From Clicks to Consensus: A Collective Consent Approach to Online Privacy

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Abstract

A user's meaningful and informed consent is crucial for online systems to allow users to have autonomy and control over their data. Notice and consent, the de-facto standard for collecting consent, has been oft-criticized for not being effective at collecting users' consent. Other solutions have been proposed, but also have their shortcomings. Existing approaches to consent are all individualistic, but given that we are constantly immersed in a complex digital world, having every individual informed about data collection by multiple companies and making constant consent decisions has proven impractical. As individual approaches to consent do not work, a collective approach is worth exploring.

We conceptualize how *collective consent*, a process that leverages citizens' assemblies, could be a way forward for consent. We describe the theoretical foundations behind this idea, demonstrate how it could replace notice and consent and be a method to collect consent in the generative AI context, discuss the need for shifting from an individual to collective approach to data governance, and lay out future work in this space.

1 Introduction

Gathering informed, voluntary consent is crucial for technologies to be responsible, and gives users autonomy and control over their data. The primary way in which consent for data collection has been imagined is through notice and consent. In notice and consent, users are first informed about how their data will be used (*notice*), and then asked for their consent to agree to data processing (*consent*). Notice and consent, being inspired by the *Fair Information Practices* (3), has become the standard for collecting consent in the European Union under the General Data Protection Regulation (GDPR) (13). Its influence has spread worldwide, such as the California Consumer Privacy Act (CCPA) mandating that users have a right to know about data processing and opt out of data collection (38), and the Canadian government laying out consent guidelines (30).

The effects of notice and consent are dubious; several research studies have shown that users are neither informed, nor feel like they have control over their consent decisions (25; 43; 26; 20), leading to feelings of digital resignation and privacy cynicism (20; 44; 25). Despite its presence in the online space, notice and consent has been oft-criticized (43; 25; 26; 23). Much research and regulatory focus has been on consent notices, but this is ineffective for addressing fundamental issues surrounding consent, which is that consent is neither informed nor given freely.

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Despite the shortcomings of notice and consent, a user's consent is important for technologies to be responsible (37), and simply asking for a user's consent is an effective way of giving users control over their privacy (2). User data is very important for training and improving ML models. Due to the harms that can arise when data is collected and used *without* user (and worker) consent (24; 22), we posit that we need a new form of consent that is based on collecting *meaningful* and *informed* consent.

Given the increasingly complex digital world we are in, it is unreasonable for individuals to be fully informed of data practices and make so many complex consent decisions daily. As privacy and data also tends to be linked (15; 49; 3), and we as a society are facing common harms from the same large tech companies (48; 46; 45), we put forth that consent would benefit more from a collective solution (3). Thus, a collective approach to consent may provide users with more autonomy and control over their data and its outcomes.

In this work in progress, we conceptualize *collective consent* as a framework for responsible data collection. We build upon ideas from privacy, HCI, and political science to ideate on a collective consent framework to address the challenges of responsible data collection for both replacing notice and consent, and addressing data collection in emerging technologies such as GenAI.

To enact collective consent, a representative deliberative process can take place to inform broader consent decisions. In this process, a group of affected people by data processing decisions are represented by a representative group to make deliberate decisions about privacy and data collection on behalf of the broader population. Members will be presented with neutral information from different sides of the data processing decision debate, discuss whether they consent, and conditions for consent.

We believe that collective consent, compared to notice and consent and other current alternatives, can protect users' privacy more effectively, reduce the burden of consent from individual users (especially those who are unable to meaningfully consent), and is able to be more successfully implemented to emerging technologies. We conceptualize collective consent and lay the groundwork for a future research agenda focused on empirical studies of collective consent.

2 Background

2.1 Theoretical background

Our framework is based on previously proposed ideas around collective governance of privacy. In an article from the Mozilla Foundation, Anouk Ruhaak puts forth a call for collective consent, noting that we need to shift away from the individual to account for meaningful consent (35). Ruhaak notes that notice and consent is a burden on users, meaningful consent is not possible without the option to opt out, which all have implications on the privacy of the group (35). With these challenges in mind, Ruhaak believes collective consent may be the solution, giving more power to users versus tech companies, and allows for individuals to group together to decide on a better course of action for themselves (35).

