

Internet Privacy: Its Place in the Overall Debate

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Legislating top-down privacy policies for the Internet while consumer information flows elsewhere is senseless. But this is not an argument for broad, Euro-style privacy laws. The right way to fix privacy problems in any context is:

- 1) **Let freedom of information be the general rule** as it has been for centuries, in journalism, political campaigns, or business.
- 2) **Focus legislation on targeted solutions to serious harms** like identity theft or the abuse of police surveillance powers.
 - Spam is best addressed by technical standards or precisely drafted laws to help ISPs identify and block spammers.
 - Credit card fraud victims need state-level enforcement, a problem because law enforcers give low priority to thefts of small amounts.

Some Lessons from the “Real World” for Internet Privacy

Legalese doesn’t help consumers. The lesson of the Gramm-Leach-Bliley Act is that regulated “notices” can be accurate or short, but rarely both. Regulated privacy policies fit privacy advocate’s artificial vision of “notice and choice,” but *this is not what helps consumers*.

Without regulation, businesses will have the freedom to offer notices when and how consumers *really* want them, which varies widely in different contexts. Example: One web site noticed that shoppers balked at typing in their zip code. The site added a few words noting that the codes were used to check if stores nearby had the product in stock. Problem solved, no lawyers involved.

Information Restrictions Impede Anti-Fraud Measures. Crime thrives on anonymity. Security systems, authentication tools, and anti-fraud measures need information to work.

Example: To counter fraud and errors, e-commerce merchants check customer orders against a super-updated authentication database with everyone’s name and address in it. Even opt-out would break the system; no one would know if a failure to get a match was fraud or an opt-out.

Free Information Exchange benefits consumers. Compared to Europe, consumers in the United States enjoy wide access to credit and low mortgage rates. New businesses get a start by buying lists of potential customers. Consumers benefit when businesses use information to cut costs and offer discounts. On the Internet, sites that cannot freely use cookies or other ways to learn about their customers will be blindfolded and deafened.

Opt-in is not a realistic option. We challenge legislators favoring opt-in to run their next election campaigns on an opt-in basis. No use of constituent mailing lists or registered lobbyist lists without prior permission, for example.

Privacy Regulation is not needed to build consumer trust. The idea that privacy laws are needed to increase consumer trust in e-commerce is a myth; the projections of consulting firms have proved false. Fear should not rule technology policy.