought that this guideline would be at least Somewhat Useful. More people thought it would be Somewhat Useful than Very Useful. Only 40% thought it would be Very Useful. Some respondents said that placing such links would have no net benefit as at the point they are relevant the user has already agreed, and no one will go back and read it.

"Won't make it any more likely to be read."

"It's frustrating to get to the very end of the purchase process, and discover unacceptable Terms and/or EULAs."

"I guess this would be a bit useful in the case that your making a purchase and you want to know at that time how that info will be handled."

PIN Question re: Specific Guideline

Responses to this question were mixed. Some believed the average consumer would not use it. About half thought the idea was good, mainly citing the need for proper documentation and ease of accessibility of the document for consumers. Notable specific responses include:

“Even if people don’t look at this, this seems like good documentation procedures.”

“This is a good idea in theory. However, implementation will be difficult and expensive.”

“Yes. Good one, no matter what. But I think making a link to privacy language always ubiquitously present is good in addition. One doesn't replace the other. They reinforce each other.”

“Anything that makes such information easier to find is an excellent idea.”

“I believe often individuals read the agreements just before sending/submitted the information. They have already spent some time on the matter. This can be very helpful if individuals are willing/encouraged to review the information earlier.”

“Good idea. Make the link while it is top of mind with the person.”

Key Informants

Overall the Key informants strongly supported this. One concern raised was regarding the ease with which a user could go to the agreement and come back, and that any sort of delay could scuttle the transaction. It is a valid concern. This is not a simple guideline to implement, although certainly worthwhile. Perhaps the best description was the first of the specific responses included below, from a privacy researcher:

“Good idea – contextual information provided at the moment of need.” Privacy Researcher

“Make privacy notice bigger more prominent on the homepage.” US Professor of Law, ecommerce

“If delay loading of next screen by a few seconds people will quit.” US Professor of Law, Privacy

“This is an exciting idea, especially when we consider how it could be built-in to mobile apps. It is a much more robust notion of ‘in-time’ consent.” Associate Professor, Law & Privacy

“Agreed. We tend to call this “just-in-time” notification, and strongly encourage it.” Senior Analyst, Privacy Regulator

GUIDELINE 8: NOTIFICATION OF CHANGE IN AGREEMENT

Typically placed at the top of the home page in advance of a change in terms or privacy policy – possibly indicating timing, nature and (ideally) key implications. Can be removed by reader by clicking a close box. An organization would determine the extent to which the notification is placed on the site – just the Home Page, or relevant pages, perhaps the first page the user lands on, but this will be based on their own needs and factors regarding navigation, interface, and the details and extent and implications of the changes in the agreement.

Organizations ask people to periodically check agreements to see if they have changed, and the effects on them. People don't know how often to check and we suspect rarely check back, yet remain responsible for certain terms that may change. This will eliminate the need to have to check back. One concern would be negative reaction from consumers who do not care to see the notification. And ideally, a Notification of Change would also contain a summary or highlights of any changes to the agreement.

In some instances an organization may take an approach not unlike they do with Antispam and unsubscribe rules. The consumer can choose to subscribe or unsubscribe to notifications of change in agreements.

Benefits to Organization

Assuming consumers act like they indicate they would with respect to this type of change, then they will have a better understanding of an organization's agreements with them. They can make a decision on their interactions with the organization based on current rules, not as they understood them when they initially engaged. In a transparent organization, this will be of benefit.

Examples

LinkedIn

Survey of Canadian Internet Users

This suggestion was well received, with 90% of responders supporting it as at least Somewhat Useful. Most people want to know when an agreement is changed and how these new policies affect them differently from the one already signed. It was certainly one of the mostly strongly supported guidelines.

"It's nice to have that information front and centre."

"It depends if I would be grandfathered under the agreement at the time of purchase or subject to the new agreement. There would need to be clarification around this in the Notification of Change or I would be chasing the company for clarification of this point."

"Again the problem arises that even if the agreement changes we would still have to agree to it in order to use whatever service it is so it doesn't really matter ... if we're notified that it changed."

PIN Question re: Specific Guideline

Respondents heavily favoured this recommendation. However, they expressed concern about its implementation and ensuring that consumers do not universally ignore it. Notable specific responses:

"Agree. This is useful when an agreement is changed if the changes apply to user who previously agreed to the agreement and had a cookie placed on their browser address or will have it apply to them."

"Should go without saying."

"This is a good idea. However, there the key implications should be mandatory."

"Full disclosure is always good policy."

"Good – but also include a summary of changes (brief) in an obvious section of the document."

"Okay – could require reading before using the website again."

