

## **APPENDIX E: INDUSTRY GUIDELINES**



BANKING  
INDUSTRY  
TECHNOLOGY  
SECRETARIAT

THE BANKERS ROUNDTABLE

*PRIVACY PRINCIPLES IMPLEMENTATION PLAN*

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**ADOPTING A PLAN FOR IMPLEMENTING PRIVACY PRINCIPLES**

Each bank will approve a plan for implementing The Banking Industry Privacy Principles at the level of the Board of Directors or the Office of the Chair, with subsequent notification of this action to the Board.

**COMMUNICATING WITH BANK CUSTOMERS**

It is important to communicate the bank's policies related to customer privacy to the bank's customers. How that is done should be left to each bank to decide and may include use of existing channels.

**ADVISING AND TRAINING EMPLOYEES**

All employees should be informed and educated about the bank's plan for implementing The Banking Industry Privacy Principles. How this is done will be decided by each bank.

**ESTABLISHING A PRIVACY MARK**

There may be need and value in having a banking industry privacy mark that assures the public that certain safeguards have been met. The Banking Industry Technology Secretariat will explore this possibility and make recommendations to the BITS Board of Directors.

### CONTRACTING WITH THIRD PARTY VENDORS

Each bank will obtain agreement from third party vendors, on a case-by-case basis, to comply with the bank's privacy principles.

### INFORMING CUSTOMERS OF THIRD PARTY OPT-OUT

Where a bank provides information to unrelated and unaffiliated third parties for their independent use for marketing or similar purposes, the bank will notify customers of their right to opt-out from the bank providing customer information to those third parties.

### COMPLYING WITH PRIVACY PRINCIPLES

Banks will apply their own internal process to assure compliance with the bank's privacy principles.

### ADDRESSING BREACHES OF POLICY

Breaches of policy will be addressed internally on a case-by-case basis by each bank.

### MAINTAINING ACCURATE CUSTOMER DATA

Each bank will establish and maintain procedures by which customers can correct inaccurate customer information.

*Approved September 11<sup>th</sup>, BITS Board of Directors*

*Approved September 12<sup>th</sup>, The Bankers Roundtable Board of Directors*

## PRIVACY PRINCIPLES

1. **Recognition of a Customer's Expectation of Privacy.**  
Financial institutions should recognize and respect the privacy expectations of their customers and explain principles of financial privacy to their customers in an appropriate fashion. This could be accomplished, for example, by making available privacy guidelines and/or providing a series of questions and answers about financial privacy to those customers.
2. **Use, Collection and Retention of Customer Information**  
Financial institutions should collect, retain and use information about individual customers only where the institution reasonably believes it would be useful (and allowed by law) to administering that organization's business and to provide products, services and other opportunities to its customers.
3. **Maintenance of Accurate Information**  
Financial institutions should establish procedures so that a customer's financial information is accurate, current and complete in accordance with reasonable commercial standards. Financial institutions should also respond to requests to correct inaccurate information in a timely manner.
4. **Limiting Employee Access to Information**  
Financial institutions should limit employee access to personally identifiable information to those with a business reason for knowing such information. Financial institutions should educate their employees so that they will understand the importance of confidentiality and customer privacy. Financial institutions should also take appropriate disciplinary measures to enforce employee privacy responsibilities.
5. **Protection of Information via Established Security Procedures**  
Financial institutions should maintain appropriate security standards and procedures regarding unauthorized access to customer information.
6. **Restrictions on the Disclosure of Account Information**  
Financial institutions should not reveal specific information about customer accounts or other personally identifiable data to unaffiliated third parties for their independent use, except for the exchange of information with reputable information reporting agencies to maximize the accuracy and security of such information or in the performance of bona fide corporate due diligence, unless 1) the information is provided to help complete a customer initiated transaction; 2) the customer requests it; 3) the disclosure is required by/or allowed by law (e.g., subpoena, investigation of fraudulent activity, etc.); or 4) the customer has been informed about the possibility of disclosure for marketing or similar purposes through a prior communication and is given the opportunity to decline (i.e., "opt out").

7. **Maintaining Customer Privacy in Business Relationships with Third Parties**  
If personally identifiable customer information is provided to a third party, the financial institutions should insist that the third party adhere to similar privacy principles that provide for keeping such information confidential.
  
8. **Disclosure of Privacy Principles to Customers**  
Financial institutions should devise methods of providing a customer with an understanding of their privacy policies. Customers that are concerned about financial privacy will want to know about an institution's treatment of this important issue. Each financial institution should create a method for making available its privacy policies.

**DIRECT  
MARKETING  
ASSOCIATION  
GUIDELINES  
for...**

**Ethical**

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**Business**

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**Practice**



**T**he Direct Marketing Association's Guidelines for Ethical Business Practice are intended to provide individuals and organizations involved in direct marketing in all media with generally accepted principles of conduct. These guidelines reflect The DMA's long-standing policy of high levels of ethics and the responsibility of the Association, its members, and all marketers to maintain consumer and community relationships that are based on fair and ethical principles. In addition to providing general guidance to the industry, the Guidelines for Ethical Business Practice are used by The DMA's Committee on Ethical Business Practice, an industry peer review committee, as the standard to which direct marketing promotions that are the subject of complaint to The DMA are compared.

**T**hese self-regulatory guidelines are intended to be honored in light of their aims and principles. All marketers should support the guidelines in spirit and not treat their provisions as obstacles to be circumvented by legal ingenuity.

**T**hese guidelines also represent The DMA's general philosophy that self-regulatory measures are preferable to governmental mandates. Self-regulatory actions are more readily adaptable to changing techniques and economic and social conditions. They encourage widespread use of sound business practices.

**B**ecause dishonest, misleading or offensive communications discredit all means of advertising and marketing, including direct marketing, observance of these guidelines by all concerned is expected. All persons involved in direct marketing should take reasonable steps to encourage other industry members to follow these guidelines as well.

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# *The Terms of the Offer*

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## *HONESTY AND CLARITY OF OFFER*

### *Article #1*

All offers should be clear, honest and complete so that the consumer may know the exact nature of what is being offered, the price, the terms of payment (including all extra charges) and the commitment involved in the placing of an order. Before publication of an offer, marketers should be prepared to substantiate any claims or offers made. Advertisements or specific claims which are untrue, misleading, deceptive or fraudulent should not be used.

## *ACCURACY AND CONSISTENCY*

### *Article #2*

Simple and consistent statements or representations of all the essential points of the offer should appear in the promotional material. The overall impression of an offer should not be contradicted by individual statements, representations or disclaimers.

## *CLARITY OF REPRESENTATIONS*

### *Article #3*

Representations which, by their size, placement, duration or other characteristics are unlikely to be noticed or are difficult to understand should not be used if they are material to the offer.

## *ACTUAL CONDITIONS*

### *Article #4*

All descriptions, promises and claims of limitation should be in accordance with actual conditions, situations and circumstances existing at the time of the promotion.

## *DISPARAGEMENT*

### *Article #5*

Disparagement of any person or group on grounds addressed by federal or state laws that prohibit discrimination is unacceptable.

## *DECENCY*

### *Article #6*

Solicitations should not be sent to consumers who have indicated to the marketer that they consider those solicitations to be vulgar, immoral, profane, pornographic or offensive in any way and who do not want to receive them.

## *PHOTOGRAPHS AND ART WORK*

### *Article #7*

Photographs, illustrations, artwork and the situations they describe should be accurate portrayals and current reproductions of the products, services or other subjects they represent.

## *DISCLOSURE OF SPONSOR AND INTENT*

### *Article #8*

All marketing contacts should disclose the name of the sponsor and each purpose of the contact. No one should make offers or solicitations in the guise of one purpose when the intent is a different purpose.

## *ACCESSIBILITY*

### *Article #9*

Every offer and shipment should clearly identify the marketer's name and postal address or telephone number, or both, at which the consumer may obtain service. If an offer is made online, an e-mail address should also be identified.

*SOLICITATION IN THE GUISE OF AN  
INVOICE OR GOVERNMENTAL  
NOTIFICATION*

*Article #10*

Offers that are likely to be mistaken for bills, invoices or notices from public utilities or governmental agencies should not be used.

*POSTAGE, SHIPPING OR HANDLING  
CHARGES*

*Article #11*

Postage, shipping or handling charges, if any, should bear a reasonable relationship to actual costs incurred.

*Marketing to Children \_\_\_\_\_*

*MARKETING TO CHILDREN*

*Article #12*

Offers and the manner in which they are presented that are suitable for adults only should not be made to children. In determining the suitability of a communication with children online or in any other media, marketers should address the age range, knowledge, sophistication and maturity of their intended audience.

*PARENTAL RESPONSIBILITY AND CHOICE*

*Article #13*

Marketers should provide notice and an opportunity to opt out of the marketing process so that parents have the ability to limit the collection, use and disclosure of their children's names, addresses or other personally identifiable information.

*INFORMATION FROM OR ABOUT  
CHILDREN*

*Article #14*

Marketers should take into account the age range, knowledge, sophistication and maturity of children when collecting information from them. Marketers should limit the collection, use and dissemination of information collected from or about children to information required for the promotion, sale and delivery of goods and services, provision of customer services, conducting market research and engaging in other appropriate marketing activities.

Marketers should effectively explain that the information is being requested for marketing purposes. Information not appropriate for marketing purposes should not be collected.

Upon request from a parent, marketers should promptly provide the source and general nature of information maintained about a child. Marketers should implement strict security measures to ensure against unauthorized access, alteration or dissemination of the data collected from or about children.

*Special Offers and Claims \_\_\_\_\_*

*USE OF THE WORD "FREE" AND OTHER  
SIMILAR REPRESENTATIONS*

*Article #15*

A product or service which is offered without cost or obligation to the recipient may be unqualifiedly described as "free."

If a product or service is offered as "free," all qualifications and conditions should be clearly and conspicuously disclosed, in close conjunction with the use of the term "free" or other similar phrase.

When the term "free" or other similar representations are made (for example, 2-for-1, half-price or 1-cent offers), the product or service required to be purchased should not have been increased in price or decreased in quality or quantity.

### *PRICE COMPARISONS*

#### *Article #16*

Price comparisons including those between a marketer's current price and a former, future or suggested price, or between a marketer's price and the price of a competitor's comparable product should be fair and accurate.

In each case of comparison to a former, manufacturer's suggested or competitor's comparable product price, recent substantial sales should have been made at that price in the same trade area.

For comparisons with a future price, there should be a reasonable expectation that the new price will be charged in the foreseeable future.

### *GUARANTEES*

#### *Article #17*

If a product or service is offered with a guarantee or a warranty, either the terms and conditions should be set forth in full in the promotion, or the promotion should state how the consumer may obtain a copy. The guarantee should clearly state the name and address of the guarantor and the duration of the guarantee.

Any requests for repair, replacement or refund under the terms of a guarantee or warranty should be honored promptly. In an unqualified offer of refund, repair or replacement, the customer's preference shall prevail.

### *USE OF TEST OR SURVEY DATA*

#### *Article #18*

All test or survey data referred to in advertising should be valid and reliable as to source and methodology, and should support the specific claim for which it is cited. Advertising claims should not distort test or survey results or take them out of context.

### *TESTIMONIALS AND ENDORSEMENTS*

#### *Article #19*

Testimonials and endorsements should be used only if they are:

- a. Authorized by the person quoted;
- b. Genuine and related to the experience of the person giving them both at the time made and at the time of the promotion; and
- c. Not taken out of context so as to distort the endorser's opinion or experience with the product.

### *Sweepstakes* \_\_\_\_\_

#### *USE OF THE TERM "SWEEPSTAKES"*

##### *Article #20*

Sweepstakes are promotional devices by which items of value (prizes) are awarded to participants by chance without the promoter's requiring the participants to render something of value (consideration) to be eligible to participate. The co-existence of all three elements — prize, chance and consideration — in the same promotion constitutes a lottery. It is illegal for any private enterprise to run a lottery without specific governmental authorization.

When skill replaces chance, the promotion becomes a skill contest. When gifts (premiums or other items of value) are given to all participants independent of the element of chance, the promotion is not a sweepstakes. Promotions that are not sweepstakes should not be held out as such.

Only those promotional devices which satisfy the definition stated above should be called or held out to be a sweepstakes.

## *NO-PURCHASE OPTION*

### *Article #21*

Promotions should clearly state that no purchase is required to win sweepstakes prizes. They should not represent that those who make a purchase or otherwise render consideration with their entry will have a better chance of winning or will be eligible to win more or larger prizes than those who do not make a purchase or otherwise render consideration. The method for entering without ordering should be easy to find, read and understand. When response devices used only for entering the sweepstakes are provided, they should be as easy to find as those utilized for ordering the product or service.

## *CHANCES OF WINNING*

### *Article #22*

No sweepstakes promotion, or any of its parts, should represent that a recipient or entrant has won a prize or that any entry stands a greater chance of winning a prize than any other entry when this is not the case. Winners should be selected in a manner that ensures fair application of the laws of chance.

## *PRIZES*

### *Article #23*

Sweepstakes prizes should be advertised in a manner that is clear, honest and complete so that the consumer may know the exact nature of what is being offered. For prizes paid over time, the annual payment schedule and number of years should be clearly disclosed.

Photographs, illustrations, artwork and the situations they represent should be accurate portrayals of the prizes listed in the promotion.

No award or prize should be held forth directly or by implication as having substantial monetary value if it is of nominal worth. The value of a non-cash prize should be stated at regular retail value, whether actual cost to the sponsor is greater or less.

All prizes should be awarded and delivered without cost to the participant. If there are certain conditions under which a prize or prizes will not be awarded, that fact should be disclosed in a manner that is easy to find, read and understand.

## *PREMIUMS*

### *Article #24*

Premiums should be advertised in a manner that is clear, honest and complete so that the consumer may know the exact nature of what is being offered.

A premium, gift or item should not be called or held out to be a "prize" if it is offered to every recipient of or participant in a promotion. If all participants will receive a premium, gift or item, that fact should be clearly disclosed.

## *DISCLOSURE OF RULES*

### *Article #25*

All terms and conditions of the sweepstakes, including entry procedures and rules, should be easy to find, read and understand. Disclosures set out in the rules section concerning no-purchase option, prizes and chances of winning should not contradict the overall impression created by the promotion.

The following should be set forth clearly in the rules:

- No purchase of the advertised product or service is required in order to win a prize.
- Procedures for entry.
- If applicable, disclosure that a facsimile of the entry blank or other alternate means (such as a 3"x5" card) may be used to enter the sweepstakes.
- The termination date for eligibility in the sweepstakes. The termination date should specify whether it is a date of mailing or receipt of entry deadline.
- The number, retail value (of non-cash prizes) and complete description of all prizes offered, and whether cash may be awarded instead of merchandise. If a cash prize is to be awarded by installment payments, that fact should be clearly disclosed, along with the nature and timing of the payments.

- The approximate odds of winning each prize or a statement that such odds depend on number of entrants.
- The method by which winners will be selected.
- The geographic area covered by the sweepstakes and those areas in which the offer is void.
- All eligibility requirements, if any.
- Approximate dates when winners will be selected and notified.
- Publicity rights regarding the use of winner's name.
- Taxes are the responsibility of the winner.
- Provision of a mailing address to allow consumers to receive a list of winners of prizes over \$25.00 in value.

## *Fulfillment* \_\_\_\_\_

### *UNORDERED MERCHANDISE*

#### *Article #26*

Merchandise should not be shipped without having first received the customer's permission. The exceptions are samples or gifts clearly marked as such, and merchandise mailed by a charitable organization soliciting contributions, as long as all items are sent with a clear and conspicuous statement informing the recipient of an unqualified right to treat the product as a gift and to do with it as the recipient sees fit, at no cost or obligation to the recipient.

### *PRODUCT AVAILABILITY AND SHIPMENT*

#### *Article #27*

Direct marketers should offer merchandise only when it is on hand or when there is a reasonable expectation of its timely receipt.

Direct marketers should ship all orders according to the terms of the offer or within 30 days where there is no promised shipping date, unless otherwise directed by the consumer, and should promptly notify consumers of any delays.

## *DRY TESTING*

### *Article #28*

Direct marketers should engage in dry testing only when the special nature of the offer is made clear in the promotion.

