

Banking On Privacy: The Public's Expectation Equals The Institution's Opportunity

By

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The Privacy Debate

- **For our purposes, the privacy debate is the “tension between the potential economic benefits for business and consumers through the development of enhanced information assets” and the “public’s increasing concern over privacy.”**

How Important Is Data?

- **During the 1980's, American businesses invested more than \$1 trillion in information technology.**
- **Since 1990, American businesses have spent more money on computers and communications equipment than on all other capital equipment combined.**

Something Special In America

“Something special has happened to the American economy in recent years.”

“Innovations in information technology--so-called IT--have begun to alter the manner in which we do business and create value, often in ways that were not readily foreseeable even five years ago.” – Alan Greenspan, June 14, 1999.

Banking Regulators Recognize The Value of Data To Business Cont'd

“Access and use of financial information is the lifeblood of the financial services industry.”

Testimony of Julie Williams, Acting Comptroller of the Currency Before the Committee on Banking and Financial Services of the U.S. House of Representatives, July 28,1998.

Banking Regulators Recognize The Value of Data To Business Cont'd

- **Credit determinations.**
- **Investment guidance.**
- **Insurance underwriting.**
- **Identification of new market opportunities.**
- **Fraud prevention and prevention of money laundering.**
- **Human resources management.**

Privacy: Growing Public Concern?

- 94% of Americans are concerned about possible “misuse” of their personal data.
- 29% of Americans believe that they have personally been the “victim” of business misuse of their personal data.

What Do the Numbers Mean?

- 58% of Americans have asked a company to remove their name from mailing list.
- 78% of Americans have refused to give information to a business when it's perceived as having too much information.
- 21% of Americans have looked to see whether a company has a privacy policy.
- 71% of American Internet users believe it's very important for a company to have privacy policy.

What Do the Numbers Mean?

- 85% of Americans believe that it is absolutely essential or very important for Internet sites to show a privacy notice and state how information will be used BEFORE a consumer provides personal information or purchases.**
- 64% of Americans report denying personal information at financial websites because they thought the information was “not really needed or too personal.”**
- 61 % of Americans report they refused to purchase goods or services at financial websites because they “weren’t sure how [the site] would use their personal information.”**

Confidence That Industries Handle Personal Information Properly

	Germany	U.K.	U.S.
Banks	69%	76%	77%
Healthcare	71%	73%	74%
Dept. Stores	47%	53%	66%
Life Insurance	40%	49%	62%
Credit Card	N/A	48%	47%

Privacy Is Essential To Banking

“Privacy is the cornerstone of banking, the heart of our relationship with our customers.”

Public remarks of Hjalma Johnson, president of the American Bankers Association, in a speech given November 15, 1999.

“Any company that ignores, or fails to understand, the tinderbox of public sentiment waiting to ignite on privacy acts at its peril.”

Julie Williams, public remarks, Summer 1999.

What Is Privacy?

- “Privacy, like an elephant, is more readily recognized than defined.”
- Privacy is not absolute. It is contextual and subjective. It is neither inherently beneficial nor harmful.
 - Privacy is not an end in itself. It is an instrument for achieving other goals.
 - There is surprisingly little agreement on what privacy means.
 - US concept is protection from government.
 - Much of world views threat as business

International Implications

- **Many governments have 30 years of experience in this area and still have not reached conclusions.**
- **EU Data Protection Directive. Article 25 states that personal data cannot be transferred out of Europe to countries lacking “adequate” protection. U.S. “lacks.”**
- **“Safe Harbor” Negotiations.**

Fair Information Practices – E.U.

- **“Processing of personal data.”**
- **Data Processing must be “fair and lawful.”**
- **For “specified, explicit and legitimate purposes” for which collected and processed.**
- **“Adequate, relevant and not excessive.”**
- **“Accurate and up to date.”**
- **Kept “no longer than necessary.”**

Fair Information Practices – E.U. Cont’d

- **Notice (For each use not explicitly authorized).**
- **“Unambiguous Consent” (Opt In).**
- **No processing, even with consent, of “sensitive data.”**
- **Access. Reasonable times and without undue expense.**
- **Right to object to processing (and prohibit use for direct marketing).**
- **No wholly-automated decision-making based on “personal aspects” (e.g. creditworthiness).**
- **Security.**
- **Enforcement (National Privacy Authority and Private Right of Action).**

Fair Information Practices – U.S.

