

**Summary of Presentation by EPIC, Privacy Rights Clearinghouse, Consumers Union,
and Consumer Federation of America**

GLB Interagency Meeting on the ANPR on Privacy Notices

February 25, 2004

Federal Trade Commission Conference Center

Participants:

Tena Friery, Research Director, Privacy Rights Clearinghouse

Shelley Curran, Policy Analyst, Consumers Union

Brad Scribner, Housing Coordinator, Consumer Federation of America

Chris Hoofnagle, Electronic Privacy Information Center (EPIC)

Comments:

Ms. Friery and Ms. Curran provided a handout – a joint Privacy Rights Clearinghouse and Consumers Union statement on the ANPR, which accompanies this summary.

Mr. Hoofnagle gave a review of the EPIC petition requesting that the agencies develop a short, consumer-friendly notice. He said that the notice should open with a clear call to action, e.g., we are allowed to disclose your private information to other companies unless you tell us not to. He stated that companies know how to hide information that they don't want consumers to see, referring to *Teng v. AT&T*. Language should be free of multiple negatives; the notice should be in a closed mailer; and the notice should give clear examples of information sharing for marketing. The short notice should also be accurate and fully consistent with the long notice.

On the sample approaches filed with the ANPR, Mr. Hoofnagle expressed a preference for A and B. Since they are standardized and based on yes/no answers, the consumer groups can assign scores and issue privacy scores on notices using this approach. This allows for greater comparison among financial institutions. He added that the ability to do scoring may create a "privacy market."

Mr. Scribner said that the definitions are unclear in the notices, for example: "scope;" "affiliate" vs. "nonaffiliate;" and "family of companies." As for affiliates, he suggested distinguishing between affiliates that are service providers and those that separately offer their own products and services and want to market to consumers. He said the notices should not limit the explanation to use of the information for marketing; rather, they should include other sharing, such as general access to information by employees. Ms. Curran said that potential use of information is key. Mr. Scribner would like to add to the notices customized information as to the current opt-out status of the consumer. Ms. Curran noted that Do-Not-Call provides a single list and allows consumers to check online whether they are included in the list.

Ms. Friery referred to the written comments in the handout. She said that the Privacy Rights Clearinghouse has a hotline for consumers and has posted guidance online. She said that "opt out" is recognized by consumers. She discussed various goals for the short notice that are

more fully explored in the handout:

- (1) Elements:
 - She suggests including the statement “required by federal law” to draw attention to the notice and focus on the information flow (how it is used and how to stop the flow).
 - She said that “joint marketing” has caused confusion for consumers.
 - Readability: She referred to the proposed notice in the new California law, SB 1.

- (2) Research:
 - She suggested that the Krane and Culnan-Milne papers on this subject are worth a fresh look.

- (3) Guidelines for notices:
 - Key issues to answer in notice: whether and to whom information is disclosed; how to stop the disclosure; and why the information is disclosed.

- (4) Approaches suggested in the ANPR:
 - There’s concern about ambiguous language. She asked the agencies to look at the word “sharing” and inquire whether this adequately describes information practices. She said “disclose” is more descriptive and that “provide” and “use” better capture what is meant.

