

## CRITICAL AND COMPARATIVE ANALYSIS OF WHATSAPP'S PRIVACY POLICIES

Written by **Sagarika Koneru\*** & **Shaantanu Krishnan\*\***

\* 2nd Year BBA LLB Student, School of Law, Christ (Deemed to be University)

\*\* 2nd Year BBA LLB Student, School of Law, Christ (Deemed to be University)

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### **ABSTRACT**

Today, the Internet has taken the world by storm. The world has connected in unfathomable ways before the existence of the web. Albeit the Internet has largely benefitted the masses, the legal fraternity has faced various challenges relating to Privacy of the users of Internet applications.

By the means of this Article, the authors will be dealing with the Privacy policy of the free cross-platform instant messaging and Voice over IP service application, WhatsApp and its impact on the users of the application. Primarily, by the means of this article, the authors have attempted to analyse the Privacy Policy of WhatsApp with respect to the earlier and current versions of the same. Furthermore, the authors aim to provide a comparative analysis of the current and previous version of the privacy policy of WhatsApp and suggestions to better the current privacy policy.

### **HISTORY:**

The concept or the idea of the internet was conceived ages before the actual birth of the same. The idea of internet goes back to the 16<sup>th</sup> Century scientific revolution in Europe that envisaged systematic collection, classification and sharing of information or knowledge to facilitate, progress of all<sup>1</sup>.

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<sup>1</sup> Page 204, Marshall T. Poe, A History of Communications, Cambridge University Press, 2011.

Before the internet arrived, the objectives of systematic collection, classification and dissemination of information were achieved in a different form via a system comprising three institutions, namely-

1. A library to allow information to accumulate in one place for easy access;
2. An index which granted access to information recorded in the library;
3. An article in the form of a book or journal which allowed sharing of information effortlessly<sup>2</sup>.

Although the system was a huge step towards the conception of the internet, it packed a few flaws of its own, for instance, the library existed in a physical form making it inaccessible to all, the index didn't guarantee quality or plausible work and so forth<sup>3</sup>.

The internet in its nascent stages was a result of an attempt to create a communication channel during the World War II, the result of which was the Advanced Research Projects Agency Network (ARPANET). The credit for this idea is typically given to Leonard Klienrock who wrote about ARPANET in the form of a paper titled "Information Flow in Large Communication Nets"<sup>4</sup>. Hence initially, the internet was first developed as a form of electronic communication between scientists. However, it was highly ineffectively as it merely connected machines for purpose of sharing a computer's resources and didn't provide an actual form of communication due to which ARPANET ended with the change in objectives. As a result of which, the internet was born<sup>5</sup>.

The internet, as we know it today was developed in the form of the 'World Wide Web' using a language called Hypertext Markup Language (HTML)<sup>6</sup>, developed by an Englishman by the name, Tim Berners Lee. He is credited to introducing the world to the internet to the common user. Tim and his colleague wanted to develop an electronic mode of communication to share

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<sup>2</sup> Page 205, Marshall T. Poe, A History of Communications, Cambridge University Press, 2011.

<sup>3</sup> Page 206, Marshall T. Poe, A History of Communications, Cambridge University Press, 2011.

<sup>4</sup> Live Science, "Internet History Timeline: ARPANET to the World Wide Web", <http://www.livescience.com/20727-internet-history.html>, June 27 2017.

<sup>5</sup> Page 43, J Gillies & Robert Caliliau, How the Web Was Born: The Story of the World Wide Web, Oxford: Oxford UP, 2000.

<sup>6</sup> Live Science, "Internet History Timeline: ARPANET to the World Wide Web", <http://www.livescience.com/20727-internet-history.html>, 27 June 2017.

information with scientists at CERN<sup>7</sup>. As a result of his efforts, the world today is privileged to have, what was termed as, the World Wide Web, or commonly call, the Internet<sup>8</sup>.

Developments such as the Internet Protocol version 6 in 1998 and Google being launched in the same year revolutionized the way people looked at the Internet<sup>9</sup>. Advances in information communication technology are dramatically improving real-time communication and information-sharing<sup>10</sup>.

