



New Internet Privacy Bill Proposed

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Consumers' concerns regarding Internet privacy have increased as of late and Congress is prepared to address the issue by year-end. On May 3, 2010, Congressmen Rick Boucher of Virginia and Cliff Stens of Florida released a staff discussion draft of a bill intended to "require notice to and consent of an individual prior to the collection and disclosure of certain personal information related to that individual." Despite being in the early stages of development, the draft bill is already making waves among business owners, the major concern being the potential for negative effects on e-commerce in an already troubling economic time due to "overreaching" privacy regulations.

The discussion draft purports to apply to "any person engaged in interstate commerce that collects covered information". The bill would not apply to "government agencies or any person that collects covered information from fewer than 5,000 individuals in any 12-month period." Covered information would include information such as first names or initials and last names, a postal addresses, phone or fax numbers, e-mail addresses, social security numbers, tax identification numbers, driver's license numbers, financial account numbers including credit card numbers, IP addresses, customer numbers, and identification information about a specific individual or a computer, device, or software application owned or used by a particular user.

In general, the bill would prevent a covered business from collecting, using, or disclosing covered information from or about an individual for any purpose unless the business makes available to such individual a privacy notice prior to the collection of any covered information and obtains the consent of the individual to such collection. The requisite notice must be "posted clearly and conspicuously" on the Web site and "accessible through a direct link" from the business's homepage. The information contained in the notice must include items such as the identity of the collector, a description of the information collected, the purposes for which the information is collected and used, how the information is stored, how long the information is retained in an identifiable form, and the purposes of which the information may be disclosed.

All business owners who use the Internet as a marketing and sales channel should have in place an artfully drafted Terms of Use and Privacy Policy. Typical terms included in such Web site agreements include statements on content and use restrictions, identification of information collected while visiting the site, warranties, and many of the mandates proposed by the new privacy bill.

While the necessity of such Web site agreements is often overlooked by business owners, as more and more business is transacted over the World Wide Web the importance of such agreements cannot be overemphasized. And if Congress is successful in passing some form of the Internet privacy bill that recently surfaced, a business owner's failure to have such agreements in place may result in significant penalties.