

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Brownlee at 8:30 a.m. on January 16, 2001 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: April Holman, Legislative Research Department
 Robert Nugent, Revisor of Statues
 Lea Gerard, Secretary

Conferees appearing before the committee:

 Charles Ranson, President, Kansas, Inc.
 LeAnn Schmitt, Legislative Division of Post Audit
 Steve Rarrick, Deputy Attorney General for Consumer Protection

Others attending: See attached list.

Charles Ranson, President, Kansas Inc. appeared before the committee to give an overview of Kansas Inc. He gave the history of Kansas Inc. (Attachment 1) and the 2000 Annual Report discussing in detail issues that are important to the future of Kansas. Kansas Inc. promotes economic development statewide and to compete in global economy. Copies of the annual report can be obtained from Kansas Inc., 632 SW Van Buren, Suite 100. The Kansas, Inc. 2000 annual report discusses in detail the issues believed to be particularly important to the future of the state and the processes that are in place to respond to those challenges. Mr. Ranson pointed out at the beginning in the annual report a message from Governor Graves and his letter which introduces the report and the major item on the work plan for this year is completion of the comprehensive update to the state strategic plan for economic development. This will be the fourth strategic plan developed in the state the first being Redwood-Krider, the second in 1993, a third released in January, 1997 that actually was an exercise to establish goals and objectives for the state assuming that several years after we would come back and take what had been presented as a framework and develop the blueprint for our economic future. We are roughly half-way through the strategic plan process with a target date of June 1 for delivery of the consultants final work product. It will then be printed and published by the end of June. The recommendations and analysis will be ready for consideration by the interim joint committees and run up to the 2002 legislative session. Elsewhere in the report, we highlight several challenges that confront Kansas as we move into the 21st century. This includes issues of sustainability confronting small towns in rural Kansas, global competitiveness and investment and diffusion of information technology throughout the state. Elsewhere in the report, Mr. Ranson stated they look at three economic trends that have been measured over a period of years to compare Kansas to regional neighboring states and the nation. Those include population trends, employment trends and income per capita income trends. Kansas has done relatively well. The gap has closed in per capita income between Kansas per capita income and the national per capital income.

Charles Ranson pointed out that their legislative agenda for 2001 is to support the continuation in broadening of economic development funding that may be through re-authorization of the lottery or some other means. EDIF is the sole source of funding for economic development today and without re-authorization, there will be a very large hole that will have to be filled somehow in order to continue the program and efforts that have been successful for the state over the past years. Secondly, Mr. Ranson stated Kansas, Inc. will continue to support enactment of Legislation to meet the critical need for risk capital particularly at the C stage. Thirdly, we will support KAN-ED Legislation to accelerate diffusion of Broadband internet technology all across Kansas.

Senator Brownlee asked if there were any questions from the committee. Senator Barone asked for clarification on the chart regarding population for the surrounding states to be substantially different than the information that was pulled from the US Census Bureau. For example, you show Kansas more than 7.1%. Charles Ranson responded that from 1990 thru 1999 the population growth increased 7.1% Senator Barone stated that information he had from 1990 through 2000 the growth was 8.5%. Mr. Ranson stated they developed the material before the 2000 Census was released, they pulled the information from

the US Census website. Senator Barone stated that if the correct data would show that Kansas is growing at a lesser rate than the surrounding areas, what conclusion would you draw from that. Mr. Ranson stated that he could draw several conclusions part of which Kansas is experiencing an out-migration particularly young people. We see that in small town Kansas. There is a lack of diverse opportunities for young people to remain in Kansas and to build their careers. We need to reaffirm our commitment to diversify the economy to invest in the infrastructure technology that would make Kansas an attractive location to maintain long-time Kansans but to attract new growth.

Senator Brownlee then introduced LeAnn Schmitt from the Legislative Division of Post Audit. Ms. Schmitt gave an overview of the 2001 Performance Audit Report for economic development in Kansas. Copies of the Performance Audit Report can be obtained from the Legislative Division of Post Audit, 800 SW Jackson, Suite 1200. The audit work performed by Legislative Post Audit helps provide information on coordination and effectiveness of state programs for economic development in Kansas.