The Internet today is used for a multitude of purposes ranging from sending and receiving multimedia data for e-commerce and online gaming<sup>11</sup>.

## **INTRODUCTION TO WHATSAPP**

WhatsApp is an online based messaging application developed as an alternative to regular SMS<sup>12</sup> messaging. WhatsApp is available on online application software markets like Apple Store and Google Play store for no cost and offers a simple, secure, reliable online medium for messaging and calling, which is available on phones all over the world<sup>13</sup>. WhatsApp only allowed mere sending and receiving of text and multimedia messages but with time, today it offers a plethora of services such as voice and video calling along with uploading of Statuses<sup>14</sup>. WhatsApp's Privacy Policy was updated on 25<sup>th</sup> August, 2016 by the virtue of Facebook purchasing WhatsApp which was announced on the 19<sup>th</sup> of February, 2014<sup>15</sup>. The previous Privacy policy of WhatsApp prior to the change, which was last modified on the 7<sup>th</sup> of July, 2012 was replaced by the current Privacy policy in 2014.

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<sup>7</sup>Conseil Européen pour la Recherche Nucléaire (The European Organization for Nuclear Research).

<sup>8</sup> Page 214, Marshall T. Poe, A History of Communications, Cambridge University Press, 2011.

<sup>9</sup> Live Science, "Internet History Timeline: ARPANET to the World Wide Web", <http://www.livescience.com/20727-internet-history.html>, 27 June 2017.

<sup>10</sup>United Nations, Office of the High Commissioner, "The Right to Privacy in the Digital Age", <http://www.ohchr.org/EN/Issues/DigitalAge/Pages/DigitalAgeIndex.aspx>

<sup>11</sup> NTCHosting, <http://www.ntchosting.com/encyclopedia/internet/what-is-internet/#History>

<sup>12</sup> SMS stands for Short Message Service which allows a user to send text or multimedia messages to one or more user using Telephonic carrier connections.

<sup>13</sup> WhatsApp Inc., "About WhatsApp", <https://www.WhatsApp.com/about/>

<sup>14</sup> A public broadcast of a text, photos, videos and animated GIFs that disappear after 24 hours available for viewing to all the contacts of a user, unless a particular contact has been blocked by him/her.

<sup>15</sup> Forbes, "Facebook Closes \$19 Billion WhatsApp Deal", <https://www.forbes.com/sites/parmyolson/2014/10/06/facebook-closes-19-billion-WhatsApp-deal/>, 6 October 2014.

The previous Privacy policy of WhatsApp expressly states what aspects of privacy it shall cover. It covers treatment of Personally Identifiable User Information<sup>16</sup>, obtained by WhatsApp through the site or mobile software.

However, this policy doesn't govern the usage of any Personally Identifiable Information or Non- Personally Identifiable Information<sup>17</sup>, the access of which has been granted to any individual or company not owned, managed or controlled by WhatsApp.

According to the previous Privacy Policy of WhatsApp, the organisation collects the following types of information;

1. Personally Identifiable Information
2. Mobile device's information while registering (for verification purposes).
3. Information about a user's website session via Persistent (remains on the memory of the machine until expiry date) and session cookies (remains in the memory of the machine for the current session of browsing only)<sup>18</sup>.
4. Log file information such as Internet Protocol Address, Domain names, landing pages, number of clicks, amount of time spent, pages viewed and order of the same.

The policy also specifies the information it doesn't collect namely names, emails, addresses or other contact information from its users' mobile address book or contact lists other than mobile phone numbers. The software merely imports the name from the phone book for the corresponding user. Furthermore, the messages sent or received by users, whether text or multimedia, if not delivered within thirty days of the sender sending it, or required to be saved under any legal obligation, is deleted as soon as the message is delivered to the user(s)<sup>19</sup>.

## **POLICY**

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<sup>16</sup> Information directly corresponding to the physical or virtual identity of a user such as phone number, push notification name (pop-up notifications), billing information.