“Good idea in principle, however, if readers didn't read the agreement to begin with, they won't read it with the changes either!”

Key Informants

There was support among Key Informants for this guideline, but some questions around where to place it. Its interactive nature, causing engagement by the consumer, was seen as positive by at least one of the Key Informants.

“Home page and major section pages would be a reasonable compromise? i.e. top level menu landing pages? Searches don't always land a user on the home page?” Privacy Researcher

“I see this as good if it is interactive and so consumers have to accept the change. Of course meaningful information has to be provided and not just a notice that a change has occurred.” Associate Professor, Law & Privacy

GUIDELINE 9: ALLOW READER TO SAVE/PRINT/SEND AGREEMENT/NOTICE

At the time of agreeing to an agreement the user can either send themselves a copy, save a copy or print a copy. The name given to the document should be easily identifiable (e.g., ABC-Co Privacy Sept2014, and not 47953_PPN_v7.1).

Benefits to Organization

Any organization citing transparency as a goal in dealing with consumers, could hardly disagree that consumers should have immediate access to any agreement to which they are party with the organization. It generates trust on the part of consumers, allowing them to do essentially what Ronald Reagan suggested regarding nuclear arms control agreements with the Soviet Union during the Cold War: *"Trust, but verify."*⁴²

Example

Apple (But only when accessed from mobile devices)

Survey of Canadian Internet Users

Over 83% of respondents expressed support for this, as people do like to keep copies in their files of agreements to which they may be held responsible. One went so far as to say it should be a requirement by law. There is common sense in this suggestion, we believe.

"Having the option of retaining a physical copy helps if you believe and part of the agreement has been violated."

"Very helpful. Having a hard copy for my records is almost mandatory."

"I don't get how this would make a difference we would still have to agree to the agreement we would just have a copy to read over later to see what we agreed to."

"People might like a copy for sites they use regularly specially the financial ones."

"I am not going to plug up my inbox or hard drive with these things that I would never read."

"This should be required by law even if 99% don't use it."

PIN Question re: Specific Guideline

Response to this question was on the whole very simple and positive. Almost all believed it should be implemented with minimal changes, and some suggested more regulation of the documents provided in order to ensure they are the same as the ones agreed to. Notable specific responses:

"Definitely Completely agree/Should be a requirement Like any agreement, consumers should have their own copy to refer to whenever they want or wherever they are. Agreements also change but the changes are not always highlighted."

"This is a good point. How is it assured that a user not only assents to an agreement, but also has 'received' it, so its substance can be known in perpetuity."

"Unless you can get a copy of the agreement you actually 'signed' everybody will be totally confused. I had no idea that such info might not be easily available."

"Great idea. There should also be a period for the user to be able to read the agreement and rescind his/her consent based on reading the full document."

⁴² "Trust but verify" was a slogan used during the Cold War to describe the basis for transparency in diplomatic relationships. Today, the term can be used to describe a strategy for narrowing the "trust gap" not between nations, but between companies and stakeholders. <http://www.pwc.com/us/en/view/issue-13/trust-but-verify.jhtml>

“This would be useful particularly when newer versions are issued/used.”

“Agree. I always back myself up with paper and also digitally.”

“Absolutely this should happen. Just as I can print off my boarding pass, why not the agreement. No cost to the company. I am frankly surprised there is not a print button.”

“I think this option would be extremely important to many people.”

Key Informants

There was general support from the Key Informants, and for some it was one of their most important. One suggested integrating it into a cloud-based service that would keep one’s personal agreements – an interesting idea, but certainly well beyond the scope of any of our recommendations.

“Save and print send – possibly store in a cloud-based. A personal data store.” Internet Usability & Accessibility Expert

“Agree. Would also help signify the importance if this was mandatory to consumers.” Associate Professor, Law & Privacy

GUIDELINE 10: WRITE HEADINGS/TITLES IN THE “CONSUMER VOICE”

Consumers understand better when headings and text are in their voice. In other words, use “What information of mine do you collect?” rather than “Initial Collection of Personal Information.” As one respondent so beautifully put it, people should be “lured with rhetorical questions.” It is also a way to bring plain language to an existing document, (if only to the headlines) without changing the document.

For the Terms and EULAs one Key Informant, a contract litigator, suggested that the lawyers may want to put a notice at the beginning of the agreement to the effect of “Headings are not part of the agreement, and placed here solely for convenience.” This of course would only be if headings were added as part of this exercise, and not just modified. The concern is that readers may be confused, because most probably do not realize that such headings are not part of an agreement, and, if there, just intended to aid understanding.

For any online agreement, this, in conjunction with a Table of Contents, can be effective at helping readers to their subjects of concern. This is not an uncommon practice currently in the display of Privacy Policy Notices.

