

Uber and the Right to Privacy

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There has been a trend of technology affiliated companies gathering a significant amount of personal data, including sensitive information like location, from its consumers through various apps and this has made it difficult to maintain privacy. Facebook also allegedly gave one of its employees a master password which allowed her to view anything that users typed on their Facebook pages but the company claims to have implemented more stringent privacy measures since then.¹ Microsoft, too, was in the news when it had admitted to searching a user's mail account for details on someone found to have leaked corporate information, though it promised not to conduct such a search again.² Uber, a taxi-on-demand service company, too has been in the limelight for all the wrong reasons ever since it was reported that the company was being callous with the data it records about its users. The paper seeks to evaluate the recent news surrounding privacy violations of Uber with an attempt to understand the loopholes in Uber's privacy policy and evaluate implications of the God Window. This is followed by an analysis of suggestions to remedy the situation at hand.

Introduction

Why the Debate around Uber's Privacy Mechanism?

The company recently acknowledged that it was looking into one of its executives, who was alleged to have tracked the journey of a journalist without any authorization. The matter was brought to light when an Uber executive suggested investigating the personal life of journalists engaging in negative publicity of the company in order to disclose private information about their lives.³

Senator Al Franken too had questioned data collection by Uber through a letter

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¹ C. Timberget *et al*, 'Uber Executive Stirs Up Privacy Controversy', Washington Post (2014) available at http://www.washingtonpost.com/business/technology/uber-executive-stirs-up-privacy-controversy/2014/11/18/d0607836-6f61-11e4-ad12-3734c461eab6_story.html, accessed on 28 February 2018.

² E. Weise & J. Guynn, 'Uber Tracking Raises Privacy Concerns', USA Today (2014) available at <http://www.usatoday.com/story/tech/2014/11/19/uber-privacy-tracking/19285481/>, accessed on 28 February 2018.

³ B. Smith, *Uber Executive Suggests Digging up Dirt on Journalists*, BuzzFeed News available at <http://www.buzzfeed.com/bensmith/uber-executive-suggests-digging-up-dirt-on-journalists#.pu831qEy>, accessed on 28 February 2018.

to its CEO Travis Kalanick. This was in response to reports showing that the privacy of customers was being invaded by revealing their location. He enquired about the circumstances under which employees might be subject to disciplinary action for breaching Uber's privacy policy. He urged the company to clarify and clearly describe what it included in the limited set of business purpose⁴

The company has also updated its privacy policy in response to the expose and it clarified its position of prohibiting all its employees from accessing user data except when it was required for 'legitimate business purposes'. Tracking users clearly fall outside the ambit of a legitimate business purpose and would attract regulatory investigation. The company also claims that it regularly monitors access to data. However, the letter pointed out that the policy on the website of the company does not make an indication to this effect and this raised doubts over the enforceability and application of Uber's policies. He also referred to God's view, a tool accessible to most of the Uber employees that permit them to track customers using the service. An explanation of what is meant by 'internal reasons' for which a company shares the personal details of its users was sought. The option of giving customers the choice to consent to sharing information or opting out of it was also put forth.⁵

Uber's privacy attorney had replied to the Senator's letter admitting that both instances were in violation of the privacy policy espoused by Uber. However, she clarified that the employee had located the journalist because she was late for a meeting and the company had given a public apology for this act. The senator was not pleased with the responses he received for his letter as Uber had failed to answer his questions satisfactorily and not clarified what it would term as being a 'legitimate business purpose' either.⁶

Uber's Problematic Privacy Policy

Uber's privacy policy states that:

...“We will retain your Personal Information and Usage Information (including geolocation) for as long as your account with the Services is active and as needed to provide you services. Even after your account is terminated, we will retain your Personal Information and Usage Information (including geo-location, trip

⁴ Franken Senate, 'Uber Letter', available at <http://www.franken.senate.gov/files/letter/141119UberLetter.pdf>, accessed on 28 February 2018.