## *Collection, Use and Maintenance of Marketing Data* \_\_\_\_\_

### *COLLECTION, USE AND TRANSFER OF PERSONALLY IDENTIFIABLE DATA*

#### *Article #29*

Consumers who provide data that may be rented, sold or exchanged for marketing purposes should be informed periodically by marketers of their policy concerning the rental, sale or exchange of such data and of the opportunity to opt out of the marketing process. Should that policy substantially change, marketers have an obligation to inform consumers of that change prior to the rental, sale or exchange of such data, and to offer consumers an opportunity to opt out of the marketing process at that time. All individual opt-out requests should be honored. Marketers should maintain and use their own systems, policies and procedures, and at no cost to consumers refrain from using or transferring such data, as the case may be, as requested by consumers.

List compilers should maintain and use their own systems, policies and procedures, and at no cost to consumers refrain from using or transferring data, as the case may be, as requested by consumers.

For each list that is rented, sold or exchanged, the applicable DMA Preference Service name removal list (e.g., Mail Preference Service, Telephone Preference Service) should be employed prior to use.

Data about consumers who have opted out of use or transfer should not, per their requests, be used, rented, sold or exchanged.

Upon request by a consumer, marketers should disclose the source from which they obtained personally identifiable data about that consumer.

### *PERSONAL DATA*

#### *Article #30*

Marketers should be sensitive to the issue of consumer privacy and should only collect, combine, rent, sell, exchange or use marketing data. Marketing data should be used only for marketing purposes.

Data and selection criteria that by reasonable standards may be considered sensitive and/or intimate should not be disclosed, displayed or provide the basis for lists made available for rental, sale or exchange when there is a reasonable expectation by the consumer that the information will be kept confidential.

### *PROMOTION OF MARKETING LISTS*

#### *Article #31*

Any advertising or promotion for marketing lists being offered for rental, sale or exchange should reflect the fact that a marketing list is an aggregate collection of marketing data. Such promotions should also reflect a sensitivity for the consumers on those lists.

### *MARKETING LIST USAGE*

#### *Article #32*

List owners, brokers, managers, compilers and users of marketing lists should ascertain the nature of the list's intended usage for each materially different marketing use prior to rental, sale, exchange, transfer or use of the list. List owners, brokers, managers and compilers should not permit the rental, sale, exchange or transfer of their marketing lists, nor should users use any marketing lists for an offer that is in violation of these guidelines.

## *Telephone Marketing* \_\_\_\_\_

### *REASONABLE HOURS*

#### *Article #33*

Telephone contacts should be made during reasonable hours as specified by federal and state laws and regulations.

### *TAPING OF CONVERSATIONS*

#### *Article #34*

Taping of telephone conversations by telemarketers should only be conducted with notice to or consent of all parties, or the use of a beeping device, as required by applicable federal and state laws and regulations.

### *RESTRICTED CONTACTS*

#### *Article #35*

A telephone marketer should not knowingly call a consumer who has an unlisted or unpublished telephone number, or a telephone number for which the called party must pay the charges, except in instances where the number was provided by the consumer to that marketer.

Random dialing techniques, whether manual or automated, in which those parties to be called are left to chance should not be used in sales and marketing solicitations.

Sequential dialing techniques, whether a manual or automated process, in which selection of those parties to be called is based on the location of their telephone numbers in a sequence of telephone numbers should not be used.

### *USE OF AUTOMATED DIALING EQUIPMENT*

#### *Article #36*

When using automated dialing equipment for any reason, telephone marketers should only use equipment which allows the telephone to immediately release the line when the called party terminates the connection.

ADRMPS (Automatic Dialers and Recorded Message Players) and prerecorded messages should be used only in accordance with tariffs, federal, state, and local laws, FCC regulations and these guidelines. Telephone marketers should use a live operator to obtain a consumer's permission before delivering a recorded message.

When using any automated dialing equipment to reach a multi-line location, the equipment should release each line used before connecting to another.

#### *USE OF TELEPHONE FACSIMILE MACHINES*

##### *Article #37*

Unless there is a prior business relationship with the recipient, or unless the recipient has given prior permission, unsolicited advertisements should not be transmitted by facsimile. Each permitted transmission to a fax machine must clearly contain on each page or on the first page, the date and time the transmission is sent, the identity of the sender and the telephone number of the sender or the sending machine.

#### *PROMOTIONS FOR RESPONSE BY TOLL-FREE AND PAY-PER-CALL NUMBERS*

##### *Article #38*

Promotions for response by 800 or other toll-free numbers should be used only when there is no charge to the consumer for the call itself and when there is no transfer from a toll-free number to a pay call.

Promotions for response by using 900 numbers or any other type of pay-per-call programs should clearly and conspicuously disclose all charges for the call. A preamble at the beginning of the 900 or other pay-per-call should include the nature of the service or program, charge per minute and the total estimated charge for the call, as well as the name, address and telephone number of the sponsor. The caller should be given the option to disconnect the call at any time during the preamble without incurring any charge.

The 900 number or other pay-per-call should only use equipment that ceases accumulating time and charges immediately upon disconnection by the caller.

#### *DISCLOSURE AND TACTICS*

##### *Article #39*

Prior to asking consumers for payment authorization, telephone marketers should disclose the cost of the merchandise or service and all terms and conditions, including payment plans, whether or not there is a no refund or a no cancellation policy in place, limitations, and the amount or existence of any extra charges such as shipping and handling and insurance. At no time should high pressure tactics be utilized.

#### *Fund-Raising*

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##### *Article #40*

In addition to compliance with these guidelines, fund-raisers and other charitable solicitors should, whenever requested by donors or potential donors, provide financial information regarding use of funds.

#### *Laws, Codes, and Regulations*

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##### *Article #41*

Direct marketers should operate in accordance with laws and regulations of the United States Postal Service, the Federal Trade Commission, the Federal Communications Commission, the Federal Reserve Board, and other applicable federal, state and local laws governing advertising, marketing practices and the transaction of business.

*Appendix 1*  
*Other DMA Resources* \_\_\_\_\_

Guidelines for Mailing List Practices  
Guidelines for Personal Information Protection  
Guidelines for Marketing By Telephone  
Guidelines for Acceptance of Direct Response  
Broadcast Advertising  
Guidelines for Acceptance of Print Mail Order  
Advertising  
Fair Information Practices Manual - includes  
comprehensive Checklist of Fair  
Information Practices  
Marketing Online Privacy Principles and Guidance  
Privacy Action Now kit  
Mail Preference Service and Telephone Preference  
Service Subscriber Brochures

The DMA can also provide your company with information on the following Federal Trade Commission (FTC) and Federal Communications Commission (FCC) regulations and rules affecting direct marketers:

**FTC:**

Mail or Telephone Order Merchandise Rule  
Telemarketing Sales Rule  
Negative Option Rule  
Guides Against Deceptive Pricing  
Guarantees and Warranties  
Equal Credit Opportunity Act  
Fair Debt Collection Practices Act  
Telephone Disclosure and Dispute Resolution Act

**FCC:**

Telephone Consumer Protection Act

Other DMA and government titles are available, as well as a variety of consumer education brochures. Contact the Ethics and Consumer Affairs Department in Washington, D.C. for more information.

*APPENDICES*

## *Appendix 2 - Introduction \_\_\_\_\_*

### *DMA INTERPRETATIONS UNDER THE ETHICAL GUIDELINES*

The Direct Marketing Association's Guidelines for Ethical Business Practice are principles that direct marketers should follow to ensure that they are conducting their business in an ethical manner. Guidelines, by their very nature, are meant to be general tenets. However, sometimes more specific guidance is needed to address various marketing practices. When such situations arise, The DMA issues specific guidance which expands on the ethical guidelines.

"Interpretations" are used to respond to consumer and regulatory concerns regarding specific issues and to educate industry members on acceptable industry practice.

As other interpretations of the guidelines are issued, they will be included herein.

## *Appendix 2 - #1*

### *INTERPRETATION ON USE OF AUTOMATIC NUMBER IDENTIFICATION AND CALLER ID UNDER ETHICAL GUIDELINE #35*

The Direct Marketing Association (The DMA) recognizes that the proper use of technology such as automatic number identification (ANI) and Caller ID benefits consumers. The DMA also acknowledges the privacy concerns that may arise with the use of such technology.

The DMA Guidelines for Marketing by Telephone require that telephone marketers who receive or collect consumer data as a result of a telephone marketing contact, and who intend to rent, sell or exchange those data for direct marketing purposes should notify the consumer of that fact. Consumer requests regarding restrictions on the collection, rental, sale or exchange of data relating to them should be honored. Telephone marketers using Automatic Number Identification (ANI) should not rent, sell, transfer or exchange, without customer consent, telephone numbers gained from ANI except where a prior business relationship exists for the sale of directly related goods or services.

## *Appendix 2 - #2*

### *INTERPRETATION ON USE OF FINANCIAL INFORMATION BY DIRECT MARKETERS UNDER ETHICAL GUIDELINES #29 AND #30*

The DMA considers credit card numbers, checking account numbers and debit account numbers to be personal information and therefore should not be transferred, rented, sold or exchanged when there is a reasonable expectation by the consumer that the information will be kept confidential. Because of the confidential nature of such personally identifying numbers, they should not be publicly displayed on direct marketing promotions or otherwise made public by direct marketers.

## *Appendix 2 - #3*

### *INTERPRETATION ON DISCLOSURE OF HEALTH AND MEDICAL DATA UNDER ETHICAL GUIDELINES #29 AND #30*

Direct marketers understand the sensitivity of collecting and using certain types of data, including health-related data. In the management of health-related data, fair information principles outlined in The DMA's Guidelines for Personal Information Protection would apply.

Information derived from the relationship between a patient and a medical care provider should never be disclosed or used for marketing purposes.

Health and medical data not derived from the provider-patient relationship should nonetheless be considered sensitive and personal in nature and should be rented, sold, transferred or exchanged only where appropriate privacy safeguards are in place. Such data may include, but are not limited to, data voluntarily provided by the consumer and compiled by way of questionnaires and/or compiled list methods and marketed with the knowledge of the consumer.

Consumers who provide health and medical information that may be rented, sold, transferred or exchanged for marketing purposes should be informed at the point of providing the information of the potential for the rental, sale, transfer or exchange of such data. Marketers should offer an opportunity to have a consumer's name deleted or suppressed upon request.

Marketers should ensure that safeguards are built into their systems to protect health and medical data from abuse, theft or misappropriation. The text and nature of solicitations directed to consumers on the basis of health-related data should take into account the sensitive nature of such data.

*The DMA Ethics and Consumer Affairs  
Department*

In its continuing efforts to improve the practices of direct marketing and the marketer's relationship with customers, The DMA sponsors several activities in its Ethics and Consumer Affairs Department.

- Ethical guidelines are maintained, updated periodically, and distributed to the direct marketing industry.
- The Committee on Ethical Business Practice investigates and examines mailings and offerings made throughout the direct marketing field which are brought to its attention.
- The Ethics Policy Committee revises the guidelines as needed, and initiates programs and projects directed toward improved ethical awareness in the direct marketing area.
- "Dialogue" meetings between direct marketing professionals and consumer affairs and regulatory representatives facilitate increased communication between the industry and its customers.
- MOAL (Mail Order Action Line) assists consumers in resolving direct response complaints. MPS (Mail Preference Service) offers consumers assistance in decreasing the volume of national advertising mail they receive at home. TPS (Telephone Preference Service) offers a decrease in national telephone sales calls received at home.

For additional information contact The DMA's Washington, D.C. office.

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**Case Report From  
The Direct Marketing Association's  
Committee on Ethical Business Practice**

*Prepared by*

**The DMA Ethics and Consumer Affairs Department**

*September – November 1997*



**The Direct Marketing Association, Inc.**

The Committee on Ethical Business Practice, comprised of 15 executives from DMA member companies, investigates and examines mailings and offerings made throughout the direct marketing field, based on complaints and inquiries received. The Committee, which meets ten times a year, works with both member and non-member companies to gain voluntary cooperation in adhering to the association's self-regulatory guidelines. This is done in an effort to increase good business practices for the industry and to increase consumer protection and confidence in the marketplace.

*This report is issued to inform and educate DMA members and other companies about practices that are considered contrary to The DMA's ethical business practice guidelines. The report's purpose is also to inform regulators and others interested in consumer protection issues of The DMA's self-regulatory guidelines and specific actions taken to gain compliance with these guidelines.*

The first volume of the ethics case report, dated February 1997, covered cases reviewed from April - November 1996. Volume 1, No. 2, dated April 1997, covered cases reviewed by the Committee on Ethical Business Practice and Committee staff in January, February and March 1997. Volume 1, No. 3, dated August 1997, covered cases reviewed in April, May, June and July. This report (Volume 1, No. 4) covers cases reviewed in September, October and November. *Beginning in 1998, reports will be issued three times a year: in April, August and December.*

For more information about The DMA's Committee on Ethical Business Practice, and other ethics and consumer affairs department programs, or to submit a case for review, please contact Marsha Goldberger, Director, Ethics and Consumer Affairs, or Pat Faley, Vice President, Consumer Affairs, in The DMA's Washington office, 1111 19th Street, NW, Suite 1100, Washington, D.C. 20036 (telephone: 202.955.5030; fax: 202.955-0085; e-mail: [consumer@the-dma.org](mailto:consumer@the-dma.org)). ■

## Contents

During this period, 23 cases were handled. Direct marketing promotions and practices of 15 companies were reviewed by the Committee on Ethical Business Practice for potential violation of The DMA's voluntary self-regulatory Guidelines for Ethical Business Practice. In addition to complaints reviewed by the Committee, eight more inquiries were initiated by Committee staff. Some of these cases had been discussed in the previous case report, but their outcomes were pending at the time that report was published. (In order to more easily allow readers to follow outcomes of previously reported cases, cases are being numbered, beginning with this report.)

In addition, The DMA's Mail Order Action Line (MOAL), which acts as an intermediary between consumers and companies to resolve complaints, handled 220 complaints over this three-month period. The majority of these complaints concerned non-delivery of promised merchandise or refunds, or receipt of unordered merchandise, and were resolved to the consumer's satisfaction.

The 23 complaints reviewed by The DMA Ethics Committee and staff required an examination of company practices in the following areas:

### Data Collection and List Rental Practices.....page 1

- 13 cases

*(1 case also included sweepstakes issues; 2 cases also included general advertising issues)*

### Solicitation in the Guise of an Invoice or.....page 5 Governmental Notification

- 4 cases

### General Advertising Issues.....page 7

- 8 cases

### Sweepstakes and Prize Promotions.....page 9

- 1 case

## Data Collection and List Rental Practices

### Case Issues

Nine cases reviewed by the Committee during this period were related to data collection, list rental practices, and/or personal information. Three of the cases had been pending further action at the time of the last ethics case report.

The issues raised were: non-compliance with a consumer's name-removal request (Case #1); the use of Social Security numbers on a sweepstakes mailing piece (Case #2); the use of marketing data for non-marketing purposes (Case #3); the use of health-related data for marketing purposes (Case #4); marketing credit card and weight reduction offers to minors (Cases #5 and #6); whether consumers were offered the opportunity to opt out of receiving unsolicited offers (Cases #7 and #8); and misuse of The DMA's Mail Preference Service (MPS) file (Case #9).

(The Committee decided that the last matter be initially investigated by staff, with a report made back to the Committee. The MPS subscriber explained an internal error that occurred, causing mailings to be sent to some consumers on the suppression file, and described actions taken to avoid such a future occurrence. Based on this report, Case #9 was closed.)

The relevant DMA guidelines generally state that consumers should be informed about a company's information gathering and usage practices and be given the opportunity to opt out of the marketing process; in addition, The DMA's Mail and/or Telephone Preference Service should be used. Only those data appropriate for marketing purposes should be used for direct marketing; marketing data should not be used for non-marketing purposes; and offers suitable for adults should not be promoted to minors (Articles #7 - Advertising to Children; #32 - Data Collection and List Rental Practices; #33 Personal Information; #34 - List Usage Agreements; Appendix 2 - #3 - Interpretation on Disclosure of Health and Medical Data Under Ethical Guidelines #32 and #33)

### DMA Action

The Committee contacted eight of the companies in writing with its concerns and questions as to whether and how consumers were informed about the ability to opt out of the marketing process; the use of personally identifying and sensitive information on direct marketing promotions; the use of marketing data, such as

changes of address reported to magazine and publishing companies, for reference or individual look-up services; and the inappropriate mailing of direct marketing promotions to minors.

