

# Privacy and identity in Internet of Things: smart devices

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# Internet of things: Smart toys

Smart toys and privacy of children

How to get protection? Privacy policies and Terms of use

- Debate for their validity and compliance with existing legislation

# Cayla: a smart toy

- Genesis Toys is the creator of Cayla :
  - a Hong Kong incorporated company which is based and located in Los Angeles, California <https://www.genesis-toys.com/>
- Genesis is working with Nuance Communications
  - -a software provider – for providing voice recognition technology which also stores the questions towards Cayla in a server in the cloud ( as specified in the privacy policy and app application)
- My friend Cayla US website and UK website
  - US site provides a privacy policy while the UK site provides privacy policy and terms of use and user agreement

## Cayla: a smart toy

- Does the parent of the child has a valid contract? Is she contracting away the child's privacy?
  - The UK user agreement can be considered as an analogy to shrink wrap or perhaps the browse wrap contracts. These are internet contracts where their validity and enforceability has been questioned and examined by Courts on a case by case base-reluctant to consider them valid contracts
  - The non retrievable display of terms upon opening the app, cannot amount as a solid ground to support a valid and enforceable contract

# Contracting away children's privacy

- If we take the case we don't have a valid contract between user/parent and a company, there is no agreement on the privacy policies. We need to examine and establish whether children's privacy has been compromised and follow legal procedures-based on other legal grounds e.g. common law privacy torts.
- In case we assume, that there is a valid contract between user/parent and smart toys company-binding also in the privacy policies- then the parent has given consent to the privacy policies which become binding.
- Considering that most of the smart toys privacy websites do not comply with privacy and data protection legislation the question is : if we have a contract, can parents contract away their children's privacy? And is this valid and to what extend?

## UK Cayla , disclaimers

- Also, in the user agreement there are disclaimers and limitations of liability which in short state that *“they are not responsible for content or functions of the service or its ability to meet the users needs, they are not liable for losses including lost or corrupted information, or loss the user suffer by using our services, and in any case for any loss they will pay only the amount the user has paid for Cayla”*.
- They also state that: *“Cayla connects to the internet and any information by using the app is on the users sole risk , and only the user is responsible for the use of Cayla. We cannot guarantee the use of the app will be free of unacceptable content”*.
- It looks like they deny any responsibility for the quality and content of Cayla as well as any misuse of information or security breach.

# US related privacy laws

- *US privacy laws* : a patch approach –solve identified problems.
- Fair Information Practice Principles (FIPPs) –guidance on privacy law, e.g. data collection.
- Children Online Privacy Protection Act 1998(COPPA) (amended 2013) : parents control the information websites can collect from their kids under 13 years of age.
- Children's Online Privacy Protection Act Rule.
- Do Not Track Kids Act, introduced in House (06/11/2015):amends the COPPA and expands the protection e.g. In the “operator” term includes operators of online and mobile applications.

## US related privacy laws

- The Federal Trade Commission Act (FTC Act) “ prohibits unfair and deceptive practices related to the privacy and data security policies. The FTC is the body enforcing the Children Online Privacy Protection Act (COPPA) through its COPPA Rule.
- The Federal Trade Commission (FTC) on June 2017, has updated their guidance on how to comply with COPPA in the *“Six Step Compliance Plan for your Business”*.
- This update states, among others, that COPPA applies to connected devices of the Internet of Things, including connected toys collecting personal information such as voice recordings or geolocation data. |



## US related privacy laws

- The update also provides a “*Compliance Plan*” for getting verified parental consent mainly by asking knowledge based authentication questions and using parent facial recognition to match with a verified photo ID. ([https://www.ftc.gov/news-events/blogs/business-blog/2017/06/ftc-updates-coppa-compliance-plan-business?utm\\_source=govdelivery](https://www.ftc.gov/news-events/blogs/business-blog/2017/06/ftc-updates-coppa-compliance-plan-business?utm_source=govdelivery))
- *US State Laws* : California: “Privacy rights for California Minors in the Digital World” 2015.
- *International agreements*: EU-US Safe Harbor agreement – followed by the 2016 “Privacy Shield” framework introducing enforceable rights for data transfers.

## US Cayla: Compliance with Privacy law

- US Cayla website has a privacy policy that states that it complies with data protection laws-although its later provisions contradict with privacy laws.
  - It states that “by... using our website and by providing information you consent to the collection , processing, maintenance and transfer of personal information in and to the US and other applicable territories.....: “
  - It asks for unlimited consent without restrictions
  - it allows the processing and transfer of data in other territories without clarification on which territories or the security measures for such transfer.

## US Cayla: Compliance with Privacy law

- The privacy policy has a statement that *“they will not share personal information to third parties without the users specific consent ,except in the cases where provided in the policy “*
- These cases are : *information shared with third trusted partners, business transfers, legal disclosure and advertising.*
- Actually the policy allows the sharing of information without any security assurances or commitment of following privacy standards.

## US Cayla: Compliance with Privacy law

- The policy states that they “*keep your information as long as necessary*” without defining this period. The COPPA states that the operator can retain personal information only as long as is *reasonably necessary to fulfill the purpose* for which the information was collected.
- The policy also states that *it is possible to remove or delete all your information from their databases because of backups and other reasons*
- These privacy policies is questionable whether comply with Fair Information Principles and COPPA legislation

## US concerns about toys that “spy”

- Electronic Privacy Information Center(EPIC), with the Campaign for Commercial Free Childhood, the Center for Digital Democracy, and Consumers Union, filled a complaint in the Federal Trade Commission(FTC) over toys that “spy “ children ,( Cayla and i-Que) , on the ground that these toys violate federal privacy laws.
- They argue that Cayla and i-Que, violate federal privacy legislation and adopt unfair and deceptive practices. FTC has committed to reply to this complaint.

