

Current Trends in Information Privacy Law

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Overview

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- What is Information Privacy Law?
- Key Laws Addressing Information Privacy Issues
- FTC Enforcement of Information Privacy Laws
- Advice for Practitioners
- Questions

What is Information Privacy Law?

- **Information Privacy** is the expectation that confidential personal information disclosed in a private place will not be disclosed to third parties.
 - Has evolved into the concept that an individual has an interest in controlling the collection, use, and disclosure/dissemination of private personal information.
 - No protection afforded for information that is publicly available or voluntarily disclosed in a public place.
- Restatement (Second) of Torts classifies four basic privacy rights:
 - Unreasonable intrusion upon the seclusion of another without consent;
 - Appropriation of a person's name or likeness;
 - Publication of private facts;
 - Publication that places a person in a false light.

Key Laws Addressing Information Privacy Issues

Federal Trade Commission Act

- FTC guards against unfairness and deception by enforcing companies' privacy promises (implicit or express) regarding collection, use, and security of consumers' personal information.

Telemarketing Rules issued by the FTC and FCC

- Institutes "Do Not Call" lists.

CAN-SPAM Act

- Institutes "Do Not E-mail" rules.

The Privacy Act of 1974

- Protects [from disclosure] certain records maintained by the federal government pertaining to individuals.
- Grants the right to obtain a copy of one's own file.

Key Laws Addressing Information Privacy Issues

Fair Credit Reporting Act

- Ensures privacy of information in consumer reports.

Gramm-Leach-Bliley Act

- Protects consumers' personal financial information maintained by financial institutions.

Children's Online Privacy Protection Act ("COPPA")

- Grants parents control over what information is collected online from their children and how that information may be used.

Health Insurance Portability and Accountability Act ("HIPPA")

- Protects the privacy of personal health information.

FTC Enforcement of Information Privacy Laws

- Privacy is a hot-button issue for the FTC as well as Congress.
 - As recently as June 2005, FTC Chairman Deborah Platt Majoras testified before Congress regarding extending security protections for sensitive consumer data and requiring companies that possess such information to inform consumers when the data has been breached.
- The FTC has focused primarily on violations of stated corporate privacy policies, non-secured disclosure of personal information, and identity theft.
- The FTC has initiated more than 20 investigations related to consumer privacy since 2000 and has entered into at least 13 consent decrees with companies for alleged violations of the privacy laws.

FTC Enforcement of Information Privacy Laws

- Some recent enforcement actions:
 - *BJ's Wholesale Club, Inc.* (6/05): FTC alleged lax security compromised thousands of credit and debit cards.
 - *Vision I Properties, LLC* (3/05): FTC alleged company disclosed personal information of nearly 1 million customers.
 - *Petco* (3/05): FTC alleged security flaws allowed hackers to access consumers' credit card information.
 - *Nationwide Mortgage Group and Sunbelt Lending Services* (11/04): FTC alleged companies failed to protect customers' personal information in violation of Gramm-Leach-Bliley Act.
 - *Gateway Learning* (9/04): FTC alleged company rented customer information it pledged to keep private.
 - *Guess.com, Inc.* (8/03): FTC alleged company made false claims about information security.
 - *Microsoft Corp.* (12/02): FTC alleged false security and privacy promises.
 - *Eli Lilly* (5/02): FTC alleged company disclosed e-mail addresses of subscribers to its reminder service.

Practical Advice to Ensure Compliance with Information Privacy Laws

- If your company or client collects private personal information from consumers, create a privacy policy and follow it to the letter.
- Limit the information you collect to information that is absolutely necessary.
- Secure your data, particularly financial information subject to the provisions of the Gramm-Leach-Bliley Act and medical information subject to HIPPA.
- Take complaints seriously.
- Educate yourself about state and foreign privacy laws, particularly in the European Union, and ensure compliance with any additional obligations under those laws.
- If your company is consumer-oriented and collects sensitive data, designate a chief privacy officer to oversee compliance with the privacy laws.