Regarding the first matter, which had been previously pending (Case #1), the company had responded by explaining why consumers who had opted out were subsequently contacted: the company believed consumers opted out without full knowledge of what they were opt out of, and it wished to test consumer response for a new service. The Committee asked again for the source of the opt out to which the company replied that the source was not known, but since the company had a customer relationship with the complainant it should be able to promote new products. The Committee reminded the company that promotional advertising copy should be sensitive to consumers' privacy concerns.

Case #2, which concerned the display of Social Security numbers on sweepstakes promotions, had been pending a further company response as of the date of the last report. Based on the information that Social Security numbers were supplied by consumers themselves and were no longer visible through a window envelope, the Committee agreed that the case had been satisfactorily resolved.

The case alleging the use of marketing data for non-marketing purposes (Case #3) caused the Committee to analyze several essential questions; for example, the definition of "marketing data," the source of information used for reference purposes, consumers' expectations regarding the use of marketing information, and the means used to assure separation of data for marketing and reference uses. The company stated that its promotions contained out-of-date marketing materials that are no longer being used. The Committee subsequently reviewed new promotional materials, and based on the content of these materials, closed the case. The materials indicate that public (non-marketing) information is used for reference services.

Case #4 concerned a promotional mailing which contained reference to a health-related condition. The Committee questioned the companies involved as to the source of the health-related information and whether the consumer was offered the opportunity to opt out of the marketing process, pointing out the special sensitivity of medical or health-related information. In addition, the Committee questioned the wisdom of using a self-mailer for this kind of promotion rather than a sealed envelope, which would afford a greater degree of privacy. The companies responded that the information was supplied by the consumer in a survey which contained an opt-out notice. The mailing list source concluded, as a result of this Committee inquiry, that such potentially sensitive promotions should, in the future, be contained in sealed envelopes.

Two cases concerned promotional mailings received by minors, one for a credit card and the other for a weight loss program (Cases #5 and #6). The Committee questioned the companies involved as to the source of these mailings and pointed out that promotions appropriate for adults should not be sent to children. In addition, the Committee questioned the veracity of the claims made in the weight loss promotion. As of the date this report was published, these cases were pending company responses.

The Committee reviewed an online promotion (Case #7) which claimed that it had a listing of millions of e-mail addresses which were available for others to market their products and services. The company was questioned as to the ability of the persons on the list to opt out of having their addresses collected and transferred. The Committee also questioned the veracity of some of the claims made, specifically in regard to the large number of available non-duplicate e-mail addresses and the amount of money that could be made advertising to the addresses on the list. The company's response and further Committee action was pending at the time this report was published.

During this time period, the Committee also questioned a list broker's data promotions, which claimed availability of consumer names and addresses based on the consumers' responses to previous promotions (Case #8). These business-to-business promotions were for "get-rich-quick" and business opportunity promotions that are often the subject of consumer protection agency inquiries and actions. The company was questioned as to consumers' abilities to opt out of having their names collected and transferred, and advised that the promotions themselves did not seem to portray the consumers on the lists in a sensitive fashion. The company's response and further Committee action was pending at the time this report was published.

Four other inquiries were also initiated by Committee staff in relation to data collection and privacy issues, three of which had been pending at the time of the last case report (#10, #11, #12). Two of the inquiries were regarding companies not honoring requests for name suppression, resulting in numerous unsolicited mailings being received by the consumer. The other matter concerned sweepstakes mailings received by a young child instead of an adult in the household, which raised questions about how the name was obtained. Since responses had not been received, the companies were reminded once again of the complaints received against them. The other newer inquiry (#13) concerned marketing a database of fax numbers. The company was informed that promotional faxes are prohibited by law, unless there is a prior business relationship with the recipient or express consent is given.

The DMA guidelines relating to privacy protection are routinely cited by the Committee. How consumer data should be collected and used is one of the most important issues direct marketers face, and The DMA encourages all companies to use information responsibly, according to the guidelines. This involves ensuring that companies disclose data gathering and use practices, give consumers the opportunity to opt out, honor such requests and use The DMA's name-removal services (Mail and Telephone Preference Services).

As The DMA recently announced, such privacy protection measures will be mandatory for DMA members as of July 1999. Members are given the intervening year between now and then to ensure that their privacy policies are in place, that notice and opt out options are given and that the association's name-removal services are used by all companies using consumer data.

As noted in the previous case report, the case regarding use of marketing data for non-marketing uses emphasized that there must be a clear separation between marketing and non-marketing data and that reference services, such as people-finders, skip tracing, or individual look-ups, should never use data obtained through marketing transactions.

Personal information, such as health-related data, should not be made available to other marketers when there is a reasonable expectation by the consumer that it will remain confidential. When certain health-related data are provided by consumers themselves, they should have the opportunity to not have such information transferred to other marketers. When potentially sensitive information is used by marketers, mailing promotions in sealed envelopes provides a measure of privacy, rather than having such promotions be self-mailers.

Marketing to children is an issue that has gained increasing attention, in part due to Federal Trade Commission workshops on privacy and cyberspace, and the recent White House Summit: Focus on Children, held in Washington, D.C. The Committee views inappropriate marketing to children, online or in traditional media, as a serious matter. Minors should not be the recipients of promotions that are not appropriate for them, and age appropriate promotions should be directed to the parents of minors. Marketers who operate Web sites directed to children should have clear notice about their information collection and use practices. (Ethical business practice guidelines regarding marketing to children have been expanded and strengthened by the ethics committees and are being presented to The DMA's Board for review and approval.) ■

## Solicitation in the Guise of an Invoice or Governmental Notification

### Case Issues

The Committee reviewed four complaints of this nature during this time period, three relating to promotions designed to look like "official" government documents, and one case concerning a solicitation for a new or renewed magazine subscription which had the appearance of an invoice. One of the government look-alike mailings and the case concerning the magazine subscription solicitation were pending company responses at the time of the last ethics case report.

The issues raised by three of the cases (Cases #14, #15 and #16) were that the solicitations, by specific wording on the outer envelope and overall appearance, appeared to be government "audits" or notices, either for jury duty or in regard to upcoming official elections. (Case #16, which contained the word "audit" on the envelope was not viewed as violating the guidelines.) The other promotions were fund-raising solicitations, one of which asked recipients to complete and return a "jury verdict" against certain organizations.

The fourth promotion (Case #17), by its overall appearance and reference to amounts owed and account numbers, appeared to be an invoice. Upon close examination and a review of fine print disclosures, the "invoice" was actually a solicitation for a subscription or a renewal for a specific magazine. The Committee also was concerned about the use of specific magazine names in this promotion and if there was any relationship between the company and the magazines being promoted.

The relevant DMA guideline states that offers likely to be mistaken for invoices or notices from government agencies should not be used. (Article #11 - Solicitation in the Guise of an Invoice or Governmental Notification)

### DMA Action

The Committee wrote to three of the companies, also citing Article #43 (Laws, Codes, and Regulations) because of federal regulations prohibiting the use of deceptive government look-alike envelopes and postal requirements concerning specific disclosures that need to appear on solicitations that are in the guise of invoices.

As noted in the last case report, the Committee employed further attempts to contact the company using the "jury duty" promotion (Case #14). A representative for the company responded that it did not believe there was anything misleading about the promotion, but that the envelope copy was being changed to clarify that

the promotion was not from the government. The Committee asked to review revised copy; however, the company did not provide any revisions. Because the Committee believed there may be violations of law as well as of ethical guidelines, the case was referred to the U.S. Postal Inspection Service for review.

The Committee contacted the company regarding the government "look-alike" mailing piece that involved alleged "election" documents (Case #15) to point out that such language on the outer envelope was potentially misleading to recipients. That company's response was pending at the time of this report. Case #18, which involved the magazine subscription/renewal service, had been pending a response when the previous case report was published. The solicitation, which appeared to be an invoice, used the names of specific well-known magazines in its promotions. One of these magazines advised the Committee that it did not have any relationship with the company in question and did not give it authorization to collect subscription fees on its behalf. The case was referred to state Attorneys General and the U.S. Postal Inspection Service because the company failed to respond to the Committee's inquiries and the Committee believed violations of law may also be involved.

#### *Discussion*

The DMA continues to see misleading government look-alike mailings where consumers frequently assume the mailing is from a government entity. The outer envelope generally has "official"-sounding language regarding mail delivery, contains certain symbols often associated with a government agency, or urges the consumer to take action by statements such as "Important - Do Not Delay" and "Registered Documents Enclosed." In some cases, it is clear once the envelope is opened that the promotion is actually a solicitation, but that is not always the case. Cases brought to the Committee's attention in recent months involved political groups engaged in fund raising which were using this type of marketing tactic.

The Committee on Ethical Business Practice and Committee staff have also in the past reviewed numerous misleading business directory publications and "invoices" for unordered magazines and newsletters that are really solicitations. Recipients frequently assume such invoices are for an ongoing business directory listing or subscription, when that is not the case. Because this type of promotion is directed to businesses or other types of organizations, the DMA has been advising its members to be on the alert for invoices for services and products not rendered by the sender of the "invoice".

The "invoice" promotion discussed herein contains an element unseen by the Committee previously. Specifically, the promotion indicates a specific well-known magazine, which raised issues about whether the magazine publisher is

aware that the magazine is promoted this way and whether any subscriptions are, in fact, processed. The Committee's inquiry revealed that the magazine publisher in this case was also victimized by this promotion. The publisher, however, credited consumers who had paid for bogus subscriptions and subsequently called the publisher wondering when their pre-paid subscriptions would begin.

Complainants who realize these solicitations are not invoices for ordered services or merchandise state that such tactics reflect poorly on the direct marketing industry. Companies should be aware of The DMA's guidelines, and postal regulations which specify disclosures that must be made on such solicitations. Many such mailings received by The DMA in the past were forwarded to postal authorities for law enforcement action. ■

## **General Advertising Issues**

### **Case Issues**

The Committee reviewed four cases during this period involving general advertising practices, two of which also concerned data issues.

The issues concerned the accuracy of claims made for a weight loss promotion (Case #6, discussed earlier); the truthfulness of an online promotion for millions of e-mail addresses and the money that could be made via rental of such addresses to other marketers (Case #7, discussed earlier); mailing what appeared to be an advertisement torn from a publication, with a personalized note addressed to the recipient (Case #18); and an offer made for a continuity program in which material details of the offer were not as conspicuous as other parts of the offer (Case #19). (The Committee did not view Case #18 as misleading and therefore did not contact the company.)

The relevant DMA guidelines, which are among the most frequently cited by the Committee, state in general that all offers should be clear, honest, and complete so that the consumer knows the exact nature of what is being offered; misleading or deceptive offers should not be used; marketers should be able to substantiate claims made, including weight loss and earnings claims; and all descriptions and promises should be in accordance with actual conditions existing at the time the offer is made. (Articles #1 - Honesty and #4 - Actual Conditions)

## DMA Action

The Committee contacted three of the companies in writing with its concerns and requests for substantiation of the offers. As noted earlier, two of the cases also involved information practices concerns. It was pointed out to the company offering the continuity program that the small print disclosures seemed to contradict the overall impression given by the mailing, and that consumers were often confused by their obligations when responding to the mailing. Responses to all three cases and further Committee action were pending at the time of this report.

Four other inquiries regarding general advertising practices were initiated by Committee staff, one of which was pending at the time of the last report (#20). Case #20 concerned a mailing in which the company asked consumers if their Social Security records are accurate. As of the date of this report, a response still had not been received; therefore, the mailing was forwarded to the Social Security Administration for its review. The other three inquiries (#21, #22 and #23) concerned mailings which were apparently solicitations for loan applications and which featured non-negotiable checks.

## Discussion

As stated before, direct marketing offers should be clear, honest and complete, and the actual product or service received should meet the consumer's expectation, so that the company will establish and maintain a long-standing buyer-seller relationship with the consumer. A consumer misled by a direct marketing promotion may be reluctant to try the medium in the future.

According to The DMA's ethical guidelines, print which by its small size, placement or other visual characteristics is likely to substantially affect the clarity of an offer should not be used. Consumers are often offended by prominent claims of "free," "no obligation" and the like when asterisks or small print serve to contradict that main message. They question marketing techniques in which all material information is not stated clearly and upfront.

Likewise, exaggerated claims of the ability to earn or win great sums of money or lose large amounts of weight are seen in a negative light by many consumers. Unfortunately, too many consumers want to believe the truthfulness of such claims or erroneously believe that these claims could not be made in print if they were not legitimate.

Though the use of non-negotiable "checks" is legal if the nature of the "check" is clearly disclosed, consumers have indicated a level of confusion about some promotions which use them. ■

## Sweepstakes and Prize Promotions

### Case Issues

The Committee reviewed one case relating to sweepstakes and prize promotions during this period. The case, which also involved data collection and privacy issues, had been pending further action at the time the last ethics case report was published.

The sweepstakes issues under review included a lack of clarity regarding entry procedures and ways to win the sweepstakes and the use of small print disclosures which seem to contradict overall statements of winning.

The relevant DMA guidelines state in summary that offers must be clear, honest, and complete so that they will be easily understood by consumers, and that all promises should be in keeping with the actual conditions of the promotions. Sweepstakes promotions should clearly state that no purchase is required and the chances of winning should not be misrepresented. (Articles #1 - Honesty; #2 - Clarity; #4 - Actual Conditions; #15 - Use of the Term "Sweepstakes"; #16 - No Purchase Option; #17 - Prizes; #18 - Premiums; and #19 - Chances of Winning)

### DMA Action

As noted in the previous case report, the Committee contacted the company regarding its concerns and reviewed the company's explanations of how the sweepstakes promotion works (Case #2). The company notified the Committee that it had changed an aspect of the promotion dealing with privacy issues of concern. After further review of the promotion and the company's explanation, the Committee agreed that the sweepstakes-related disclosures were clear.

### Discussion

Although the majority of the Committee's cases during this reporting period were related to data collection and list rental practices, sweepstakes and prize offers that misrepresent to consumers the chance that they have to win a major prize are still an ongoing Committee concern. They are also a prominent concern of government authorities and other consumer protection agencies, which have conducted several "stings" in recent months of companies promoting sweepstakes and prize offers. Those companies engaged in such promotions should consult The DMA's ethical business practice guidelines, which are extensive in the area of sweepstakes, and should consult legal counsel about the various state requirements.

Legitimate sweepstakes offers do not require that consumers make any purchase in order to be eligible for a prize, and sweepstakes promotions should clearly state that no purchase is required. The chances of winning should be stated clearly and should not be misrepresented or disguised by an "official" appearance of the promotion. In addition, disclosures in the rules section or elsewhere in a promotion should not serve to contradict the overall impression made. ■



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Revised May 1997

## **THE COMMITTEE ON ETHICAL BUSINESS PRACTICE PROCEDURES FOR CASE HANDLING**

### Background

The Committee on Ethical Business Practice was established by the Direct Marketing Association ("The DMA") to investigate and examine mailings and offerings made throughout the direct marketing field based on complaints and inquiries received. These efforts are made in order to increase good business practices for direct marketers. The Committee examines such offerings in relation to The DMA self-regulatory Guidelines for Ethical Business Practice.

The Committee consists of 15 executives from DMA member companies, one of whom serves as liaison to The DMA Board of Directors. Each year new Committee members representing a portion of the Committee are nominated and elected by the existing Committee and approved by the Board or its Executive Committee.

### History and Purpose

The DMA's self-regulatory guidelines and procedures are meant to help individual companies and the industry as a whole maintain high ethical standards. Oftentimes companies are not aware that a particular promotion has the potential for causing consumer confusion or contributing to a negative image of direct marketing. Bringing potential guidelines violations to companies' attention can often prevent unwanted attention from regulators or legislators. Although cooperation with the Committee is voluntary, it is in everyone's best interest to work together to ensure that high standards are maintained and consumer confidence in direct marketing is enhanced.

