Case Study #2: Linked Privacy Policy

START HERE

The privacy clause in the vendor's contract merely contained a link to their privacy policy:

Licensor shall process personal data in accordance with its Privacy Policy available at https://www.xyz.org/privacy/.

Library: Please replace with the clause below:

Licensor will take all reasonable and prudent efforts to protect Authorized Users' personal privacy. Licensor agrees that all personally identifiable information, including but not limited to log-ins recorded in system logs, IP addresses of Authorized Users accessing the system, saved searches, search terms, accessed and downloaded materials, patterns of use, usernames and passwords are to be protected and will not be shared with third parties, except in response to a subpoena, court order, or other legal requirement. If Licensor is compelled by law or court order to disclose personally identifiable information of Authorized Users or patterns of use, Licensor shall provide the Licensee with adequate prior written notice as soon as is practicable, so that Licensee or Authorized Users may seek protective orders or other remedies. Licensor will notify Licensee and Authorized Users as soon as is practicable if the Licensor's systems are breached and the confidentiality of personally identifiable information is compromised.

Licensor agrees that all data, information, or content created, generated, provided, or stored in the product or service by Authorized Users will be used only in conjunction with the product or service being provided, that it will not be used for any other purpose, or be released by Licensor or copied in any manner for any other use and will be promptly returned or destroyed upon termination of this Agreement.

Licensor agrees to maintain the confidentiality of any personal identification data relating to the usage of the Licensed Materials. Such data may be used solely in a manner that fully protects the anonymity of individual users and the confidentiality of their searches, and solely for purposes directly related to the Licensed Materials. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party. Unless expressly allowed by individual users, direct marketing to Authorized Users is prohibited.

Vendor: Inserted our approved privacy clause instead:

Each party represents and warrants that so far as it is aware it has complied with and undertakes to continue to comply with all applicable legislation relating to the security and confidentiality of any Authorized User's personal data held or controlled by it, including the security, confidentiality, processing and sharing of any Authorized User's personal data.

Library: We can accept with the addition of our original last paragraph:

Licensor agrees to maintain the confidentiality of any personal identification data relating to the usage of the Licensed Materials. Such data may be used solely in a manner that fully protects the anonymity of individual users and the confidentiality of their searches, and solely for purposes directly related to the Licensed Materials. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

Vendor: Accepted this compromise.

END HERE

Final Contract Language

Each party represents and warrants that so far as it is aware it has complied with and undertakes to continue to comply with all applicable legislation relating to the security and confidentiality of any Authorized User's personal data held or controlled by it, including the security, confidentiality, processing and sharing of any Authorized User's personal data. Licensor agrees to maintain the confidentiality of any personal identification data relating to the usage of the Licensed Materials. Such data may be used solely in a manner that fully protects the anonymity of individual users and the confidentiality of their searches, and solely for purposes directly related to the Licensed Materials. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

SHORING UP OUR DEFENSES

As you learned in Case Study #1, a good post-mortem of privacy clause negotiations should include identifying remaining risks to patron privacy. This language contains different risks from Case Study #1, including:

Legislative inadequacies: The protection of user data privacy by vendor relies heavily on laws and regulations, which are not necessarily up to the standard of data privacy protection the library desires.

Equivocation: the vendor's compliance is qualified in the very first sentence ("so far as it is aware"), and leaves the possibility open for a vendor to claim unawareness of data vulnerabilities after-the-fact in case of a breach.

Can you think of any others?

Each party represents and warrants that so far as it is aware it has complied with and undertakes to continue to comply with all applicable legislation relating to the security and confidentiality of any Authorized User's personal data held or controlled by it, including the security, confidentiality, processing and sharing of any Authorized User's personal data. Licensor agrees to maintain the confidentiality of any personal identification data relating to the usage of the Licensed Materials. Such data may be used solely in a manner that fully protects the anonymity of individual users and the confidentiality of their searches, and solely for purposes directly related to the Licensed Materials. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

Now that you've identified remaining privacy risks, how might you shore up privacy protections within your library until you are able to renegotiate?

Cross-departmental collaboration: Use this time to work with colleagues in other departments (circulation, IT, administration, etc.) to identify any risks present in different places patron data may be collected within the library, and work to mitigate those risks.

Review policies: Now's the time to review, not only your library's privacy policy, but also to consider other policies that might advantage your position next time you're negotiating privacy protections. For instance, does your library have a licensing policy, and if so, does it include privacy as a preferred or essential licensing term? Brainstorm other policies, such as a walk-away policy, a no-NDA policy, etc.

What are some other ways to mitigate risk to patrons?