



Multi-layered notices 12 months on – the work goes on

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In the May/June 2005 edition of this Bulletin ((2005) 2(1) *Priv LB* 1), Marty Abrams, Centre for Information and Policy Leadership (CIPL), and Malcolm Crompton, Information Integrity Solutions, wrote about multi-layered privacy notices and a number of global initiatives to incorporate them into privacy practice on a global basis.

The multi-layered notice approach aims to cut through the complexity of communicating to individuals about how an organisation collects, uses, shares and protects the personal information it holds. Using a more simplified and standardised format, the

wanting to create, translate and manage their privacy highlights document as an XML document.²

Since this time, events have indicated that the multi-layered notice is still very much alive and being further refined.

US research and development of financial services prototype and other developments

Of particular significance has been the very detailed research carried on in the US in an effort to find a better solution to the avalanche of incomprehensible and unread privacy notices that resulted from new financial services legislation,

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approach aims to help individuals make better decisions about with whom they will do business, and with whom they will entrust information about themselves.

The article reported the global widespread endorsement of the multi-layered notice approach, including by Data Protection and Privacy Commissioners in 2003 and the EU Article 29 Data Protection Working Party in 2004. The article also reported as late-breaking news the recommendations aimed at encouraging organisations to use of multi-layered notices by the Office of the Privacy Commissioner in its 2005 report on the review of the private sector provisions of the *Privacy Act 1988* (Cth).¹ At the time, the privacy working group of the Electronic Commerce Sub-Group of Asia Pacific Economic Co-operation (APEC) was taking an interest in privacy notices and IBM had published an online package to help businesses

known as the *Gramm-Leach-Bliley Act* (GBLA).

This research and the development of a prototype privacy notice formed phase one of the Form Development Project. Phase two, yet to be completed, will assess the prototype.³

The report on phase one⁴ reinforced much of the research that had informed the development of the multi-layered privacy notices up to that time: for example, it reinforced earlier findings that the notice must be well-designed, simple, adopt a common format. The language must be clear and follow a layered structure. Further, it confirmed that consumers automatically expect information to be kept secure, so that reassurance on this issue does not need to be a focus of the notice.

However, a range of qualitative techniques shed new light on what consumers want from a privacy notice: for example, consumers indicated that it was how organisations share

information that most matters to them. It showed that oversimplification can also be ineffective. The report says:

A notice that strips away all contextual information will be short, but uninformative. The challenge is to find the balance between as few words as possible and enough information so consumers understand.⁵

The prototype developed in the report therefore includes information that provides a context for understanding the information in the notice. For example, the prototype includes information about the possible sharing practices of financial institutions, as well as a method for a financial institution to outline, in a standardised format, its particular sharing practices. This enables consumers to understand the specific sharing practices of their bank, and to compare them to other institutions. The prototype also includes a 'Why' section which adds further context by including brief information about the law applying to the notices. Consumers liked the fact that the notice was governed by law.

How specifically applicable this prototype will be outside the context of the GLBA environment is yet to be seen. However, there are no doubt valuable lessons to be learned for the development of multi-layered privacy notices in wider contexts. We will await the further testing of the prototype with much interest.

Among the US headquartered companies, Microsoft was one of the first companies to implement the multi-layered approach and has embedded the approach deeply into its practices. As noted recently by its Chief Privacy Strategist, Peter Cullen:

In the case of MSN, that means that 250 million people have access to a much more streamlined privacy notice. That has since been expanded to all online services, and Microsoft Office 2007 will be one of the first boxed products that comes out with a layered, or short form, privacy notice.⁶

The US Postal Service became one of the first government agencies in the world to implement the approach.⁷

Developments in Australia

The Australian government has led the way in the government sector by

being the first government in the world to include a multi-layered privacy notice on its award-winning flagship portal, www.australia.gov.au. In March 2006 the site was judged to be the 'best government site' in the 2006 Australian NetGuide Awards.⁸

Developments in Canada

The privacy advice group Nymity⁹ in Canada has published a Short Notice Guide and a Primer for Transparency both of which adopt the approach as endorsed by privacy commissioners and developed by the US-based Center for Information Policy Leadership (CIPL) led by Marty Abrams. Nymity has worked with Canadian companies on adoption by companies there. Equifax Canada is a notable adopter of the multi-layered notice approach.¹⁰

OECD Working Party on Information Security and Privacy

In its meeting in Seoul, South Korea, the OECD Working Party on Information Security and Privacy (WPISP) considered a white paper which discussed research on privacy notices conducted by the UK Information Commissioner,¹¹ the US financial services regulators outlined above, and the work conducted by CIPL including CIPL's working group. The paper related the research to the OECD guidelines, other guidance from the OECD, and the OECD's work on notice tools. Reports of the outcome of the meeting indicate that the WPISP expressed support for simplified notices and the research being undertaken. It also expressed general support for the Ten Steps best practice document prepared by CIPL.¹²

APEC

Multi-layered notices continue to be a matter of interest to APEC's Electronic Commerce Sub-Group. Multi-layered notices figured as an important point of information and discussion at its Data Privacy Subgroup meetings in Gyeongju, Korea in September 2005 and again in Hanoi in February 2006.

Conclusion

Shorter, clearer privacy notices, including the multi-layered notice approach, continue to receive strong support from policy makers and regulators globally as best practice. Further, very detailed research in the US has backed moves in this direction.

The rest is up to organisations in both the public and private sectors to recognise and implement it.

Continuing revelations of poor information security could significantly reduce trust in online service channels. Reassurance through a simple and understandable multi-layered privacy notice and demonstrably abiding by it is a good starting point in regaining that trust. Business and government have nothing to lose and a lot to gain by adopting this global best practice. ●

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Endnotes

1. Available online at <www.privacy.gov.au/act/review/index.html>.
2. See <www.ibm.com/webmaster/news/privacynoticehighlights.html>.
3. The Form Development Project was initiated by six of the US federal agencies that enforce the GLBA.
4. *Evolution of a Prototype Financial Privacy Notice: A Report on the Form Development Project*, 28 February 2006, Kleimann Communications Group Inc at <www.ftc.gov/privacy/privacyinitiatives/ftcfinalreport060228.pdf>.
5. Above, Executive Summary p xi.
6. See <http://news.com.com/Putting+privacy+first+at+Microsoft/2008-1029_3-6088719.html>.
7. See <www.usps.com/homearea/docs/privpol.htm?from=home&page=0080privacy>.
8. At <www.agimo.gov.au/media/2006/march/49963.html>.
9. At <www.nymity.com>.
10. At <www.equifax.com/EFX_Canada/welcome/privacy_e.html>.
11. At <www.informationcommissioner.gov.uk/cms/documentUploads/Fair%20Processing%20Notices%20Research%20Final.pdf>.
12. See <www.hunton.com/files/tbl_s47Details/FileUpload265/1405/Ten_Steps_whitepaper.pdf>.