

Summary of Presentation by National Association of Attorneys General (NAAG)
GLB Interagency Meeting on the ANPR on Privacy Notices
February 4, 2004
Federal Trade Commission Conference Center

Participants:

Julie Brill, Assistant Attorney General, State of Vermont
Susan Henrichsen, Supervising Deputy Attorney General, State of California
Esther Chavez, Assistant Attorney General, State of Texas
Sarah Reznek, Consumer Protection Project Director and Counsel, NAAG

Comments:

Ms. Brill identified three goals for the privacy notice, which should apply to consumers and business. First, the notice should provide choice. Second, it should describe information collection activities that consumers want to learn about and businesses want to disclose. Third, the notice should allow for comparison among companies to distinguish them based on their practices. Her office has heard complaints from consumers about the use of personal information for marketing and about financial institutions obfuscating their practices.

Ms. Henrichsen stated that businesses would like notices to be comparable for competitive reasons. Businesses that have what they believe are good privacy practices and good security practices want consumers to know about those practices.

Most consumers do not distinguish between third parties and affiliates. Ms. Henrichsen observed that the term "family of companies" is not well-received among consumers. Consumers are more interested in distinguishing the reasons or purposes for sharing personal information. Ms. Brill agreed that the word "affiliate" is meaningless to most consumers. She suggested using the terms "related company" and "unrelated company." Including a statement about the purpose of information sharing is very important.

Goals of the notice. Ms. Brill spoke first about three goals or principles to consider in developing a notice. The first is consistency across notices in terms of format. This is not standardization but consistency about what information is provided where. Ms. Henrichsen agreed that consistency, not complete uniformity, is one goal for the privacy notice. Second, similarity of language used in all notices, to help educate consumers. Third, make the location of the information in the notice consistent, so consumers can easily find what they are looking for.

Ms. Brill raised some specific concerns: First, the action piece needs to be in the same place with the same language. The action piece needs to be up front, although for a short form she said the location depended on its placement and the overall length of the notice. Type-size should be sufficiently large to be easily read. Finally, for consumer opt-out choices, the regulators should require multiple means of opting out, including toll-free numbers.

Consumer testing. Ms. Brill said they have not conducted independent research, although Vermont used experts for litigation related to the state's privacy regulation. She also mentioned the extensive materials submitted to the jointly-sponsored Workshop on Effective Notices, held in December 2001. Ms. Henrichsen talked about S.B. 1, the privacy bill in California, commenting that the notice in the law was reviewed by reading experts but not tested by consumers. The final version was a compromise reached by interested parties. Ms. Henrichsen referred to an earlier version of the notice, a "megabox" that had been in the draft bill for several years, and commented that that design is still worth consideration.

Sample notices. While the speakers said they leaned toward the general layout and design of Appendices A and B attached to the ANPR, they criticized features of all the examples. For Appendix A, they said they liked the concept but not the way it looked. They had similar reservations about Appendix B, including the small type. They expressed a preference for standardized formatting and language. They also preferred the "layered" approach, with key elements presented in the short form with the longer, full privacy notice available on request. Ms. Henrichsen said that she would like to see both the short and long-form notices sent together. When asked if that would defeat the purpose of the short notice, she replied that if the short notice is at the top and distinguishable from the longer notice, that should resolve the problem. Ms. Brill expressed a different view: she said that consumers want only the key information.

The speakers did not like Appendix C, stating that it is similar to what financial institutions are now providing and that this format is not standard enough or consistent enough. Appendix D is only the action piece and uses terms that are unclear.