Plain Language Primer
for Privacy Policies

By Kinsella Media, LLC
Kinsella Media, LLC produced this Plain Language Primer to provide guidelines for writing and formatting materials for privacy policies.

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Plain Language Primer
Making Privacy Policies Clear and Understandable
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Kinsella Media (“KM”) is a nationally recognized firm specializing in plain language redrafting of legal documents. KM also specializes in media-based class action and bankruptcy notification programs in the mass tort, consumer, and product liability arenas. The firm has developed and directed some of the largest and most complex national notification programs in the country. The scope of expertise includes notification programs for cases involving antitrust, bankruptcy, consumer fraud, data privacy, mass tort, and product liability litigation.

Preface

There is a good chance that your business collects and uses at least some kind of personal information about your customers. If your company works with third-party marketers, you likely have additional information about your customers’ online activities.

There is also a good chance that you are making promises to your customers about your information practices – about how your company collects, uses, and shares such information. These promises may appear in the form of a website privacy policy. But how confident are you that those promises are accurate and complete? And that your customers read and understand them?
In its 2010 Preliminary Staff Report, "Protecting Consumer Privacy in an Era of Rapid Change," the Federal Trade Commission ("FTC") recently found that most corporate privacy policies are "incomprehensible," and that "consumers typically do not read, let alone understand" these privacy disclosures. The FTC stated that generally speaking, "privacy policies do a poor job of informing consumers about companies' data practices or disclosing changes to their practices." The FTC even criticized sophisticated companies who have very thorough privacy disclosures for policies that are "opaque" and "too long and too difficult to navigate." The FTC said that "[p]rivacy notices should be clearer, shorter, and more standardized, to enable better comprehension and comparison of privacy practices."

In February 2012, the Department of Commerce unveiled its long-awaited privacy report, "Consumer Data Privacy in a Networked World." The report emphasizes transparency and states that "[p]lain language statements about personal data collection, use, disclosure, and retention help consumers understand the terms surrounding commercial interactions.

With rapidly changing technologies and an increased focus on consumer privacy, it is now more important than ever for businesses to make sure that their privacy policies and other legal disclosures are written clearly, concisely, and transparently. In other words, privacy policies must be written in plain language.

Kinsella Media thanks Reed Smith LLP’s Data Security, Privacy, and Management Team for sharing these remarks.
What is Plain Language?

Plain language relies on principles of clarity, organization, layout, and design. This is critical because only 28% of U.S. adults have graduated from college. A 2003 literacy study found that less than 15% of U.S. adults were proficient in “understanding, integrating, synthesizing, and analyzing multiple pieces of information located in complex documents.”

As defined by practitioners, plain language is the

- “marriage of content and format”
- “use of language stripped of archaic forms and vocabulary, aided by design, layout and typography of the text … [It] takes into account the empirical research of the past 30 years about how the mind works—how people read and assimilate information.”

This primer explores the principles of plain language as applied to the development of privacy policies. It focuses specifically on the implications of plain language requirements for structuring and writing privacy policies.

Questions to Consider Prior to Drafting a Privacy Policy

When drafting a privacy policy for a layperson, first consider:

- Who is the audience?
- What information do they need to know?
- What is the logical organization or flow of that information?

WHO IS THE AUDIENCE?

In writing plain language privacy policies, the demographics of the audience are important, but only to a point. In actuality, the education and comprehension levels of consumers vary so widely that privacy policies must be written in the simplest conversational English without legal jargon, complex language, or unwieldy grammatical structures.

It is important to close the gap between the reading level of your privacy policy and the reading level of your audience. Studies have shown that the average U.S. adult reads several grade levels below their highest level of educational attainment. Therefore, a 9th grade reading level is desirable for your privacy policy. In order to effectively communicate your privacy policy to the widest possible audience, you will need to simplify the language in your policy and format it in the clearest way possible.

WHAT DOES THE AUDIENCE NEED TO KNOW?

Aside from just simplifying the language and format of your privacy policy, you will also need to provide all the information necessary for a consumer to determine whether they want to use your website. You may be required to include information in order to show compliance with legal and regulatory requirements, such as the Gramm-Leach-Bliley Act, the Children’s Online Privacy Protection Act, the Health Insurance Portability and Accountability Act, and various state laws.
Furthermore, the requirement that privacy policies are not “unfair or deceptive” according to the FTC’s mandate is an underlying obligation for all privacy policies. This means that your privacy policy will need to strike the appropriate balance of being easily comprehensible and sufficiently informative.

