

Taking the confusion out of privacy notices

Privacy policies are too long, too complex and companies that persist in using them risk losing their consumers to more privacy-savvy competitors. **Alan Pedersen** looks at how short privacy policies could help businesses to communicate themselves more effectively.

The need for businesses to be upfront about how they use customer information has never been more important. Information has become a vital tool as businesses strive to understand their customers better. Vast amounts of information are being collected, mined, analysed, matched, diced and spliced in order to efficiently and productively profile and target consumers with products and services.

But consumers are becoming increasingly concerned about how this information is being used, and frustrated over their lack of control. In attempt to reassure them, most large organisations now post online privacy policies spelling out what kinds of data they collect, what they do with it and how they protect it.

The problem is that their efforts to be upfront about how they handle customer data can have the opposite effect. Consumers are often bamboozled by long, complex notices packed with legal jargon and technical terms. Only 47 per cent of respondents to a survey published by the University of Pennsylvania in June this year said they understood privacy policies. And it turns out that even they did not fully understand them. Over half of them incorrectly believed that companies who post privacy policies do not share their details with other companies.

Your average corporate policy pushes well past the 2,000 word mark, begging the question of who exactly is going to sit down and read the whole thing? Privacy policies are supposed to provide transparency, but if nobody is reading them or they cannot understand them, then they are not doing their job properly. They may meet legal or regulatory requirements, but in terms of establishing consumer trust and maintaining the corporate brand, there is still some way to go.

Businesses, however, are starting to recognise the problem, and efforts are underway to improve communication through the development of short notices that summarise organisations' privacy practices. Industry has already started the ball rolling, with a programme for short notices developed by the Center for Information Policy Leadership at law firm Hunton & Williams. And more recently, the initiative has received backing from national privacy regulators in a bid to develop a global standard.

There is evidence to suggest that this approach will be popular with consumers. Research from the Privacy Leadership Initiative in 2001 showed that 77 per cent of US consumers were in favour of shorter privacy notices, while 70 per cent supported the idea of a standardised format that would allow them to compare and contrast different companies' policies.

ORIGINS OF SHORT NOTICES

In 1999, the US introduced legislation aimed at updating and modernising regulation in the financial services sector. Bundled in with the various provisions of the Gramm-Leach-Bliley Act (see p.26) was a new privacy rule requiring organisations to provide customers with a privacy notice explaining the types of personal information they collect, what safeguards are in place, and whether their data is shared with third parties. Although the rule stated that these notices should be clear and conspicuous, Martin Abrams, who leads the Center for Information Policy Leadership (CIPL), says they were anything but. "When Gramm-Leach-Bliley notices began to appear in 2001," he says, "the reaction by the American public, by the media, by policy makers was: 'these things are unreadable.'"

A failure to communicate

Privacy notices are not traditionally the easiest things to understand, but under the US Gramm-Leach Bliley Act they reached an all time low. Here are two examples of how companies' privacy notices failed to communicate effectively:

"An affiliate is a company we own or control, a company that owns or controls us, or a company that is owned or controlled by the same company that owns or controls us. Ownership does not mean complete ownership, but means owning enough to have control." - **Seattle Savings Bank**

"Except for this identification, transactional, and experiential information, when you request to be excluded from affiliate sharing of information in accordance with the procedures set out in this Use of Information section, we cannot share information about you and your products and services with us from your applications or agreements, from credit reporting agencies, or from other sources when the communication of this information would be classified as a 'consumer report' under the Fair Credit Reporting Act." - **Honeywell Credit Union**

Source: Lost in the Fine Print: Readability of Financial Notices, 2001, Mark Hochhauser, Ph.D, Readability Consulting

A study carried out that same year by Readability Consulting provided confirmation of just how poor these notices actually were. The study benchmarked privacy notices from 60 financial organisations against the 'Flesch Reading Ease Score', finding that not one managed to score better than 'difficult'. The conclusion was that notices were "poorly written with too many long sentences and too many uncommon words." (see box on p.31)

The word from the financial regulators was that these notices were simply not good enough. And it was this that provided the impetus for Abrams and the CIPL to set about finding a solution to the problem.

