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committed to promoting privacy online.

Note: The following paper on aspects of "choice" is prepared for the Internet Caucus Advisory Committee's 2001 Privacy Briefing Book on the "Policy of Choice." It contains excerpts from the Online Privacy Alliance's "Privacy Guidelines Commentary" that can be read in its entirety, along with the OPA's "Guidelines for Online Privacy Policies" at <http://www.privacyalliance.org/resources/> .

Privacy Guidelines Commentary

November 19, 1998

ONLINE PRIVACY ALLIANCE

Commentary to the Mission Statement and Guidelines

INTRODUCTION

1. This commentary is intended to serve as an introduction to the Alliance's Mission Statement and Guidelines as well and to serve as an interpretive tool, which will assist Alliance Members and others to establish and refine on-line privacy programs internally and in working with third parties to develop enforcement programs. This document attempts to reflect the thoughts of the drafters of the Guidelines, their areas of disagreement, and the compromises they have reached in their final product. ...

ANNEX I

ELEMENTS OF EFFECTIVE SELF-REGULATION

FOR PROTECTION OF PRIVACY

As set forth in *A Framework for Global Electronic Commerce*, the Clinton administration supports private-sector efforts to implement meaningful, consumer-friendly, self-regulatory regimes to protect privacy. To be meaningful, self-regulation must do more than articulate broad policies or Guidelines. Effective self-regulation involves substantive rules, as well as the means to ensure that consumers know the rules, that companies comply with them, and that consumers have appropriate recourse when injuries result from noncompliance. This paper discusses the elements of effective self-regulatory regimes -- elements that incorporate principles of fair information practices with enforcement mechanisms that ensure compliance with those practices.

A. Principles of Fair Information Practices

Fair information practices were originally identified by an advisory committee of the U.S. Department of Health, Education and Welfare in 1973 and form the basis for the Privacy Act of 1974, the legislation that protects personal information collected and maintained by the U.S. government. These principles were later adopted by the international community in the Organization for Economic Cooperation and Development's Guidelines for the Protection of Personal Data and Transborder Data Flows. Principles of fair information practices include consumer awareness, choice, appropriate levels of security, and consumer access to their personally identifiable data. While the discussion that follows suggests ways in which these principles can

be implemented, the private sector is encouraged to develop its own ways of accomplishing this goal.

1. *Awareness.* At a minimum, consumers need to know the identity of the collector of their personal information, the intended uses of the information, and the means by which they may limit its disclosure. Companies collecting and using data are responsible for raising consumer awareness and can do so through the following avenues:

- *Privacy policies.* Privacy policies articulate the manner in which a company collects, uses, and protects data, and the choices they offer consumers to exercise rights when their personal information is used. On the basis of this policy, consumers can determine whether and to what extent they wish to make information available to companies.
- *Notification.* A company's privacy policy should be made known to consumers. Notification should be written in language that is clear and easily understood, should be displayed prominently, and should be made available before consumers are asked to relinquish information to the company.
- *Consumer education.* Companies should teach consumers to ask for relevant knowledge about why information is being collected, what the information will be used for, how it will be protected, the consequences of providing or withholding information, and any recourse they may have.

Consumer education enables consumers to make informed decisions about how they allow their personal data to be used as they participate in the information economy. Consumer education may be carried out by individual companies, trade associations, or industry public-service campaigns.

2. *Choice.* Consumers should be given the opportunity to exercise choice with respect to whether and how their personal information is used, either by businesses with whom they have direct contact or by third parties. Consumers should be provided with simple, readily visible, available, and affordable mechanisms -- whether through technological means or otherwise -- to exercise this option. For certain kinds of information, e.g., medical information or information related to children, an affirmative choice by consumers may be appropriate. In these cases, companies should not use personal information unless its use is explicitly consented to by the individual or, in the case of children, his or her parent or guardian. ...