

PRIVACY

NAVIGATING TREACHEROUS WATERS

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PRIVACY

- HOW ARE COMPANIES GETTING IN TROUBLE?

- ✓ PRIVACY POLICIES THAT ARE INACCURATE OR DO NOT FULLY DISCLOSE WHAT INFORMATION IS COLLECTED AND HOW IT IS USED

- ✓ CERTAIN USES OF “SURVEILLANCE” TECHNIQUES SUCH AS WEB BUGS AND COOKIES

- ✓ ATTEMPTS TO CHANGE PRIVACY POLICIES

- ✓ UNSOLICITED COMMERCIAL E-MAIL

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PRIVACY

- **WHAT ARE THE RISKS?**

- ✓ **FTC ENFORCEMENT ACTIONS**

- ✓ STAFFING ON PRIVACY MATTERS DOUBLED IN THE LAST YEAR

- ✓ **STATE ENFORCEMENT ACTIONS**

- ✓ MICHIGAN AG LAWSUITS INVOLVING WEB BUGS AND COOKIES

- ✓ CRIMINAL ACTIONS FOR VIOLATION OF ANTI-SPAM LAWS

- ✓ **CLASS ACTION LAWSUITS**

- ✓ FEDERAL AND STATE COURT

- ✓ **PUBLIC RELATIONS**

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PRIVACY

■ WHAT CAN YOU DO?

✓ PRIVACY POLICY AUDIT

- ✓ IS YOUR POLICY ACCURATE REGARDING WHAT INFORMATION IS COLLECTED?
- ✓ IS YOUR POLICY ACCURATE REGARDING WHAT YOU DO WITH INFORMATION?
- ✓ ARE CONSUMERS CLEARLY NOTIFIED OF YOUR PRACTICES?
 - ✓ COOKIES?
 - ✓ WEB BUGS?
 - ✓ CLICK-STREAM DATA?
 - ✓ WEB “SURVEILLANCE”
 - ✓ PRIOR WEB SITES VISITED?
 - ✓ SEARCH ENGINE TERMS?

PRIVACY

■ WHAT CAN YOU DO? (CONT.)

✓ POLICING COMPLIANCE

- ✓ INTERNAL CONTROLS?

- ✓ INTERNAL REVIEW OF NEW MARKETING OPPORTUNITIES?

- ✓ HANDLING CONSUMER COMPLAINTS?

✓ ENSURING THAT PERSONAL INFORMATION ACQUIRED FROM THIRD PARTIES MEETS LEGAL REQUIREMENTS

- ✓ HAVE E-MAIL ADDRESSES BEEN COLLECTED WITH THE CONSENT OF THE CONSUMER?

- ✓ WHAT IS THE NATURE OF THE CONSENT?

✓ KEEPING ABREAST OF NEW LAWS AND ENFORCEMENT PRACTICES

PRIVACY

■ WHY SHOULD YOU HAVE A PRIVACY POLICY?

- ✓ CONSUMER EXPECTATIONS
- ✓ DMA'S PRIVACY PROMISE
- ✓ LOWERING ENFORCEMENT PROFILE
- ✓ FEDERAL LAW
- ✓ STATE LAW
- ✓ INTERNATIONAL LAW
- ✓ BRACING FOR FUTURE REGULATION
- ✓ CREATING GREATER CERTAINTY REGARDING PERMITTED USES FOR CONSUMER INFORMATION

HOW DID WE GET HERE?

➤ THE INTERNET

- **DISCLOSURE OF TRADITIONAL MARKETING PRACTICES**

- ◆ LIST RENTAL
- ◆ CUSTOMER PROFILING
- ◆ COOPERATIVE DATABASES
- ◆ REVERSE APPEND

- **SPAM**

- ◆ 23 STATES AND MORE
- ◆ MA SENATE BILL NO. 1795
 - REQUIRES “EXPRESS CONSENT”
 - USE OF ADV PREFIX
 - A REAL RETURN ADDRESS
 - “CONSPICUOUS NOTICE” TO STOP FURTHER E-MAIL

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HOW DID WE GET HERE? (CONT.)

- **TELEMARKETING**
 - **FEDERAL AND STATE LAWS**
- **IDENTITY THEFT**
- **EUROPEAN PRIVACY REGULATION**
 - **THE EU PRIVACY DIRECTIVE**
 - **THE “SAFE HARBOR”**
- **MICROSOFT**
 - **INTERNET EXPLORER**
 - **P3P**
- **DOUBLECLICK** 

DOUBLECLICK UPDATE

CLASS ACTION SETTLEMENT:

- ✓ **\$1.8 million in legal fees and costs**
- ✓ **Clear Notice:** The company's privacy policy will include easy-to-read explanations of its ad-serving services.
- ✓ **Enhanced Choice:** If the company collects personally identifiable information, previously collected click-stream obtained by the company from across Web sites can only be combined with the personally identifiable information after the provision of clear and conspicuous notice to the Internet user and receipt of the Internet user's **opt-in** choice.
- ✓ **Education:** Includes 300 million consumer privacy banner ads
- ✓ **Consistency:** The company will ensure that an Internet user's online data will not be used in a manner materially inconsistent with the privacy policy under which it was collected, unless the consumer has given permission to do otherwise.
- ✓ **Routine purging of data**
- ✓ **Independent audits**

