

ITI ISSUE BRIEF

PRIVACY AND “CHOICE”

“Choice” is the issue of how individuals can choose to limit the use and distribution of their personal information by businesses, non-profits and other entities, either by selectively refusing to disclose it or by “opting out” or “opting in” in appropriate circumstances. “Opt-out” is when individuals are offered some means of limiting use or sharing of their personal information for purposes beyond the activity at hand. “Opt-in” is when an organization is precluded from any secondary use or sharing of such data unless explicit consent has been obtained. Numerous bills before Congress have contemplated both approaches. Some bills called for “opt-in” in the case of medical, genetic or children’s data. Others would apply a “universal opt-in” approach to *any* kind of data, so long as it was collected online.

Some unanswered questions:

- How to treat a consumer who discloses his information after receiving clear and conspicuous notice about an organization’s information practices. Can affirmatively typing in or otherwise disclosing information after such notice be considered “opting in”?
- If not, how explicit must the permission be for each individual use? Can permission be granted for all secondary uses with one “click” or is even more necessary?
- Can a single grant of permission govern the consumer relationship going forward or must the consumer be interrupted with questions each time he revisits a Web site and discloses more information to a business or non-profit.

ITI’s position: Opposed to “universal opt-in” mandates.

Any national policies should focus on ensuring clear and conspicuous privacy disclosures and enabling individuals to make informed choices about sharing their personal information. Congress should not mandate a “universal opt-in” standard for all online data because such an approach would disrupt seamless e-commerce and effectively preclude many legitimate business practices.

The vast majority of consumers will not indicate a privacy preference, regardless of whether it is presented in an “opt-out” or “opt-in” format. For this reason, precluding legitimate uses of data in the absence of explicit consent is tantamount to outlawing those uses altogether.

In a “universal opt-in” scenario, businesses would be forced to choose between potentially annoying measures to overcome the anti-choice inertia or simply discontinuing services and products based on personalization. In either case, businesses would lose valuable opportunities to maintain the customer relationship and consumers would miss out on the personalized products, “loss-leader” discounts and other benefits from the free flow of information. In fact, direct marketing contacts would likely *increase* as businesses lost the tools to target their appeals to those with the greatest interest.

Federal Reserve Chairman Alan Greenspan has cited the use of “detailed data to fine-tune product specifications to most individual customer needs” as one of the reasons information technology has boosted productivity in the U.S. economy.¹

Where the personal information at stake is particularly sensitive – or when dealing with children – requiring explicit consent may be appropriate. It is not appropriate as a blanket standard for even the most mundane information just because it is collected over the Internet. In fact, when Congress addressed financial records privacy in the Financial Services Modernization Act, it chose the less restrictive “opt-out” standard for sharing data with third parties and imposed no “choice” requirement at all for secondary internal uses of data, such as cross-selling of products.

Potential unintended consequences of “universal opt-in”:

- Software companies prevented from contacting past customers with information about software updates and security “patches.”
- Online merchants prevented from using past information to create digital signature “certificates” for future transactions.
- Consumers lose out on thousands in targeted, personalized “loss leader” coupons and personalized services when businesses get too few “opt-ins” to make such programs financially worthwhile.

ITI and Privacy

ITI is committed to a deliberative dialogue on privacy issues. Our privacy principles are available online at: <http://www.itic.org/sections/Privacy.html>

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¹ Greenspan testimony before the Joint Economic Committee, June 14, 1999.