

Track II: Introduction and Overview of Financial Services and Information Technology Privacy Policy: Synthesizing Financial Services Industry Privacy

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Time for Financial Services Privacy 2.0?

- Next year marks end of the first decade following enactment of the Gramm Leach Bliley Financial Privacy Act
- This decade has been marked by:
 - Lengthy privacy policies that few read and even fewer exercise the choices offered
 - An increasing number of reported security breaches
 - Which cause great concern but often no direct harm



Time for Financial Services Privacy 2.0?

- The first decade has been marked by:
 - Heightened concerns about identity theft
 - New accounts fraudulently opened by ID thieves
 - Existing accounts hijacked
 - Medical identity theft



Time for Financial Services Privacy 2.0?

- This might be a good time to:
 - Assess what is working – and what is not
 - Think about ways to prevent problems rather than deal with their aftermath
- Here are some thoughts and proposals regarding:
 - Privacy policies
 - ID theft
 - Security breaches



Privacy Policies

- Undecipherable privacy notices:
 - Rarely read
 - Almost never used by consumers as the basis for choosing or rejecting a financial institution
 - Few consumers exercise opt out or opt in rights
 - Burden is on consumer to exercise these choices
 - Pending solution
 - Federal agencies' proposed model privacy notices
 - Simpler, easier to read disclosures



Privacy Policies

- Will the proposed model privacy notices work?
 - Some consumers use food labels to decide what to buy
 - Are consumers more likely to use these simpler privacy notices as a basis of choosing financial institutions?
 - In a supermarket, it is easy to compare food offerings were are next to each other
 - Many consumers get a privacy notice after they have already finished shopping
 - Should notices be made available earlier? Online?



Privacy Policies

- Model notices will not make the opt out process easier for consumers
 - Is choice working effectively when only 3-5% of consumers ever opt out?
 - Is the cost worth it?
 - Would more consumers opt out if the process was easier?
 - Or, do consumers see the benefits of information use and sharing?
 - Should these questions be answered before requiring an opt out process?



Privacy Policies

■ Alternatives:

- Is there an effective “market” for privacy?
 - Is there evidence there is transparency and efficient choice?
- If there is no effective market, should the government step in and impose norms instead of requiring notice and choice?
- Or, does the system work *because* choices exist -- even if they are rarely exercised?



ID Theft

■ ID Theft

- A very real problem affecting millions of Americans
 - Can be a nightmare to undo
- Huge resources are being devoted to:
 - Red Flags Rule compliance
 - Flagging credit files
 - Freezing credit files



ID Theft

- ID Theft can take place so easily because:
 - We “are” a few bits of information in the eyes of credit grantors
 - Name, DOB, SSN
 - If we moved to more reliable means of identification and authentication, depending on the circumstances:
 - There would be far less need to guard and restrict access to certain types of personal information
 - As it would be of little or no value to potential ID thieves



ID Theft

- Alternatives include:
 - Biometrics
 - Digital Signatures
 - Two-Factor Authentication
 - ?? New Developments
- Establish a government/industry project to solve this identification/authentication problem in the next 2-3 years?
 - Offer a \$50 million prize to develop a better system?



Security Breaches

- Reactions now include:

- Notification of affected individuals
- Offers of credit monitoring services

- Problem:

- Difficult for notice recipients to evaluate how to respond when few details are provided:
 - What information was compromised?
 - Who is suspected of taking it?



Security Breaches

- There is typically:
 - a low incidence of resulting ID theft
 - great concern and some efforts made on the belief ID theft is likely to occur
- Reactions:
 - Consumers who receive notice often cancel accounts and refuse to do business with company providing notice
 - Yet, that company may have had strong better than average protections in place, but a bad employee
 - No tools are provided to potential future customers to evaluate company's security measures



Security Breaches

- A similar approach in the environmental area has proven very effective in reducing environmental hazards
- Government enforcement cannot monitor every potential polluter
- Notice requirements make this far less necessary
 - Professor Deirdre Mulligan, Boalt Hall Law School, has suggested environmental-law type disclosures in this context.



Security Breaches

- In order to create incentives to adopt security measures and increase the impact of market forces:
 - Require public posting of breaches, along with company explanations
 - Notifications to regulators



Security Breaches

- Potential customers could then evaluate a company's security incidents before deciding to do business
 - Companies could offer explanations about what happened or what they have done to prevent future incidents



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