Initial research into privacy policies led the CIPL towards the concept of layered privacy notices. A project to find a workable solution that would be acceptable to consumers was set up, bringing together privacy experts from organisations such as Procter & Gamble, Chase, IBM and Kodak.

The idea behind the project was to find a way for businesses to spell out their various legal requirements through a full privacy policy, but provide greater transparency by layering a shortened summary version over the full policy. "You can't do away with the legally

required long and complete notice," says Abrams, "but you can have a shorter notice which would have some common elements in it which the public could understand." Basically, he says, the short privacy notice acts as a "snapshot of how an organisation manages information."

Abrams explains the CIPL project involved looking at food labelling standards as a model for developing a template for short notices. He explains there are three key elements used in food labelling that could be applied to privacy notices.

The first involves reducing the amount of information that consumers have to read through, limiting it to six or seven elements that encompass the main sources of information that consumers look for - such as what information is collected, how it is used, and what their rights are. The second element is to create similarity between notices, the idea being that the more consumers become accustomed to a particular style or feel, the more likely they are to remember and understand the notices. The final element is simplification, boiling the content and language down to something that consumers will understand and quickly absorb. Abrams says that consumers just do not understand convoluted phrases like 'non public private financial informa-

tion' or 'protected healthcare information'. Complex wording means they have to spend time and effort trying to translate them into something that is meaningful to them.

The CIPL's working group eventually settled on a standardised template. The idea was that businesses would provide a summary of their privacy practices across six main areas: (1) the scope of the policy, for example, which group companies it applies to (2) the type of data collected (3) how it is used (4) consumers' privacy choices (5) further information (an optional category) and (6) point of contact. (See below for Procter & Gamble's short privacy notice.)

In an effort to maintain consistency across the notices, the CIPL also issued a set of requirements for using the template in order to discourage companies from deviating too far from the standard.

ENHANCING CONSUMER TRUST

Although primarily driven by US financial regulation, the concept of short privacy notices has attracted interest from other sectors. Abrams believes that short notices can provide greater choice for consumers when deciding where to take their business. Creating a standard, short and easy to read policy, says Abrams, "allows people to compare notice against

notice and make a choice about which organisation they're going to do business with, based on their privacy practices."

When choosing products and services, Abrams suggests there are three main areas that consumers will look at: (1) the value of a company's products and services (2) whether there are any comebacks such as security breaches or ID theft, and (3) whether the company will use their information appropriately.

He believes that where product value is evenly matched across a particular sector, consumers are perfectly willing

| | | |
|--|--|---|
|  Procter and Gamble Company Privacy Notice Highlights | | Scope This statement applies to the Procter & Gamble Company and the www.pg.com website. |
| Personal Information <ul style="list-style-type: none"> We collect information you choose to submit during your registration. We use common internet technologies such as cookies on our websites and emails. We sometimes obtain additional information about you, such as your demographic and lifestyle information, from other sources. For more information about our information collection practices please click here. | | |
| Uses <ul style="list-style-type: none"> We use the information you submit to provide you with the service you requested. We use information about you to provide you with helpful and targeted offers from P&G products and services. Click here for more information. We do not share, trade, or sell information about you with other marketers without your permission. We may share your information with vendors we've hired to send you the offers you signed up for. Click here for more information. | | |
| Your Choices <ul style="list-style-type: none"> You may request to be removed from our programs by clicking this link. You may request access to personal information you have submitted to P&G by clicking this link. | | How to Contact Us For more information about our privacy policy, go to the privacy statement on our website at: http://www.pg.com/privacy_full.html Or write us at: P&G Privacy Team One Procter & Gamble Plaza TN-7 Cincinnati, OH 45202 |
| Important Information <ul style="list-style-type: none"> The P&G.com website has been awarded the Better Business Bureau OnLine® Privacy Seal. Please click here for more information. We take steps to protect the information you provide against unauthorized access and use. For more information click here. | | |

to switch brands according to which company offers the best privacy protection.

Procter & Gamble, which has already posted a 'highlights notice' on its website, is one organisation that recognises the value of better communication. "We feel that a more user-friendly approach to explaining our privacy program will help to increase understanding and trust among our consumers," says Sandy Hughes, Chief Privacy Officer for Procter & Gamble. She explains that the actual process of boiling down their policy was a straightforward process, building on earlier efforts to provide greater transparency over their privacy practices. "About two years before, we had created an 'Executive Summary' type page on top of our policy, to accomplish the same objective. So when CIPL considered an even shorter notice, we were able to reapply what we had done previously."