⁵ E. Weise & J. Guynn (n 2).

⁶ J. Pagliery, 'Uber Limits God View to Improve Rider Privacy', *CNN Money* available at <http://money.cnn.com/2014/12/16/technology/security/uber-privacy-letter/>, accessed on 28 February 2018.

*history, credit card information and transaction history) . . .*⁷

Uber's policy also defines that the data would be used for legitimate reasons such as:

*“ ... resolve disputes, conclude any activities related to the cancellation of an account (such as addressing chargebacks from your credit card companies), investigate or prevent fraud and other inappropriate activity, to enforce our agreements, and for other business reasons.”*⁸

The 'other business reasons' is what is problematic since it can be used to justify anything that the company does as a business reason and the same was done for the 'God's View' tool as well. The loosely worded privacy policy of Uber which says that the location data can be used to prevent and investigate violations of the company's policy or terms of service or attempts of fraud confers wide discretion on the company to access information anytime without any monitoring on the pretext of evading violations which may not occur at all.⁹

Moreover, there is no time fixed in the company's statement which implies it can hold on to customer data for as long as they want. The policy states that *“after a period of time, your data may be anonymized and aggregated, and then may be held by us as long as necessary for us to provide our Services effectively, but our use of the anonymized data will be solely for analytic purposes,”*¹⁰

Other Instances of Privacy Breach by Uber

Uber is trying to clean up on any damage it may have done. Among the posts that have been taken off include a 2011 study by Uber which states that San Francisco neighborhoods which are prone to theft, burglary, prostitution, and alcohol-related crimes call the most number of Uber rides.¹¹ In another post, Uber seemed to have discovered a way of tracking one-night sexual encounters. This was indicated by surveying requests of rides ordered between 10 p.m. and 4 a.m. on Fridays and Saturdays and then being picked up from the drop off

⁷ Uber, 'Privacy Policy', *Uber Privacy Official Website* available at <https://www.uber.com/legal/usa/privacy>, accessed on 28 February 2018.

⁸ Ibid.

⁹ S. Khalid, 'Privacy Concerns in the Sharing Economy - The Case of Uber', *Jolt Digest-Harvard Journal of Law and Technology*, available at <http://jolt.law.harvard.edu/digest/telecommunications/privacy-concerns-in-the-sharing-economy-the-case-of-uber>, accessed on 28 February 2018.

¹⁰ Uber (n 7).

¹¹ J. Pagliery, 'Uber Removes Racy Blog Posts on Prostitution, One Night Stands', *CNN Money* available at <http://money.cnn.com/2014/11/25/technology/uber-prostitutes/?iid=EL>, accessed on 28 February 2018.

location within a few hours. The blog pointed out how the number of overnight stays drop around Valentine's Day and increase around tax day which Uber thinks makes sense since the inflow of cash tends to make people, as they say, more 'frisky'. Uber went ahead and even mapped the areas where Rides of Glory were popular to help people avoid that kind of thing. It also concluded that Rides of Glory were more popular in areas with a higher male/female ridership ratio.¹²

In response to Uber's unauthorized tracking, the critics had taken to social media to express their displeasure with trending hashtag like #UberGate, #DeleteUber, etc. Unsanctioned tracking will result in major legal repercussions in the future. The Uber employee could be terminated by the company as per Uber's privacy policy. Uber itself could also be subject to an investigation by the FTC or face enforcement action or a state attorneys general investigation.¹³

Uber also faced criticism when it was recently revealed that Uber android app was found to not only send and receive texts or access your GPS but also collect information such as what other apps are installed, what cell towers and wifi networks are you connected to, whether your phone is charged, etc. All this is part of the default setting and though it doesn't indicate that the information is being misused, it does not prevent it from being done in the future.¹⁴ The company sought to justify this by saying that access to calendar and contact allows the user to send messages via the app when they are late. Moreover, wifi helps in tracking the rider when the GPS signal is low. The camera allows the user to pay by clicking a picture of their credit card. Though downloading the app is optional, on Android, the user must agree to give complete access to such features as well while in I Phones, permission is sought for accessing particular parts of their phone.¹⁵