Since its inception in 1960, the Committee has applied The DMA Guidelines for Ethical Business Practice to hundreds of direct marketing cases concerning deception, unfair business practices, personal information protection, and other ethics issues. In this way, the Committee works to counter promotions that detract from direct marketing's image. In order to educate marketing professionals on acceptable marketing practices, a case report is regularly issued which summarizes questioned direct marketing promotions and how cases were administered. The report also is

used to educate regulators and others interested in consumer protection issues about The DMA's self-regulatory guidelines and how they are implemented.

The Committee is also responsible, along with the Ethics Policy Committee, for reviewing and revising The DMA Guidelines for Ethical Business Practice as necessary to keep the guidelines timely, specific, and meaningful in relation to the Direct Marketing Association's stated broad ethics objectives.

#### Procedures/Confidentiality Policy

Cases involved are against both DMA members and non-members alike. The Committee receives promotions for review in a number of ways: from consumers, member companies, non-members, or, sometimes, consumer protection agencies. Once the Committee reviews a particular promotion and believes the promotion may violate the ethical business practice guidelines, the company is contacted for its response. If the Committee does not believe the promotion violates the ethical guidelines, the case is closed and there is no need to contact the company. Cases closed without the company being contacted are handled confidentially.

#### Company Response:

If the Committee contacts the company with its concerns, the company at this point may provide a written explanation, or if it desires, give an in-person presentation at an upcoming meeting. By creating an open dialogue about the particular promotion, the Committee and the company usually will come to agreement about what, if anything, should be done to correct the situation. Pending cases while under discussion are handled confidentially. The DMA does not confirm that a case was received or is being reviewed by the Committee, except where the complainant, or the company which is the subject of the complaint, has already made public the fact that a complaint was filed.

The majority of the time, cases are resolved successfully, either by the company modifying or discontinuing the promotion in question or by explaining the promotion to the Committee's satisfaction. If the company states that its promotion is being revised, the Committee asks to review the revised promotion before closing the case. Cases closed with a satisfactory resolution are kept confidential. Any cases closed where the Committee believes there is continued violation of the Guidelines for Ethical Business Practice will be made public, including the name of the company and the facts of the case.

### Referral to Law Enforcement Agency/DMA Board of Directors

In cases where the company does not cooperate with the Committee's inquiry and the Committee believes a violation of law may have occurred in addition to a violation of the ethical guidelines, the case is forwarded to an appropriate law enforcement agency for its review, and such referral will be made public.

In those rare instances when a member company does not cooperate with the Committee's inquiry and/or the Committee believes the guidelines are being violated, a case may be referred to The DMA's Board of Directors for further action. Cases referred to the Board of Directors are made public by the Committee. Board action could include censure, suspension, or expulsion of a member and/or issuing a press release regarding the guidelines violation and company's lack of cooperation. If a case is closed without a satisfactory resolution and the company in question subsequently applies for DMA membership, the membership will not be accepted. In cases where the outcome was not satisfactory and a member company seeks to renew its membership, the membership will be held in abeyance until the matter is satisfactorily resolved with the Committee.



## ***THE COMMITTEE ON ETHICAL BUSINESS PRACTICE***

The Committee on Ethical Business Practice was established by the Direct Marketing Association (The DMA) to investigate and examine mailings and offerings made throughout the direct marketing field based on complaints and inquiries received. These efforts are made in order to increase good business practices for direct marketers and to provide consumer education programs. The Committee examines such offerings in relation to The DMA's self-regulatory Guidelines for Ethical Business Practice.

The Committee consists of 15 executives from DMA member companies, one of whom serves as liaison to The DMA Board of Directors. New Committee members are nominated and elected by the existing Committee and approved by the Board.

Since its inception in 1960, the Committee has applied The DMA's Guidelines for Ethical Business Practice to more than 800 direct marketing cases concerning deception, unfair business practices, personal information protection, and other ethics issues. In this way, the Committee works to counter techniques that detract from direct marketing's image. Case reports are regularly issued to educate The DMA's members and other companies about practices that are considered contrary to The DMA's ethical guidelines, and to inform regulators and others interested in consumer protection issues about specific actions taken to gain compliance with these guidelines.

The Committee is also responsible, along with the Ethics Policy Committee, for reviewing and revising The DMA Guidelines for Ethical Business Practice series as necessary to keep the guidelines timely, specific, and meaningful in relation to the Direct Marketing Association's stated broad ethics objectives.

May 1997



## **ETHICS POLICY COMMITTEE**

The Ethics Policy Committee was established in 1979 by the Direct Marketing Association's (The DMA) Board of Directors to initiate programs that seek to increase customer confidence in the direct marketing industry. The Committee is responsible for keeping the association's self-regulatory industry guidelines timely, specific, and meaningful in relation to technology and industry changes and The DMA's stated broad ethics objectives.

The Committee consists of 11 executives from DMA member firms, one of whom serves as liaison to the Board. New members are elected by the existing Committee members and approved by the Board.

In the past few years, the Committee devoted its efforts to several projects, for example:

- The Committee works with The DMA Privacy Task Force and consumer and regulatory officials influential in privacy issues toward developing a greater understanding of privacy as it relates to the use of information for marketing purposes. The comprehensive Fair Information Practices Manual was produced to assist marketers in developing and promoting name-removal options and list security practices. The Committee developed principles for online privacy and marketing to children, and interpretations which clarify The DMA's guidelines concerning personal information protection.

- The Committee continues to promote increased visibility with government agencies by engaging in cooperative efforts to educate both consumers and the industry in ethical business practices. For example, the Committee developed, with the U.S. Postal Inspection Service, consumer tips regarding sweepstakes advertising, and it continues joint efforts to educate industry members about preventing consumer fraud. The Committee also worked with the Federal Trade Commission to produce industry compliance guides and consumer education materials about the Mail or Telephone Order Merchandise Rule and other issues.

- The Ethics Policy Committee hosts twice-yearly "Dialogue" meetings with local and state consumer officials in selected cities throughout the country. Co-sponsored by the U.S. Office of Consumer Affairs, the Council of Better Business Bureaus, and the National Association of Consumer Agency Administrators, Dialogue meetings, which began in 1985, foster increased communication and visibility between consumer affairs representatives and direct marketing professionals. Educational projects and guidelines revisions often result from Dialogue discussions.

**The Direct Marketing Association**

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**Marketing**

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**Online**

**Privacy Principles  
and Guidance**



# MARKETING ONLINE

## PRIVACY PRINCIPLES AND GUIDANCE

*While The DMA's Guidelines apply to marketing in all media, the following principles and illustrations highlight issues unique to online and Internet marketing. They cover online notice and opt out, unsolicited marketing e-mail, and online data collection from or about children.*

### Online Notice and Opt Out

All marketers operating online sites, whether or not they collect personal information online from individuals, should make available their information practices to consumers in a prominent place. Marketers sharing personal information that is collected online should furnish individuals with an opportunity to prohibit the disclosure of such information.

#### The Online Notice

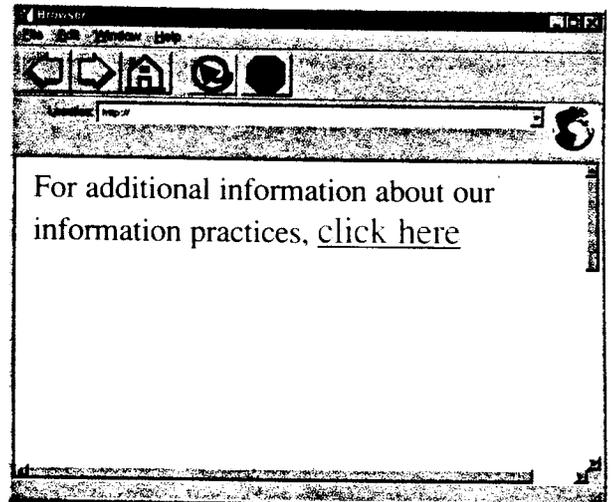
The notice should be easy to find, easy to read, and easy to understand.

- A marketer should post its notice so as to readily enable the consumer to learn about the marketer's information practices in a manner that permits a consumer effective choice over the collection and disclosure of personal information.

For example:

A marketer operating a World Wide Web site that collects personal information from individuals who visit it could post notice of its information practices on its home page or on the page where information is collected (e.g., survey questionnaire).

A marketer could provide an icon on its home page that, when clicked, will furnish the consumer with access to additional screens disclosing the marketer's information practices.



The notice should identify the marketer, disclose an e-mail and postal address at which it can be contacted, and state whether the marketer collects personal information online from individuals. If the marketer collects personal information online, the notice should contain disclosures about:

- The nature of personal information collected with respect to individual consumers.



Depending on the circumstances, information collected about a consumer may include:

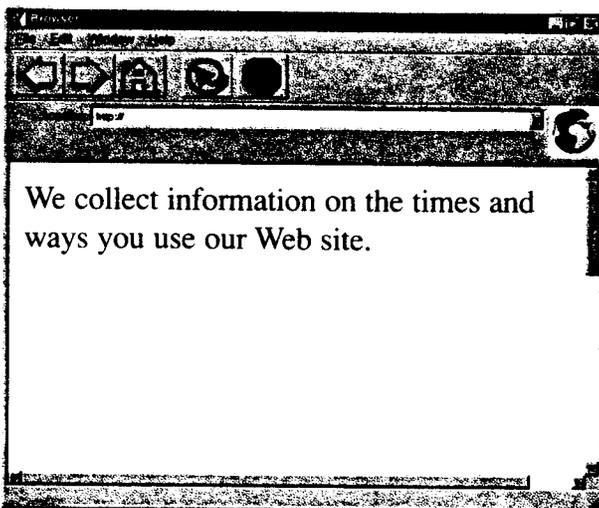
- contact or locator information (such as name, postal, and e-mail addresses),
- billing information (such as financial account and credit card number),
- transactional information (such as data on purchases a consumer makes),
- navigational information (such as data revealing consumers' preferences or the choices they make among the range of products, services, or sites, and the times of day they are made), and
- the content of correspondence or messages directed to a marketer.

For example, a marketer could include language such as:

"We keep the information you provide in responding to our questionnaire."

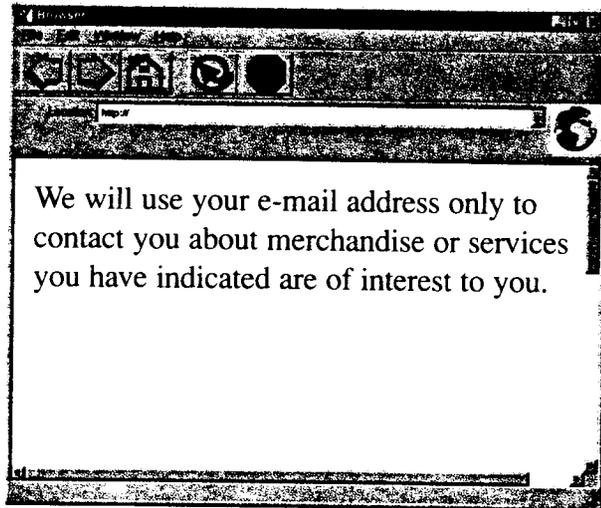
"We maintain your name, postal, and e-mail addresses, telephone number, and payment and order processing information. We also may keep information on your communications with our customer service representatives."

"We collect information on the times and ways you use our Web site."



- **The nature of uses of such information.**

The information may be used, for example, to ensure that a consumer is properly billed, for marketing by e-mail, or for evaluating and understanding consumer reactions to content, services, or merchandise offered online. It also may include using the consumer's name and address for marketing by mail or other media.



For example, a marketer could include language such as:

"We will use your e-mail address only to contact you about merchandise or services you have indicated are of interest to you."

"We use information for billing purposes and to measure consumer interest in our various services or pages."

- **The nature and purpose of disclosures of such information, and the types of persons to which disclosures may be made.**

This may include disclosure of names and postal and e-mail addresses to other merchants for marketing purposes or to

firms that conduct market research for the marketer, or disclosure of additional information for bill collection purposes.

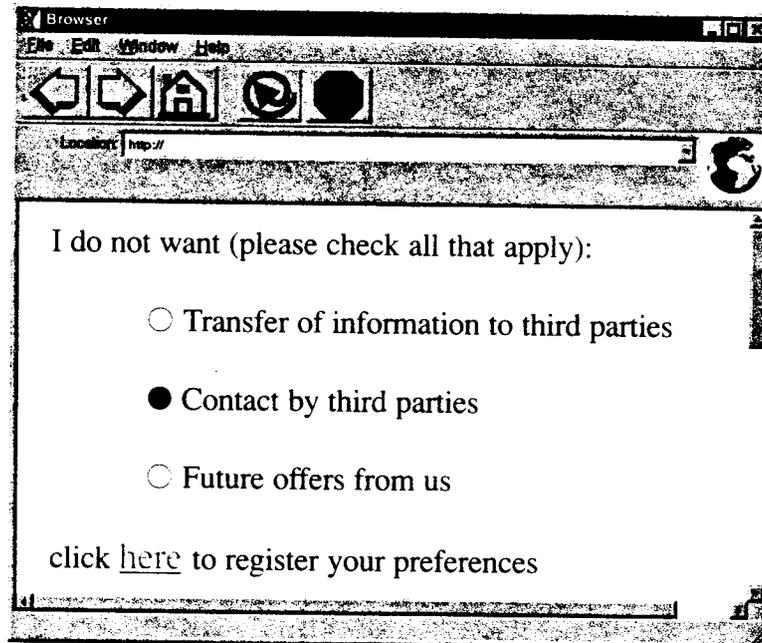
- **The mechanism by which the individual may limit the disclosure of such information.**

An opt out will traditionally be the means offered to consumers to limit the disclosure of information collected about them.

### **The Means of Opting Out**

**All marketers sharing personal information that is collected online should furnish consumers with the opportunity to opt out from the disclosure of such information. The notice and opt-out process should enable consumers to request that their personal information not be rented, sold, or exchanged.**

- Marketers' notices should clearly and accurately inform consumers of their opt-out choices (e.g., transfer of all information to third parties, contact by third parties in a particular medium, re-contact by the marketer, etc.)
- Marketers should suppress in a timely fashion the personal information of individuals who request that their personal information not be rented, sold, or exchanged.
- Whenever possible, marketers should provide consumers with the opportunity to opt out via e-mail.
- In opting out from lists used for online solicitation purposes, consumers may also seek to opt out from solicitations in other media, such as mail or telemarketing. Marketers should honor these consumer requests for opt outs from solicitations in other media.



**As an illustration, The DMA's present notice of its Web site practices and opt out is reprinted below. The DMA's notice is limited because the type of consumer information collected at the site is limited. If, for example, sales were transacted or a chat room were sponsored at the site, then the notice would require additional disclosures.**

## **The DMA Web Site Privacy Policy**

For years the The DMA has developed guidelines and programs to meet consumer privacy expectations through notice of its information practices to consumers and by offering consumers the ability to remove their names from marketing lists. As interactive media evolve, The DMA renews its commitment to notice and opt out in this new medium.

The DMA's Web site is maintained by the Direct Marketing Association, Inc., 1120 Avenue of the Americas, New York, NY 10036-6700. You can reach us by phone at 212 768-7277.

This site recognizes the home server of visitors, but not their e-mail addresses. Therefore, individually identifiable e-mail addresses are not captured or stored for future use, unless you provide them by posting a message to The DMA. Data on visitors' home servers are aggregated for internal review and then discarded.

Persons who communicate with The DMA, and therefore supply The DMA with an e-mail address will receive future communications from the Association by e-mail. Persons who do not wish to receive e-mail messages from The DMA may notify the membership department by e-mail ([dma@the-dma.org](mailto:dma@the-dma.org)). E-mail addresses will NOT be disclosed or sold to other parties.

Persons who request information about The DMA, its services or educational events, and who supply the Association with their name and postal address will be added to our database to receive future Association mailings related to Association programs and events.

The DMA occasionally makes the lists of postal addresses volunteered on its Web site available to other carefully screened associations or companies whose products or services you may find of interest. If you no longer wish to receive such mailings, please copy your mailing label exactly (or clip it out) and send your request to The DMA's membership department at the above address, or you may contact the Association by e-mail ([dma@the-dma.org](mailto:dma@the-dma.org)).