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SOURCES OF AUTHORITY

➤ FEDERAL LAW

- NO GENERAL LAW THAT REQUIRES PRIVACY POLICIES OR DICTATES SPECIFIC PRIVACY PRACTICES.
- SOME SPECIFIC LAWS MAY APPLY:
 - CHILDREN'S ONLINE PRIVACY PROTECTION ACT ("COPPA")
 - FAIR CREDIT REPORTING ACT
 - GRAMM-LEECH-BLILEY ACT
 - VIDEO PRIVACY PROTECTION ACT
 - WIRETAPPING LAWS?
- THE FTC ACT
 - UNFAIR OR DECEPTIVE ADVERTISING PRACTICES
 - IS YOUR PRIVACY POLICY ACCURATE, CLEAR, AND EASY TO UNDERSTAND? IS THE LINK PROMINENT?



FTC POLICY STATEMENT 10/01



“We will expand our review of privacy policies and make it more systematic. We will seed lists with names to ensure that restrictions on disclosures to third parties are honored. We will also work with seal programs and others to get referrals of possible privacy violations. Finally, as I will discuss shortly, we will improve our own complaint handling system to target cases more effectively.”

“Further, because American companies are now competing in an international market, the FTC will give priority to complaints that U.S. companies fail to provide privacy protections they promised under the European Union Safe Harbor Principles.”

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FTC ENFORCEMENT ACTIONS



- ✓ High School Student Survey Companies Settle FTC Charges. Personal Data Collected For Educational Purposes Was Sold to Commercial Marketers.
- ✓ Microsoft Settles FTC Charges Alleging False Security and Privacy Promises.
- ✓ Popcorn Company Settles FTC Privacy Violation Charges. "Jolly Time" Web Site Collected Information from Kids Without Parents' Consent.
- ✓ FTC Announces Settlement With Bankrupt Website, Toysmart.com, Regarding Alleged Privacy Policy Violations.
- ✓ <http://www.ftc.gov/privacy/index.html>

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SOURCES OF AUTHORITY (CONT.)

➤ STATE LAWS

- SPAM LAWS
 - “UNSOLICITED COMMERCIAL E-MAIL”
- ENHANCED PRIVACY PROTECTION
 - STATE CONSTITUTIONAL PROVISIONS
- COMMON LAW RIGHTS
- UNFAIR TRADE PRACTICE LAWS
- RECENT LITIGATION
 - WEB BUGS
 - COOKIES
- NATIONAL MARKETERS MUST COMPLY WITH THE MOST RESTRICTIVE STATE LAWS

SOURCES OF AUTHORITY (CONT.)

➤ INTERNATIONAL LAW

- EUROPE

- THE EU PRIVACY DIRECTIVE
- DIFFERENT LAWS FOR EACH COUNTRY
- THE “SAFE HARBOR”

- JAPAN

- NOTHING ... YET
- BILLS PENDING IN THE JAPANESE DIET

- CANADA

- NATIONAL PRIVACY LAW
- BEING PHASED IN OVER TIME
- APPLIES TO US COMPANIES THAT ENGAGE IN LIST TRANSACTIONS ACROSS CANADIAN BORDER
- ESSENTIALLY A “NOTICE AND CHOICE” LAW FOR MOST COMPANIES

- MANY OTHER COUNTRIES

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SOURCES OF AUTHORITY (CONT.)

➤ ASSOCIATION RULES

- THE DMA
 - ◆ “PRIVACY PROMISE”
 - NOTICE AND CHOICE
 - LIST SUPPRESSION
 - APPLIES TO BOTH ONLINE AND “TRADITIONAL” MARKETING
- THE JADMA
 - PRIVACY GUIDELINES

SOURCES OF AUTHORITY (CONT.)

➤ IE 6 AND COOKIES

- MICROSOFT EMBRACES P3P FOR COOKIES
 - DEFAULT SETTING ON IE 6 MAY PREVENT COOKIES FROM BEING USED IN CERTAIN CONTEXTS, INCLUDING IN THE THIRD-PARTY SETTING
 - IE 6 BEING USED BY APPROXIMATELY 40% OF WEB SURFERS, A NUMBER LIKELY TO RISE
 - REQUIRES FULL AND COMPACT PRIVACY POLICIES

ADDITIONAL RESOURCES

THE FTC

WWW.FTC.GOV

THE DEPARTMENT OF COMMERCE - EU "SAFE HARBOR"

WWW.EXPORT.GOV/SAFEHARBOR

CHILDREN'S PRIVACY

WWW.EPIC.ORG/PRIVACY/KIDS

[HTTP://WWW.CDT.ORG/PRIVACY/CHILDREN](http://WWW.CDT.ORG/PRIVACY/CHILDREN)

GENERAL PRIVACY RESOURCES

[HTTP://WWW.EPIC.ORG/PRIVACY](http://WWW.EPIC.ORG/PRIVACY)

[HTTP://WWW.PRIVACYRIGHTS.ORG](http://WWW.PRIVACYRIGHTS.ORG)

P3P

[HTTP://WWW.W3.ORG/P3P](http://WWW.W3.ORG/P3P)

CANADIAN PRIVACY LAWS

[HTTP://WWW.CAPA.CA](http://WWW.CAPA.CA)