

RFID

Thank you, and good afternoon. By way of background, the National Retail Federation is the world's largest retail trade association, with membership comprising all retail formats and channels of distribution. In addition to many national and state retail associations, our membership consists of household names, from Saks to Sears; and retailers of all type: from the local haberdasher to Home Depot. We are very pleased to be able to participate in today's workshop.

RFID and EPC (Electronic Product Codes) are critically important to retailers and, ultimately, to our customers. The privacy issues, while potentially significant, are only a portion of the picture. Whether they achieve significance, as CapGemini's research makes clear, is dependent upon four other issues of even greater importance: Education, Notice, Choice and Value.

Let me start with a few observations:

1. Individuals are notoriously bad at assessing the economic value of a new concept in the abstract. (And a corollary, no one will pay much for a "pig in a poke.")
2. For many people uncertainty is frightening. Confronted with the unknown they tend to fall back on certain touchstones for reassurance (such as the protection of the family, hearth and home).
3. In the period before society has an opportunity to comprehend, experience and reach a consensual accommodation, new technology is often characterized as creating unwarranted privacy intrusions.

Use of RFID technology in retail stores is still in its earliest stages. As the study indicates most consumers have not heard of the technology. And of those who have, their reactions appear to reflect these three observations.

For example, on the positive side, given this newness, it's not entirely surprising that consumers value highly the potential for the technology to satisfy safety and security concerns: recovery of stolen items; antitheft capabilities; prescription drug security; product safety recalls and quality monitoring of the food supply chain. And, inasmuch as society still places the bulk of the nurturing burden on Mom, these same family-safety potentials might explain why women tended to rate the benefits of RFID more highly than did men.

Improvements such as fewer "out of stocks" and faster checkouts likely ranked lower than was anticipated because consumers have not yet experienced a world in which these things happen. Thus it is difficult to appreciate their value. Similarly, consumers say they are unwilling to pay extra for a service they can't now imagine. If two decades ago one had asked consumers how much they would have been willing to pay for a telephone they could remove freely from the wall, it's likely most would have said little or nothing. It's virtually certain they would not have given a figure comparable to the \$69 per month many cell phone users pay for that extra portable.

As to Privacy, privacy related questions scored high in both the unaided and pre-programmed responses. Again, not entirely surprising. When new technology expands sensory reach, it inevitably breaches previously ingrained expectations. Individuals react to the change as a privacy violation. Eventually an accommodation is reached, from which arise new expectations. The Internet, e-mail and cell phones are undergoing that process now. The most famous law review article illuminating the right of privacy, published near the turn of the prior century, was written in response to that era's cutting edge technology – telephoto lenses.

Now let me suggest a proposition. Unless we are aiming to arrest potential benefits, we shouldn't write laws in response to imagined difficulties. Currently, virtually everything about RFID is uncharted. We need to see what uses develop; whether the technology's use, in practice, falls within or outside our comfort zones, before we begin regulating its use.

An early law prohibiting the photographing of strangers might have stopped some peeping Toms, and killed most photojournalism. A law making it illegal to telephone unknown persons, would have curtailed some telemarketing, but also would effectively have prohibited national public opinion polling and the 911 system.

As the technology evolves, and its novelty passes, one can anticipate a more realistic balance between consumer benefits and concerns. Regulation should be considered only if evolving technology and practice fail to meet consumer expectations.

NRF believes that the privacy policy recommendations our Board has adopted are applicable here. Our policy recognizes that in a highly competitive retail marketplace, maintaining the Trust of one's customers is essential. There may be millions of retail outlets, but in the real world, customers shop in just a fraction of one percent of them. For most retailers, repeat business is critical. If a dissatisfied customer walks down the mall to a competitor, the retailer hasn't lost a sale; he's probably lost dozens, or even scores of dozens, of sales.

As applied to RFID that means there is a need for Education: it's important that consumers learn the RFID basics, its uses in EPC, and receive a realistic explanation of its potential.

There should be Notice: the early stages of deployment, when interest in new products and services is naturally high, are also ideal teaching moments. Currently, a small group of retailers and manufacturers are leading the

development of RFID for use in the marketplace. They have begun this process, but others need to join them.

There should be Choice:

As with privacy policies, retailers should provide customers with options. For example, they should allow customers to opt out if they do not want to receive marketing solicitations from the retailer or if they do not want their information shared with third parties for marketing purposes. In some cases, the option will be to choose another retailer.

Information received by a retailer should be subject to reasonable and responsible Security and Access provisions.

And the entire process should be managed with an eye toward Value for the customer. A more cost effective supply chain is one such value. As the CapGemini research demonstrates, consumers will need to see the benefits of deployment in order to fully appreciate its value. The concept of a "Blackberry" is not nearly as appreciated, as is its reality.

The potential for overly harsh regulation of new technology is a constant threat. The values of RFID and EPC will only be realized if retailers act thoughtfully, carefully, and adhere to the essential principles, that have always been at the heart of building customer trust.

Thank you.