**To help marketers and other organizations create their own Privacy Policy Statements, consistent with The DMA's Marketing Online Privacy Principles, The DMA created a special section on its Web site. The site enables Webmasters and administrators to draft and post a privacy policy online, tailored to the specific practices of the company or organization. When marketers respond to several questions based on their site information policies, the resource tool automatically takes the answers and creates a privacy policy document, which can be edited and posted directly to a Web site. The address of The DMA's privacy policy tool is: (<http://www.the-dma.org/policy.html>).**

# Unsolicited Marketing E-Mail

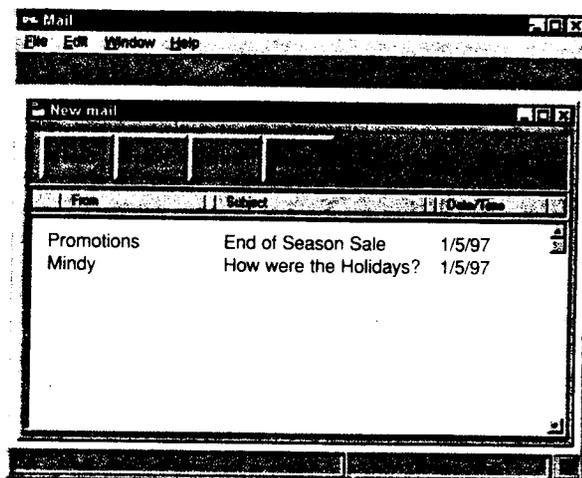
## 1. Online solicitations should be posted to newsgroups, bulletin boards, and chat rooms only when consistent with the forum's stated policies.

- To facilitate adherence to this principle, forum operators should publicize their policies regarding solicitations in their forums, for example, "We would like to send offers for valuable services and products that may be of interest to consumers."
- Marketers should inquire about the forum's policies before directing online e-mail solicitations to the forum.

## 2. Online e-mail solicitations should be clearly identified as solicitations and should disclose the marketer's identity. Marketers using e-mail should furnish consumers with whom they do not have an established business relationship with notice and a mechanism through which they can notify the marketer that they do not wish to receive future online solicitations. Marketers using e-mail should furnish consumers with whom they have an established business relationship with notice and a mechanism through which they can request that the marketer suppress their e-mail addresses from lists or databases rented, sold, or exchanged for online solicitation purposes.

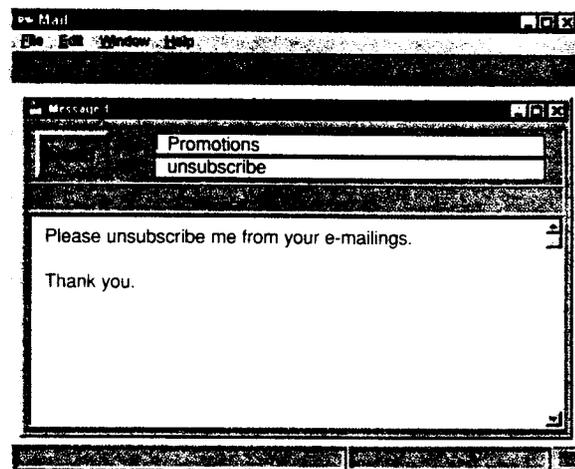
- Online solicitations should be identified in a way that allows recipients to readily recognize them as solicitations.

For example, a marketer should use clear language, such as "End-of-Season Sale," that ensures that—without reading more than the first paragraph—a consumer will recognize the e-mail message as a solicitation.



- Marketers should have systems in place that will honor consumer requests to not receive future online solicitations or, in the case of consumers with whom they have an established business relationship, to have their e-mail addresses removed from their lists or data bases that are made available for rental, sale, or exchange for online solicitation purposes.

For example, a marketer could say, "We value our relationship with you and if you wish to opt out of receiving further e-mail advertisements, let us know. To get on our opt-out list, all you have to do is send an "unsubscribe" message to ..."



- The identifying information in the solicitation should include the name of the marketer making the solicitation and an e-mail address, postal address, and telephone number at which it can be contacted.

For example, a marketer could say, "Here's how you can reach us ... (name, address, etc.)."

- Whenever possible, consumers should be provided with the opportunity to opt out via e-mail. Marketers should identify where consumers are invited to send such opt-out e-mail requests, particularly if the e-mail address is different than the one from which the marketing e-mail solicitation is sent.

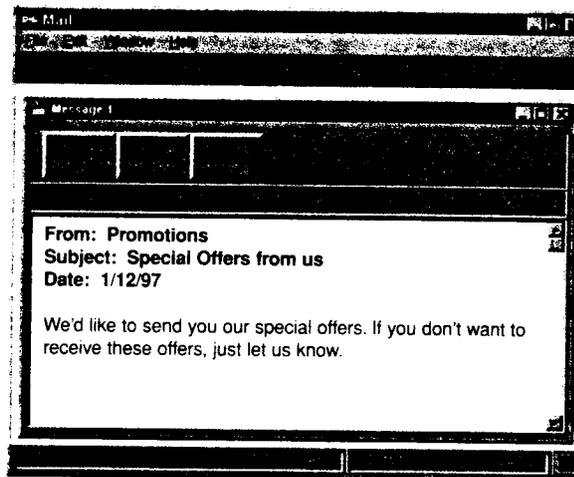
- Because of the unique characteristics of automated mailing lists (e.g., listservs), subscribers to such lists cannot individually opt out if the list manager permits online solicitations to be directed to its subscribers. This prevents a marketer from suppressing online solicitations to some subscribers of a listserv but not to others. Consequently, a marketer directing online solicitations to subscribers of an automated mailing list should honor the list manager's stated policies regarding online solicitations. To facilitate adherence to this principle, managers of automated mailing lists should identify themselves and make their policies known to marketers and their agents prior to a solicitation. Marketers should also ask about policies that affect them.

**3. Any person who uses for online solicitation purposes e-mail addresses or screen names collected from the online activities of individuals in public or private spaces should see to it that those individuals have been offered an opportunity to have this information suppressed.**

- Ideally, marketers using e-mail addresses and related information they have harvested should provide consumers with an opportunity

to opt out prior to using the information for online solicitations.

For example, a marketer could say, "We see that you frequent the ( ) site — we'd like to send you offers of (computer equipment). If you don't want to receive these offers, just let us know."



- When using lists of e-mail addresses harvested by others, marketers should ensure that consumers have already been offered an opportunity to have their e-mail addresses and related information removed. Marketers should contractually require the sellers of harvested lists to contain the e-mail addresses of only persons who did not respond to a notice and opportunity to opt out.

**4. Marketers who operate chat areas, newsgroups, and other public forums should inform individuals using these spaces that information they voluntarily disclose in these areas may result in unsolicited messages to those individuals by others.**

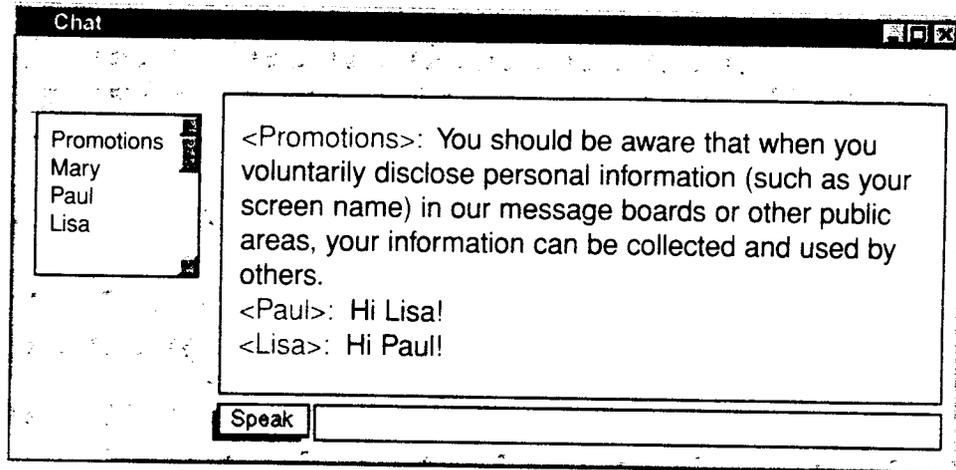
- For example, a marketer may inform visitors to a Web site with a message board that: "You should be aware that when you voluntarily disclose personal information (such as your screen name) in our message boards or other public areas, your information can be collected and used by others."

- Marketers should also support industry and other efforts to help educate consumers about ways to protect their privacy online.

**5. All persons involved in the use, rental, sale or exchange of lists and data for online solicitation purposes should take reasonable steps to ensure that such sharing of lists and data adheres**

**to these industry principles. Industry groups should take appropriate steps to encourage their members to follow these principles.**

- For example, marketers should incorporate these principles into their list rental contracts and should furnish these third parties with a copy of The DMA's Guidelines for Ethical Business Practice.

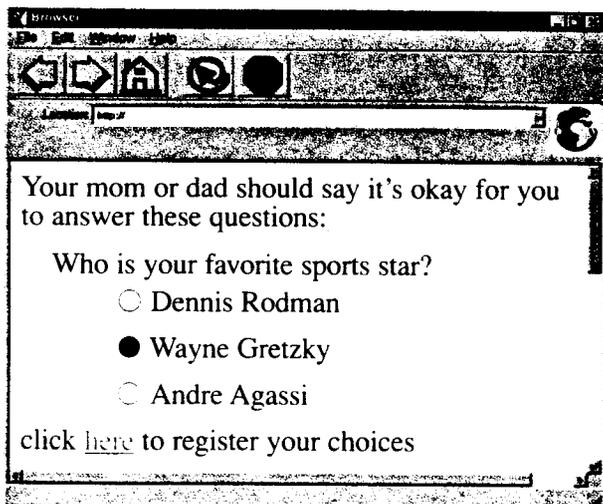


# Online Data Collection from or about Children

This section contains additional principles that apply to online activities that are directed primarily at children who, more so than adults, may not understand the nature of information elicited from them nor the uses to which the information may be put. Because of this difference in maturity, marketers operating online or Internet sites directed primarily at children should encourage parents to share in and monitor their children's online experiences.

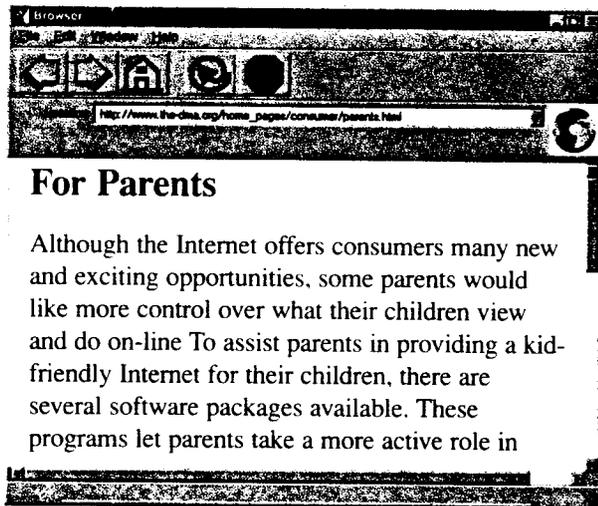
1. In making decisions whether to collect data from or communicate with children online, marketers should take into account the age, knowledge, sophistication, and maturity of their intended audience.

For example, marketers should encourage young children to obtain their parents' permission, using language such as "Your mom or dad should say it's okay for you to answer these questions."



2. Marketers should be sensitive to parents' concerns about the collection of their children's names, addresses, or other similar information, and should support the ability of parents to limit the collection of such data for marketing purposes through notice and opt out.

- Marketers should encourage children to consult with their parents before furnishing data.

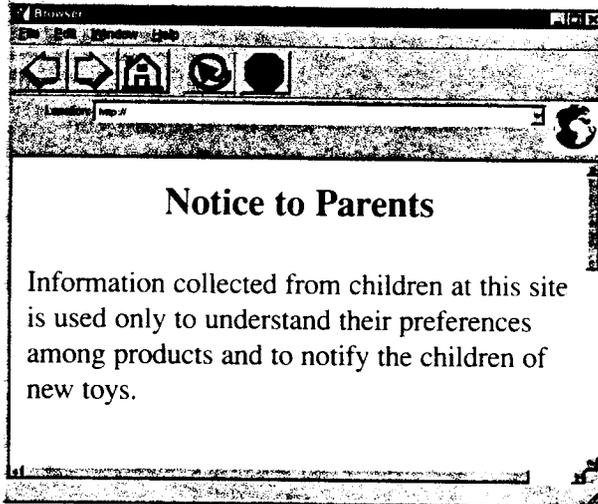


- Marketers should also support industry and other efforts to help educate parents about ways to protect their children's privacy online, including informing them about software tools and parental access controls that prevent their children from disclosing their name, address, or other personal information. The DMA's Web site, for example, hosts a special "For Parents" section on its "Consumer Assistance" page, which informs parents of the various software packages available for helping parents provide a kid-friendly Internet for their children. Marketers could hyperlink to this page.

**3. In conjunction with supporting the ability of parents to limit the collection of such data online, marketers should limit the use of data collected from children in the course of their online activities to the promotion, sale, and delivery of goods and services, the provision of all necessary customer services, the performance of market research, and other appropriate marketing activities.**

- For example, a toy manufacturer's disclosure to young children might state: "If you give us your e-mail address, we will tell you when new \_\_\_ arrive at the stores, but it's \_\_\_ important that you ask your parents if that's okay."
- The same toy manufacturer's disclosure to parents might say: "Information collected from children at this site is used only to understand their preferences among products and to notify the children of new toys."

**4. Marketers should also effectively explain that the information is being requested for marketing purposes.**



**5. Marketers should implement strict security measures to ensure against unauthorized access, alteration, or dissemination of the data collected online from children. [Marketers should consult Articles 7, 8, and 9 of the The DMA's Guidelines for Personal Information Protection for suggested measures that should be taken to ensure security. These articles lay out the guidelines direct marketers should follow for the security of personal data; for authorization of visitors to areas where personal data are processed and stored; and for secure transfer of data.]**

**For additional information contact:  
Ethics and Consumer Affairs Department  
Direct Marketing Association, Inc.  
1111 19th Street, N.W., Suite 1100  
Washington, DC 20036-3603  
tel: 202.955.5030  
e-mail: [consumer@the-dma.org](mailto:consumer@the-dma.org)**

Direct Marketing Association, Inc.

<http://www.the-dma.org>

HEADQUARTERS:

1120 Avenue of the Americas  
New York, NY 10036-6700  
212.768.7277

1111 19th Street, N.W., Suite 1100  
Washington, D.C. 20036-3606  
202.955.5030



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ELECTRONIC MESSAGING ASSOCIATION

March 31, 1998

Mr. Robert Pitofsky  
Chairman  
Federal Trade Commission  
6<sup>th</sup> Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580



**Re: Privacy Guidelines 1998-P954807  
Response to Request for Guidelines and Principles  
Regarding Online Information Practices**

The Electronic Messaging Association (“EMA”) welcomes the opportunity to participate in the Federal Trade Commission’s (“FTC” or “Commission”) exploration of the effectiveness of self-regulation as a means of protecting consumer privacy interests online.<sup>1</sup> EMA commends the Commission for seeking the input of the organizations and companies that depend on online communications and the Internet to accomplish their business goals and looks forward to continued cooperation between industry and government in formulating industry guidelines regarding online information practices.

**EMA’s Unique Perspective**

EMA is a trade organization that represents almost 500 corporate “users” and “providers” of electronic messaging and commerce. “User” members of EMA participate in a wide variety of electronic messaging and electronic commerce and represent a number of industries including the aerospace, finance, health care, and petroleum industries. “Provider” members offer a wide range of telecommunications and computing services including electronic mail, networks, directories, computer facsimile, electronic data interchange, paging, groupware, voice mail, software development, and mainframe and mini computer manufacturing.

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<sup>1</sup> EMA submits these comments in response to the Federal Trade Commission’s Request for Industry Guidelines that was published on March 5, 1998, in the Federal Register.