In the performance audit, the Legislative Division of Post Audit looked at how well the three main economic development agencies in the state, Kansas Inc., KTEC and KDOC are performing the roles for which they were created, and are they coordinating their economic development efforts. What benefit has the state received as a result of loans, grants and investments made under economic development programs and is there sufficient accountability over these moneys? The Legislative Division of Post Audit also looked at how does funding for economic development activities and salaries for economic development officials in Kansas compare to other states? They recommend the Legislature review the economic development funding structure to ensure that the state has appropriate commitment to economic development and towards the competition and rivalry among the three main agencies.

Regarding the State economic development funding, Senator Brownlee asked what percentage of the Ad Astra funds is public money? Ms Schmitt stated that she would get that information. Senator Brownlee asked how many loans are not being collected on by the Department of Commerce. LeAnn Schmitt stated that they were doing an excellent job of recovering the loans, we did not see any instances where they had lost a lot of money by a loan not paid back. Most of their programs are grants rather than loans. Senator Brownlee also asked how much money is in the EDIF sub-accounts? Ms Schmitt stated that she would get that information.

Senator Brownlee than introduced Steve Rarrick, Deputy Attorney General of the Consumer Protection Division. Mr. Rarrick gave an overview (Attachment 2) where he briefly discussed two sections in the Kansas Consumer Projection Act (KCPA) that addresses telemarketing and the 1998 slamming law. He will discuss some legislation that they will hear about this year on Telemarketing either through this committee or from the House side. The Telemarketing Fraud provisions contained in K.S.A. 50-671 through 50-675 provide protections and requirements for verbal agreements made by consumers with telemarketers. Provisions in K.S.A. 50-670 protect the privacy of Kansans when telemarketers call them in their homes. Regarding the slamming provisions contained in K.S.A. 50-6, 103 were passed in 1998 to eliminate slamming (the unauthorized switching of a consumer's local or long distance service) in Kansas and to resolve the inherent difficulty of proving what actually transpires in conversations between telemarketers and consumers. The Attorney General and members of the telecommunications industry have been working over the past two sessions to amend the slamming bill.

Senator Brownlee handed out a policy update from the American Legislative Exchange Council (ALEC) regarding Safeguarding Privacy in the Information Age (Attachment 3).

The meeting was adjourned at 9:35 a.m.

The next meeting is scheduled for January 17, 2001 at 8:30 a.m.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: JANUARY 16, 2001

| NAME | REPRESENTING |
|-----------------|---------------------------|
| Bill Sneed | SW Bell |
| Bill Lawrence | BOEING |
| Rob Hodges | KTVA |
| Doug Smith | Debert Darr & Assoc |
| Ernest C. Pogge | AARP |
| Eric Sexton | WSU |
| Erik Sartorius | KC Reg. Assn of Realtors |
| Hal Hudson | NFIB/KS |
| Art Green | Missouri Lumbermen |
| Michael West | Kearney Law Office |
| Shirley Allen | Bollenberg & Assoc. |
| Bob Hubbell | Southwestern Bell |
| Mike Murray | Sprint |
| Terry Diehl | Southwestern Bell |
| Seth Bridge | Sen. Brungardt |
| Ken Bane | Hein/Jueir Chrt'd |
| Janet Buchanan | KCC |
| Colleen Harrell | KCC |
| Debby Doherty | Kansas Inc. |
| Betty Brown | Cancelled KTEC |
| Levi Rost | KTEC |
| Jesse Salt | Kansas A. G. |

LEGISLATIVE TESTIMONY—16 JANUARY 2001

Charles Ranson, President, Kansas, Inc.

I have been asked to provide an overview of Kansas, Inc. In so doing, let me take you back 14 years to 1986. The Kansas economy is in its worst state since the Great Depression. In fact, as the U.S. suffered through a severe recession, Kansas' economy verged on '30s-like figures.

Kansas bank failures spiked. Agriculture, manufacturing, and oil & gas—traditional mainstays of the State's economy throughout the 20th century, simultaneously dove into the ditch. Suicides increased. Kansas' economy was in desperate straits. An urgent response was required.

The Legislature, joined by then-Governor John Carlin and a rainbow coalition of constituencies (including KCCI, the League of Women Voters, unions and farm groups, put aside their differences of the moment to forge a consensus recovery strategy. Call it triage, stabilization and rehabilitation.

