Chapter 7.10
A Taxonomic View of Consumer Online Privacy Legal Issues, Legislation, and Litigation

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ABSTRACT

In this chapter, consumer online privacy legal issues are identified and discussed. Followed by the literature review in consumer online privacy legislation and litigation, a relational model is presented to explore the relationship of the issues, legal protections, and the remedies and risks for not complying with the legal requirements. Two survey studies are used to reinforce the vital need for a stronger role by the government and business community as well as the privacy awareness from online consumers themselves. This chapter is concluded with a vital call for consumer privacy education and awareness and government and legislators' attention and timely responses with legislation that protects consumers against those who would misuse the technology.

INTRODUCTION

Information privacy is defined as the right of individuals to control information about themselves (Richards, 2006). As the Internet becomes more popular and more people are using it as a daily means of communication, information sharing, entertainment, and commerce, there are more opportunities for breaches of privacy and malicious intent attacks. There have been numerous bills introduced in the House of Representatives and the Senate in recent years attempting to legislate protections for consumers regarding online privacy. Many of these attempts at legislation fail to become laws. This study aims to examine consumer online privacy legal issues, recent litigation

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topics, and the present active legislation. The topic will be of interest because some of the legislation does not provide more consumer protection but is instead taking away consumer privacy such as the USA Patriot Act and the Homeland Security Act enacted after the terrorist attacks of September 11, 2001. These laws give government more access to private information instead of providing consumers with increased protections.

Some relevant privacy issues are underage consumer protections, health information privacy, lack of consumer control over information stored in databases, information security breaches, and identity theft. Recent litigation in the United States in the information security area has been over the lack of protection over the information gathered and stored by companies from consumers. The Federal Trade Commission (FTC) has initiated lawsuits against companies not providing the level of information protection they should. The FTC charged Petco with Web site security flaws that allowed a structured query language (SQL) injection attacker to gain consumer credit card information (FTC File No. 032 3221, 2004). The FTC also charged BJ's Wholesale Club with failing to secure credit card magnetic stripe information appropriately (FTC v. BJ's Wholesale Club, Inc, 2005). There was also a class action suit filed on behalf of Banknorth, N.A. (Visa and Mastercard) charging BJ's Wholesale Club that "hackers" gained access to credit card information of cardholders and used the information fraudulently (FTC v. BJ's Wholesale Club, Inc, 2005). These instances are examples of companies failing to take proper measures to secure consumer information. The stolen personal information could have been gathered through an online interaction or a personal visit to the company. These examples show that it does not matter how a consumer interacts with a company, either on the Web, in person, or on the phone, the company stores the information they gather in databases on their systems and all of the information is a target.

Current laws relating to consumer online privacy and protections are the U.S. Safe Web Act of 2006, the USA Patriot Act of 2001, Homeland Security Act: Cyber Security Enhancement Act of 2001, the Federal Privacy Act of 1974, the Children's Online Privacy and Protection Act of 2000, and the Health Insurance Portability and Accountability Act of 1996. The points pertaining to consumer privacy and protection will be included. Not all parts of the laws may be applicable to the subject of this chapter.

In the following section, consumer online privacy legal issues are identified and discussed. Followed by the literature review in consumer online privacy legislation and litigation, the authors present a relational model to explore the relationship of the issues, legal protections, and the remedies and risks for not complying with the legal requirements. Two survey studies are used to reinforce the vital need for a stronger role by the government and business community as well as the privacy awareness from online consumers themselves. This chapter is concluded with a vital call for consumer privacy education and awareness and government and legislators' attention and timely responses with legislation that protects consumers against those who would misuse the technology.

CONSUMER ONLINE PRIVACY LEGAL ISSUES

Table 1 summaries the major research studies in consumer online privacy issues which contain the following six categories: information security breaches, information privacy breaches, identity theft and pre-texting, health information privacy, underage consumer protection, and spyware, malware, viruses, cookies, and SPAM. The following subsections discuss these six categories.