On behalf of its members, EMA promotes electronic messaging and electronic commerce services in three primary ways: first, EMA assists in the definition, endorsement, development, demonstration, and implementation of all messaging standards, related operating conventions, and practices for electronic messaging and electronic commerce; second, EMA serves as an advocate for public policies that are favorable to electronic messaging and electronic commerce development; and third, EMA develops and hosts programs that promote a greater understanding and appreciation for all electronic messaging and electronic commerce services and technologies.

EMA has been a long-time advocate for the development of industry privacy guidelines in cooperation with its members, other user and provider groups, and government. In developing policies, EMA has found itself to be in a unique position because its "user" and "provider" members typically fall on both sides of any privacy issue. Drawing on the experiences and knowledge of its diverse membership, EMA has found that industry self-regulation is the most effective way to ensure a proper balance between individual and industry interests, so that privacy interests are met without compromising the benefits of online technologies and services for consumers.

EMA hopes to develop model privacy principles for its members. As a first step in this process, privacy will be a topic at EMA's April 1998 Annual Meeting where EMA's staff and member-company representatives will join together to discuss industry issues. Later in its Government Affairs Committee, EMA will examine surveys regarding members' current privacy rules, develop positions on what privacy protections and disclosures should be included in new and updated privacy guidelines, and determine how EMA can best help its members develop privacy practices that achieve consumer protection.

This process will address what EMA currently considers the five most important issues in developing privacy guidelines: self-regulation, notice and opt-out provisions for consumers, special considerations regarding children, the use of privacy-enhancing technologies, and international concerns.

### **EMA's Development of Model Privacy Guidelines**

#### ***Self-Regulation Is Preferable to New Legislation or Regulation***

EMA believes that the Commission should allow companies and trade associations to develop privacy guidelines in lieu of mandated rules. Government regulation in this area is likely to be ineffective, given the ever-evolving nature of the computer marketplace. In fact, it could be counterproductive -- stifling the development of new technologies.

As has been demonstrated in past FTC hearings and workshops, the online community strongly supports privacy protection for various forms of personal information. Although the problem of protecting consumer privacy interests while conducting business online is challenging, EMA believes that industry has both the incentive and ability to meet this challenge. The online

industry has a history of creatively solving complex problems by rapidly assessing consumer demands and utilizing evolving technologies to meet these demands. Companies that fail to be responsive to consumer needs will not be able to remain competitive. EMA believes that the online industry will answer the call to protect consumer interests by using its knowledge of the online marketplace and harnessing the “creativity and innovation that have marked the development of interactive media to date.”<sup>2</sup>

The numerous efforts of various companies and trade organizations to develop privacy rules and guidelines, and educate the online community about privacy issues, demonstrate that industry is already headed in the right direction. The Direct Marketing Association, Interactive Services Association, Coalition for Advertising Supported Information & Entertainment, Information Industry Association, Ingenius, and others, have already developed self-regulation policy examples.<sup>3</sup> With the help of the Commission and privacy and consumer organizations, industry can build on these first efforts and create workable and effective standards for online information practices.

In addition to industry, the FTC will continue to play an important role in ensuring that consumers’ needs are met. Although “command and control” style privacy rules could never keep up with technological developments or adapt to the constantly evolving online marketplace as rapidly or efficiently as industry self-regulation, the Commission has, and should retain, the authority to intervene where online data collection is found to be fraudulent or deceptive. Online practices that violate the Federal Trade Commission Act and the FTC’s regulations should be investigated by the FTC, and parties should be sanctioned, where appropriate.

#### *Notice and Opt-Out Mechanisms for Consumers*

EMA believes that the cornerstones of any privacy policy are notice and opt-out provisions. Companies that collect information online should notify consumers of their activities and describe how they intend to use gathered information. Currently, all EMA members are encouraged to develop and use corporate email and computer system policies that notify employees if employers will monitor employee activities and use the information gathered through monitoring. Notice allows users to make individual choices about what email or computer activities they should undertake on the system. Similarly, EMA believes that consumers should be informed of online information collection practices and uses when conducting business or communicating online so that they can make informed choices about their online practices.

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<sup>2</sup> Staff Report, “Public Workshop on Consumer Privacy on the Global Information Infrastructure,” p. 27 (Dec. 1996).

<sup>3</sup> EMA recognizes these efforts as preliminary and does not necessarily support their provisions. As we discussed above, EMA’s positions on these and other proposals will be part of an ongoing initiative that will begin at our Annual Meeting in April.

In addition to providing notice, EMA supports the development of industry guidelines that incorporate an "opt-out" mechanism. Opt-out mechanisms enable personal information to be collected online and used, unless consumers specify otherwise. Opt-out mechanisms, when coupled with adequate notice, best enable consumers to make choices regarding their personal information, while at the same time allowing for the development and use of emerging technologies and services that benefit these consumers. As such, notice and opt-out mechanisms should be the method by which consumers are both informed of their rights and empowered to make choices regarding their personal information.

EMA believes, however, that the key to the success of notice and opt-out procedures is ensuring that consumers have been adequately informed of their rights and educated as to how to use the opt-out mechanisms. Accordingly, EMA supports the development of privacy guidelines that discuss ways in which such education will take place.

### *Special Considerations Regarding Children*

EMA also believes that industry should be particularly sensitive to the privacy interests of children and that the relevant industry should develop policies and guidelines that address specifically online information practices that affect children. EMA believes that guidelines should help ensure that parents are provided with the information that they need to protect their children. Industry guidelines should incorporate specific requirements for Web sites that are geared toward children. For instance, minors should be encouraged in language that is easily understandable to obtain parental approval before providing any personal information to a Web site geared to children. As discussed further below, EMA also supports the development and use of technology to protect children's privacy.

### *Technical Solutions*

EMA strongly supports the development and use of technology to provide privacy solutions. Existing technologies such as the Internet Profiles Corporation's ("I/PRO") I/CODE system and other anonymity enhancing systems enable consumers to make personal choices regarding whether their personal information can be collected online. Similarly, "cookie" technology has been adapted to store a consumer's privacy preferences for any given Web site on that consumer's hard drive, and the Platform for Internet Content Selection ("PICS") technology could be modified to help consumers assess a given Web site's privacy protection. These technological solutions demonstrate that industry is quite capable of meeting consumer demands for privacy, and EMA supports continued innovation in this area.

### *International Issues*

Industry guidelines must take into account the global nature of the Internet. As other nations begin to address online privacy, U.S. industry must take into consideration these

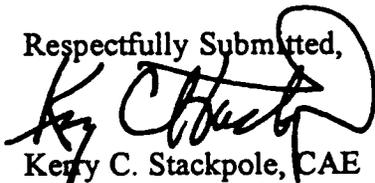
developments. For instance, the European Union's Personal Data Directive, 95/46/EC,<sup>4</sup> scheduled to come into effect in October 1998, requires that the United States have "adequate protection" in place before personal data may be exported from European Union member states to the U.S. Hong Kong has developed a similar law. New international laws and policies can provide guidance as U.S. industry formulates its own policies and, in some situations, may affirmatively shape the end result.

### Conclusion

Although the issues surrounding privacy and the online collection of data are complex, the online industry, through the cooperative efforts of EMA and other trade associations, consumer and privacy groups, and government, is poised and ready to answer the challenges. Indeed, industry has already demonstrated its ability to address privacy concerns by developing first-generation policies and technologies that provide workable solutions for both consumers and industry. EMA looks forward to contributing to the solution in the upcoming months as it seeks online information privacy guidelines, by capitalizing on its experience with electronic message privacy policies, that address the interests of consumers and industry alike.

If EMA can be of any assistance to the Commission or its staff as it strives to find effective ways to provide consumers with a reasonable expectation of privacy in their use of the Internet, please do not hesitate to contact me.

Respectfully Submitted,



Kerry C. Stackpole, CAE  
President & Chief Executive Officer  
Electronic Messaging Association

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<sup>4</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

# Individual Reference Services Group

FINAL — DECEMBER 15, 1997

## INDIVIDUAL REFERENCE SERVICES INDUSTRY PRINCIPLES



### PREAMBLE:

The following principles were developed by members of the individual reference services industry to respond, as an industry, to heightened interest in the industry's practices. The principles represent good practices that the undersigned companies agree to support as part of their operating practices. While it may take up to a year for some principles to be implemented fully, other principles are already part of the operating practices of the undersigned companies.

### SCOPE:

These principles apply to individual reference services, which are commercial services that directly or as suppliers to others provide information that assists users in identifying individuals, verifying identities and locating individuals for various purposes.

### DEFINITIONS:

- *Public Record Information:* Information about or related to an individual which has been obtained originally from the records of a federal, state, or local governmental entity that are open for public inspection.
- *Publicly Available Information:* Information about an individual that is available to the general public from non-governmental sources such as telephone directories, classified ads, newspaper reports, publications, or other forms of information.
- *Non-Public Information:* Information about an individual that is of a private nature and neither available to the general public nor obtained from a public record.
- *Appropriate or Appropriately:* Describes actions or uses that are reasonable under the circumstances reflecting a balance between the interests of individual privacy and legitimate business, governmental, and personal uses of information, including prevention and detection of fraud.

43 **PRINCIPLES:**

44

45 I. *Education*: Individual reference services shall individually and through their industry groups  
46 make reasonable efforts to educate users and the public about privacy issues associated with their  
47 services, the types of services they offer, these principles, and the benefits of the responsible flow  
48 of information.

49

50 II. *Reputable Sources*: Individually identifiable information shall be acquired from only sources  
51 known as reputable in the government and private sectors.

52

53 A. Reasonable measures shall be employed to understand an information source's data  
54 collection practices and policies before accepting information from that source.

55

56 B. Individually identifiable information that is collected for marketing purposes shall not  
57 knowingly be purchased, sold or retained for creating or inclusion in individual  
58 reference services, unless it is PUBLIC RECORD INFORMATION or PUBLICLY AVAILABLE  
59 INFORMATION; its use is specifically permitted by law; or it is collected with notice to  
60 the individual that such information will be used for inclusion in individual reference  
61 service products.

62

63 III. *Accuracy*: Reasonable steps shall be taken to help assure the accuracy of the information in  
64 individual reference services. The goal of individual reference service products is to furnish  
65 customers with accurate reproductions of information.

66

67 A. When contacted by an individual concerning an alleged inaccuracy about that  
68 individual, the individual reference service, as APPROPRIATE, shall either correct any  
69 inaccuracy or inform the individual of the source of the information and, if reasonably  
70 available, where a request for correction may be directed.

71

72 B. The individual reference service's commitment to furnish users with reasonably  
73 accurate reproduction of information in PUBLIC RECORD INFORMATION systems does not  
74 permit alteration of the substantive content of PUBLIC RECORD INFORMATION products or  
75 services.

76

77 IV. *Public Record and Publicly Available Information*: PUBLIC RECORD INFORMATION and  
78 PUBLICLY AVAILABLE INFORMATION shall be usable without restriction unless legally prohibited.

79

80 V. *Distribution of Non-Public Information*: Except as provided in section IX, NON-PUBLIC  
81 INFORMATION will be distributed only according to the criteria set forth below. The nature of  
82 NON-PUBLIC INFORMATION being requested and the intended uses of such information shall  
83 determine the level of review of the subscriber. Companies who supply information covered by  
84 this section to individual reference services shall provide such information only to individual  
85 reference services that adopt or comply with these principles.

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A. *Selective and Limited Distribution of Non-Public Information:* Individual reference services may distribute NON-PUBLIC INFORMATION without restriction of its contents only to qualified subscribers.

1. Qualified subscribers for the selective and limited distribution of NON-PUBLIC INFORMATION must satisfy the following conditions:

- a. The subscribers must state their APPROPRIATE uses for such information.
- b. The subscribers must agree to limit their use and redissemination of such information to such APPROPRIATE uses.
- c. The subscribers shall be reasonably identified and meet qualification requirements that establish them as APPROPRIATE users of the information and agree to terms and conditions consistent with these principles prior to accessing the information.

2. Each individual reference service shall take reasonable steps to protect against misuse of NON-PUBLIC INFORMATION distributed pursuant to this subsection which will include:

- a. Each individual reference service shall make available upon request an explanation of what uses of its information are APPROPRIATE and to which types of qualified subscribers such information is available.
- b. Individual reference services shall conduct a reasonable review of the subscriber and its intended uses of the information prior to making NON-PUBLIC INFORMATION available to the subscriber.
- c. Individual reference services shall maintain a record of the identity of subscribers, the types of uses, and the terms and conditions agreed to by the subscriber for three years after termination of each subscriber's relationship with the individual reference service.
- d. Reasonable measures shall be employed to help assure that qualified subscribers use NON-PUBLIC INFORMATION APPROPRIATELY.
- e. Individual reference services shall implement reasonable mechanisms to remedy subscriber abuses of the information.

B. *Commercial and Professional Distribution of Non-Public Information:* Individual reference services, when they limit the NON-PUBLIC INFORMATION content of their

129 products or services as set forth below, may distribute such products or services only to  
130 established professional and commercial users who use the information in the normal  
131 course and scope of their business or profession and the use is APPROPRIATE for such  
132 activities.

133  
134 1. NON-PUBLIC INFORMATION products or services distributed pursuant to this  
135 subsection shall not include:

136  
137 a. Information that reflects credit history, financial history, medical  
138 records, mother's maiden name identified as such, or similar  
139 information;

140  
141 b. Certain information like social security number and birth information  
142 unless truncated in an APPROPRIATE and industry consistent manner.

143  
144 2. Users shall agree to terms and conditions consistent with these principles prior  
145 to accessing the NON-PUBLIC INFORMATION, shall agree to use such information  
146 solely in the normal course and scope of their business or profession and that the  
147 use is APPROPRIATE for such activities and that they shall limit their use and  
148 dissemination of such information to such uses and in accordance with these  
149 principles.

150  
151 3. Individual reference services shall take reasonable steps to protect against  
152 misuse of the NON-PUBLIC INFORMATION distributed pursuant to this subsection  
153 which will include:

154  
155 a. If not previously established, the individual reference service shall take  
156 reasonable steps to identify the user and to establish the user as an  
157 established professional or commercial entity.

158  
159 b. Reasonable measures shall be employed to help assure that commercial  
160 and professional customers use NON-PUBLIC INFORMATION  
161 APPROPRIATELY.

162  
163 c. Individual reference services shall implement reasonable mechanisms to  
164 remedy subscriber abuses of the information.

165  
166 d. Individual reference services shall maintain a record of the identity of  
167 subscribers and the terms and conditions agreed to by the subscriber for  
168 three years after termination of each subscriber's relationship with the  
169 individual reference service.  
170

171 C. *General Distribution of Non-Public Information:* Individual reference services, when  
172 they limit the NON-PUBLIC INFORMATION content of their products or services as set  
173 forth in this subparagraph, may distribute such products or services to any person.  
174

175 1. NON-PUBLIC INFORMATION distributed pursuant to this subparagraph shall not  
176 knowingly include information that reflects social security number, mother's  
177 maiden name identified as such, non-published telephone number, or non-  
178 published address information obtained from telephone companies, birth  
179 information, credit history, financial history, medical records, or similar  
180 information, nor will the service be retrievable by a social security number.  
181

182 2. The individual reference service shall take reasonable steps to protect against  
183 the misuse of NON-PUBLIC INFORMATION.  
184

185 VI. *Security:* Individual reference services shall maintain facilities and systems to protect  
186 information from unauthorized access and persons who may exceed their authorization. In  
187 addition to physical and electronic security, individual reference services shall reasonably  
188 implement:  
189

190 A. Employee and contractor supervision—Employees and contractors shall be required to  
191 sign confidentiality agreements and be subject to supervision.  
192

193 B. Reviews—System reviews shall be made at APPROPRIATE intervals to assure that  
194 employees are complying with policies.  
195

196 VII. *Openness:* Each individual reference service shall have an information practices policy  
197 statement that describes what types of information it has, from what types of sources, how it is  
198 collected, the type of entities to whom it may be disclosed and the type of uses to which it is put,  
199 and shall make its policy statement available upon request. Consumers shall be notified about  
200 these practices in various ways such as:  
201

202 1. Web sites;  
203

204 2. Advertisements; or  
205

206 3. Company or industry-initiated educational efforts.  
207

208 VIII. *Choice:* Each individual reference service shall upon request inform individuals of the  
209 choices, if any, available to limit access or use of information about them in its data base,  
210 provided, however, that in the case of NON-PUBLIC INFORMATION distributed to the general  
211 public (section V.C of these principles), an individual reference service shall provide an  
212 opportunity for an individual to limit the general public's access or use of such NON-PUBLIC  
213 INFORMATION.