Benefits to Organization

More transparency and consumers making better decisions about their purchases, use of websites, and accepted uses of their personal information. For an organization committed to such values, this is a benefit.

Examples

[Bell Mobility Terms of Service](#)

Key Informant Comments

There was fundamentally overall agreement from Key Informants, although aside from the case of one Key Informant, it was not typically one of their top picks.

“To me, a very impactful (and minimally difficult) modification to make ... especially if headings are already present. This also naturally encourages the use of plain language in ‘answering’ the questions.” Senior Analyst, Privacy Regulator

GUIDELINE 11: DRAW DESIGN FROM WEBSITE FOR ONLINE AGREEMENTS

Such online agreements are often set out in a ‘design-free’ format, when they could easily be formatted like all other content on the site. Much work in this area has been done, particularly by one designer who based his Masters Thesis on a redesign of Apple’s Terms of Service.⁴³ He augmented it with a few short screens of relevant points, always allowing access to the actual agreement. The problem relates to legal agreements, which are often difficult for the average consumer, not being given the service by technology and graphic design of other content on organizations’ websites. We received mixed views on this from consumers and Key Informants.

One interesting view, provided by some consumers and Key Informant’s was that if legal agreements do not look like legal agreements people won’t know they are legal agreements. Strangely, that made some sense to us.

So, as for every other recommendation, we are of the view that implementation will help, and the way in which it can be done is fairly straightforward. This solution should be put in the hands of the graphic designers and the lawyers. Get them in the same room and see what bold graphic designers can do, that the lawyers will allow. The firmest creative director versus the exacting lawyer – that’s a contest we’d like to witness.

Having said that, we do believe that a couple of thoughts should be seriously considered for most of these online agreements. Consider the column width and the font size. Often the font size for these agreements is smaller than the rest of the site, and while that isn’t always a problem, when paired with the general trend to have a single column of text spreading the width of the window, it can make for difficult reading. Much is known about what constitutes the maximums and minimums for readable lines of text. We suggest checking font size and column width, as well as line spacing, against these best practices.

Benefits to Organization

Verbatim from one of our Key Informants, a privacy researcher:

“A reminder that these policies are outward facing signs of the organizational commitment to consumers and should therefore reflect the brand just as the rest of the site does is a really good, strong message.”
Privacy Researcher

Examples

[Shopify Privacy Policy](#)

Survey of Canadian Internet Users

Most respondents were supportive of such a change, although some suggested, that it may make a legal page seem less important.

We also asked a question regarding font size. It has fairly strong support for a useful change, but knowledgeable users suggested that the zoom function of Web browsers and accessibility of many mobile devices could be used. However, most cited vision issues being a large factor in the reading of agreements and supported the change, especially among those less tech-savvy. Specific responses included:

“Making the font in larger bolder format does make it easier.”

“May make it seem less important (e.g. On a gaming website).”

“This would be easier on my eyes; the bigger issue for me tends to be the length and my concerns about what I could be missing in the contractual language.”

“Similar to labelling on products usual print is so small cannot read or hurts eyes to strain and read.”

⁴³ Bernstein, G. R. (November, 2010). The fine print: Redesigning legal contracts for the digital environment. Thesis

PIN Question re: Specific Guideline

This idea of more graphic design received support, but some resistance. The primary grievance was that it was unnecessary, and that adding in the graphic design could be confusing or detract from the focus on the agreement itself. Interestingly one respondent indicated that the difference in look adds to the view of a consumer that it is a legal page, and different from the rest of a website. This was echoed by one of our Key Informants. It is an important consideration in determining whether to make such changes to the legal pages. Having said this, there is a clear trend in website design to bring more design to the legal pages. Notable specific responses include:

“Disagree. Adding graphics and design features may distract the reader and cause them to miss important points. It may also add to the length of the agreement or add another barrier to accessing the information quickly (buttons, rollovers, moving text banners etc. etc).”

“Making agreements easier to read and more user friendly is critical particularly in a world where attention spans are lower and aging demographics are at play.”

“Less keen on this idea.”

“The size and spacing of the print is extremely important for older people. Web designers are looking at selling you something. I'm not sure that ‘a single wide column’ of plain text is that great an idea.”

“Agreed and please provide a response mechanism so a consumer can at least ask and get feed back on a question. Even a 1-800 land line FREE would be a help.”

“Small text is bad – maybe a different font and text size to differentiate from the rest.”

“Ironically, differentiating makes sure that people do realize that it is different from the substance of the web page.”

“This is absolutely important to ensure that the all-important agreement/contract is not overlooked by the consumer.”