# EU and child privacy awareness

- The European Consumer Council has raised awareness to Data Protection Authorities in Europe regarding smart toys privacy concerns.
- Consumers Organizations has filled complaints with national data protection and consumer authorities in several countries (Sweden, France, Belgium, Ireland, Netherland, Greece) related to smart toys privacy and security issues
- The European Consumer Organisation (BEUC) has sent letters of concern to the European Commission, the European Union network of national data protection supervisors, and the International Consumer Protection and Enforcement Network (ICPEN), (European Communications, “Consumer watchdogs take action against unsecured IoT toys”, 2016, <http://www.eurocomms.com/industry-news/11993-consumer-watchdogs-take-action-against-unsecured-iot-toys>)

# EU and child privacy awareness

- The Norwegian Consumer Council has issued a document titled “Consumer and privacy issues in internet connected toys” in which they compare privacy and user agreement policies in three smart toys : Cayla, i-Que and Hello Barbie.
- The document identifies in a substantial manner the key legal issues raised by the use of these toys under the European Union legislation.
- Forbrukerradet, “ Toyfail, An analysis of consumer and privacy issues in three internet connected toys, 2016, [https://consumermediallc.files.wordpress.com/2016/12/toyfail\\_report\\_desember2016.pdf](https://consumermediallc.files.wordpress.com/2016/12/toyfail_report_desember2016.pdf))

# EU related (IoT)privacy laws

- EU privacy laws: comprehensive and structured approach
- Data Protection Directive : DIRECTIVE 95/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data
- The EU Data Protection Reform (2012) resulted to the :
  - ✓ *General Data Protection Regulation*: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC () and
  - ✓ *General Data Protection Directive*: Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA
- The General Data Protection Regulation will apply from 25 May 2018
- The General Data Protection Directive has to be transposed into EU Member States national law by 6 May 2018



# EU related (IoT) privacy laws

- Directive on privacy and electronic communications: Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002, concerning the processing of personal data and the protection of privacy in the electronic communications sector
- Amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009, amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

## EU related (IoT) privacy laws

- Article 29 Data Protection Working Party(WP29), “Opinion 8/2014 on the on Recent Developments on the Internet of Things”,(<http://www.dataprotection.ro/servlet/ViewDocument?id=1088>)
- In the opinion( no binding) the WP29 has identified the privacy challenges related to IoT
- The Working Group 29 has also identified IoT stakeholders including IoT device manufacturers who collect and process personal data which are generated by the device, as data controllers.

# Smart Toys identity

What is the legal status of smart toys?

- Purchase of smart toy-property right-do I have full ownership?
- Smart toys as persons: the concept of person is related to consciousness, the Shelf which is defined as the ability to plan of life and self- respect. The person is able to feel.
- “Person stands for a thinking intelligent Being, that has reason and reflection, and can consider it self as it self, the same thinking thing in different times and places; which it does only by that consciousness, which is inseparable from thinking, and as it seems to me essential to it: *it being impossible for any one to perceive, without perceiving, that he does perceive*”(John Locke, An essay concerning the true original, extent and end of civil government, 1690)
- Smart toys as legal persons: law gives legal personality to entities

# Smart Toys identity

**Smart toys as robots:** EU considers to attribute electronic personality to robots

- Smart robots: have the following characteristics:
  - ✓ The capacity to acquire autonomy through sensors and/or by exchanging data with its environment (inter-connectivity) and the analysis of those data
  - ✓ The capacity to learn through experience and interaction
  - ✓ The form of the robot's physical support
  - ✓ The capacity to adapt its behaviours and actions to its environment
- A Draft Report considers the possibility to create a specific legal status for robots, so that at least the most sophisticated autonomous robots could be established as having the status of ***electronic persons*** with specific rights and obligations, including that of making good any damage they may cause, and applying electronic personality to cases where robots make smart autonomous decisions or otherwise interact with third parties independently;

(European Parliament, Committee on Legal Affairs, Draft Report with recommendations to the Commission on Civil Law Rules on Robotics, (2015/2103(INL))

# Smart Toys identity- electronic persons

- The robotics development of autonomous and cognitive features – e.g. the ability to learn from experience and take independent decisions – has made them more and more similar to agents that interact with their environment.

European Parliament, Committee on Legal Affairs, Draft Report with recommendations to the Commission on Civil Law Rules on Robotics, (2015/2103(INL))

# Smart Toys identity-agents

- Smart toys as agents: principal is responsible and liable
- If agents are legal persons do they have contractual capacity / the ability to consent -? If child asks the smart toys to make a purchase from internet (e.g. “for necessities”) can the smart toys make the purchase and enter into a valid contract ? Can the parent do so?
- In case of malfunction, who is liable?
- Is the smart toy a mere communication tool?
- Connected toys: In the case where smart toys are connected and interacting, how do we define liability?

# Smart Toys identity - animals

- Smart toys as children: attribution of human personhood but not full capacity in some instances
- Smart toys as animals: animals don't have personhood - viewed as property
- However, the change of social values towards animals had an enormous effect on their legal status e.g. development of legal statutes such as creation of pet trusts in the US
- Recent US cases have extended the concept of companionship from the traditional relationships such as parent and child to owner and pet and have awarded damages to pet owners for the loss of the pet

# Future concerns

- Child privacy and toy identity
- If a toy has a legal personality, who is liable for privacy violations?
- If toys develop intelligence to build their privacy policies, request affirmative consent from the parents, and comply with the legislation, who is liable for software errors and algorithmic decisions?
- If a toy, can make autonomous decisions regarding the transfer and processing of data, can the toy creator be liable?



Thank you

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