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**TRUSTe Guidelines
on
Personally Identifiable Information Uses in Mergers, Acquisitions,
Bankruptcies, Closures, and Dissolutions of Web Sites**

Executive Summary

Four years ago, TRUSTe set out to build a framework of trust and confidence between companies and their customers. At the heart of its mission is the belief that in an increasingly connected world, consumers must have mechanisms that give them full control over their personal, private information so that they can protect their privacy. At no point is this protection more important than when companies undergo the difficult business transition of mergers, acquisitions and bankruptcies.

Following several high profile bankruptcy and privacy incidents and numerous requests by industry for guidance on the changed privacy climate, TRUSTe created the following guidelines to serve as an important navigation point for its licensees. These guidelines are rooted in the TRUSTe license agreement and, if followed, will ensure that companies maintain appropriate uses of consumer personal information.

Specifically, these guidelines point to the following:

- Mandated Third Party Oversight – The critical point in these guidelines is that personal information transfer requires third party oversight as an important check against the singularly focused demands imposed by

creditors. In an era marked by increasing consumer vigilance over privacy, third party oversight in data transfer is mandatory to the trust equation.

- Consumer Notice and Choice – TRUSTe recommends that giving customers opt-in is the best method to retain full value of a customer database and extend trust to new users. Indeed, if a company has made the promise to never share personal information, then a change in data handling and uses *requires* consumer opt-in. In other situations, providing both an opt-out option and public notice will be sufficient.
- Privacy Policies Must Be Honored – The same promises a company makes while in business, must be honored when going out of business. Given the current sensitivities towards privacy protection, consumer are beginning to understand that third parties exist – in the form of seal programs and government bodies – to ensure the integrity of privacy promises. To that end, both parties, the buyer and the seller, have an obligation to the consumer.

Our goal with these guidelines is to strike a reasonable balance between consumer privacy rights and expectations and the business need to realize the full value of asset portfolios. In an economy valued by information, customer data is like gold and, as such, deserves enhanced protection.

This document is an abridged version of the guidelines. The longer version, which provides procedures for companies to follow can be found at www.truste.org and is open for public comment through June 11, 2001.

Overview:

TRUSTe has created guidelines on appropriate uses of consumer personal information for its licensees that are

- merging,
- being acquired,
- selling all or substantially all the assets of a business unit
- involved in bankruptcy proceedings,
- dissolving or closing the company,
- purchasing a company with assets that include personally identifiable information (PII), or
- purchasing a database including PII

At the conclusion of these guidelines are several scenarios to provide companies with additional guidance on when notice and choice (opt-in versus opt-out) must be given to the customer. Because many scenarios are likely to exist, these guidelines should be read as general guiding principles rather than an all encompassing rule. As a rule of thumb, companies should contact

their TRUSTe account manager for further guidance specific to particular situations.

Fundamental Obligations

1. Inform TRUSTe of impending business changes as they impact customers' personally identifiable information and privacy practices.
2. Provide your customers and/or users with notice of the upcoming change.
3. If you have promised never to share personally identifiable information with a third party, at a minimum you must provide an opt-in before the information is shared with that third party.
4. If you have indicated in your privacy statement that you may share information with third parties, you should provide notice and an opt-out before sharing the personally identifiable information.
5. If the company will be sold in total to a company in a similar line of business with the same privacy policy, give notice to the customer.

Scenarios Impacting Consumer Privacy: Notice and Choice

While there are myriad permutations on how personal information can be transferred during a business transition period, we have highlighted a few recurring scenarios. These examples are meant to provide you with additional guidance on when notice and choice (opt-in versus opt-out) should be given to customers.

All of the examples pertain only to situations in which the majority of the assets that are being sold include personally identifiable information and are part of a merger, acquisition, bankruptcy, closure, or dissolution. Again, to ensure guidance on a particular situation not identified in these guidelines, companies should contact TRUSTe for clarity.

NOTE

A one time administrative email to your customer and/or user database to communicate the change in business may be sent. This administrative email may only be sent **once** and must not include **any** marketing material..

Scenario 1: "We Will Never Sell Personal Information..."

If your privacy policy states, "We will never sell, rent or lease your information" and you would like to sell the file or list of customer PII, then you need to provide at least 30 days of prominent notice on your Web site and send an

administrative email with an opt-in for all consumers prior to selling the information.

Scenario 2: “We May Share Personal Information With A Third Party...”

If your privacy policy indicated that customer information may be shared with third parties, you need to provide at least 30 days of prominent notice on your Web site and send an administrative email with an opt-out for all consumers prior to selling the information.

Scenario 3: “We Are Selling Most of our Assets to an Organization for Related Purposes...”

If you are selling a substantial majority of the assets for a particular service, including the customer and/or user database, to an organization that will be using the database for related purposes and will maintain the same privacy policy, you must give 30 days prominent notice on the Web site prior to the transfer. In this instance you must receive written approval from TRUSTe.

Miscellaneous:

- If you are selling the list or database of customers and/or users as part of an asset sale, you must follow either example 1 or 2 above.
- If you are transferring information to a subsidiary, the rules outlined above apply.