

Summary of Presentation by the Center for Democracy and Technology (CDT)
GLB Interagency Meeting on the ANPR on Privacy Notices
January 29, 2004
Federal Trade Commission Conference Center

Participants:

Ari Schwartz, Associate Director, CDT
Paula Bruening, Staff Counsel, CDT
Robert Gellman, Privacy Consultant
Susan Grant, National Consumers League

Comments:

The CDT has been working on notices for some time, including holding a colloquium last year. The CDT supports P3P technology and the role it could play in making notices easier for consumers to interpret. P3P is a technology that enables computers to automatically read online privacy policies and match the policy statements to consumers' privacy preferences. The CDT provided a statement encouraging the development and deployment of short notices. The key themes are – that notices must be easily comparable; the consumer interest must be represented in all phases of the development of the notices; and the design and content of the short notices must be based on independent, balanced research, to enhance readability, comprehension, and comparability.

The CDT stated that notices are impaired by their length and language, and they do not serve consumers. They have a strong interest in participating in the notices' effort and think it is very important. They expressed concern about not being invited to participate in Marty Abrams' Center for Information Policy Leadership project, and, as a result, believe that the project's research lacked transparency. The CDT has a working group to help develop a notice that is based on the Center's "First Principles for Short Notices" document.

Mr. Gellman discussed his model short notice, which has not been adopted by the CDT. He stressed that notices are important even if consumers do not read them because they make a company understand its practices and educate its employees. Mr. Gellman criticized the terms firms use to describe their practices such as "share," "we will contact you," "family of companies," and "joint marketing." He believes consumers do not really know what happens with their information and often think they are required to give firms their information when they are not. This lack of information is supported by Professor Joseph Turow's survey, which found that when consumers see a privacy notice they assume their personal information is not shared with others.

The presenters agreed that consumers do not have much knowledge about what is done with their information and acknowledge that the notice, even a long notice, cannot fill in all the gaps. They believe, however, that the short notice would help consumers better understand the practices, but it should not replace the long form. Mr. Gellman

urged the Agencies not to use the percentage of consumers who read notices as the measure of their effectiveness. The notices are also read by reporters and interest groups that can monitor businesses' privacy policies.

Mr. Gellman urged the Agencies to view the short notices in context. First, he noted, the long and short notices need the same language so that consumers can go back and forth between them. He believes that firms must be liable for the statements made in the short notice, just as they are for the long notice. Mr. Schwartz added that some industry groups have taken the view that they are only liable for the statements made in the long-form notice. Mr. Gellman said that the elements that are most important will vary depending on whether the notice is online or written. He does not think the standard disclosures that apply to all firms need to be on the short form so long as they were on the long form and available upon request. In his view, what consumers want most is to know whether they will get junk mail. He thinks the notices should be very specific about information sharing practices.

Mr. Schwartz said that the short notices should allow for comparisons and yes/no boxes to help consumers differentiate between companies. The notices can then educate consumers about the different practices. Ms. Grant added that the notices cannot use technical language and should reflect consumers' interests. The National Consumers League does a great deal of consumer education and strives to use plain language. In her view, notices should relay essential information and educate consumers – helping them understand the impact of how their information is used.

CENTER FOR DEMOCRACY AND TECHNOLOGY

STATEMENT ON SHORT NOTICES*

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The Center for Democracy and Technology encourages ongoing efforts toward development and deployment of short notices. CDT believes that if properly designed, short notices could provide consumers with essential information about companies' data collection practices and about consumers' rights and responsibilities related to the privacy of their personal information. CDT is actively monitoring the progress of these efforts, and is engaged in its own project to develop principles that would guide the development and deployment of short notice in a way that assures that notices are based on balanced research and address the concerns of consumers. To that end, CDT is operating from the following assumptions about the process of developing short notices:

- Ideally, notices must be easily comparable across companies. They must be simple and consistent in style and presentation. A checkbox model, or a format modeled on the nutrition labeling notice serves as an appropriate starting point for development of an effective short privacy notice. Companies should be encouraged to tie short notices to notice technologies that enable this kind of comparison. For example, financial services companies should be encouraged to adopt the Platform for Privacy Preferences.
- The public interest must be represented as decisions are made about the design and content of short notices. To effectively serve the goal of informing consumers, short notices must include information about data collection and privacy that consumers consider important and essential to their decision-making, and present that information in a manner that communicates clearly to consumers. To arrive successfully at such a notice, participation of parties that represent the consumer interest in all phases of development of the notices – research, development of content, and design of graphic presentation - is key.