The centerpiece of this historic show of nonpartisan community spiritedness has come to be known as the Redwood-Krider Report, named after KU Business professors Tony Redwood and Chuck Krider. Commissioned by the Legislature to conduct a thorough evaluation of the State's economy, to present recommendations for reversing the collapse, and to put in place measures and safeguards that would minimize the risk of reoccurrence, Redwood-Krider (joined by Boston-based economic development innovator Belden Daniels) educated a broad coalition of Kansas' leaders about the strengths and weaknesses and the challenges and opportunities confronting our State.

Senator Kerr, alone among the membership of this Committee, was in this body at that time, and he will recall the despair and the triumph of that time, as Redwood-Krider proposed 50 new policies to spur economic growth and stability, of which 46 ultimately were enacted and implemented. And, he will recall the extraordinary bipartisanship exhibited to enable Kansans to overcome the urgency of that era.

At the beginning of a new millenium, when the economic challenges that we face are serious if not yet urgent, he will testify to the to the importance of working together as we seek to understand the current condition of our economy, and the regional, national, and global context in which we must prepare for the future. We (and you) are fortunate that there remain members of this body who endured the tribulation of the mid 1980s.

Among the 50 recommendations of Redwood-Krider (the State's first fully-articulated economic development strategic plan) was one to establish Kansas, Inc as a nonpartisan, objective, and independent private-public partnership. Created to provide a neutral forum for the exploration of issues confronting the Kansas economy, Kansas, Inc is governed today by a 17-member board of directors, operating under co-chairmanship of the Governor and a senior private sector business executive. Our legislation provides for the Senate President and House Speaker (along with the Minority Leaders of each chamber) also to serve on the board, with the balance of the membership including the Secretary of KDOCH, the Commanding General of the Kansas Cavalry, a representative of the Regents' institutions, and industry representatives bringing to the organization the perspective of basic industry, services, financial services, aviation, agriculture, and organized labor. The goal of the political leadership of the 80's was to, by bringing together private and public sector leaders, forge consensus and increase common ground outside the partisan debate, thereby insuring against a repeat of the severely depressed economy of that time.

Kansas, Inc is the agency that pioneered the concept of the private-public partnership that today exists all across this country.

Working together in partnership with sister agencies KDOCH and KTEC (also created as a result of Redwood-Krider) and with the private sector and our educational institutions, much has been achieved in the ensuing 14 years. Our economy has experienced extraordinary growth. Today, we are a far more diverse economy than we were in the mid-80s. Over the span of years, services have emerged as the largest component of the State's economy. Globalization has washed across our state and nation like a tidal wave, and breath-taking advances in technology have revolutionized the ways in which we live and communicate with each other.

Much has been achieved, but as we move beyond the insularity of our past into a much more exposed and volatile global environment, the need is even

greater for us carefully, dispassionately, objectively, and in a nonpartisan way, to study the strengths and weaknesses, the challenges and opportunities that confront Kansas at the beginning of this new century.

The 2000 Annual Report of Kansas, Inc. discusses in some detail issues that we believe to be particularly important to the future of our State, and the processes we have in place to respond to change.



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

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Testimony of
Steve Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the Senate Commerce Committee
RE: telemarketing overview
January 16, 2001

Chairperson Brownlee and Members of the Committee:

Thank you for asking me to appear before you this morning on behalf of Attorney General Carla J. Stovall to provide an overview on telemarketing in Kansas. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

In giving this overview, I will briefly discuss the two sections in the Kansas Consumer Protection Act (KCPA) that specifically address telemarketing, and the 1998 slamming law. I will then discuss legislation that I believe will be heard this year on telemarketing.

The Telemarketing Fraud provisions contained in K.S.A. §50-671 through §50-675 provide protections and requirements for verbal agreements made by consumers with telemarketers, including:

- Requiring signed confirmations before telemarketing sales are considered valid and binding.
- Requiring notice to the consumer that the consumer is not obligated to pay unless the confirmation is signed and returned.
- Prohibiting telemarketers from charging credit cards prior to receiving the signed confirmation.
- Giving consumers the right to cancel sales under certain circumstances.
- Numerous exemptions to the Telemarketing Fraud provisions are set forth in K.S.A. §50-673.

