

Chapell & Associates

WHAT WOULD A NATIONAL PRIVACY LAW DO TO YOUR MARKETING?

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How would national privacy legislation affect your marketing efforts? For anyone who collects or uses consumer information, this is probably a salient question – but perhaps not a question that every direct marketer wants to answer. So it shouldn't be surprising that our industry has often seen consumer privacy as a matter for industry self-regulation – and we've defined many different guidelines and best practices to that end. But whether we like it or not, we may soon have to accept the government's involvement: proposals for a national privacy law are gaining ground.

Long a major skeptic of privacy laws, Microsoft has recently joined with the Center for Democracy and Technology – a Washington public policy group that lobbies Congress on privacy issues - and others to call for a national internet privacy law. And they're not the only ones. Even some of the data brokers – who had their share of data breaches in 2005 – have begun to support omnibus privacy legislation.

What caused this abrupt change? We might take Microsoft's reasoning as a good example. In a white paper outlining its reasons for supporting federal legislation on this issue, the company argued that the current "bewildering jumble" of state and federal laws create difficulty and confusion for both businesses and consumers.

And Microsoft makes a valid point: the privacy laws out there are often confusing and contradictory. More than twenty states have now passed data breach or privacy legislation, and while many follow the example of California's 2003 law, there remains significant ambiguity. For businesses looking to uphold industry best practices and promote the security of their brand, having a uniform standard might not be such a terrible thing after all. It's also good for business to get into the mix - without industry input, privacy legislation might go farther than any of us would like.

How could legislation go too far? It's probably more intuitive how privacy legislation could harm businesses – witness the federal government's guidelines for the healthcare industry. Even for consumers, though, protecting privacy can sometimes go a little further than they'd like. Maybe this seems unlikely to happen here, but in other countries it may already have. Take Japan, for example: nearly 60% of Japanese citizens believe that a restrictive privacy law passed there in April 2005 may be too constricting. There are times when consumers want businesses to have their personal information – and an ideal piece of legislation would balance consumer concerns with the interest we all have in *some* sharing of information.

So we should look closely at what is being suggested to make sure it meets this balance. In conjunction with the CDT, Microsoft now claims that there should be a standardized national law to "establish baseline privacy protections for consumers, and provide organizations with a uniform standard on which they can build privacy policies."

Of course, this remains vague and could encompass any number of the proposed pieces of legislation currently stalled in Congress. Yet whatever its final form, Microsoft's support could prove instrumental in the push for a national privacy law. And based on the CDT and Microsoft's positions, we can make some predictions about what the law might require:

- **Consumer access to the data collected about them may increase.** We've all heard the "consumer in control" mantra. This is a fairly logical extension of that idea, and even Microsoft has argued that consumers should be able to view the information held by marketers and data brokers. One question – is YOUR business ready to provide that transparency?

- **Data breaches will have to be declared.** Without a national standard, it hasn't always been clear to businesses when and where they are required to disclose the occurrence of a data breach. Under new legislation, this ambiguity would disappear, with strong standards being outlined for disclosure. How close are you to meeting those standards?
- **The “baseline privacy protections” will have some teeth.** Most salient, perhaps, are any restrictions on the collection of consumer information. From the CDT's position, we can probably expect new opt-in requirements, as well as new penalties for those who don't abide by the protections (and it's clear that the FTC has the will to go after companies with inadequate privacy protections). Are you ready for this?

What will this mean for your business? That all depends. Much of what the proposed legislation suggests is already part of industry best practices, so a lot of marketers may already be compliant. But if nothing else, the specter of a federal privacy law is good reason to take a long hard look at your privacy and data governance practices. There's a good deal of research conducted over the past year demonstrating that even while consumer distrust of the internet has grown, click-through and email open-rates increase when consumers have a “trusted relationship” with a marketer. So whether or not this bill ultimately has legs, you'd do well to ensure that you are taking steps to build this trust with your customers.

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