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Legal Compliance: Maximizing Operational Efficiency and Minimizing Legal Risk

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Roadmap

- Is compliance worth the effort and expense?
- Typical approaches to compliance
- Summary of high priority compliance areas
- Baseline guidance

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Basic Questions

- What is compliance?
- How do you define compliance?
- Why should you care about compliance?
- Why should you engage in compliance?

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What is compliance?

- Operations
- Legal
- Corporate
- Customers

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Typical approaches to compliance

- "I haven't been sued yet!"
- Compliant
- Ad hoc
- Rule based
- Top down
- Institutional

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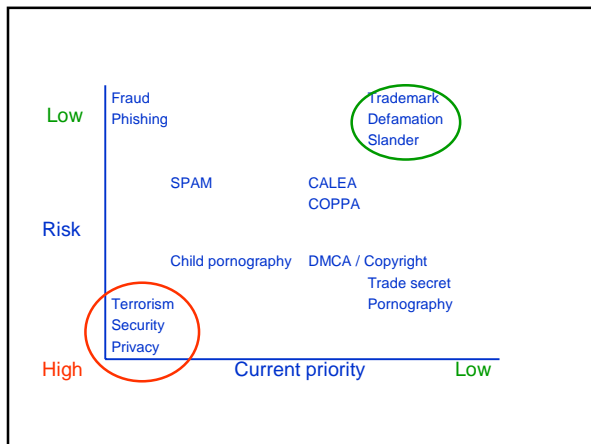
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Current high priority enforcement areas

- Privacy
- Security
- Terrorism

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For Release March 14, 2005

**Internet Service Provider Settles FTC Privacy Charges**  
Company Disclosed Personal Information of Nearly One Million Consumers

Recent documents:  
Order Under 15 U.S.C. § 552a (b)(7)  
Proposed 15 C.F.R. § 162.103  
15 U.S.C. § 552a

An Internet company that provides shopping cart software to online merchants has agreed to settle Federal Trade Commission charges that it copied personal information about merchants' customers to marketers, knowing that such disclosure contradicted merchant privacy policies. The settlement:

According to the FTC, some of the merchants who used CartManager's shopping cart and check-out software made privacy pledges to their customers such as "WE WILL NEVER DISCLOSE OR SELL, TRADU, OR LEAD ANY INFORMATION OF OUR CUSTOMERS OR VISITORS TO ANYONE." But CartManager collected and passed the personal information of nearly one million consumers who shopped at merchant sites. The FTC alleges that CartManager did not adequately inform consumers of:

"Companies and service providers must make sure that their privacy policies are in sync," said Lydia Harris, Acting Director of the FTC's Bureau of Consumer Protection. "A service provider cannot secretly collect and use consumers' personal information, contrary to a merchant's privacy policy. At the same time, merchants have an obligation to know what their service providers are doing with consumers' personal information."

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Current high priority areas  
Privacy

*Dictionary.com:*  
We do not share your personal information, including your e-mail address, with other parties. We hate spam as much as you do, so we won't give your information to anyone.

*DIYNetwork.com:*  
Except as specifically set forth in this Policy, we do not share your personal information with any non-affiliated third party without your permission.

*Pegasus technology:*  
We do not share your personal information with those websites and are not responsible for their privacy practices. We encourage you to learn about the privacy policies of any company that you visit from our site.

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Current high priority areas  
Privacy – Best Practices

Issue	Practice
<ul style="list-style-type: none"> <li>• Privacy policies are contracts</li> </ul>	<ul style="list-style-type: none"> <li>✓ Created by senior management, not marketing. Reviewed by counsel.</li> </ul>
<ul style="list-style-type: none"> <li>• Not usually required</li> </ul>	<ul style="list-style-type: none"> <li>✓ Does your state require a policy.</li> </ul>
<ul style="list-style-type: none"> <li>• Standard: deceptive practice</li> </ul>	<ul style="list-style-type: none"> <li>✓ Say what you mean, mean what you say.</li> </ul>
<ul style="list-style-type: none"> <li>• Policy follows data</li> </ul>	<ul style="list-style-type: none"> <li>✓ Synchronize with vendors; anticipate future uses.</li> </ul>
<ul style="list-style-type: none"> <li>• Analyzed from viewpoint of customer</li> </ul>	<ul style="list-style-type: none"> <li>✓ Draft policy in basic language. Don't obscure chain of custody.</li> </ul>

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Current high priority areas  
Security

“Just as consumers remodeling their homes would make sure that the doors still have locks, companies should make sure that sensitive data is still protected.”