Those who regularly used Uber would perhaps be startled to read how easily the employees of the company can find out exactly where all you have been. But even drivers are faced with a problem of customers being able to call them even after their ride has ended though there is a system of dummy numbers to prevent such information from being given away. The dummy number is like a forwarding

¹² Though Uber has taken down this blog. Uber Blog available at <https://web.archive.org/web/20140827195715/http://blog.uber.com/ridesofglory>, accessed on 28 February 2018.

¹³ C. Bessett, Does Uber Even Deserve Our Trust, *FORBES* (2014) available at <http://www.forbes.com/sites/chanellebessette/2014/11/25/does-uber-even-deserve-our-trust/>, accessed on 28 February 2018.

¹⁴ K. Cox, 'Uber's Latest Privacy Problems: "Ghost Texting" Drivers' Contacts, Collecting Android Users' Data', *Consumerist* (2014) available at <http://consumerist.com/2014/11/26/ubers-latest-privacy-problems-ghost-texting-drivers-contacts-collecting-android-users-data/>, accessed on 28 February 2018.

¹⁵ A. Hildebrandt, 'Uber Takes Heat for Customer Privacy Setting', *CBC NEWS* available at <http://www.cbc.ca/news/technology/uber-takes-heat-for-customer-privacy-settings-1.2852907>, accessed on 28 February 2018.

number that aims to hide the true ID of the driver and passenger both and the same number is visible to both of them when either tries to contact the other so that real numbers are not exchanged and drivers do not contact customers against their will. Though the number remains anonymized until another trip is accepted or till 30 minutes after the conclusion of the first trip, the time gap between a cancellation and the new trip allows the driver sufficient time to message the previous rider and this may be dangerous if he is annoyed by the cancellation as he may vent it out on the rider. Moreover, the trip record or the waybill that the driver has access to generally have the full name of the passenger as per the requirements of the Taxi and Limousine Commission and the law of other major cities and this means that the drivers can easily look up the riders on Facebook or even try to get their home address. Since the company provides the drivers with the full information such as names and address of their riders, this makes the riders feel more vulnerable when they rate the drivers who will be easily able to track them down if their services are terminated on account of negative feedback or a low rating. However, with riders being allowed to contact the driver on that number for half an hour post the ride is over also makes it problematic for drivers, especially female drivers who may receive unwanted messages from the male riders after the trip as well. Hence it shows how Uber has been unable to control unsolicited interaction between the riders and the drivers.¹⁶

The problem of ‘ghost texting’ has also bothered drivers engaged with Uber. Those on the contact list of the Uber drivers using a device provided by the company also receive messages inviting recruitments for the company without the recommendation or consent of the driver. Though the company claims it is only when the drivers go through the entire referral process where they manually recommend their friends as employees so that they can earn credits, even drivers who did not go make such suggestions are faced with messages from Uber to their friends inviting them to join the company.¹⁷

What does this Imply and what needs to be done?

A more concerning matter is that users are not aware that their privacy is being compromised. Many people may not mind their journey being tracked either. Post 9/11 the government has been more active in monitoring people and this is evident through the increasing number of cameras to record movements of

¹⁶ P. Mosendz, ‘Uber Drivers Have Privacy Problems Too’, *Newsweek* available at <http://www.newsweek.com/uber-taxi-e-hailing-riding-app-travis-kalanick-emil-michael-josh-mohrer-uber-285642>, accessed on 28 February 2018.