As individuals, the effects of privacy harms may seem small, thus it is important to address harms collectively, where its impacts are more visible (48). In a 2022 Web Conference Consent Workshop keynote, Robin Berjon describes the need for collective, socialized consent, calling it "consent of the governed" (2). Berjon notes "such institutions (for collective governance) exist for other problems and that we should not shy away from apply them to data exchange (2). Outside of computer science, Nobel Prize-winning economist Elinor Ostrom has also shown that a collective of people can successfully govern a common public asset, leading to better outcomes for the majority (32). Collective consent also has implications on allowing creative workers to have more power and advocate for themselves in the age of generative AI (24). Collective bargaining could be a way to give power back to workers and users, especially as present-day power imbalances typically favor large tech companies over the privacy interests of everyday users and workers.

2.2 Collective governance of data and privacy

Privacy and data are commonly thought of as one's own commodity to create and control. However, there is an increasing call for regulators and society to start treating data as a public good. It is

arguably more effective to govern data by treating it as a public commodity rather than an individual one because not every user has the ability nor interest to act in ways that protect their privacy, which can in turn can reveal information about other users (15). Not only do users not always care about their privacy, but we are largely unaware of how the data collected from us today may impact us in the future, especially as the impacts of individual instances of data collection seem small (until combined, then the effects are greater) (48). Focusing on privacy as a private good is not enough to protect the majority of users because of information leakages and external issues with privacy management (36). Therefore, we need to work on collective privacy that helps the majority of users, rather than privacy as an individual activity, which may enhance protections for privacy-focused users, but reveal more for users less interested in privacy (15; 47), which is the majority of users (34; 11).

When using an online service, privacy is rarely a consideration. Thus, users may often take shortcuts to evade the burden of acting in ways to protect one's privacy, which leads to less-secure systems and information leakage (1). It is no wonder why users act in these ways, as privacy management requires not only effort and understanding of privacy tasks, but also time to do these tasks well (36). Obar argues that instead of focusing on individual privacy, the most reasonable solution is to focus on "*representative data management:* a combination of non/for-profit digital dossier management via infomediaries that can ensure the protection of personal data" and free users from a privacy ideal that is ultimately unattainable (27).

(author?) (36) argues that not only should we recognize privacy as a public commodity, but that to achieve optimal privacy for the masses, governments need to have a role in collective privacy management, noting that "privacy has value beyond what most individuals are able to foresee and the government has a duty to prevent new technologies from disrupting the provision of this good."

Consent, since it involves the management of personal data, should be treated as a collective problem, rather than an individual problem. Individual consent choices can have implications on the privacy of others, and as not everyone has equal interest or ability to manage their own consent, a collective approach could be the way forward to improve online consent.

3 Collective consent through citizens' assemblies

Consent is commonly thought of as an individual choice, but we have witnessed the boundaries for individual consent, showing that notice and consent is overwhelming (both in terms of information to process, and the number of consent decisions to make), thus few users end up making consent decisions meaningfully. Because of the shortcomings of individualized consent, we posit that it may be more effective to give the power to make consent decisions to a group of users (such as a representative jury or panel) to deliberate on consent decisions.

3.1 Citizens' assembly

A citizens' assembly is a democratic process where representative members of a wider population are randomly selected to inform policy decisions on behalf of this population (29). This group is then tasked with in-depth learning and discussions about the topic to then form an informed recommendation to present to policymakers (28). There exist several kinds of representative democracy, based on the kind of policy questions to address, and how detailed recommendations should be. These deliberations can range anywhere from just over one day, to 47 weeks long, depending on how much learning and deliberation certain policy questions require (28). We only borrow the terminology of "citizens' assembly" in our paper, not the commitment to the long processes typically associated with a citizens' assembly, and recommend it be shortened to address issues around consent.

Since the 80s, citizens' assemblies, a popular form of representative deliberative democracy, have deliberated on over 732 policy issues, covering a variety of topics such as the environment, strategic planning, urban planning, health, among many other topics (31) around the world (28). Citizens' assemblies have also been used in the context of tech policy (at least 18 since the 80s (31)). For instance, Alignment Assemblies, organized by the Collective Intelligence Project and in collaboration with major AI companies such as Anthropic and OpenAI, have been taking place for members to discuss what they want out of AI, and how to align AI to better support humans (8).

The main benefits of a citizens' assembly as a form of deciding on policy decisions are that: i) they provide fair representation due to the process of randomly selecting a panel that represents the

population, and ii) they provide fairness because all members in the panel have an equal opportunity to participate in the democratic process and deliberate (12).