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IX. *Access:* Upon request and reasonable terms, an individual reference service shall:

- A. Inform an individual about the nature of PUBLIC RECORD and PUBLICLY AVAILABLE INFORMATION that it makes available in its products and services and the sources of such information;
- B. Provide individuals with NON-PUBLIC INFORMATION contained in products and services that specifically identifies them and that are distributed as part of an individual reference service to users under section V. of these Principles unless the information was obtained on a limited use basis from a governmental agency or if its disclosure is limited by law or legally recognized privilege; and
- C. Direct individuals to a consumer reporting agency regulated by the Fair Credit Reporting Act where such agency is the source of the information about the individual.

X. *Children:* Where an individual is identified in the product or service as being under the age of 18, no NON-PUBLIC INFORMATION about that individual shall be provided for other than selective and limited distribution purposes or for the purposes of locating missing children.

XI. *Assurance of Compliance:* The signers of these principles shall have completed within 15 months of the effective date of these principles, and on a periodic basis thereafter, at least once every year, an assurance review done by a reasonably qualified independent professional service. The independent professional service shall apply assurance criteria consistent with these principles and approved by the signers as a group. Individual referenceservices shall have a reasonable opportunity to respond to any concerns expressed in such assurance review. A summary reflecting both the report and any subsequent actions taken or response made by the company shall be publicly available.

243 **PLEDGE:**

244

245 The undersigned companies pledge to introduce and follow the above industry principles at the  
246 earliest practicable opportunity or by December 31, 1998, whichever is sooner.

247

248

Acxiom Corporation

249

CDB Infotek, a ChoicePoint Company

250

DCS Information Systems

251

Database Technologies, Inc.

252

Equifax Credit Information Services, Inc.

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Experian

254

First Data Solutions Inc.

255

Information America, Inc.

256

IRSC, Inc.

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LEXIS-NEXIS

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Metromail Corporation

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National Fraud Center

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Online Professional Electronic Network

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Trans Union Corporation

## Interactive Services Association

### Principles on Notice and Choice Procedures for Online Information Collection and Distribution by Online Operators

For purposes of these guidelines, the definition of Online Operators ("online operators") is anyone operating a worldwide web site for commercial or non-commercial purposes, including entities offering products and services for sale. All online operators whether or not they collect personal information online from individuals, should inform consumers about their information practices in a prominent place. Online operators sharing personal information that is collected online should furnish individuals with an opportunity to prohibit the disclosure of such information to third parties for commercial purposes.

#### The Elements of the Notice

An online operators' notice of their information practices should be easy to find, easy to read, and easy to understand. It should identify the online operator, disclose an e-mail and postal address at which the online operator can be contacted, and state whether and through what mechanisms the online operator collects personal information online from individuals. In particular, if the online operator collects personal information online, the notice should contain disclosures about:

- 1) The nature of personal information collected with respect to individual consumers.

Personal information is that which can identify an individual personally. Personal information includes items such as a person's name, street address, phone number, social security number and other similar data. In addition, in the online environment, personal information can include an e-mail address, that enables an online operator to contact an individual even if that e-mail address bears no relation to a person's actual name. Information is not considered personal if it is collected, used and/or disclosed in the aggregate. All online operators' notices should contain a clear explanation of the types of personal information collected online.

- 2) The manner in which such information is collected and nature of the uses of such information.

In addition to the types of information collected, online operators should make clear how personal information is collected. For example, disclosure should be made as to whether the information is collected automatically or affirmatively.

The online operator should also disclose in general terms, the intended uses of the personal information collected. Uses of such information might include, for example: system administration, research and product development, online site customization, direct marketing and completion of individual transactions

- 3) The nature and purposes of disclosures of such information and the types of persons to whom disclosures may be made.

Online operators should also disclose the nature and purposes of such disclosure and types of persons to whom being disclosed. For example, such disclosures may be made to other commercial entities for marketing purposes. The online operator should also describe any practices it engages in to ensure that the recipients of such personal information use the information in agreed upon ways.

- 4) The mechanism by which the individual may limit the disclosure of such information.

An online operator should clearly describe its information disclosure policies, offering consumers an easy-to-use mechanism to ask that personal information not be disclosed to third parties.

#### Means of Exercising Choice

All online operators that disclose for commercial purpose personal information, should furnish consumers with the opportunity to request that their personal information not be rented, sold, or exchanged, and all such online operators should suppress, in a timely fashion, the personal information of individuals who have made such requests.

Where personal information has been collected online from consumers, online operators choice mechanism should include a way for consumers to exercise their choices via electronic means.

## Interactive Services Association

### Principles on Notice and Choice Procedures for Online Information Collection and Distribution by Internet and Online Service Providers

Internet and Online Service Providers maintain unique relationships with their subscribers. They may offer members the opportunity to communicate privately or publicly with others online, as well as provide members with direct services that can often involve information regarding certain goods and services. The ease of collection of personal information online and the seamless nature of the online experience make it critical that consumers are made aware of information collection, use and disclosure policies of Internet and Online Service Providers.

- 1) **Internet and Online Service Providers should act responsibly with the personal information they collect about their subscribers.**

Internet and Online Service Providers collect information in order to provide subscribers with online accounts, including name, address, telephone numbers and credit card information. Such Providers are uniquely positioned to provide the best possible member online experience by collecting data about the subscriber's online activities and using it thoughtfully to evaluate the services' offerings and make improvements based on aggregate member usage rates.

Given the information collected by Internet and Online Service Providers, each must be responsible for the personal information under its control and should strive to ensure its accuracy and to provide appropriate access and the opportunity to correct.

- 2) **Internet and Online Service Providers should provide subscribers to their services with an easy to find, easy to read, and easy to understand notice of their information collection, use and disclosure policies:**

- The notice should indicate the nature of the personal information collected and whether such information is collected automatically, such as navigational or transactional information, or upon affirmative request from or disclosure by the consumer.
- The notice should indicate the nature of the uses of personal information. For example, the Online Service Provider should state whether transactional or navigational information is used by the online service for individually targeted marketing purposes or in an aggregate form, for internal programming and research.
- Each Internet and Online Service Provider should also clearly disclose whether any personal information about individual users is sold, rented or

otherwise disclosed to third parties, and the circumstances under which such disclosures are made.

- 3) Internet and Online Service Providers that disclose personal information about subscribers to third parties, should furnish subscribers with means for exercising choice about such disclosures.<sup>11</sup>
- 4) Internet and Online Service Providers should not, (except where required by law or to protect property, or when it is believed to be necessary for health or safety reasons), disclose to third parties any information that could connect the online identity (or screen name) of a subscriber to that subscriber's true identity, without subscriber permission.

Internet and Online Service Providers should offer all subscribers a mechanism through which the subscriber can choose whether personal information can be disclosed to third parties.

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<sup>11</sup> A means of giving consumers a mechanism for exercising choice may involve notice of a service provider's information practices before a subscriber signs up for service, thereby giving consumers the opportunity to sue another Internet or online service if they so choose.

Interactive Services Association

Statement on Children's Marketing Issues

The online medium has a tremendous potential for engaging the imagination of children and has opened up a veritable world of information and education resources to them. Children of all ages have found the computer and the variety of products and services available online to be engaging, informational, amusing, fun and educational.

The ISA believes that the variety of groups that work with children, including , parents, educators, the Internet and Online industry, and government, should work together to help build an online community environment that will nurture children and allow them to have a positive experience online as the medium continues to grow and expand and delight users.

- 1) Marketers operating online or Internet sites for children should be familiar with the 1997 advertising guidelines of the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus.
- 2) In making decisions whether to collect data from or communicate with children, online operators operating sites or Internet sites directed primarily at children should:
  - Take into account the age, knowledge, sophistication, and maturity of their intended audience.
  - Be sensitive to parents' concerns about the collection of personal information from their children including names, addresses and other similar information about them or their children and support for the ability of parents to limit the collection of such data.
  - Encourage and notify parents and/or responsible adults about the availability of current technology and software tools available allowing parents to control what information their children can share online.
  - Encourage parents and/or responsible adults to take advantage of available software tools and parental access controls, as available, to restrict their children's access to particular sites.
  - Recognize the sensitivity of information about children and limit the use of data collected from children in the course of their online activities, in conjunction with support for the ability of parents and/or responsible adult to limit the collection of such data.
  - Implement strict security measures to ensure against unauthorized access, alteration, or dissemination of the data.

- Encourage parents and/or responsible adults to share in and monitor their children's online experiences.
- Explain clearly to parents and/or responsible adults that the information being requested is for marketing purposes.

While the ISA believes online operators ought to be responsible for notifying viewers how they may be collecting and using any information they gather, the ISA believes that parents can also play an important role. As with all of their children's activities, parents should take an active role in how their children interact online and monitor their children's usage of the Internet and online services.

It is important to note that unlike television where a child may be exposed to advertising messages simply by turning a dial, the online and Internet medium generally requires a password for access as well as interaction in the form of decision-making and typing or clicking a mouse. The decision to give a password to a child is the parent's first opportunity to shape and share in the child's online experience.

Parents, educators and others who work regularly with children are encouraged to educate themselves about the Internet and to work with children to help them learn how to distinguish between "commercial" content and other forms of content on the Internet.

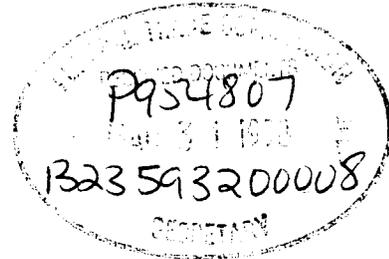
Together, we can all work to develop and follow guidelines for online marketing to children, in an effort to safeguard our children and help ensure their online experience is an enriching and enjoyable one.



**DONALD D. KUMMERFELD**  
President  
(212)872-3710  
FAX 223-6375

March 31, 1998

Mr. Donald Clark  
Secretary  
Federal Trade Commission  
Room H-159  
Sixth Street & Pennsylvania Ave., N.W.  
Washington, D.C. 20580



Re: Privacy Guidelines 1998 - P954807

Dear Mr. Clark:

The Magazine Publishers of America (MPA) is pleased to respond to the Federal Trade Commission (FTC) Notice requesting industry guidelines and principles regarding online information practices. We share your interest in promoting an online environment that protects the privacy and security of consumers' personal information. As expressed by many in the online industry during your 1996 and 1997 privacy workshops and as we stated in our 1997 comments on the Administration's Framework for Global Electronic Commerce, we advocate the development of self-regulatory approaches to privacy protection online.

MPA's membership includes approximately 200 consumer magazine publishing companies in the United States, publishing over 800 magazines. Our membership also includes over 50 international magazine companies. Our member magazines range from well-known, nationally distributed publications such as Time, The Reader's Digest, and National Geographic to smaller-circulation and local publications such as Harvard Business Review, The Net and Milwaukee magazines. Many of our members are involved in new media magazine endeavors in addition to their traditional print offerings.

MPA has a long-standing interest in promoting business practices that are respectful of our subscribers and readers. For many years, we have recommended the Direct Marketing Association's (DMA) Guidelines for Ethical Business Practices to our members as an appropriate way to enhance customer relations. We have kept our members apprised as DMA developed additional publications dealing with specific marketing practices, such as Guidelines for Marketing by Telephone and Guidelines for Mailing List Practices. After DMA published its online self-regulatory guidelines, Privacy Principles and Guidance for

Marketing Online at the end of 1996, in May of 1997, we provided copies of that publication and DMA's Guidelines for Personal Information Protection to all our members.

In our transmittal memorandum, we suggested that our members take note of the DMA's recommendations on online Notice and Opt Out and that members with online sites that cater to children pay particular attention to the guidance on parents sharing in their children's online experiences. We expressed to our members our support for the efforts of DMA and others in the industry to develop effective self-regulatory approaches that appropriately balance consumer protection and market development needs.

Our member education efforts continued and expanded early this year. In January, we wrote to our Board of Directors, members of our New Media Committee, and our general membership informing them of the FTC's continuing review of industry's self-regulatory efforts and reiterating the importance for MPA member companies of developing and posting privacy policies on their Web sites. To help our members develop privacy policies, we provided information on the DMA privacy policy creation tool, as well as information on privacy policies developed by Time Warner and The McGraw-Hill Companies, two MPA member companies.

As our members developed and reviewed their online privacy policies, we urged them to keep in mind the following three key elements extracted from the DMA Guidelines :

1. **All Web sites should have a posted statement about information practices.** This statement should be easily accessible, for example, on a screen linked to the Web site's home page, or posted directly on the page where information is collected. The statement should indicate whether the company collects personal information online. If it does, the statement should identify the type of personal information collected and describe how and by whom such information may be used.
2. **All Web sites should offer consumers an opportunity to restrict use or disclosure of personal information by "opting out."** Consumers should be able to request that their personal information not be rented, sold, or exchanged, or that they not receive any future solicitations from the company.
3. **In addition to the privacy notice and opt-out that should be part of every Web site, sites directed primarily at children should also contain a statement explaining that information may be collected for marketing purposes and encouraging children to consult with their parents before furnishing information.**

Subsequent to sending this information to our members, we made follow-up phone calls to members of the Board of Directors and a number of other MPA members to offer assistance in developing or posting privacy policies. To further help our membership in this endeavor, in March we were one of four associations cosponsoring a multi-industry forum with The McGraw-Hill Companies on customer privacy on the Web. The

informative and useful meeting, which brought together magazine companies, book publishers, and information companies, included an overview of industry self-regulation policies and several company case studies in privacy policy development. The day-long session also included workshops where companies could learn how to develop and implement a workable online privacy policy.

MPA remains committed to educating our members regarding online privacy protection issues and providing assistance to our members as they develop and upgrade their online information practices. We continue to believe that the DMA's Privacy Principles and Guidance for Marketing Online provide a sound basis for industry self-regulatory efforts.

MPA is also participating in the information content subgroup working with the Department of Commerce to implement self-regulatory policies for privacy protection and intends to attend upcoming workshops dealing with NTIA's Discussion Draft of Elements of Effective Self-Regulation for Protection of Privacy. We hope that both government and industry recognize that developing effective self-regulatory policies is an ongoing process that will evolve as we gain experience with consumer reaction to posted information policies. We look forward to working with the FTC and other government agencies in successfully implementing self-regulation that balances consumer protection and market development needs.

Sincerely,



Donald D. Kummerfeld  
President

cc:

Martha Landesberg  
Attorney  
Division of Credit Practices

Toby Milgrom Levin  
Attorney  
Division of Advertising Practices

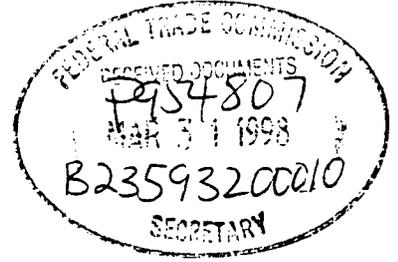


NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS

P.O. Box 3769 • WASHINGTON, DC • 20007-0269  
(703) 522-4770 • (800) 336-4644 • FAX (703) 524-1082

ORIGINAL

March 31, 1998



Secretary  
Federal Trade Commission  
Room H-159  
Sixth Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Privacy Guidelines 1998 - P954807

Dear Secretary:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the nation's federally chartered credit unions, I appreciate this opportunity to share the Internet privacy guidelines we recommend that our members adopt.

Credit unions recognize that financial institutions and other commercial organizations should post their consumer privacy policies on their web sites to assuage consumer concerns about misuse of information. Protecting members' privacy is an important principle for federal credit unions. In fact, the standard bylaws for federal credit unions require that the officers, directors, committee members and employees of the credit union hold the transactions between the credit union and its members, as well as information about members' personal affairs, in confidence. However, NAFCU does recommend that its members post privacy policies on their web sites.

Again, thank you for this opportunity to share our recommended Internet privacy policy. Please do not hesitate to contact me or Dea Whayland-Daly, NAFCU's Associate Director of Agency Relations, if you have any questions or require additional information.