“Whatever makes it clearer and visually more appealing gets my vote.”

Key Informants

“ Many companies are moving this way.” Internet Usability & Accessibility Expert

“Like the idea. Again, Educaloi made good work in that way, using icon to inform readers instead of long text.” Privacy Researcher

“Not sure about this one. Can the difference not be used as a tool to have people pay notice?” Associate Professor, Law & Privacy

“Yes! This is a great way of ensuring that the content is actually readable and clearly laid out without making specific design guidelines.” Privacy Researcher

GUIDELINE 12: INDICATE SPLIT CONSENT FOR PRIVACY CHOICES

This is the one recommended guideline where we are effectively recommending a change in the wording of an online agreement, more specifically a Privacy Policy Notice. As one of our Key Informants, a privacy researcher noted:

“Separate out consent and purpose – delivery, marketing, marketing from third parties.” Privacy Researcher

This, we believe, would help a consumer ensure their personal information is used for product and service requirements but not for sales and marketing, research or re-sale.

This would apply solely to Privacy Policy Notices. While it would require a change in the working of the PPN it does not require a change in an organization’s policy. It just gives consumers information that they clearly state is important to them, and that organizations make difficult for them to access. It’s a meaningful restatement. We believe our same Key Informant describes well the approach for this:

“This is so important I think it needs to be a separate point. There should be some clear way for consumers to tell what they must share for purposes of service provision, what the organization wants them to share for purposes beyond service provision (and marketing and even research should not be lumped in with necessary service), and I’d like to see internal marketing uses split out from information that might be shared with third party partners for marketing as well.” Privacy Researcher

Benefits to Organization

The recommendations that we like the best are ones that benefit both consumers and business. For two reasons: (1) If business does better without expense to the consumer, the marketplace is improved, and (2) If business benefits from one of these recommendations, there is a greater probability that organizations will voluntarily implement it. Our concern is that Canadian organizations are so reliant on marketing to consumers who have given their consent (one way or another) that to more readily allow consumers to remove themselves from the marketing roles would not be something that many would voluntarily apply, because they would not see a benefit.

Key Informants

The Key Informants, particularly those involved in the privacy realm, were particularly supportive of this as beneficial to consumers. We did not ask consumers directly about this recommendation, but it was clearly noted as an area of concern in the responses to the PIN survey, concerning areas of information most likely to lead them to read an online agreement.

“It’s meaningful restatement. Good for competing-competition around privacy.” US Professor of Law, Privacy

“The distinction between personal preferences and must-have personal information is crucial for the consumer’s understanding.” Associate Professor, Law & Privacy

MOBILE – A WHOLE OTHER KETTLE OF FISH (SORT OF)

Mobile is different. It is much more difficult in general. There are myriad guidelines for web apps, web pages, responsive design, etc. As well, apps have a whole other dimension, caused partially by having in many cases to serve two masters – Android and iOS. However, when looking at what consumers want to understand better on mobile, the solutions they recommend largely overlap with highly supported solutions in general, with the exception of a stronger preference for a larger font.

Consumers' activity profiles were different for mobile and desktop, but the use of social media, e-commerce activities and banking were some of the more common activities on mobile as well as desktop.

We come to two conclusions regarding mobile. If a web site is not designed for mobile, including online agreements, not much else will help until that is fixed.

We are not looking for solutions that require new mobile guidelines, or implementation of any specific guidelines out there for mobile apps, web apps and web sites. What we do recommend is to correct one problem that poses particular difficulty for mobile – the lack of responsive design for mobile sites. In some cases, responsive sites refer back to desktop versions for online agreements.

To the extent that a mobile site is responsive design regarding all its page, including online agreements, the solutions that best meet the four key suggestions from consumers we believe would also best serve mobile. Those guidelines that best serve the four key needs of mobile would be:

- Summary of Salient Points
- Detailed Table of Contents, tied to Headlines in “Consumer Voice”
- Summary of Changes
- Plain language in new agreements

One further recommendation, not high on the list of recommendations by our consumers, but one we believe would be appropriate for later reference would be the Ability of consumers to Send an Email copy of the agreement to the themselves, as it would allow them to later check details regarding any term or condition at the time of the agreement, or use of information they have an interest in or concern about.

CONCLUSIONS

For organizations that want to improve the display of their online agreements there are simple, proven and effective ways to do it – ways that consumers have indicated would work, and in many cases suggested themselves.

It's that simple.

Such changes would primarily benefit the consumer, at least initially. However, in time we believe that organizations that demonstrate a strong commitment to transparency, to aiding their customers in truly understanding their agreements, and to protecting their personal information in the age of big data will win back some lost trust and potentially, if only incrementally, increase their competitive position in the marketplace.