Citizens' assemblies can be preferred over other forms of democracy because it encourages participants to engage in critical thinking and actively deliberate over their decisions, rather than being presented (sometimes distorted) information to win the votes of individual people (18). Additionally, not everyone is equally interested in being involved in political or policy decisions. Therefore representative deliberative democracies relieve the burden of important political and policy decisions to a group of engaged and representative people to actively discuss and deliberate on their decisions. Even if an individual is interested in participating, they may not have the time to participate, which leads to skewed representation in electoral democracy, where racial minorities and women tend to be underrepresented in the voter pool (4). Thus, the random selection that occurs in citizens' assembly can be more fair and representative compared to individuals voting (19).

3.2 Conceptualizing the collective consent process

In this section, we describe the general process of a citizens' assemblies and how it could be applied to consent. We illustrate how collective consent could be used as a way to replace notice and consent, and collect consent in the context of GenAI data collection from users (i.e., consent related to scraping of online data which users may have posted online).

Inviting and selecting members. Invitations are sent to a random sample of approximately 2,000 to 3,000 people in the given population (9). These invitations are sent by mail, email, phone, and other ways to reach these potential members. Those who opt-in to participating are put in a random lottery to select the members of the citizens' assembly (9). The selected individuals in the lottery undergo another lottery, this time stratifying them by demographics (for instance, age, gender, socioeconomic status) to eventually have a citizens' assembly that is representative of the population, including non-citizens of a jurisdiction (9; 6). Approximately 30 to 200 participants from a given population are randomly selected (10) through a process of "sortition" or "civic lottery" (41). The volunteers in the previous stage who were selected in the lottery undergo another lottery, this time focused on stratifying them based on demographics to ensure a representative group is selected.

Application to notice and consent and GenAI data collection. Privacy and AI regulations tend to be more jurisdictional therefore those who are affected by a jurisdiction's data regulations and practices will be invited to participate, not only citizens. For instance, if a regulation is applied to a certain country, residents of that country will be invited, and if a country has different states or provinces handling data differently, residences of that particular state or province will be invited to participate.

In addition to stratifying for the typical demographic factors, citizens' assemblies for collective consent will need to ensure various privacy preferences are represented in the assembly. Given that privacy is central to consent, privacy preferences need to be taken into account when selecting the members to ensure consistency across decisions, ensure the broader population feels represented in the decision-making process, and prevent skewing the outcome towards certain privacy attitudes.

Learning phase. As the members of the citizens' assembly have different levels of knowledge and experiences with the task to be discussed, they need to be prepared, which involves extensive learning about the task (33). Depending on how complex the matter is, the learning phase can range from as short as a one day, a couple of weeks, to a few months (33; 28).

Application to notice and consent. Different forms of data processing will take different lengths of time to understand. The understanding of different purposes will differ based on user exposure to these purposes, and the complexity of such purposes. Some purposes are more straightforward to users, such as those related to strictly necessary purposes, marketing, and advertising (25). For purposes that are straightforward, it is possible that the learning phase, and thus the citizens' assembly process, can be shortened and adapted based on members' understandings of the topics. Reliance on lightweight forms of citizens' assembly, such as citizens' dialogues or citizens' councils, is recommended (28).

Application to GenAI data collection. As GenAI systems are complex, rapidly evolving, and not well-understood by most people (39), the learning phase for GenAI consent will be more extensive compared to consent for general data processing. For GenAI consent, we recommend that full

citizens' assemblies take place to allow for this in-depth learning and exchange of ideas. Similar to the *Learning Phase* for notice and consent, we recommend that the *Learning Phase* for GenAI consent should involve multiple stakeholders who can explain these systems to members, and provide a multi-faceted perspective of data collection.

Listening phase. Citizens' assemblies typically involve public hearings, oral and written submissions from members with their opinions and thoughts on the matter, meeting with NGOs and other stakeholders to expose members to a variety of opinions and perspectives on the topic (33). The listening phase allows for discussions, questions, and comments from citizens' assembly members. Typically, summaries of the citizens' assembly will be shared publicly online to keep the process transparent to the public (21).

Application to notice and consent. It is important to involve a variety of stakeholders, such as those from industry, regulators, privacy lawyers, NGOs, etc. to expose members to a variety of views and allow for exchange of dialogue between members and these stakeholders. As members may have pre-conceived notions of what different purposes and companies do with user data (25; 5), it is important to not have these biases impact collective consent decisions. Instead, the focus of the *Listening Phase* should be on educating members about the costs and benefits of data collection for different purposes, and potential benefits and harms.

Application to GenAI data collection. Similar to the considerations for notice and consent, collective consent for GenAI data collection needs to involve multiple stakeholders to provide a nuanced perspective of the pros and cons of data collection in the context of GenAI systems. In addition to the stakeholders mentioned above, GenAI can have drastic impacts on work, such as the creative sector (24; 22), therefore it is very important to involve these affected communities in the *Listening Phase*.