<sup>17</sup> Information indirectly corresponding to the physical or virtual identity of a user such as anonymous user usage data, cookies, IP addresses, browser type, clickstream data.

<sup>18</sup>CISCO, "What are cookies? What are the differences between them (session vs. persistent)?",

<https://www.cisco.com/c/en/us/support/docs/security/web-security-appliance/117925-technote-csc-00.html>, 15 July 2014.

<sup>19</sup>WhatsApp, "The Information WhatsApp Does Not Collect", Privacy Policy 2012, <https://www.WhatsApp.com/legal/?doc=privacy-policy&version=20120707>

### **Previous Privacy Policy of WhatsApp:**

WhatsApp uses the stored data described in its privacy policy to provide better services in terms of security, functionality and personalization from the mobile app in the form of the users phone number, status updates and billing information and cookies and log file information in the website format. WhatsApp in its Privacy Policy stated it uses the above stated information for the following reasons:

1. Retain information so the user doesn't have the hassle of re entering the information time and again he/she uses the service;
2. To provide custom, personalized content and information;
3. To monitor individual and aggregate metrics such as total number of visitors, pages viewed, etc.;
4. Track the user's entries, submissions, views and such<sup>20</sup>.

WhatsApp discloses information, as detailed in their privacy policy in situations of legal obligations, wherein they in good-faith believe that such action is in compliance with laws of the state, international law or respond to the order of a Court of law, subpoena, or search warrant or equivalent, or where in our reasonable belief, an individual's physical safety may be at risk or threatened<sup>21</sup>. WhatsApp also reserves the right to share a user's information in the following instances;

1. Personally Identifiable Information with a third party service provider with the users consent or except as part of a specific program or feature for which you will have the ability to chose or to the extent that it is reasonably necessary to perform, improve or maintain the WhatsApp Service.

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<sup>20</sup> WhatsApp, "The Way WhatsApp Uses Information", WhatsApp Privacy Policy 2012, <https://www.WhatsApp.com/legal/?doc=privacy-policy&version=20120707>.

<sup>21</sup> WhatsApp, "When WhatsApp Discloses Information", WhatsApp Privacy Policy 2012, <https://www.WhatsApp.com/legal/?doc=privacy-policy&version=20120707>.

2. Non-Personally Identifiable Information with interested third-parties to help them understand the internet behavioural patterns for certain content, services, advertisements, promotions, and/or functionality on the WhatsApp Site<sup>22</sup>.

WhatsApp employs reasonable physical, technical and managerial protection for the data that flows via their servers to the users at the other end but doesn't guarantee the same in case of a data breach<sup>23</sup>.

WhatsApp shows its concern to the privacy of minors as well. It states that users below the age of 16 are not allowed to use the service and in the event of a user being under the age of 16 years, their account will be deactivated with immediate effect once it comes to WhatsApp's notice<sup>24</sup>. A user accessing the service either from the website or the mobile application from anywhere but not the United States of America through the continuous use of the service is assumed to expressly consent to be governed by the Californian Law for the purpose of personal data collection, use and disclosure.<sup>25</sup>

Lastly, the previous Privacy Policy of WhatsApp engages upon the security of user data in case of a merger fail or bankruptcy. In case of a merger, it reserves the right to transfer, assign information as part of the merger. In case of bankruptcy, insolvency, reorganization or assignment for benefit of creditors, WhatsApp may partially control the personal information being transferred which need or treated<sup>26</sup>.

### **Current Privacy Policy of WhatsApp:**

The current Privacy Policy of WhatsApp is rather a more ambiguous affair in certain aspects, for instance, where the previous Privacy Policy of WhatsApp clearly lays down instances or

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<sup>22</sup> WhatsApp, "When WhatsApp Discloses Information", WhatsApp Privacy Policy 2012, <https://www.WhatsApp.com/legal/?doc=privacy-policy&version=20120707>.

<sup>23</sup> WhatsApp, "Our Commitment to Data Security", WhatsApp Privacy Policy 2012, <https://www.WhatsApp.com/legal/?doc=privacy-policy&version=20120707>.