Sincerely,

Kenneth L. Robinson  
President

Enclosures

KLR/DWD/nh



**NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS**

**P.O. Box 3769 • WASHINGTON, DC • 20007-0269  
(703) 522-4770 • (800) 336-4644 • FAX (703) 524-1082**

### **Recommended Privacy Policy**

Our credit union is committed to keeping information about members, their accounts, and their transactions confidential, as required by state and federal laws and Article XIX, § 2 of our bylaws. On occasion, we release information about our members if such release is necessary to serve our members. For example, we release information to consumer reporting agencies so that we can use consumer reports in evaluating loan applications. We do not collect or maintain information about our members that is not essential for prudent business purposes. Our web site includes security measures to prevent unauthorized access.



# Consumer Privacy and Smart Cards — A Challenge and an Opportunity

Prepared by the  
Legal & Public Policy Committee — Smart Card Forum

Released May, 1997

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# **Consumer Privacy and Smart Cards — A Challenge and an Opportunity**

## **Introduction**

The Smart Card Forum was created in 1993 to promote the widespread acceptance of smart card technology in North America. Central to the Forum's mission are: (i) providing education in the marketplace about the benefits of smart card technology, (ii) helping its members identify viable business propositions and (iii) providing policymakers with the information they need to develop sound public policy positions on relevant issues. The issue of consumer privacy brings all of these elements into sharp focus. Indeed, in the arenas of consumer acceptance and policy development, no issue is more visible or perhaps more important than privacy. As a result, smart card business propositions will only be successful if consumers, policymakers and Forum members understand the role this technology can play in protecting privacy while efficiently and securely delivering services and benefits.

### **I. Privacy In The Consumer Context**

While privacy has many meanings, privacy in the consumer context is commonly defined as the consumer's interest in knowing how personal information will be used by a business or government agency, the benefits which will accrue to the consumer for such use and how the consumer can choose to limit or prevent that use. Smart card technology, if properly designed and implemented, can enhance both the fact and the perception of the consumer's ability to exercise a much greater degree of control over personal information than is the case with any comparable delivery system. The Smart Card Forum strongly believes that an understanding of the benefits that can be provided and how privacy can be protected by smart card technology will lead to greater consumer acceptance and a healthier business environment for the development of this technology.

The following discussion of issues, educational opportunities and suggested business

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practices is intended as a guide for our members. It is based on the simple premise that consumer oriented design and implementation of this technology, coupled with education of consumers and policymakers, make good business sense.

## II. Consumer Issues And Educational Opportunities

- ✍ **The consumer should be educated about what a smart card is.** A brief description of how smart cards work may be helpful in dealing with consumers. The following may be useful general information in doing that. There are two basic kinds of smart cards. An “intelligent smart card” contains a microprocessor that actually stores and secures information and “makes decisions” as required by the card issuer's specific application needs. New information can be added to these cards and processed by the microprocessing unit. Monetary value, for example, can be added or debited as required. The second type of card is better described as a memory card. These cards are primarily information storage cards that contain stored value which the consumer can “spend” in a pay phone, retail, vending or related transaction. Many of today's prepaid telephone cards are memory cards. In both types of cards, the integrated circuit chip allows the stored information to be protected from damage or theft. As the storage capacity of cards increases and their costs decline, smart cards will have enhanced processing and other capabilities, making them the equivalent of portable computers, the “computer in the pocket.”
- ✍ **The smart card can be a consumer empowerment tool.** Smart cards in general can provide consumers with a high degree of information control. The smart card microprocessor chip functions much like a miniature computer. To a greater extent than possible through other technologies, the consumer can play a role in determining what information, or value, is placed on that chip and deciding who receives access to it and when. In the future, the microprocessor chip will provide the consumer with a much broader array of choices with respect to applications placed on a card. It is important that consumers understand the large role they can play in choosing applications and managing the disclosure of personal information to issuers of the cards, merchants and other third parties.
- ✍ **Smart card technology is not a product but an efficient and secure delivery system for consumer products and services.** Smart card technology is an enabling tool which provides access to products, services or value. Current industry regulations and privacy safeguards will continue to apply to the services, products or

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value being accessed or the business transactions being conducted by use of this technology. However, as this is a new technology for consumers, there is a real need for industry members to ensure that its applications are responsibly implemented.

Industry self-regulation and prompt and clear responses to consumer questions will go a long way toward demystifying the technology and ensuring consumer acceptance of its various applications.

- ✎ **The security provided by smart card technology is unequalled in the context of broad-based consumer access devices for services, products and value.** While security issues will always pose challenges to any technology, it is imperative for the smart card industry to effectively communicate to consumers the very high level of security and protection provided by smart card technology. No broad-based system is ever totally secure. However, successful unauthorized attempts to access or alter data in a smart card system are unlikely because of the prohibitive cost of those efforts. In addition, the technology can support various forms of cardholder identification including identification (such as PINS and biometrics) that can be verified on the card itself.
  
- ✎ **Smart card technology permits higher levels of protection over consumer information.** Not only can smart card technology be designed to allow consumers to determine who receives access to sensitive or confidential data, the technology can also be designed to securely compartmentalize information storage so that access to one application on a multi-application card will not allow access to other applications which may exist on the same card. In fact, the greatly increased levels of security possible in smart card designs should remove consumer concerns that access to a financial function, for example, could provide access to a health care function. This technical capacity to securely segregate functions on the card itself can be supplemented by ensuring that the device which reads the card is programmed only to perform the particular function being used. Depending on the application and the level of privacy protection appropriate for that application, the consumer will be able to further protect data on the card by personal passwords or PINs unique to each compartmentalized application.

### III. Suggested Business Practices

- ✎ **Members of the Smart Card Forum are encouraged to adopt consumer privacy principles and make them known to their customers.** The strength of the Smart Card Forum is the diversity and breadth of its membership. Some of its members are in regulated industries, others are not. Some of its members have adopted a code of responsible information practices, consumer privacy principles or similar guidelines,

others have not. THE SMART CARD FORUM STRONGLY ENCOURAGES RESPONSIBLE CONSUMER PRACTICES BY SMART CARD APPLICATION PROVIDERS AND ENDORSES INDUSTRY SELF-REGULATION. THE FORUM ENCOURAGES ITS MEMBERS TO INCORPORATE INTO SMART CARD APPLICATION DESIGNS THE CONSUMER PRIVACY PROTECTIONS AND CHOICES THIS TECHNOLOGY PERMITS AND TO ADOPT A CODE OF RESPONSIBLE INFORMATION PRACTICES OR SIMILAR POLICIES COVERING THE USE OF CONSUMER DATA THAT MAY BE OBTAINED THROUGH THESE APPLICATIONS. Because of the diverse membership of the Smart Card Forum, it is not possible for the Forum to provide a guide for all represented industries. However, the Forum has attached a Guide to Responsible Consumer Information Practices as a suggested framework around which each member should develop a policy which takes into account the realities of the industry that member represents. The guiding principle should be to give the consumer a comfortable and reasonable level of knowledge and control over personal information used to achieve the economic or other benefit the member provides.

**The Smart Card Forum has established a Privacy Task Force to assist its members, consumers and policymakers in understanding consumer and policy concerns relating to smart card technology.** The Smart Card Forum Privacy Task Force will support Forum members in developing policies which educate consumers and policymakers about the technology. In particular, its ongoing role will be to educate members about which types of information and value can be stored on smart cards, how access to that information or value is achieved and protected, and how consumers can make informed decisions regarding disclosure of personal information in exchange for the benefits offered.

### **Summary**

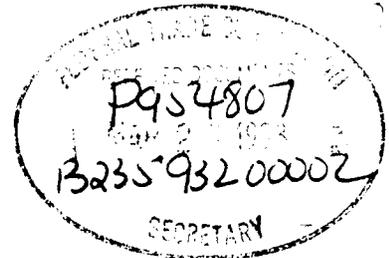
For smart card technology to be successful, it must be embraced by consumers and it must not be unnecessarily or unwisely regulated by policymakers. In some ways, the very designation of this technology as “smart” has become a barrier to acceptance. The industry and its members must forcefully make the point that the technology does nothing by itself. What makes this technology “smart” is the empowerment it provides to the consumer to access benefits, services or information in a highly personalized, efficient and secure environment. It is the intention of the Smart Card Forum to continue to work closely with other industry groups, governmental agencies and consumer groups to assist consumers in achieving the levels of disclosure and information necessary to use this technology effectively with maximum privacy protection.

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## Guide To Responsible Consumer Information Practices

-  Identify, recognize and respect the privacy expectations of consumers and make applicable privacy guidelines available to them.
-  Establish procedures to ensure that consumer data -- information directly related to the consumer's use of the card -- is as accurate, up to date and complete as possible. Promptly honor requests from consumers for information the company has about them as a result of the consumers' use of their cards and provide a procedure for them to correct inaccurate personally identifiable information.
-  Limit the use, collection and retention of information about consumers to what is necessary to administer their accounts, provide superior service and offer consumers new opportunities.
-  If personally identifiable consumer information is to be provided to unaffiliated third parties for marketing or similar purposes, inform the consumer of that purpose and provide the consumer the opportunity to decline (i.e. "opt out"). If personally identifiable consumer information is provided to a third party, require the third party to adhere to equivalent privacy standards with respect to that information. This would not apply to situations where information is disclosed in order to complete a transaction or pursuant to legal process, including the investigation of fraud or criminal activity.
-  Provide a means for consumers to remove their names from the company's telemarketing, online, mailing and other solicitation lists.
-  Maintain appropriate security standards and procedures regarding access to personally identifiable consumer information.
-  Implement policies and procedures to limit employee access to personally identifiable consumer information to a need-to-know basis. Educate employees about privacy standards and employees' responsibilities to protect consumer privacy and monitor employee compliance, and take appropriate disciplinary measures with employees who fail to adhere to such standards.

CHILDREN'S ADVERTISING REVIEW UNIT  
COUNCIL OF BETTER BUSINESS BUREAUS, INC.



SELF-REGULATORY GUIDELINES FOR CHILDREN'S ADVERTISING

GUIDELINES FOR INTERACTIVE ELECTRONIC MEDIA (E.G., INTERNET AND ONLINE SERVICES)

The guidelines contained in this section highlight issues unique to Internet and online advertising to children under 12. They are to be read within the broader context of the overall Guidelines, which apply to advertising in all media. They are intended to provide minimum, voluntary standards for the protection of children and their parents, and are to be taken as an interim approach to a new and unfamiliar marketing venue.

Just as these new media are rapidly evolving, so in all likelihood will this section of the Guidelines. Advances in technology, increased understanding of children's use of the medium, and the means by which these current guidelines are implemented will all contribute to the evolution of the "Interactive Electronic Media" section. CARU's aim is that the Guidelines will always reflect the latest developments in technology and its application to children's advertising.

Further, these children's Guidelines must be overlaid on the broader, and still developing industry standards for protecting and respecting privacy preferences. These industry standards include disclosure of what information is being collected and its intended uses, and the opportunity for the consumer to withhold consent for its collection for marketing purposes. Thus, in the case of data collection from children, reasonable efforts should be made to establish that notice is offered to, and choice exercised by a parent or guardian.

The availability of hyperlinks between sites can allow a child to move seamlessly from one to another. However there is no way to predict where the use of successive links on successive pages will lead. Therefore, advertisers who maintain sites for children should not knowingly link their sites to pages of other sites which do not comply with CARU's Guidelines.

In keeping with CARU's Principle regarding respecting and fostering the parents' role in providing guidance for their children, advertisers who communicate with children through e-mail should remind and encourage parents to check and monitor their children's use of e-mail and other online activities regularly.

The following guidelines apply to online activities which are intentionally targeted to children under 12, or which appear within online areas specifically designated as children's areas. For purposes of this section, these activities include making a sale or collecting data, and do not include the use of "spokescharacters" or branded environments

for informational or entertainment purposes, which are addressed in the “Endorsement” and “Disclosure” sections of the Guidelines.

### Making a Sale

Advertisers who transact sales with children online should make reasonable efforts in light of all available technologies to provide the person responsible for the costs of the transaction with the means to exercise control over the transaction. If there is no reasonable means provided to avoid unauthorized purchases of goods and services by children, the advertiser should enable the person responsible to cancel the order and receive full credit without incurring any charges. Advertisers should keep in mind that under existing state laws, parents may not be obligated to fulfill sales contracts entered into by their young children.

1. Children should always be told when they are being targeted for a sale.
2. If a site offers the opportunity to order or purchase any product or service, either through the use of a “click here to order” button or other on-screen means, the ordering instructions must clearly and prominently state that a child must have a parent’s permission to order.
3. In the case of an online means of ordering, there should be a clear mechanism after the order is placed allowing the child or parent to cancel the order.

### Data Collection

The ability to gather information, for marketing purposes, to tailor a site to a specific interest, etc., is part of the appeal of the interactive media to both the advertiser and the user. Young children however, may not understand the nature of the information being sought, nor its intended uses. The solicitation of personally identifiable information from children (e.g., full names, addresses, e-mail addresses, phone numbers) triggers special privacy and security concerns.

Therefore, in collecting information from children, advertisers should adhere to the following guidelines:

1. Before asking children for information about themselves or others, advertisers should remind children to ask a parent for permission to answer the information gathering questions (e.g., “You must ask your Mom or Dad if you can answer these questions”).
2. The advertiser should disclose, in language easily understood by a child, why the information is being requested (e.g., “We’ll use your name and e-mail to enter you in this contest and also add it to our mailing list.”) and whether the information is intended to be shared, sold or distributed outside of the collecting advertiser company. Reasonable efforts should be made to offer parents the opportunity to exercise choice and control.

3. If information is collected from children through passive means (e.g., navigational tracking tools, browser files, etc.) this should be disclosed to the child and the parent along with what information is being collected.
4. Advertisers to children who collect identifiable information online should make reasonable efforts, in light of the latest available technology, to ensure that parental permission is obtained.
5. Even if a child is asked to register at a site using his or her full name, advertisers should encourage the child to use a "screen name" (e.g., "Bookworm", "Skater", etc.), first name, initials, or other alternative to full names for any activities which will involve public posting.
6. If the information is optional, and not required to engage in an activity, that fact should be clearly disclosed in language easily understood by a child (e.g., "Tell us your name if you want to", or "You don't have to answer to play the game"). The advertiser should clearly disclose what use it will make of this information, if provided, as in #2 above.
7. Since e-mail addresses can be used to learn other, personally identifiable information about the owner, e-mail addresses should be solicited on secure sites, when available. If a secure site is not yet available, an advertiser who solicits an e-mail address from a child should make reasonable efforts in light of the latest available technology, to ensure that parental permission is obtained.
8. The interactivity of the medium offers the opportunity to communicate with children through electronic mail. While this is part of the appeal of the medium, it creates the potential for a child to receive unmanageable amounts of unsolicited e-mail. If an advertiser communicates with a child by e-mail, there should be an opportunity with each mailing for the child or parent to choose by return e-mail to discontinue receiving mailings.

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#### CARU'S REASONABLE EFFORTS STANDARD

CARU's Guidelines for Interactive Electronic Media require that "reasonable efforts" be made to provide notice and choice to parents when information is collected from children online. CARU currently interprets these reasonable efforts as follows, depending on the type and sensitivity of the information collected:

In all cases, the information collection or tracking practices must be clearly disclosed, along with the means of correcting or removing the information. The disclosure notice should be prominent and readily accessible before any information is collected. For instance, in the case of passive tracking, the notice should be on the page where the child enters the site.

- ◇ For real world, personally identifiable information, which would enable the recipient to directly contact the child offline, the company must obtain prior parental consent, regardless of the intended use.
- ◇ When personally identifiable information (such as email addresses, screen names) will be publicly posted so as to enable others to communicate directly with the child online, or shared with third parties, the company must obtain prior parental consent.
- ◇ For other identifiable information, such as email addresses, first names, hometowns, the company must directly notify the parent of the nature and intended uses and offer the opportunity to remove or correct the information.
- ◇ For all other anonymous or aggregate information, whether gathered directly or through passive means, the company must clearly disclose the nature and intended uses of the information.

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