- **“Fair and Lawful” is anything not prohibited by law or contract, provided you disclose.**
- **Notice: General vs. “Explicit.”**
- **Choice: Opt Out (some limited Opt In).**
- **Access: Correct, But Not Restrict Use.**
- **Security: Common Ground.**
- **Enforcement: Sectoral and Segmented. No One National “Privacy Czar.”**

Financial Services Modernization Act: Sec. 501: Protection of Nonpublic Personal Information.

- (a) PRIVACY OBLIGATION POLICY- It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.**
- (b) FINANCIAL INSTITUTIONS SAFEGUARDS.**

Sec. 502.

OBLIGATIONS WITH RESPECT TO DISCLOSURES OF PERSONAL INFORMATION.

- NOTICE REQUIREMENTS.**
- EXCEPTIONS TO NOTICE AND OPT-OUT.**
- FURTHER DISCLOSURE BY NONAFFILIATED THIRD PARTIES.**
- DISCLOSURE OF FORMS OF ACCESS.**

Sec. 503: Disclosure of Institution's Privacy Policies

Financial institutions must disclose to each consumer, “clearly and conspicuously” at the time of establishing a “customer relationship” and not less than annually thereafter, their policies and practices with respect to collecting, disclosing and protecting the nonpublic personal information of consumers, and the right of consumers to examine and dispute accuracy of information maintained by the institution or made available to third parties.

Sec. 503: Disclosure of Institution’s Privacy Policies Cont’d

- **The federal banking agencies will prescribe the form of the disclosures. The Act spells out in broadly what must be included.**
- **The disclosures must permit the consumer to “compare differences in the measures taken and the policies established” by the disclosing institution and by other financial institutions.**
- **How Do You “Compare”?**

Sec. 504: Rulemaking

- **Each federal banking agency must adopt final implementing regulations by May 12, 2000.**
- **Authority to grant exceptions.**

Sec. 507: State Laws

- State laws are preempted only to the extent of an inconsistency with subtitle A.
- No state law will be deemed inconsistent if it affords greater protection than provided by subtitle A, as determined by the FTC, after consultation with the appropriate agency.
- At least a dozen states have proposed legislation to enforce “opt in” on sharing with affiliates and others.

The Gramm-Leach-Bliley Act Is Only The Opening Salvo

- Privacy Advocacy Groups believe that the privacy provisions the Act don't go far enough.
- Rep. Markey-Barton and Sen. Shelby Bills. "Opt-In."
- Sen. Torricelli's "Cookie Cruncher."
- Sen. Kerrey's "American Safety and Privacy Act." Painting Privacy With a Broad Brush.
- Clinton Administration Proposed Legislation.

Complex Issues

- **There are no simple answers.**
- **There are always unintended consequences from limiting the free flow of information.**
- **There are risks and benefits.**
- **Wrestling Jell-O.**

International Political Reality

- **Growing consensus in rest of world on privacy approach. They view privacy as limiting data flows.**
- **Will foreign data regulations threaten America's leadership and what we believe are fundamental rights?**
- **We are facing well-funded, established bureaucracies in other nations.**
- **American consumers will increasingly ask “Why not here?”**

On the Horizon

- **FTC and others to conduct study on information-sharing practices among financial institutions and their affiliates. By law, due January 1, 2002. But: Clinton has ordered the National Economic Council to work with Treasury and the OMB to complete the study and propose legislation to session that begins in 2000.**
- **FTC Online Privacy Committee. Report on Online Access and Security due May 15, 2000.**

How Will US Banks Respond?

- **Flight.**
- **Fight.**
- **Do the Minimum and Hope for the Best.**
- **Spot the trend and be there ahead of the curve.
E.g. “Permission-based” marketing.**
- **Where’s the “right place to be” on Privacy?**
- **Costs vs. Benefits.**

How Will US Banks Respond Cont'd?

- **Keep Informed. Locally, Nationally, Globally.**
- **View Privacy as an “Opportunity” not a “Burden.”**