<sup>24</sup> WhatsApp, "Our Commitment to Children's Privacy", WhatsApp Privacy Policy 2012, <https://www.WhatsApp.com/legal/?doc=privacy-policy&version=20120707>.

<sup>25</sup> WhatsApp, "Law and Protection, WhatsApp Privacy Policy 2016", <https://www.WhatsApp.com/legal/#privacy-policy-law-and-protection>.

<sup>26</sup> WhatsApp, "In the Event of Merger, Bankruptcy, Sale", WhatsApp Privacy Policy 2012, <https://www.WhatsApp.com/legal/?doc=privacy-policy&version=20120707>.

interest groups that shall be governed by the previous Privacy Policy<sup>27</sup>. The current Privacy Policy fails to address such significant aspects. However, the current Privacy Policy touches upon aspects that the previous Policy hasn't laid any emphasis upon, for instance, it provides the rights of the users in terms of content that is submitted for their account or through their account, rights of the organization itself in terms of copyrights, trademarks, domains, loopholes, trade dress, trade secrets, patents and other intellectual property rights<sup>28</sup>.

The new Policy also encompasses their global presence and legally enforces their right to collect, use, process and share the users information as described in the Privacy Policy including transfer of the information to the United States regardless of the geographical location from where the user is enjoying the service<sup>29</sup>. In addition to retention of information for the reasons stated in the previous Privacy Policy of WhatsApp, the new Privacy Policy grants them the power to enforce their terms and policies for investigation of potential violations<sup>30</sup>.

The Privacy Policy incorporates the right of Facebook Family of Companies to-

1. Use the information WhatsApp receives from them;
2. Grant the affiliate companies to use the information that WhatsApp shares with them

The WhatsApp Privacy Policy 2016 also helps, operates, provides, improves, understands, customizes, supports and markets WhatsApp services and offerings.

The new Privacy policy also states that WhatsApp can now share data, including a user's phone number, with Facebook, letting it better target adverts and improve friend suggestions<sup>31</sup>.

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<sup>27</sup> WhatsApp, "What does this Privacy Policy Cover? ", WhatsApp Privacy Policy 2012, <https://www.WhatsApp.com/legal/?doc=privacy-policy&version=20120707>.

<sup>28</sup> WhatsApp, "Special Arbitration Procedure for United States or Canada", WhatsApp Privacy Policy 2016, <https://www.WhatsApp.com/legal/#terms-of-service>

<sup>29</sup> WhatsApp, "Our Global Operations", WhatsApp Privacy Policy 2016, <https://www.WhatsApp.com/legal/#privacy-policy-our-global-operations>

<sup>30</sup> WhatsApp, "Law and Protection, WhatsApp Privacy Policy 2016", <https://www.WhatsApp.com/legal/#privacy-policy-law-and-protection>.

<sup>31</sup> James Titcomb, Technology, The Telegraph, "WhatsApp is now Sharing your Phone Number with Facebook - here's How to Stop it", <http://www.telegraph.co.uk/technology/2016/08/25/WhatsApps-new-privacy-policy-lets-it-share-your-phone-number-wit/>, 26 August 2016.

## **ANALYSIS**

The previous Privacy Policy of WhatsApp in overall can be described as a policy designed with privacy concerns as its priority. For instance, the Previous Privacy Policy of WhatsApp expressly stated that no information relating to the users would be shared with any third parties and also ensured no third-party ads with no information being shared for commercial or marketing purposes<sup>32</sup>. It sufficiently convinces the users of utmost care and concern for their privacy by expressly stating the physical, technical and managerial efforts to secure their information<sup>33</sup>.