¹⁷ J. Bhuiyan & C. Warzel, ‘“God View”: Uber Investigates Its Top New York Executive for Privacy Violations’, *Buzzfeed News* available at <http://www.buzzfeed.com/johanabhuiyan/uber-is-investigating-its-top-new-york-executive-for-privacy#.lsQGqalym>, accessed on 28 February 2018.

people at public places. However, there are very crucial differences between the function of the God-view tool and the task of law enforcement agencies. The police officials sought to protect the public and hence monitor them but Uber tracks people only for furthering its business interests. Moreover, when we step out we know we would be watched but until recent reports came to light, Uber users were not told that the company was tracking their whereabouts.¹⁸

Uber needs to institute restrictions on saving customer data by allowing it to be retained only up to a certain period of time and with the permission of the customer who should have control over managing their data so they are able to delete it whenever they want. Including an option of the private journey where absolutely no information is retained may also be preferable for some consumers who may not want all their rides to be tracked or recorded. Uber should also disclose to the public, how much data it shares with the government agencies like the police and crime branch, etc.¹⁹

Even the police need to have warrants before using a tracking device on anyone's car. People have a fundamental right to privacy and that means people should be able to monitor who has access to their locational data and who it is being shared with. They must have the right to dictate what information is extracted, how it is stored and shared. People may terminate their accounts for various reasons, for example, if they are unhappy with how their information is being used and it is unfair if even after this their information is being retained. The privacy policy needs to be clear in defining what purposes the information would be used for. Both the company and its employees should be made aware of it to avoid breaches.²⁰

All this shows that when our information becomes a part of databases it can be used by people for their own selfish motives and the information that can be dug up can be very destructive as well. The Federal Law doesn't have adequate means to protect users if their information is being used against them by a company which has access to their data. In spite of the fact that the Federal Trade Commission has in the past come down heavily on companies violating the representations they make about how data is managed, there is a wide leeway when the company acts in compliance with the privacy policy drafted by the company attorneys.²¹

¹⁸ B. Weinstein, 'Four Other Ways Uber is Ethically Challenged', CNN Money available at <http://money.cnn.com/2014/11/21/technology/uber-ethics-oped/?iid=EL>, accessed on 28 February 2018.

¹⁹ J. Stanley, 'Lessons of the Uber Privacy Scandal', ACLU available at <https://www.aclu.org/blog/technology-and-liberty/lessons-uber-privacy-scandal>, accessed on 28 February 2018.

²⁰ D. Kerr, 'Sen. Al Franken questions Uber, Lyft over privacy (Q&A)', CNET available at <http://www.cnet.com/news/sen-al-franken-talks-uber-lyft-and-privacy-policy-q-a/>, accessed on 28 February 2018.

²¹ C. Timberger *et al* (n 1).

Conclusion

This scandal is like a gentle warning of all the dangers we make ourselves vulnerable to when we permit an agency or institution to gather information about us. It sheds light on the fact that the information is liable to be misused not only by governments but even private entities such as Uber which also have selfish interest and incentives to collect data and use it if for their own advantage. Geolocation data contains sensitive information about things like where you live, your doctor's address, which church you go to and what all places you have visited. Though location-based apps seek to facilitate convenience they are also very risky. People should be aware of how their data is being used and should be able to choose what they want to share or not.

It also showed how new entrepreneurs in the market do not understand how vital it is to protect the data collected and take the privacy of users seriously. It raises doubts on whether larger companies are vigilant in safeguarding the privacy or if they are just smarter in hiding the abuse. Nevertheless, the size of the company is no guarantee to privacy as it doesn't take away from the fact that in any organization there might be individuals who will be willing to exploit the information they have in exchange for other selfish considerations.

However, the issue reveals a pressing need for companies to have legal systems in place to ascertain and respond to risks they may face in relation to breach of privacy and the vulnerability of data being secretly misused. The information sharing industry survives on good faith and reputation. Though the company has attempted to project a privacy-oriented image in the corporate sector, the privacy policy suffers on May accounts and it is even opposed to the company's public image of being privacy friendly. It falls in the category of a large number of companies which fall short of their ideals and goals of privacy. Bringing tech companies under the ambit of federal regulation and reviewing the deficiencies in the existing privacy regime along with steps to ensure compliance by all the officials associated with the company is the need of the hour.