The Telephone Solicitations provisions contained in K.S.A. 50-670 protect the privacy of Kansans when telemarketers call them in their own homes. These provisions include the very popular "Just Say No" law that Kansas consumers are always glad to hear about when we speak to consumer groups across the State. These provisions:

- Require commercial telemarketers making unsolicited consumer telephone calls to residential numbers to:
(1) identify themselves;

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- (2) identify the business on whose behalf they are soliciting;
- (3) identify the purpose of the call immediately upon making contact by telephone with the person who is the object of the telephone solicitation;
- (4) promptly discontinue the solicitation if the person being solicited gives a negative response at any time during the consumer telephone call ("just say no");
- (5) hang up the phone, or in the case of an automatic dialing-announcing device operator, disconnect the automatic dialing-announcing device from the telephone line within 25 seconds of the termination of the call by the person being called; and
- (6) have a live operator or an automated dialing-announcing device answer the line within five seconds of the beginning of the call (if answered by a automated dialing-announcing device, the message shall include only the identity of the telemarketer and the identity of the business on whose behalf they are calling, but shall not include any unsolicited advertisement).

- Exemptions from the definition of an unsolicited telephone call, and the above requirements, include calls made: in response to an express request of the person called; primarily in connection with an existing debt or contract, payment or performance which has not been completed at the time of the call; or to any person with whom the telemarketer or the telemarketer's predecessor in interest had an existing business relationship (except telecommunication companies). Newspapers were removed from the exemption list last session.
- Prohibit commercial telemarketers from blocking the display of the telemarketer's telephone number from a caller identification service when that number is being used for telemarketing purposes and when the telemarketer's service or equipment is capable of allowing the display of such number.
- Prohibit commercial telemarketer's from sending written information by fax or computer to a consumer after the consumer requests orally or in writing that such transmissions cease.
- Prohibit commercial telemarketers from obtaining a consumer's payment by use of professional delivery, courier or other pickup service unless the goods are delivered with the opportunity to inspect before payment is collected.

The slamming provisions contained in K.S.A. 50-6,103 were passed in 1998, to eliminate slamming (the unauthorized switching of a consumer's local or long distance service) in Kansas and to resolve the inherent difficulty of proving what actually transpires in conversations between telemarketers and consumers. This statute:

- Places the burden of proof on the alleged unauthorized carrier to provide evidence that the consumer affirmatively ordered a switch in service.
- Prohibits any activity, conduct, or representation during the solicitation (i.e. telemarketing call) that would mislead, deceive or confuse the consumer.
- Provides civil penalties at a minimum of \$5,000 and a maximum of \$20,000 for each slamming violation.

Kansas has taken a firm stance against slamming in Kansas with the passage of this strong slamming law. Although prosecutions for slamming violations occurring prior to the passage of the 1998 slamming law were much more difficult to prove, we prosecuted 7 companies for slamming and cramming for a total of \$258,500 from 1996 to 1999. In 2000, we concluded the first two investigations under the 1998 slamming law with Consent Judgments for \$350,000 and \$75,000. We have one other slamming case nearly concluded, which should result in a \$200,000 Consent Judgment. As the result of the 1998 slamming law, our prosecutions, and efforts of industry, our slamming complaints have decreased from 500 in 1998 and 415 in 1999, to 178 in 2000.

The Attorney General and members of the telecommunications industry have been working over the past two sessions to amend the slamming bill. The proposed amendments included: agreed upon clean-up to existing provisions; a new private cause of action for non-consumer entities (churches, associations, partnerships, corporations) for slamming; and adding deceptive cramming (the addition of unauthorized charges to a consumer's phone bill) to the prohibited acts of the existing statute. The proposed private cause of action for slamming to non-consumer entities, such as churches, associations, partnerships, and corporations, is necessary because these entities have no protection from slamming under current law.

The bill failed in the last days of last session due to disagreement over exemptions relating to the new proposed cramming provisions. We would urge the legislature to pass a bill with the uncontested slamming clean-up provisions and the new private cause of action for non-consumers, without the controversial cramming provisions. Cramming complaints have decreased significantly in the last three years, from more than 121 complaints in 1998 (we began tracking cramming in April of 1998), to 59 complaints in 1999 and to 38 complaints in 2000.