The previous Privacy Policy gains the upper hand over the current Privacy Policy in terms of a few aspects such as clearly and expressly stating the applicability of the Policy<sup>34</sup> and also expressly stating their concern on users below the age of sixteen and their security concerns<sup>35</sup>. However, the current Privacy Policy of WhatsApp provides the users with a much more detailed account of the way user's information is shared and to what kinds of interest groups. For instance, the new Privacy Policy, in addition to the sections of the previous Privacy Policy, incorporates the following new aspects into the Policy;

1. Automatically Collected Information<sup>36</sup>;
2. Third-Party Information<sup>37</sup>.

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<sup>32</sup>Asheeta Regidi, First Post, "WhatsApp's New Privacy Policy is Unfair, but Legal", <http://www.firstpost.com/tech/news-analysis/WhatsApps-new-privacy-policy-is-unfair-but-legal-3687495.html>, 26 August 2016.

<sup>33</sup> WhatsApp, "Our Commitment to Data Security", WhatsApp Privacy Policy 2012, <https://www.WhatsApp.com/legal/?doc=privacy-policy&version=20120707>.

<sup>34</sup> WhatsApp, "What does this Privacy Policy Cover? ", WhatsApp Privacy Policy 2012, <https://www.WhatsApp.com/legal/?doc=privacy-policy&version=20120707>.

<sup>35</sup> WhatsApp, "Our Commitment to Children's Privacy", WhatsApp Privacy Policy 2012, <https://www.WhatsApp.com/legal/?doc=privacy-policy&version=20120707>.

<sup>36</sup> WhatsApp, "Automatically Collected Information", WhatsApp Privacy Policy 2016, <https://www.WhatsApp.com/legal/#privacy-policy>.

<sup>37</sup> WhatsApp, "Third Party Services, Terms of Services" WhatsApp Privacy Policy 2016, <https://www.WhatsApp.com/legal/#privacy-policy>.



The new policy also specifies the transfer of data from server to server around the globe<sup>38</sup>, which is nowhere introduced or specified in the previous Privacy Policy. One of the most questionable changes to the policy has been its attempt to grant more arbitrary authority to WhatsApp to retain information relating to investigations on illegal activity, fraud, security threats etc<sup>39</sup>, clarity upon which in terms of set criteria on the basis of which information will be held is absent.

## **CONCLUSION**

The Previous privacy policy touches upon certain key aspects that the new policy fails to comprehend as crucial, such as specifying the parties that are bound by the Privacy Policy, however, the previous policy failed in bringing out specificity with regards to parties who can have access to the user's data and the nature of the data as well.

Albeit the new Policy clears the manner and parties to which it retains the right to share information with, it fails to maintain the tone of concern for privacy that is present in the previous privacy policy.

As compared to the Previous Policy of WhatsApp, the new policy reveals glaring privacy violations in the form of third-party access for advertisements to saving of Non- Personally Identifiable Information such as log file information and pages viewed, visited etc<sup>40</sup>.

The latter half of 2013 saw the United Nations General Assembly adopting the Resolution 68/167<sup>41</sup>, which expressed deep concern over the negative impact of surveillance and interception of communication on human rights. The General Assembly came to the conclusion that the rights held by people offline must also be protected online, and it called upon all States to respect and protect the right to privacy in digital communication. Thus with growing awareness and concerns regarding online privacy of people, the following actions are suggested by the authors to better the current Privacy Policy of WhatsApp:

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<sup>38</sup>WhatsApp, WhatsApp Privacy Policy 2016, <https://www.WhatsApp.com/legal/#privacy-policy>.

<sup>39</sup> WhatsApp, "Law and Protection, WhatsApp Privacy Policy 2016", <https://www.WhatsApp.com/legal/#privacy-policy-law-and-protection>.

<sup>40</sup> WhatsApp, "Automatically Collected Information", WhatsApp Privacy Policy 2016, <https://www.WhatsApp.com/legal/#privacy-policy>.

<sup>41</sup> United Nations General Assembly, "Resolution: RES/68/167, The Right to Privacy in the Digital Age", <http://undocs.org/A/RES/68/167>, 21 January 2014.

1. Discard the use of Non- Personally Identifiable Information for ascertaining user behaviour trends online and use surveys instead to ascertain the same.
2. Protect the information of the user and ensure the information isn't handed over to the new owner or creditor in case of a merger, acquisition or bankruptcy.