WE EXPECT AVOIDANCE FROM BUSINESS

In response to that we have two simple questions:

- Where do any of our recommendations run afoul from a legal perspective, or require a fundamental legal change?
- Where are we wrong in our interpretation of Canadians and what they do and want to improve regarding online agreements?

CONSUMERS LIKE IT

In our surveys, of the PIN and Canadian Internet Users, we asked for final comments. Here are some views on the project and its intent. We would like to share them. While they may not be fully representative of all respondents (we did have some negative views), we believe they do represent the majority:

"Excellent initiative and significant improvements will follow if implemented."

"Thanks for doing this project. It seems to me that obstacles on web-sites are not always due to some company trying to sneak something past."

"Nothing I wholly object to and a great many proposals of significant merit. Go for it."

"This is a very good project to implement."

"Very well done."

"Thank you for your efforts on behalf of consumers."

"Well done!"

"This is a great survey as I believe many people struggle with reading privacy policies and agreements. Thank you for considering my opinion."

"This is a great thing to look into! I think summarizing key points at the beginning would make people more likely to read!"

"The current set up is flawed and it is very pleasing to know that it is being studied."

"This was a good and necessary survey. Thank you."

"I really hope this happens and you guys make it less of a massive pain to read."

APPENDICES

APPENDIX 1: PIN SURVEY ONE – EXPERIENCES & INSIGHTS

A survey to solicit issues, insights and potential recommendations regarding improved online agreements, solely through open-ended queries.

Questions

1. If you, like the majority of consumers, rarely read online agreements or privacy policies please tell us why you don't. Otherwise, please tell us why you do.
2. Are there certain online agreements or policies that you ensure you do read? If so, what are they, and why? (for instance, agreements from certain companies, or for certain products or services).
3. What sections, or terms, of online agreements or privacy policies are of most relevance, or present the most risk, to you? Why?
4. Do you deal with mobile agreements or privacy policies any differently than other online agreements? If so, why? How? (Specifically this might relate to what one is doing when using a mobile device, where you might be when you need to read it, and the difference in the size and nature of the screen and input mechanisms.)
5. Have you ever been caught by unexpected terms of an online agreement or privacy policy? Can you tell us the story, what could have prevented it, what you did to rectify it, and what were the eventual implications?
6. Can you give us an example of a GOOD online agreement or privacy policy, and what you liked about it? If it was on a mobile device please note that.
7. Can you give us an example a POOR online agreement or privacy policy, and what you didn't like about it? If it was on a mobile device please note that.
8. How can online agreements or privacy policies be better summarized or structured?
9. How can online agreements and policies be displayed better graphically? (e. g., Better fonts, bigger fonts, tables, use of bold or italics, etc.)
10. How can online agreements and policies be customized for individual consumers or for certain types of consumers?
11. How can online agreements or privacy policies be improved for mobile devices?

APPENDIX 2: PIN SURVEY TWO – GUIDELINE CRITIQUE

A survey to solicit open-ended detailed responses to our key guideline recommendations, not unlike what we would expect from a focus group:

Introduction:

We would like your opinion on some of our recommended guidelines. We have selected our guidelines based on the following Guiding Principles:

1. Must be practical and proven in use elsewhere
2. Must be consumer focused in that it enhances a consumer's rights
3. Must not be dependent on any of the other guidelines
4. Must not require new technologies nor revised graphic design
5. Should not require significant legal review or revision

It is important to note that we are asking for your comments on the benefits of these individual recommendations if they were to be read (or used) by an online reader, not whether you would use them. We are looking more for qualitative insights, concerns and thoughts, than for quantitative support.

Questions:

Many users find online agreements difficult to understand. For each of the following recommendations we would like your comments on whether you agree or disagree it would benefit a reader and why.

PLAIN LANGUAGE

It is well documented that Plain Language improves readability and understanding of legal agreements. We suggest that Plain Language be used for new agreements.

ADD SCENARIOS FOR KEY ITEMS OR CONCEPTS

For specific concepts or terms add a short example scenario to help the reader understand it. Scenarios give examples of where a term or concept may apply. These can be made available as mouseovers. Scenarios are separate from the legal agreement or policy. Google uses Scenarios: for example, in their Privacy Policy, when stating "We collect information" the Scenario mouseover states: "Example, This includes information like your usage data and preferences, Gmail messages, G+ profile, photos, videos, browsing history, map searches, docs, or other Google-hosted content."

