

Summary of Presentation by Direct Marketing Association (DMA)
GLB Interagency Meeting on the ANPR on Privacy Notices
February 18, 2004
Federal Trade Commission Conference Center

Participant:

Pat Faley Kochura, Vice President, Ethics and Consumer Affairs, DMA

Comments:

Ms. Kochura provided a handout, submitted with this summary. The DMA is an association of about 5000 corporations who want to reach consumers directly. They focus on database marketing. The DMA has 50 different industry segments; one is the financial services industry.

The DMA created a Gramm-Leach-Bliley Act notice generator. This generator provided suggested language and standardized the order in which information in the notice is presented to the consumer. Flexibility is built into the model. Non-lawyers drafted the language which was scored for readability (Flesch). The objective was to get the language to the 8th grade level. The final generator is 5 pages long.

The DMA research indicates that consumers don't read the notices. The Harris survey showed that only 3% read them; 64% don't read them at all.

In preparation for the meeting, Ms. Kochura said they surveyed their financial services members and asked their opinion on seven points. The results follow:

1. Consider the option where the company can write one short notice that is fully compliant with the law (they are seeking a re-write of the current law).
2. Determine the content of the notice based on what consumers really want to know. A survey by MBNA of its customers using the CIPL-generated notice found that consumers like this approach.
3. Like the food label, use one uniform federal label that companies can use, but ensure that the categories allow flexibility for companies to include other information, such as state add-on requirements. These companies state they need federal preemption.
4. If the agencies create a short, standardized notice that consumers understand, there is no need for a long notice. The short notice should serve two separate needs: communication to consumers and a document for examiners.
5. Timing and delivery: consumers who care should always be able to find the privacy policy. With 65% using the Internet, the agencies should consider mandating an Internet policy. The DMA requires a link to the privacy policy from the home page. The agencies should also consider whether consumers should have the choice of receiving the privacy policy in the mail or online where it is always available.

6. DMA members are concerned about having flexibility on the opt-out choices. A global opt-out is not the most consumer-friendly approach; they want to provide choice in opt-outs.
7. DMA members don't want to be prohibited from explaining the reasons for and benefits of their privacy practices and policies.

In conclusion, Ms. Kochura stated that the DMA is interested in assisting with industry and consumer research.

Comments to Federal Interagency Group
On Short Privacy Notices
February 18, 2004
Patricia Faley
Vice President, Ethics and Consumer Affairs
The DMA

When GLB was put into place we felt that our financial services company members were going to have a very difficult time creating GLB-compliant privacy notices. We also felt that once a corporation completed a perfectly compliant GLB notice, their customers would not understand them.

We therefore set about to create a GLB Privacy Policy Generator in an attempt to assist our financial members and consumers. Our goal was to create a Plain English tool to assist our members create GLB policies that would meet the letter of the law and, at the same time, ones that consumers would understand.

We provided our members with suggested language and standardized layout and format, but also maintained what we thought was needed flexibility. We felt it just was not possible to foresee all the possible ways data might be collected and used in the future and for what purposes.

Non-lawyers drafted our GLB privacy policy generator. It was then scored for readability through Flesch-Kincaid grade-readability software. We then reworked the text to make it even more readable. Finally it was reviewed for compliance by legal counsel. We were able to get the readability ratings down to eighth grade levels for the most part. The final privacy policy generator was 5 full web pages of text. The resulting notices were several pages long and answered questions consumers would not likely have asked themselves--such as information practices about "former customers" or the category of "verifying information."

Everything we have seen and heard since then says that, although consumers were aware of having received the numerous notices, they did not read them.

A Harris Poll showed that only 3% reviewed online privacy notices carefully most of the time and 64% didn't read notices at all.

The DMA has a number of financial services companies as members. We have the following thoughts for you as you go through this process:

1. Consider the option where a company has the flexibility to write one short notice that is still in complete compliance with the law. As the law now stands, the notices are, by definition, long and complex. Perhaps the thing that would be truly helpful to both consumers and business would be a rewrite of the current law regarding notices.
2. Rethink the content of the notice based on what consumers really want to know. One of our financial company member's testing shows that a simple, concise notice they created provided their consumers with all the information they wanted about information practices and privacy.
3. The food label analogy is a good one. There is one uniform federal standard and consumers understand it and use it. To keep notices short, you will have to pre-empt state financial privacy laws and create one uniform national notice. If you don't, states will tack on their own financial services requirements and the notices will be long and complicated for consumers. Further, states should not have the right to piggyback the federal Privacy Notice for *unrelated* matters. For example, Texas law requires its financial institutions to include in its GLB notices the contact information for the Texas Office of Consumer Credit Commissioner.
4. If we create a short standard notice so that consumers can understand it, there is no need at all for the long, convoluted one. Let's admit we failed at consumer communication. And move forward in an enlightened way; the short, clear notice should replace the long one--not be in addition to it.
5. Consumers who care to look at the privacy policy should always know where to find it. Now that 60 to 70% of Americans are now on the Internet (and that number just continues to rise) perhaps you should consider posting the new short, simple, clear notice on each financial services company's Internet site in a consumer friendly way. We should question whether the consumers who want to read and compare policies

would rather receive them in the mail once a year. Wouldn't it be better for them to have access to these exactly when they want them...either at the time they request them or on the Internet?

6. There should be some flexibility for companies to give even more specific opt out choices depending on the various product lines they offer. The global opt out is not necessarily the most consumer friendly way to go. A consumer might not be interested in receiving anything about financial planning or credit cards, but ~~4~~ may be interested in a new low-rate mortgage or a home equity loan.
7. There should be some capability for companies to explain the reasons for and advantages of their information sharing practices. Most of the notices you have provided in the appendix do not provide this information to consumers.