

Summary of Presentation by Jim Harper
GLB Interagency Meeting on the ANPR on Privacy Notices
February 5, 2004
Federal Trade Commission Conference Center

Participant:

Jim Harper, Editor, Privacilla.org.

Comments:

Mr. Harper's goal is to improve consumer decision-making. However, in the context of privacy notices, he cautioned that opt-out numbers are not a measure of how good or bad the notices are.

While Mr. Harper is supportive of short notices, his priority is to get people to read the notices, not just to make them more readable. He suggested that the agencies make the notice "punchy" – a little bit like advertising. He also asked that any notice the agencies develop have flexibility for businesses.

Mr. Harper provided a handout to the agency staff with his preliminary thoughts on improving privacy notices.

Alternative Notice Under Gramm-Leach-Bliley Preliminary Thoughts

Goal: Improve consumer decision-making on financial privacy and information practices.

Measures:

Quality of decision-making is not directly measurable because it is subjective. The best measures of success at improving decision-making are probably the quantity and intensity of inputs, including:

- Privacy notices
- Advertising aimed at information practices
- Consumer advocacy aimed at information practices
- News reporting regarding information practices
- Boycotts and Web campaigns

The number of opt-outs is not an appropriate measure because people may rationally allow information sharing or (in the absence of harm) choose indifference.

Comments:

Research Should Focus on Actual (Not Self-Reported) Consumer Decision-Making
Most consumers probably make most of their decisions based on brand, reputation, recommendation, etc., and price. Consider that 4 of 5 inputs to consumer decision-making (listed above – there may be others) do not provide information categorically, but rather influence “atmospherics.” Notice, short or long, that tries to take consumers through artificial intellectual processes (of the kind we engage in as policymakers) is probably inconsistent with their decision-making processes in most cases. Price is probably the only area where discrete data is a significant part of consumers’ decision-making.

The Nutrition Label Analogy has Significant Weaknesses

Though it provides marginal benefits, nutrition labeling has not succeeded at improving health habits. Obesity rates continue to climb, for example. Studies finding significant consumer use of labels are probably based on self-reporting rather than actual observation or other methods. In such studies, as in privacy surveys, consumers probably give the

“right” answer rather than the true answer. More health information is probably conveyed more effectively by Subway (Jared), Jenny Craig, the Atkins/South Beach diets, etc. Finally, nutrition information is objective, while privacy interests are subjective. Sodium will always be an important consideration in nutrition, while “privacy” interests will continue to rotate through different considerations, including telemarketing, data retention, identity fraud, employee browsing, fairness and accuracy, offshoring/outsourcing, Bank Secrecy Act reporting, tracking methods (cookies/Web bugs), and so on, and so on, and so on.

Cost of Notice are Both Monetary and “Mindshare”

Privacy notices have substantial costs in both dollars and “mindshare.” The costs in dollars are well understood. The billions spent on mailing annual notices is generally charged to consumers through higher prices on financial services (i.e., checking fees, etc.), contributing to the problem of the unbanked. Privacy notices also may “turn off” consumers to other important messages. Essential education protecting consumers from “phishing” scams, for example, may go ignored if consumers’ scarce attention has been used up by detailed, but unimportant, privacy notices.

Conclusion:

Short notice with mandated elements would probably have only slightly more appeal to consumers than long notice. To successfully connect with real consumers living busy lives, short notice should look and act more like advertising. It should allow commercial puffery, enticement, etc. and it should be permitted to focus on single issues, such as security, phishing, telemarketing, etc., as determined by the best efforts of financial services providers to discern the interests of consumers. Financial services providers should compete against one another to provide useful information to their consumers in ways that reach them.

To satisfy GLB mandates, single-issue notices should point to fuller notice for the small minority of highly interested people to review. All that is needed is one full representation accessible somewhere (i.e., on a Web site) so that competitors and advocates can make claims about a financial services provider’s information practices.