INLINE SUMMARIES OR SPLIT/SEPARATE COLUMN SUMMARIES

These are highlighted explanations, in line with the agreement copy, or to the side in a separate column providing an explanation for each paragraph or section. They are not part of the legal document. Generally, this is a plain language explanation of the detailed "legalese" section.

USE THE GRAPHIC DESIGN AND INTERFACE OF REST OF SITE ON AGREEMENT PAGE

Rather than have one page of single column small font text for legal agreements (as most websites currently do), use the same design as the rest of the website. Online agreements are often set out in a "design-free" format, when they could easily be formatted like all other content on the site. And just to be clear, "design free" means a single, wide column of plain text, and is not typically considered to be a positive feature.

SUMMARY OF SALIENT POINTS

This would be a summary at the beginning of the document that would highlight points of a document that would be considered most important to a reader. It can vary from organization to organization, and can deal with more sensitive topics like sharing data with third parties, restrictions and limitations, remedies and monitoring of use. It will of course vary between the different types of online agreements. It is important to note that this will not replace the actual agreement.

As one website puts it, these are the “Main Terms, in a nutshell.”

DETAILED TABLE OF CONTENTS

Many users know the areas of concern and importance to them, but have trouble finding specific sections of interest or concern. A Table of Contents hyperlinked to the relevant sections accommodates this, particularly for long documents.

STATEMENT OF AVERAGE TIME IN MINUTES TO READ THIS ONLINE AGREEMENT

Include a statement before each online agreement indicating how long it will take the average reader to read it. This would be calculated at the average adult reading speed of 300 WPM (Words per minute). For instance, Apple would put at the top of their website Terms of Use agreement "This Terms of Use agreement will take the average reader 11 minutes to read (at 300 WPM). This does not include the eight legal documents referenced that also govern and apply to your use of the site."

OPTION TO SAVE, PRINT OR SEND AGREEMENT

At the time of agreeing to an agreement the user can either send themselves a copy, save a copy or print a copy. The name given to the document should be easily identifiable (e.g., ABC-Co Privacy Sept2014, and not 47953_PPN_v7.1) Few organizations do this at the moment and to get a copy of the agreement a user would have to find it on the website, and may not be able to get the version in force when they initially agreed to it.

NOTIFICATION OF A CHANGE IN AN AGREEMENT

When an agreement is changed, or about to be changed, a Notification of Change should be placed at the top of the home page in advance – possibly indicating timing, nature and (ideally) key implications. It can be removed by reader by clicking a close box.

SUMMARY OF CHANGES IN AGREEMENT

Make clear in a section at the top of the agreement (or notice) the changes from the prior version. All changes or just key changes may be noted. This information would remain as long as that agreement is on the website. This information may also be included in the Notification of Change (noted in previous question) that would appear at the top of a home page for a short time when an agreement is modified.

PLACE A LINK TO THE ACTUAL AGREEMENT THROUGH THE WEBSITE WHERE RELEVANT

Rather than just place a link to agreements in the footer, when information is collected, particularly personal information, place a link to the Privacy Policy Notice precisely where the information is gathered. Where individuals are transacting, make the Terms and EULAs more apparent, ideally with a list of salient points on the page and a link to the actual document.

APPENDIX 3: SURVEY OF CANADIAN INTERNET USERS

We conducted a survey of 388 Canadians soliciting feedback on our key recommendations, both quantitatively and qualitatively. The survey was conducted online, incorporating consumers familiar with the Internet from all provinces and territories, age ranges, incomes and a representative split on gender.

The survey was considered to be to determine general views on whether, and the degree to which our recommended guidelines would be useful, and ranking within sets of recommendations focused on specific issues, notably those dealing with online agreements being too long, and those dealing with online agreements being too difficult to understand, as noted in our initial environmental scan and PIN surveys.

Survey Content

The Consumers Council of Canada is conducting research looking to improve online agreements, namely End User License Agreements, Privacy Policies, and Terms of Use.

We want your opinion on some recommendations we have to improve online agreements.

But first, a little background. In a recent survey we conducted we found that:

12. Most people rarely read online agreements.
13. People find them too long.
14. People find them confusing and difficult to understand.
15. People often believe they have little choice as they see the agreements as one-sided.

THE QUESTIONS:

Which of the following activities do you conduct on the Internet - from your laptop or desktop? Check ALL that apply.

- Social media
- Research purchases
- Purchase goods and services
- Write consumer reviews for products or services
- Store information in the Cloud (Dropbox, Google Drive, iCloud, One Drive etc.)
- Online gaming
- Banking
- Discussion forums
- Other (please specify)

If you have a mobile device (tablet or smartphone) which of the following activities do you conduct on the Internet? Check ALL that apply.

