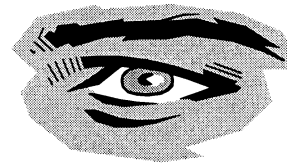
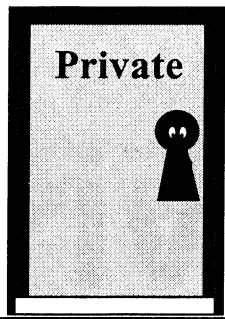


Privacy Watch



**Keeping An Eye On
Developments in the
Law of Privacy**

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Attorneys at Law

Winter, 2003

MINNESOTA ADOPTS PRIVACY LAW FOR INTERNET USE

Internet users may be able to control whether their service providers disclose personal information under a new law that was passed by the legislature and signed during the past session.

The measure, Minn. Stat. § 325M.01, which could speed federal action of internet privacy, was opposed by national service providers. It requires all internet service providers (ISPs) to tell consumers in Minnesota whenever they plan to disclose such personal information about them such as which websites users have visited, their email or home addresses, and telephone numbers. Providers would also have to disclose purposes for use of the information.

Under the new law, all ISP contracts must state in a conspicuous manner whether their customers would have to take action to prevent the information-sharing once people are notified, or if the service provider would need permission to proceed before sharing the information. The bill will allow consumers to sue businesses that violate the law with an exception for giving information to law enforcement.

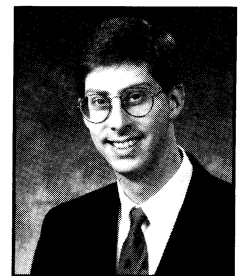
A second portion of the law follows the lead of other states who have adopted rules to try to control unwanted email. It requires companies sending unsolicited advertisements to include the letters "ADV" in the subject lines of emails, and the term "ADV-Adult" for materials of a sexual nature. The new law goes into effect on March 1, 2003. It is anticipated that the law may draw a challenge from ISPs on several grounds including the potential that it is unconstitutional and violates the First Amendment to the U.S. Constitution. Similar challenges have been made to other comparable laws and they have met with mixed success throughout the country.

"This law is a good one for consumers because it will enhance their protection of their personal privacy," said **Phillip J. Trobaugh**, an attorney at the law firm of **MANSFIELD, TANICK & COHEN, P.A.** who represents consumers in privacy-related matters. "Hopefully the law will be a model for other states and, perhaps, the federal government too," **Mr. Trobaugh** added.

The measure does not have any parallel at the federal level, although there has been discussion about enacting a similar measure to provide uniformity among the states. If so, any federal law would supersede the Minnesota law.

The Minnesota bill was modeled on state and federal laws that prevent video stores from disclosing what

(continued on reverse)



Phillip J. Trobaugh

Privacy Watch Fact

Key Provisions of Internet Privacy Law

- Alerts consumers about release of personal information
- Provider for mechanism to stop such release
- Violators pay actual damages and possibly attorneys fees
Minn. Stat. § 325M.01

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...Minnesota Adopts Privacy Law For Internet Use

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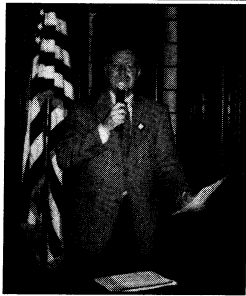
movie customers had rented. The federal measure was enacted in the late 1980's following a controversy regarding efforts by journalists who ascertained what video movies were rented by Robert Bjork during his ultimately-unsuccessful effort to be confirmed to the Supreme Court.

One such measure is currently pending in Congress. Under S.2201, which has been approved by the Senate Committee on Commerce, Science, & Transportation, operators of websites will be required to provide "clear and conspicuous" notice of how personal information provided through the site would be used. The bill would require ISPs to permit consumers to "opt-in" for the use of sensitive personal data, including financial and medical information; companies could use the opt-out approach for non-sensitive data such as marketing information. The bill also requires that consumers be

told at the time the information was collected how it will be used. It also would obligate ISPs to provide "reasonable" access to information that the company has collected, upon balancing the needs of users against the cost of providing such information. Also, it would allow operators to charge a fee of up to \$3 for such access.

The most controversial provision of the bill would allow consumers to sue for statutory damages of up to \$500 per violation for the improper release of sensitive personal information as well as injunctive relief. Companies accused of violations could assert a defense that they had implemented procedures to comply with the law.

The bill also requires the Federal Trade Commission (FTC) to impose similar privacy protection rules on off-line companies within six months of the enactment of the legislation. The rules will go into effect one year later, unless Congress passes similar legislation before that time. The federal measure would override any laws, including the Minnesota measure.



PRIVACY POINTERS

Marshall H. Tanick of the law firm of MANSFIELD, TANICK & COHEN, P.A. recently discussed privacy legal issues at a breakfast meeting of the City of Lakes Rotary Club in downtown Minneapolis. Mr. Tanick reviewed new regulations dealing with terrorism in the wake of the September 11, 2001 attacks and pointed out potential privacy problems, including increased governmental access to banking and other personal data and increased surveillance activities.

PrivacyWatch is a complimentary service of the law firm of MANSFIELD, TANICK & COHEN, P.A., providing analysis and review of recent legal developments concerning the law of privacy. It examines developments in connection with the Minnesota Government Data Practices Act, the Minnesota Open Meeting Law, the Federal Freedom of Information Act, the common-law right of privacy, and similar provisions of interest and importance to Minnesota and surrounding areas. For further information, contact the law firm at (612) 339-4295, or by FAX at (612) 339-3161.

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