Howard Beales, (former) Director of the FTC's Bureau of Consumer Protection.

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Current high priority areas  
Security

Issue	Practice
<ul style="list-style-type: none"> <li>• Integrity</li> </ul>	<ul style="list-style-type: none"> <li>✓ Security should be multi-disciplinary / not just handled by technical staff.</li> </ul>
<ul style="list-style-type: none"> <li>• Bad apples</li> </ul>	<ul style="list-style-type: none"> <li>✓ Internal and external controls on valuable information.</li> </ul>
<ul style="list-style-type: none"> <li>• Weak links</li> </ul>	<ul style="list-style-type: none"> <li>✓ Protect valuable information throughout chain of custody.</li> </ul>
<ul style="list-style-type: none"> <li>• Compartmentalization</li> </ul>	<ul style="list-style-type: none"> <li>✓ Security policies and procedures should be appropriate for each employee function.</li> </ul>

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Current high priority areas  
Terrorism

- Patriot Act
- Subpoenas / Warrants

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Current high priority areas  
Terrorism – Patriot Act

<p>Issue</p> <ul style="list-style-type: none"> <li>• Data preservation</li> <li>• Subpoena review</li> <li>• "Good faith" reporting</li> </ul>	<p>Best Practices</p> <ul style="list-style-type: none"> <li>✓ Patriot Act records preservation requirements part of business practices.</li> <li>✓ Training incorporates distinction between Patriot Act subpoenas and other documents.</li> <li>✓ Management must decide on "good faith" standard.</li> </ul>
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Current high priority areas  
Terrorism – Subpoenas

<p>Issue</p> <ul style="list-style-type: none"> <li>• Patriot Act v. standard subpoenas</li> <li>• Visits from law enforcement</li> <li>• "Courtesy" subpoenas</li> </ul>	<p>Best Practices</p> <ul style="list-style-type: none"> <li>✓ Draft a "request for information" policy</li> <li>✓ Distinguish between types of subpoenas</li> <li>✓ Figure out what to do when the FBI comes</li> <li>✓ Train staff on how to respond to subpoenas.</li> <li>✓ Develop relationship with law enforcement</li> </ul>
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 Developing a flexible compliance plan

- What does flexible mean?
- How do you draft a plan like this?
- How do you train your staff?
- Identifying compliance trends

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 Developing a flexible compliance plan  
 Components of a flexible compliance plan

- Created by multi-disciplinary team, not solely by lawyers.
- Reflects brand identity
- Creates centers of knowledge
- Is made up of components
- May be continuously improved
- Has a update schedule

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In some cases, a customer's account will be terminated based on our compliance program. While it is your obligation to follow this program, it is also our responsibility to help you understand and to communicate why these actions are being taken. This training memo, read along with our compliance program, should help you make good decisions. If at any time you believe you can not make a decision, or do not understand the basis for a particular policy, you should contact either the next person on the escalation chart, or, the person who has overall responsibility for that particular policy.

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Developing a flexible compliance plan  
How do you train your staff?

- Explain the basis for the rules.
- Push responsibility down.
- Always provide a point of contact with an "expert."
- Monitor and document escalations and new questions.

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Developing a flexible compliance plan  
Identifying compliance trends

- Informally identify where your complaints are coming from.
- Subject matter experts collect trends.
- Yearly compliance "audits."
- Subscribe to newsgroups.
- Determine if headlines apply to you.

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Basic Guidance

- Identify operational areas where you get the biggest bang for your compliance buck.
- Develop compliance plans that fit your corporate culture.
- Realize that real compliance issues might not be those that you face every day.
- Build flexibility into your plan.
- Train employees on the use of the plan.
- Revise the plan yearly.

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