**WHAT IS THE LOGICAL ORGANIZATION OR FLOW OF THAT INFORMATION?**

Think in terms of a hierarchy of information. Start with the general and move to the more specific. A question and answer format is the most effective and easily understandable way to guide a reader through information, particularly if the information pertains to a complex issue like a company’s information privacy practices. Anticipate a reader’s questions and organize the information to answer those questions.

### Consumer Notice and Privacy Policies

A privacy policy, as is the case with any consumer notice, must provide readers with essential information. A recommended structure includes:

- Headline(s)
- Introduction describing the scope of the privacy policy
- Sections of important information (how personal information is collected, used, shared, disclosed, etc.)
- Subsections under rights (opt-out policy, etc.)
- Contact information

#### Content Characteristics

**HEADLINES**

It should come as no surprise that the eyes of a reader immediately tend to gravitate to headlines. Therefore, when drafting your headlines, your goal should be able to provide mapping points for readers so that it is easy for them to find the information they are seeking. Keep your headlines simple and relevant.

Use descriptive headers to organize the privacy policy by grouping related information into more manageable sections. Below are examples of descriptive headers:

- What types of personal information do we collect about you?
- How do we use your personal information?
- With whom do we share your personal information?
- To whom is my personal information disclosed?
- How do we protect your personal information?

Avoid using overly broad headers like, “What are the Terms of the Privacy Policy?” and “What are My Rights under this Privacy Policy?” Such headers will do little to organize or divide the privacy policy into more manageable sections.
Formatting Characteristics:

Typography and Space

TYPE

Serif fonts are typically used in printed materials because the individual letters are distinctive and easily recognized by the human brain. However, the typefaces that work well in print do not always translate to the Internet. The resolution of most computer monitors can often make it harder to read serif fonts because of their more complex shapes. Therefore, sans-serif fonts are usually preferred for online text because they are easier to read with lower resolution or interlaced digital displays. When posting your privacy policy on an online medium, consider using sans-serif font. Furthermore, research shows that adults prefer fonts like Verdana, Georgia, and Trebuchet, while children prefer fonts like Arial and Comic.

An example of serif type is Times New Roman
An example of sans serif type preferred by adults is Verdana
An example of sans serif type preferred by adults is Arial

FONT SIZE

If possible, font size should be at least 12 to 14 point to be more easily read on screen. Printed text should be at least 9 point. However, there is variation among font types and adjustments should be made whenever necessary. What is 12 point in one font may be as small as 10 point in another. It is also important to consider the medium you are using to deliver your privacy policy. For example, if you are providing a privacy policy for a mobile device, then you should consider the small display size of the screen, which may make reading the privacy policy more difficult.

PARAGRAPHS AND SENTENCES

Long blocks of copy and superfluous text discourage careful reading. Paragraphs should consist of concise sentences of reasonable length using words with fewer syllables. Complex sentences, especially in legal documents, may be traditional but are hard to understand. Use discretion and focus on readability.

EMPHASIZING TEXT

Use bullets, underlining, and/or italics to emphasize key points. Generally speaking, you should avoid using all uppercase type for sentences or paragraphs as it is the most difficult type to read. However, uppercase type can be used effectively in some limited situations, such as headings and subheadings. Bolding, italics, or initial caps are far more readable type treatments.

USING CHARTS

Consider using charts to organize material, emphasize key points, and provide examples of what key policy points will mean to a consumer. Using charts may be an effective way to summarize or provide a snapshot of the entire privacy policy.
Writing in Plain Language

A consensus exists among plain language experts regarding the basic guidelines that make documents accessible and understandable.

**USE POSITIVE LANGUAGE AND REDUCE NEGATIVES.**
Positive language communicates a clearer message than negative language. For example, the following sentences communicate the same message, but the positive language sentence is easier to understand.

*Positive:* “We will only combine your mobile device information with your other personal information in the following circumstances…”

*Negative:* “We will not combine your mobile device information with your other personal information except in the following circumstances…”

**USE ACTIVE VOICE – USE PASSIVE VOICE SPARINGLY.**
The active voice eliminates ambiguity and requires fewer words to express a thought. The subject of the sentence performs the action rather than being acted upon. For example, consider these two sentences:

*Passive:* Location-based data will only be shared with other companies in the following circumstances...