In the event the controversial cramming provisions are proposed, we would suggest that they be proposed in a separate bill, in the hope that the controversy over the cramming provisions will not, once again, kill the slamming changes that both the Attorney General and the telecommunications industry agree should be made.

Last session, I spent considerable time before this and other legislative committees testifying about telemarketing, and specifically, do-not-call legislation. The purpose of these laws is simply to allow citizens to put a stop to unwanted and unsolicited telemarketing calls.

Do-not-call legislation is sweeping the country. At the time I testified last year, 17 states had do-not-call laws in place. Now, 23 states have do-not-call laws in place to protect their citizens from unwanted telemarketing calls.

The Consumer Protection Division receives countless inquiries and complaints about telemarketing by phone, at the State Fair, and when office representatives give educational presentations throughout the State. Consumers are always asking how to stop telemarketing calls into their homes, and consumers regularly express support for a do-not-call law to Consumer

Protection staffers as we speak to groups across the State. Recently, consumers have been calling to ask why Kansas does not have a do-not-call law.

It appears that Kansans overwhelmingly support the enactment of a do-not-call law. Last September, the Consumer Protection Division conducted a survey at the Kansas State Fair. Of the 801 Kansans who participated in our survey, 800 supported a do-not-call law. The one person who said he would oppose such a law just happened to be a manager at a telemarketing company.

You may hear that there is already a means for consumers to stop telemarketing calls by participating in the DMA do-not-call list. Unfortunately, and with all due respect, this simply is not accurate. Unlike the 23 state do-not-call laws, the DMA program is a voluntary program run by one private industry association, with absolutely no enforcement mechanism. It is only members of the DMA who voluntarily agree to access and abide by the list, and even these members are not subject to any sanctions for calling consumers on the DMA list. Consumers on the DMA list continue to receive calls from telemarketers who are not members of the DMA, and there is no remedy for consumers who are called by DMA members who have ignored the list. Participating in the DMA program therefore does not stop telemarketing calls to consumers, and even DMA members who call consumers on the DMA list are not subject to prosecution.

You may also hear that there are do-not-call protections under the FTC Telemarketing Sales Rule, which allows consumers to ask each individual telemarketer to take their name off their calling list. Unfortunately, this protection does very little to curb telemarketing calls to an individual consumer's home. First, the consumer must receive the call from each telemarketer, ask the telemarketer to remove his/her name from it's calling list, and then keep a record/log of each telemarketer that he/she has asked to remove his/her name from the calling list. If the consumer receives a call from that telemarketer again, he/she must be able to verify from his/her record/log to prove that this telemarketer was previously instructed to remove his/her name from the calling list. Finally, the consumer must repeat this process for every telemarketer in the country in order to eliminate telemarketing calls. As you can imagine, consumers cannot successfully eliminate calls using the Telemarketing Sales Rule method.

Finally, you may hear that creating a do-not-call list in Kansas will impose unreasonable costs on national telemarketers. However, it was opposition by the telemarketing industry that prevented the creation of one national do-not-call list (maintained by the Federal Trade Commission) several years ago. Now, rather than paying to access one national list, national telemarketers must pay to access 23 separate state do-not-call lists, and the number of states enacting do-not-call lists is increasing each year. With this trend in mind, one would think the telemarketing industry would want to re-think their opposition to a single national list.

The Attorney General supports the concept of "do-not-call" legislation, but would not support a bill that contained numerous exemptions. Some of our colleagues in other states with these laws have warned us that their laws are ineffective because of numerous exemptions for selected segments of industry. For example, Kentucky's "do-not-call" law has twenty-two exemptions. As a result,

if Kansas passes a do-not-call law, it should do so without adding exemptions to those currently set forth in K.S.A. 50-670. Last year, we drafted a do-not-call law modeled after an Oregon law, and would be happy to provide it to the Committee.

In addition to our investigation and enforcement efforts, Attorney General is committed to educating consumers and businesses on Kansas law and current trends in consumer fraud. We prepare and provide brochures and flyers on current issues, including telemarketing. Since the Attorney General took office in 1995, the Consumer Division has made 608 educational presentations, an average of just over 100 each year. We staff a booth for 10 days each year at the Kansas State Fair. If any member of the Committee is interested, I have a selection of brochures and flyers on telemarketing issues that we provide to consumers.