- I don't have a mobile device
- I don't access the Internet or apps on a mobile device
- Social media
- Research purchases
- Purchase goods and/or services online
- Write consumer reviews for products or services
- Store information in the Cloud (Dropbox, Google Drive, iCloud, OneDrive etc.)
- Online gaming

- Banking
- Discussion forums
- Other (please specify)

How often do you read, all or part of, the following Online Agreements?

- Privacy Policies
- Terms & Conditions / Terms of Use
- End User Licence Agreements (EULAs)

For those Privacy Policies that you read, what causes you to read them? Check ALL that apply. Check Not Applicable if you read none.

- Where I am concerned about the use of my personal information
- If I have the time
- If I have reduced trust of that particular organization
- If the website gathers particularly sensitive information
- Not Applicable
- Other (please specify)

For those Terms & Conditions / Terms of Use that you read, what causes you to read them? Check ALL that apply. Check Not Applicable if you read none.

- Where there is a significant financial amount at stake
- If I have the time
- If I have reduced trust of that particular organization
- If the website or application is particularly sensitive
- Not Applicable
- Other (please specify)

For those End User Licence Agreements (EULAs) that you read, what causes you to read them? Check ALL that apply. Check Not Applicable if you read none.

- Where there is a significant financial amount at stake
- If I have the time
- If I have reduced trust of that particular organization
- If the nature of the purchase or product is particularly sensitive
- Not Applicable
- Other (please specify)

FOR EACH OF THE QUESTIONS BELOW PLEASE NOTE DEGREE OF USEFULNESS:

USE PLAIN LANGUAGE IN AGREEMENTS: It is well documented that Plain Language improves readability and understanding of legal agreements. (Very, Somewhat, Not Very, Not at All)

INLINE SUMMARIES OR SPLIT/SEPARATE COLUMN SUMMARIES: These summaries, within the agreement or to the side in a separate column, typically provide a plain language explanation for each paragraph or section. (Very, Somewhat, Not Very, Not at All)

USE THE GRAPHIC DESIGN AND INTERFACE OF REST OF SITE ON AGREEMENT PAGE: Rather than have a column the full width of the page in a small font, use the same design as the rest of the website. This may include larger fonts, multiple columns, bolding and/or italics. (Very, Somewhat, Not Very, Not at All)

ADD SCENARIOS FOR KEY ITEMS OR CONCEPTS: For specific concepts or terms add a short example scenario to help the reader understand it. Scenarios give examples of where a term or concept may apply. These can be made available as mouseovers. Scenarios are separate from the legal agreement or policy. Google uses Scenarios: for example, in their Privacy Policy, when stating "We collect information" the Scenario mouseover states: "Example, This includes information like your usage data and preferences, Gmail messages, G+ profile, photos, videos, browsing history, map searches, docs, or other Google-hosted content." (Very, Somewhat, Not Very, Not at All)

Of the following recommendations from this page, which two items do you believe would be the most useful and why?

- Use Plain Language for new agreements
- Use inline summaries or split/separate column summaries
- Add Scenarios for key items or concepts
- Use the graphic design and interface of rest of the website for the agreement
- Please note why

FOR EACH OF THE QUESTIONS BELOW PLEASE NOTE DEGREE OF USEFULNESS:

SUMMARY OF SALIENT POINTS: This would be a summary displayed before the agreement that would highlight important points. It can deal with more sensitive topics like sharing data with third parties, restrictions and limitations, remedies and monitoring of use. As one website puts it, these are the "Main Terms, in a nutshell." (Very, Somewhat, Not Very, Not at All)

DETAILED TABLE OF CONTENTS: Many users know the areas of concern and importance to them, but have trouble finding specific sections of interest or concern. A Table of Contents hyperlinked to the relevant sections accommodates this, particularly for long documents. (Very, Somewhat, Not Very, Not at All)

STATEMENT OF AVERAGE TIME IN MINUTES TO READ THIS ONLINE AGREEMENT: Include a statement before each online agreement indicating how long it will take the average reader to read it. This would be calculated at the average adult reading speed of 300 WPM (Words Per Minute). (Very, Somewhat, Not Very, Not at All)

Of the following recommendations from this page, which do you believe would be the most useful and why? Pick one or two items.