CDT is engaging other public interest advocates in a project to assure that the public interest is reflected in short notices for privacy. CDT also looks to the Federal Trade Commission and the Office of the Comptroller of the Currency to assure that consumer needs are carefully and fairly considered in this process.

- The design and content of short notices must be based on independent, balanced research. It is well recognized that currently the length and language of privacy notices impair their ability to provide consumers with necessary information about data practices and privacy. Careful, independent research must be conducted about the kind of information consumers seek about privacy, the language that communicates information clearly, and the graphic presentation that enhances readability, comprehension, and comparability of the information provided.

CDT looks forward to working with industry, government and consumer advocates toward effective short notices that are useful to consumers and address their concerns.

* For more information, contact Paula Bruening (pbruening@cdt.org) or Ari Schwartz (ari@cdt.org) at the Center for Democracy and Technology, (202) 637.9800.

First Principles for Short Notices – DRAFT

The following draft principles are the result of discussions of a working group of people with experience in privacy and notice issues and are offered for the consideration of regulators. It is important to keep in mind that these principles are a work in progress and are not in any way to be considered a final work product.

- The elements of a short notice should be expressed in plain language, should lend themselves to yes/no answers and should ideally allow for checkbox indications from companies.
- Short notices should be sufficiently consistent in content and presentation that they can be automatically compared across policies.
- Longer notices should be expressed in plain language and should be wholly compatible with short notices. They must express each of the elements with the exact same language as that used in the short notice, with additional language providing a fuller explanation of each of the elements.
- All short notices should indicate:
 - What personal information is collected
 - How it is used
 - How it is shared
 - With whom it is shared
- All short notices should indicate whether the company offers the consumer:
 - Choice about the sharing of their information
 - Access and correction of information collected about them
 - Assurances about how their information is secured
 - A means to have questions and complaints about information collection and sharing practices addressed
 - Information about for how long personal data is retained
- In addition, the short notice should indicate:
 - Whether a company reserves the right to change their privacy policy
 - When exceptions to their general data use policy exist
 - That information may be shared with law enforcement
- Further information about each of these elements should be provided in the longer notice. Short notices that are provided online should link directly to the relevant information in the longer notice. When short notices are provided on paper, they should provide information about where the longer notice may be obtained online.

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Collection:	YES	NO
We collect personal information directly from you	P	<input type="checkbox"/>
We collect information about you from other sources:	<input type="checkbox"/>	P
We use cookies on our website	P	<input type="checkbox"/>
We use web bugs or other invisible collection methods	P	<input type="checkbox"/>
We install monitoring programs on your computer	<input type="checkbox"/>	P

Uses: We use information about you to:	With Your Consent	Without Your Consent
Send you advertising mail	<input type="checkbox"/>	P
Send you electronic mail	<input type="checkbox"/>	P
Call you on the telephone	P	<input type="checkbox"/>

Sharing: We allow others to use your information to:	With Your Consent	Without Your Consent
Maintain shared databases about you	<input type="checkbox"/>	P
Send you advertising mail	P	<input type="checkbox"/>
Send you electronic mail	P	<input type="checkbox"/>
Call you on the telephone	N/A	N/A

Access: You can see and correct (ALL, SOME, NONE) of the information we have about you.

Choices: You can opt-out of receiving from	Us	Affiliates	Third Parties
Advertising mail	P	<input type="checkbox"/>	<input type="checkbox"/>
Electronic mail	<input type="checkbox"/>	P	P
Telemarketing	P	P	N/A

Retention: We keep your personal data for about:	Six Months	Three Years	Forever
	<input type="checkbox"/>	<input type="checkbox"/>	P

Change: We can change our data use policy (AT ANY TIME, WITH NOTICE TO YOU, ONLY FOR DATA COLLECTED IN THE FUTURE)

Changes in version 1.1

- Shortened the list of other data sources
- Changed the YES/NO to WITH/WITHOUT CONSENT in some cases
- Added a N/A as an option (e.g., no opt-out because no third-party sharing)
- Changes some of the language (e.g., monitoring program sted spyware)
- Added a category for policy changes
- Moved some items around