Thank you again for the opportunity to provide information on this very important topic. I would be happy to respond to any questions you may have on these issues.



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ALEC Issue Analysis

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Safeguarding Privacy in the Information Age: An Overview of Current Protections

July 2000

The growth of direct marketing has caused many consumers and lawmakers to call for greater protections from the misuse of personal information. In fact, nearly every state legislature is currently considering some form of legislation that regulates how personally identifiable information gleaned from financial records, medical records, and Internet web sites can be used by businesses that employ direct marketing to reach customers. What proponents of more legislation often overlook, however, is that customers already have the ability, in most cases, to prevent this information from being shared with direct marketers in the first place and to remove themselves from direct marketing lists in the second place.

This analysis will outline existing regulations that already protect the collection and use of personally identifiable information from abuse. Its also explains how this information is used by businesses, outlines successful self-regulatory efforts by industry that prevent the kinds of abuses that legislators and consumers fear, and provides information on how consumers can remove themselves from lists and decline to have their information shared.

The Use of Lists

The success of many businesses is directly attributable to the availability of information about potential customers to whom they want to sell their goods and services. Customers who have enough similarities to "comprise an identifiable potential market for some product of service"¹ can be placed on lists that allow companies send them information about products that are likely to interest them. Technology, such as frequent customer or discount cards, preference surveys and cookies on the Internet allow direct marketers to more accurately tailor their lists to specific types of consumers. The Federal Trade Commission (FTC) says that "the increased use of 'frequent customer cards,' which enable sellers to collect purchasing data electronically . . . allows more extensive and more accurate customer targeting."²

The exchange of this information actually creates a more efficient and less intrusive marketing environment because businesses can contact only the customers who are most likely to buy their products or services. Ironically, it is this information exchange that is fueling the current round of legislation to limit its availability. Personally identifiable information is already protected, however, by current state and federal legislation in addition to self-imposed policies by industry.

Initial Regulations

Telemarketers are still singled out by state and federal lawmakers for more legislation even though initial privacy regulations limited the contact that they can make with consumers. The first federal law was the Telephone Consumer Protection Act (TCPA) of 1991, which made it illegal for telemarketers to utilize automatic telephone dialers to call any emergency number, a patient at a hospital, elderly home or similar establishment and any cellular or paging service. The TCPA also made sending of unsolicited commercial faxes illegal and requires telemarketers to establish and maintain a do-not-call list and place any consumer that requests it on such a list.

More Restrictions

In 1994, the Telemarketing and Consumer Fraud and Abuse Prevention Act strengthened the TCPA restrictions and granted enforcement authority in this area to the FTC. Specifically, the act charged the FTC with the responsibility of establishing a telemarketing sales rule (TSR) that further restricted the actions of direct marketers by requiring them to inform consumers of the intent of the marketer's call and the nature of its product.

This rule also says that telemarketers must have the consumers' "express, verifiable authorization before debiting their checking accounts." In addition, telemarketers are prohibited from misrepresenting any aspect of their product, calling before 8 a.m. or after 9 p.m., or aiding in the settlement of prior telemarketing scams.

The FTC, which has begun its five-year review of the TSR, aims to modify this rule from its original form by judging if it "could be strengthened to provide greater consumer protection, consistent with avoiding any undue compliance burden on legitimate telemarketers, as part of a broad regulatory review of the TSR."³

Congress also passed legislation in 1997 to protect personally identifiable financial information. The act, called the Fair Credit Reporting Act (FCRA), requires all credit bureaus to allow consumers to opt out of having their personal information utilized for unsolicited credit offers.

