



bankers' compliance group®

FTC Warns that Changing Online Privacy Policies without Notifying Consumers Could be an Unfair or Deceptive Practice*

On February 13, 2024, the Federal Trade Commission (FTC) published guidance entitled “AI (and other) Companies: Quietly Changing Your Terms of Service Could Be Unfair or Deceptive” (“AI Advisory”), warning companies that changing online privacy policies or terms of service without providing notice could be an unfair or deceptive practice. In the AI Advisory, the FTC explains that companies developing artificial intelligence (AI) products have incentives to obtain new data to develop these products. Thus, companies might be tempted to resolve this conflict by simply changing the terms of their privacy policies to expand the ways they can use their customers’ data. However, in an attempt to avoid backlash from users who are concerned about their privacy, companies may try to implement these changes to their privacy policies surreptitiously, without providing adequate notice.

The FTC expressly states that companies should be on notice that any firm that reneges on its user privacy commitments risks running afoul of the law. The FTC goes on to state that it may be unfair or deceptive for a company to adopt more permissive data practices (for example, to start sharing consumers’ data with third parties or using that data for AI training) while only informing consumers of this change through a surreptitious, retroactive amendment to its terms of service or privacy policy. Moreover, a business that collects user data based on one set of privacy commitments cannot then just unilaterally renege on those commitments after already collecting users’ data.

The AI Advisory indicates that changing online privacy policies or terms of service to allow for more permissive types of sharing of information, particularly for engagement with AI products, without providing adequate notice to consumers, would likely be viewed as an unfair or deceptive practice. While BCG Members are not directly subject to the FTC’s jurisdiction, the FTC has been the most outspoken agency when it comes to AI issues. Therefore, the FTC’s opinion bears some weight in this arena.

Institutions can read the AI Advisory online at <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/02/ai-other-companies-quietly-changing-your-terms-service-could-be-unfair-or-deceptive>.

For more information, contact John Davis at JDavis@ABLAWYERS.COM.

Copyright © 2024
Aldrich & Bonnefin, PLC*
All Rights Reserved

*Advertisement. This information is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. Contacting Aldrich & Bonnefin PLC does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established.

* Janet Bonnefin is retired from the practice of law with the firm.