



Biometrics and you

Aprof Gehan Gunasekara

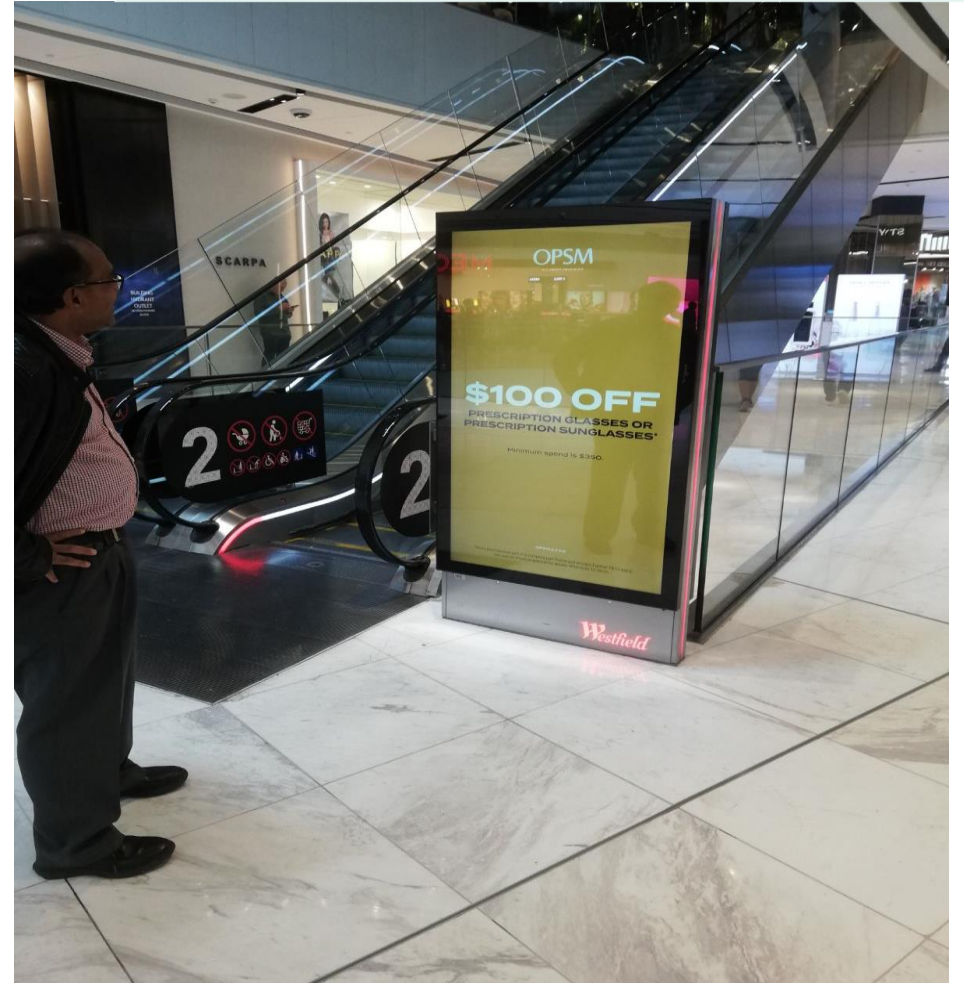
Dr Marcin Betkier

Privacy Foundation New Zealand

Introduction

- Starting point for thought
- Can you discuss biometrics in abstract?

Privacy Foundation NZ



Outline

- Biometrics, privacy & definitions
- Training/enrolment data issues
- Incidental collection/deletion
- Raw biometric data versus biometric templates
- Purpose limitation for biometrics
- Exceptions/ additional safeguards
- Role of individual authorisation

Where does biometrics fit

Australian Law Reform Commission (2008 at p.142) identifies 4 interests:

1. Controlling information others hold about you –informational self-determination
2. Territorial privacy
3. Interference with your person – personal privacy
4. Communications and surveillance privacy

Privacy theorists

- Ruth Gavison – limited access to the self
- Bloustein – personhood/dignity
 - What of Te Ao Māori e.g. Supreme Court in *Ellis v R*?
- Charles Fried – intimacy & relationships
 - Possibility of inferring intimate facts from biometric observation
 - *Image: Attribution- ShareAlike*



Definitional Problems

- Physiological biometric
- Behavioral biometric
- *Image: Creative Commons*



Enrolment data / training data

- The privacy paradox
- Privacy/ AI interface
- Sovereignty considerations
- Overseas-sources software/hardware
 - Controller/processor distinction
- Security of Biometric data?
 - Raw input data versus biometric templates

Publicly available?

- Scraped data?
- Incidental collection?
- Retention?

Purpose limitation

- Marketing?
- Emotion analysis?
- Sensitive information
- Discoverable information
- Is the proposed proportionality requirement sufficient?

The myth: consent is dead, we should do a Privacy Impact Assessment instead

Breaking it down:

- we will gather experts in a room;
 - they will assess all potential privacy harms and risks;
 - they will design the system in a way that minimises privacy risks.
- Example – proportionality test in the exposure draft of the Biometric Processing Privacy Code

What is wrong with it?

Is PIA a silver bullet?

Fallacy 1 - the agency's experts will be available to assess privacy

- Will agencies have the right people available?
- Will they be engaged at the right time?

Fallacy 2 - it is possible to predict all potential privacy risks and harms

- Can they take into account all demographic groups ?
- Do we all suffer privacy harms in a predictable way?
- Can privacy be defined purely objectively (from a “reasonable”/average person perspective)?
- Is it ok that a few could be harmed (“collateral damage”)?

Privacy cannot be defined purely objectively

- Exposure (physical or by the means of data) creates risks that are different for different people, because harms are different
- Privacy is dynamic (changes in time)
- *Privacy is a process of selective self-revelation*
- Privacy is a human right
- Survey – New Zealanders want control over their data (80%) and the right to erasure (82%)

How data privacy laws grapple with this

- Privacy is usually weighed against other rights/values
- Always a mix of authorisations: social and individual – context dependent
 - Public services vs private contracting
 - Socially beneficial uses of data (e.g. journalism, archiving, medical prevention)

Consent is a way to obtain individual authorisation, but:

- It does not fit all contexts - ‘One to one’ vs ‘one to many’
- It is often a one-off authorisation of a long-term contract (it is not enough to control a *process*)

How to do it

- Use individual authorisation only for the right scenarios!
- Preserve *conditions* for consent:
 - Intention
 - Understanding
 - Tools: Informational obligations, cool-down period, notice in advance, etc.
 - Lack of coercion (in the whole process)
 - Obligation to provide a choice
 - Prohibition of bundling authorisation with service (if personal information is not necessary for the service)
 - Obligation to enable withdrawal of authorization
 - Deletion (erasure) of the personal information
 - Time limitation (e.g. Australian CDR)

Privacy Foundation NZ

Thank you!

g.gunasekara@auckland.ac.nz

marcin@betkier.com