According to Hughes, responses to Procter & Gamble's privacy feedback form have been very positive. "About 85-90 per cent of respondents have provided favourable comments," she says, adding that the "majority of the remaining comments appear to be unrelated to the notice or the survey."

PRIVACY CONCERNS

Pro-privacy groups generally support the idea of short privacy notices, but they do have concerns over how it works in practice. Ari Schwartz, associate director at the Center for Democracy & Technology says it "really depends how they are done. If the notice gives individuals an understanding of all the issues that they care about – particularly consent, use and access – in a way that is comparable from one notice to the next, then they will be useful. If they are simply today's long notices with most of the information cut out, they will be useless."

Jason Catlett, president of privacy advocacy firm, Junkbusters, says that "too many companies are using them as brochureware...Most of the short policies I've seen provide a misleadingly rosy view." One such company, according to Catlett, is eBay. In April, he called for the Federal Trade Commission (FTC) to investigate supposed inconsistencies between the company's short and full notices. In a letter to Howard Beales, head of consumer protection at the FTC, he argued that eBay's short

privacy policy "oversimplifies and makes material omissions, giving the visitor a sense of privacy that is beyond what eBay says in the long version that it provides. This amounts to deception."

It is this issue of consistency between policies that is a major sticking point for privacy advocates. "We can assume that, in most cases, where a short policy conflicts with the other, then they [the company] are violating one of them," says Schwartz. "A company can't put out a notice and then say that the individual shouldn't rely on it. The whole purpose of any notice is that individuals should rely on it. If either is wrong, the company has engaged in a deceptive practice in most jurisdictions around the world."

Despite the criticism, Martin Abrams defends the CIPL project arguing that their template is designed to restrict the

"We feel that a more user-friendly approach to explaining our privacy program will help to increase understanding and trust among our consumers."

Sandy Hughes, Chief Privacy Officer, Procter & Gamble

ability to present misleading statements. "If you look at the concept of the short form notice, there's not the room to do that," he says. "They are fairly clinical in their presentation of information."

Abrams agrees that there should be consistency between short and full notices, but stresses that there needs to be some kind of guidance from regulators over the liability issues. A specific rulemaking on short privacy notices, which is expected to be proposed by US financial regulators later this year, could shed some light on this area.

He adds that the CIPL template is by no means the finished article, but rather an ongoing and evolving project that will be able to resolve the issues raised by privacy advocates. "I understand their concerns," he says, "but I don't believe that is the way it is going to play out."

DEVELOPING A GLOBAL STANDARD

Despite these concerns, the short notice concept has attracted support from international privacy regulators. In September this year, at their annual conference in Sydney, privacy commissioners passed a formal resolution supporting the development of a global standard. An international initiative is being spearheaded by Malcolm Crompton, Australia's federal privacy commissioner. To kickstart the scheme, he intends to publish a short/condensed notice on his website. "I am also looking at other initiatives to help spread the word, both unilaterally in Australia, for example, issuing guidelines based on the resolution, and in cooperation with others."

Creating a global standard seems an ambitious project, but not one that is unrealistic, according to Crompton. "The main inhibitors to a global standard are will and willingness to negotiate," he says. "We have seen the will component in a very similar set of issues, namely the protection of IP [intellectual property], as a result of strong efforts by various companies and organisations. The second will depend, inter alia, on those parties that want to operate under a global standard demonstrating that they are genuine in their desire to provide effective, demonstrable levels of protection of personal information."

But Crompton believes that attempts in Europe and the Asia Pacific to harmonise privacy regulation demonstrate that there is a desire to create commonality between countries.

Whether or not short privacy notices become a global standard, there appears to be a collective agreement from all sides of the privacy community that businesses must communicate themselves better. "Transparency is a requirement of the information age," says Abrams. "And that transparency has to be effective."



WEB LINKS: The Center for Information Policy Leadership:
www.hunton.com/info_policy/index.htm

For further research on short privacy notices: www.privacyconference2003.org/resolution.asp