Deliberation and outcomes. This phase allows members of the citizens' assembly to debate and engage critically with information they were presented with previously. The goal of the deliberation phase is to come up with a common decision (33). In the deliberation phase, the design of groups is highly important to ensure everyone can voice their opinions, and ensure exposure to alternative ideas (33; 40).

Citizens' assembly decisions are not always binding. Instead, these decisions are shared with governments and policy-makers to guide future decisions (17).

Application to notice and consent. Currently, the institutions in charge of regulating consent and enforcement are Data Protection Authorities (DPAs) in Europe for the GDPR, and the California Attorney General in California for the CCPA. Collective consent decisions, informed through citizens' assemblies, could be used as recommendations for the enforcement authorities to set basic defaults for consent, depending on the purposes, website, etc. to be decided on.

Application to GenAI data collection. AI governance lags behind in many jurisdictions. The most well-established AI regulation is the EU AI Act, which the European AI Office oversees and enforces. However, the EU AI Act does not regulate the training of AI systems to the same degree as it regulates the AI system itself (24). Therefore, the establishment of new regulations and interpretations is needed to handle the implications of consent on GenAI data collection.

4 Discussion

In this work in progress, we conceptualize how collective consent could be a way forward for online consent, addressing shortcomings of current approaches to consent and its alternatives. Users need to be *informed* and provide *meaningful consent*, which is difficult to achieve with purely individualistic and technical solutions. Thus, we propose a collective and sociotechnical approach to consent.

Collective consent, imagined using citizens' assemblies, allows for users to be meaningfully informed and provide meaningful consent through democratic participation. Those who are impacted by data collection are able to convene, be informed of data collection practices and technicalities, engage in discussions with other members and stakeholders, and negotiate with organizations collecting data before providing consent. Collective consent is envisioned to be an ongoing process, and thus allows

for consent decisions to be re-adjusted with advances to technologies and regulations, a crucial aspect of consent currently missing from present-day consent systems (24).

However, there are some disadvantages to collective consent, such as the limits on autonomy for users. Collective consent is meant to reduce the burden of consent placed on all users by current notice and consent systems, but there will always be some users who *want* to be informed of data processing but might not be able to make such granular consent decisions for themselves as they would usually under notice and consent.

Rethinking personal data as being a collective problem. While collective governance and bargaining is widely accepted in the workplace (such as through trade unions), collective governance of personal data is still not widespread. This is because at the workplace, it is assumed that workers, due to their shared employer and employment conditions, have similar concerns, and thus have a similar negotiating counterpart. In the context of privacy regulations, in particular the GDPR, privacy regulations tend to be based on a human rights framework, under the belief that privacy (and thus data protection) is a fundamental human right (14). As such, privacy becomes an individual right because human rights are inherent, inalienable rights for each person (42).

However, we challenge the notion that personal data governance is an individual problem, and believe it would benefit users more if it was treated similarly to collective action in the workplace. As the internet has become monopolized by a few large technology companies (16), it is evident that users are subjected to shared online experiences and online harms (48; 46). As users of the internet, we face similar concerns over our privacy (48; 7), and we have similar concerns about what big platforms are doing with our data (46; 25; 49).

In a World Wide Web Consortium (W3C) report by **(author?)** (3), they also note that "collective issues in data require collective solutions," noting that data governance cannot properly govern data if it focuses too much on individual control, rather than collective action. To make effective regulations that safeguard users' privacy, we need to shift from thinking of personal data governance as an individual problem, towards thinking of it as a collective one. This will require significant changes in the privacy regulations of many jurisdictions. The implementation of collective consent and governing personal as a collective issue will also require new, or significantly revamped, institutions because the current institutions are inadequate to handle the demands of the modern-day impacts of online platforms.

4.1 Future work

As this work in progress is conceptual, more empirical research, in particular that done with users and other relevant stakeholders (e.g., privacy regulators, legal experts), is needed to understand the practicalities of implementing collective consent. More work can be done on understanding what is needed for users to feel represented by an assembly of members, such as what kind of demographic and decision-making factors matter, and how to design a citizens' assembly to be representative of the wider population. More work can also be done on understanding the practical matters of collective consent, such as users' opinions for how consent jurisdictions should be allotted, and the scope of consent decisions. More work should also be conducted to better understand how to find a balance between collective and individual autonomy for consent.

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