*Active:* We only share location-based data with other companies in the following circumstances...

Studies show that people with less education may have a harder time understanding sentences written in passive voice than sentences written in active voice.9 Use the active voice in your privacy policy whenever possible.

**OMIT SUPERFLUOUS WORDS.**
Pare down sentences to the essential thought. For example, the sentence in (2) omits all the superfluous wording surrounding the basic premise, paring it down to one essential thought.

1. “We collect some information on an anonymous basis. We also may anonymize the personal information we collect about you. We obtain aggregate data by combining anonymous data that meet certain criteria into groups.”

2. “We will combine information in a way that does not personally identify you.”

Replace wordy phrases with simple words. For example:

Replace “in order to” with “to”
Replace “subsequent to” with “after”
Replace “with regard to” with “about”

**OMIT LEGAL JARGON.**
In most circumstances, words such as “whereby,” “pursuant to,” and “herein” can be replaced with “by which,” “following,” and “here” without losing their meaning.

**AVOID TECHNICAL JARGON.**
Your privacy policy shouldn’t read like a technical manual. A consumer should not have to master terms like “query string,” “web beacon,” “aggregation,” or “anonymization” in order to understand your company’s information practices. Those words and phrases may not be meaningful to the majority of your audience and, with advancing technology, may change quickly. The focus should be on informing your customers of what information is being collected, how it is being used and disclosed, and how they need to make choices. Avoid going into unnecessary technical explanations.
LIMIT DEFINED TERMS.

Sometimes a defined term can be helpful. For example, if there are multiple categories of tracked information, using a defined term like “Cookies” (after it has been initially defined within the context of the privacy policy) is simpler and can save space as well as eliminating repetition. In many instances, defined terms originating in the privacy policy are unnecessarily incorporated into the policy and repeated. If the defined terms do not have a specific use in a particular policy, exclude them.

USE PERSONAL PRONOUNS.

Address the policy to the reader using “you,” especially in the headline, to communicate that the message is intended specifically for that reader. The question and answer format provides an opportunity to personalize the privacy policy with questions like “What personal information do we collect about you?” and “How do we share your personal information?”

AVOID NOMINALIZATION – MAKE NOUNS INTO VERBS.

Use verbs, not nominalizations (aka “hidden verbs”). Nominalization expresses a thought as a noun requiring a supporting verb. When possible, use a verb instead of a noun. For example:

“We obtain aggregate data by combining” reads better as
“we combine information...”

ELIMINATE REDUNDANT INFORMATION.

A simple, well-written privacy policy gives the information once. Repeating the same disclosures more than once or rewording the same concepts in different ways will lose the attention of many readers. In very limited situations, however, you may find that repeating important concepts will help reinforce key concepts with consumers. For example, if you believe that it is very important for consumers to know that their personal information is not shared with third parties, then consider emphasizing this concept through highlighting, such as bolded text.

USE PARALLEL CONSTRUCTIONS AND CONDITIONAL STATEMENTS.

Use parallel construction in phrases, sentences and lists. Pay special attention to verb-tense agreement.

“Your personal information will be used: (a) to provide you with our products and services, (b) to research ways to improve our products and services, and (c) to make the advertisements you see more relevant.”

Describe privacy issues using conditional statements, such as “if this ... then that”. For example:

- “If you use the website, then this is what we will collect.”
- “If you want to create a registered account, this is what we need.”
- “If you have a question or complaint, then contact us here.”
Conclusion

Plain language privacy policies provide clear and effective communication of complex and important information to people with basic education. Clear writing and effective presentation can help promote consumer understanding and save a company time and money.

End Notes

1 As of the date of this writing, the FTC Final Report was not available for review. We anticipate that the Final Report will be released in March 2012.
5 National Center for Educational Statistics, Literacy in Everyday Life: Results from the from the 2003 National Assessment of Adult Literacy, nces.ed.gov/ Pubs2007/2007480.pdf.
7 Cheryl Stephens, Address to the Wills and Estates Section, Canadian Bar Association (Nov. 27, 1990).
Who is Kinsella? Kinsella Media sets the bar for legal notification. Kinsella has designed and implemented more national, international and statewide programs providing notice to unidentified class members and claimants than any other firm.