Protecting Children

The Children's Online Privacy Protection Act (COPPA) of 1998 went into effect on April 21, 2000. This act prohibits deceptive and unfair actions by web-

By Craig Garthwaite, Commerce and Economic Development

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operators regarding the collection of information from children under the age of 13. The final rule adopted by the FTC applies to web sites that are directly targeted at or have *actual knowledge* of collecting information from children of that age. To determine if a site is directed at children it considers many factors, including the focus of the content, the content of audio and visual samples, as well as the type of advertisers on the site.⁴ If the site is deemed directed at children, it must give parental notice and have affirmative consent, and allow the parent to view the information collected from the child.⁵

Strengthening Privacy Protections Culminates in Gramm-Leach-Bliley

The push for federal legislation to impose even more stringent privacy protections on financial information recently culminated in the GLB Financial Services Modernization Act of 1999. Title V specifically regulates the manner in which financial institutions are allowed to collect and disseminate the personal information of its consumers and customers. More information can be found in the ALEC Issue Analysis entitled "Protecting Consumer Privacy: What Gramm-Leach-Bliley Means for Consumers and Business." The final rule concerning GLB was issued by May 15, 2000 and will become effective on July 1, 2001.

Additional Legislation is Pending in Congress

Additional legislation has already been introduced in Congress that is specifically aimed at telemarketers. The Telemarketing Victims Protection Act and the Know Your Caller Act of 2000 have been introduced to require disclosures regarding how customers can be taken off of lists and to prevent the use of caller ID blocking technology by telemarketers.

In addition, Congress has convened the Congressional Privacy Caucus to address consumer privacy concerns that have arisen since the adoption of the landmark GLB legislation.

Self-Regulation

The direct marketing industry is not only subject to numerous restrictions at the state and federal level, but it has developed a successful self-regulatory system. Chief among these is the Direct Marketing Association (DMA) 1999 privacy promise. This promise established mailing and phone preference lists for all of the DMA's members. A violation of these preference lists, honored by 99 percent of its 4000 members, could result in expulsion from DMA and public disclosure of the violations.⁶

The move by the DMA was mirrored by actions by the Better Business Bureau (BBB), which established BBBOnline "whose mission is to build users' trust and confidence in the Internet by advocating ethical online business and information practices . . ."⁷ through the use of a stringent code on online behavior. Web sites which display the BBBOnline mark should notify customers of what personal information that site tracks and gathers, how this site uses the information it tracks and gathers and who the site

discloses that information to.

Other organizations, such as the Online Privacy Alliance (OPA), have developed self-policing policies. The DMA, BBBOnline and OPA are all examples of industry attempting to protect the privacy of individuals without the intervention of government regulations.⁸ Software companies are also actively engaged in developing software that helps consumers protect their personally identifiable information online and block cookies.

Who Do Constituents Contact to Protect their Information?

In order to be removed from unwanted mailing lists, consumers may mail their requests to the Direct Marketing Association at the DMA Mail Preference Service, P.O. Box 9008, Farmingdale, NY 11735-9008.

To opt out of having their personal financial information used for unsolicited credit offers, consumers should call (888) 5-OPT-OUT. To stop unwanted telemarketing calls, they can ask telemarketers to place them on their do not call lists or contact their state attorney general for information concerning state managed do-not-call lists.

Finally, constituents can file privacy complaints with the Better Business Bureau by going to www.BBBonline.org/consumers/drguide.html.

Conclusion

There is an existing regulatory framework in place, both legislatively mandated and self-enforced by industry that protects consumers' personally identifiable information. In addition, the newly minted GLB standards will be implemented next year, which are some of the most stringent in the world. State legislatures, then, should tread lightly as they consider heaping even more regulation on already heavily regulated industries.

NOTES

1 "Fact Sheet: The Direct Marketing Association and the Importance of Direct Marketing to the American Economy," (1999).

2 "Telemarketing Sales Rule 16 CFR 310," pg. 4.

3 "FTC Testifies on Telemarketing Legislation," June 13, 2000.

4 For a full list of criteria please consult "How to Comply with the Children's Online Privacy Protection Rule," Federal Trade Commission, November, 1999, pg. 1.

5 A full description of the various regulations established by the act can be found at "Children's Online Privacy Protection Act Final Rule," Federal Register 2000, pg. 59888.

6 "Current Laws and Practices Governing Mail and Telephone Solicitation," Mid-Atlantic Financial Services Association.

7 Proctor and Gamble Privacy Statement.

8 These self regulatory efforts are only a portion of the entire industries efforts in this area. For a complete discussion of self regulation see "Self Regulation and Privacy Online: A report to Congress," Federal Trade Commission, July 1, 1999.

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