- Summary of Salient Points
- Detailed Table of Contents
- Statement of average time to read
- Please note why

FOR EACH OF THE QUESTIONS BELOW PLEASE NOTE DEGREE OF USEFULNESS:

OPTION TO SAVE, PRINT OR SEND AGREEMENT: At the time of agreeing to an agreement allow the user to send themselves a copy, save a copy or print a copy. The name given to the document should be easily identifiable (e.g., ABC-Co Privacy Sept2014, and not 47953_PPN_v7.1). (Very, Somewhat, Not Very, Not at All)

NOTIFICATION OF A CHANGE IN AN AGREEMENT: When an agreement is changed, or about to be changed, a Notification of Change can be placed at the top of the home page in advance – possibly indicating timing, nature and (ideally) key implications. It can be removed by the reader by clicking a close box. (Very, Somewhat, Not Very, Not at All)

SUMMARY OF CHANGES IN AGREEMENT: Make clear in a section at the top of the agreement any changes from the prior version. All changes, or just key changes, may be noted. (Very, Somewhat, Not Very, Not at All)

PLACE A LINK TO THE ACTUAL AGREEMENT THROUGHOUT THE WEBSITE WHERE RELEVANT: Rather than just place a link to agreements in the footer of a website, place a link to the Privacy Policy Notice precisely where the information is gathered. Where individuals are making a purchase or browsing a website, make the Terms and EULAs more apparent, ideally with a list of salient points on the page and a link to the actual document. (Very, Somewhat, Not Very, Not at All)

INCREASE FONT SIZE: The larger the font, the easier it typically is to read an agreement. (Very, Somewhat, Not Very, Not at All)

Of the following recommendations from this page, which two do you believe would be the most useful and why?

- Increase font size
- Place link to agreement where relevant
- Include Summary of Changes to agreement
- Notification of a change in an agreement
- Option to Print, Save or Send
- Please note why

What one thing would you do to increase the probability that people will read an agreement on a smartphone?

If you have any final thoughts or comments please note them below...

What is your age?

What is your gender?

What is your approximate average household income?

In what region in Canada do you live?

APPENDIX 4: DETAILED RESPONSES RE: RECOMMENDATIONS – CANADIAN INTERNET USERS SURVEY

	Very Useful	Somewhat Useful	Not Very Useful	Not at All Useful
<i>Percentage</i>	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>
<i>Plain Language For New Agreements</i>	64.95	28.35	5.15	1.55
<i>Summary of Salient Points</i>	54.38	35.82	7.47	2.32
<i>Summary/Highlights of Changes from Prior</i>	50.77	38.66	8.25	2.32
<i>Plain Language Section Summaries</i>	47.94	41.49	7.47	3.09
<i>Detailed Table of Contents</i>	47.94	40.46	9.54	2.06
<i>Notification of Change in Agreement</i>	43.56	44.07	9.79	2.58
<i>Scenarios for Key Terms & Examples</i>	42.78	44.59	9.28	3.35
<i>Draw Design from Remainder of Site</i>	42.01	41.49	12.63	3.87
<i>Increase Font Size</i>	41.49	41.49	13.92	3.09
<i>Allow to Save/Print/Send Agreement</i>	40.72	42.27	13.14	3.87
<i>Link References to Relevant Agreements</i>	39.95	46.39	11.08	2.58
<i>Statement of Average Time to Read</i>	34.79	41.75	17.78	5.67

APPENDIX 5: CONSUMER RIGHTS & RESPONSIBILITIES

Consumer Rights & Responsibilities

Safety

- The right to be protected against goods or services that are hazardous to health and life
- The responsibility to read instructions and take precautions. To take action to choose safety equipment, use products as instructed and teach safety to children

Information

- The right to be given the facts needed to make an informed choice, to be protected against misleading advertising or labeling.
- The responsibility to search out and use available information. To take action to read and follow labels and research before purchase.

Choice

- The right to choose products and services at competitive prices with an assurance of satisfactory quality.
- The responsibility to make informed and responsible choices. To take action to resist high-pressure sales and to comparison shop.

Representation

- The right to express consumer interests in the making of decisions.
- The responsibility to make opinions known. To take action to join an association such as the Consumers Council to make your voice heard and to encourage others to participate.

Redress

- The right to be compensated for misrepresentation, shoddy goods or unsatisfactory services.
- The responsibility to fight for the quality that should be provided. Take action by complaining effectively and refusing to accept shoddy workmanship.

Consumer Education

- The right to acquire the knowledge and skills necessary to be an informed consumer.
- The responsibility to take advantage of consumer opportunities. Take action by attending seminars and workshops, work to ensure consumer education takes place in schools.

Healthy Environment

- The right to live and work in an environment that is neither threatening nor dangerous and which permits a life of dignity and well-being.
- The responsibility to minimize environmental damage through careful choice and use of consumer goods and services. Take action to reduce waste, to reuse products whenever possible and to recycle whenever possible.

Privacy

- The right to privacy particularly as it applies to personal information.
- The responsibility to know how information will be used and to divulge personal information only when appropriate.