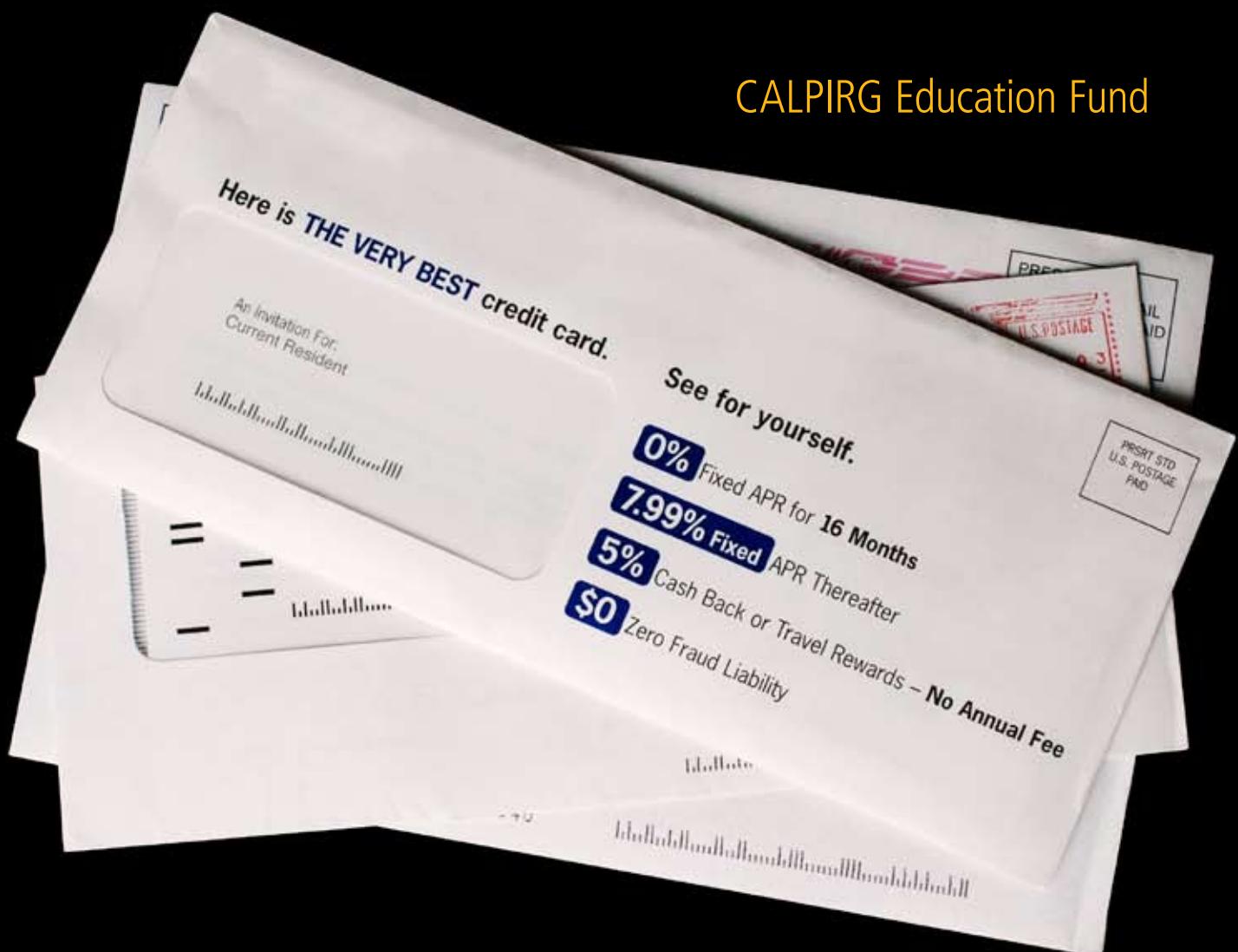


Still in the Dark

California Consumers' Search for Answers About
How Companies Share Their Personal Information

CALPIRG Education Fund



Still in the Dark

California Consumers' Search for Answers About How Companies Share Their Personal Information

CALPIRG Education Fund

Written by:
Pedro Morillas,
CALPIRG Education Fund
Tony Dutzik and
Elizabeth Ridlington,
Frontier Group

Winter 2008

Acknowledgments

CALPIRG Education Fund wishes to thank Chris Hoofnagle, senior staff attorney to the Samuelson Law, Technology & Public Policy Clinic and senior fellow with the Berkeley Center for Law & Technology for his input on the report. The authors wish to thank Alexios Monopolis, who authored the early drafts of this report, and Steve Blackledge, who guided this report through its early stages. Thanks also to Susan Rakov and Sarah Payne of Frontier Group for their editorial support.

CALPIRG Education Fund thanks The Rose Foundation for Communities and the Environment for making this report possible.

The authors bear responsibility for any factual errors. The recommendations are those of CALPIRG Education Fund. The views expressed in this report are those of the authors and do not necessarily reflect the views of our funders or those who provided review.

© Copyright 2008 CALPIRG Education Fund

With public debate around important issues often dominated by special interests pursuing their own narrow agendas, CALPIRG Education Fund offers an independent voice that works on behalf of the public interest. CALPIRG Education Fund, a 501(c)(3) organization, works to protect consumers and promote good government. We investigate problems, craft solutions, educate the public, and offer Americans meaningful opportunities for civic participation.

Frontier Group conducts research and policy analysis to support a cleaner, healthier and more democratic society. Our mission is to inject accurate information and compelling ideas into public policy debates at the local, state and federal levels.

For more information on CALPIRG Education Fund, or for additional copies of this report, please visit our Web site, www.calpirg.org.

Cover photo: Shawn Gearhart, istockphoto.com

Design and layout: Harriet Eckstein Graphic Design

Table of Contents

Executive Summary	1
Introduction	3
Protecting Consumers' Privacy: The Shine the Light Law	4
Companies' Responses to Privacy Requests Are Often Inadequate	6
The "Shine the Light" Survey	6
Findings of the Survey	7
More than One-Third of Consumers Received No Response to their Shine the Light Law Request	7
Many Consumers Received Inadequate or Incomplete Responses	8
Companies that Share Information Generally Responded by Providing a Cost-Free Opportunity to Opt-Out of Future Sharing	9
Many Consumers Were Frustrated by the Process of Asserting Their Rights Under the Shine the Light Law	9
Conclusions and Recommendations	12
Appendix: Survey Instrument and Annotated Results	15
Notes	18

Executive Summary

Consumers often have little knowledge of, or control over, how companies with which they do business share their personal information with other businesses. To protect consumers' privacy, California enacted the cutting-edge "Shine the Light" law in 2003, giving consumers new ways to learn how personal information is shared among businesses, and to opt out of such sharing.

In 2006, CALPIRG Education Fund asked members of CALPIRG to take part in a survey to determine how businesses respond to questions about the sharing of personal information of the kind covered by the "Shine the Light" law. Fifty-two individuals each contacted one company with which they do business and asked for information on how their personal information has been shared with other companies. Under the law, companies that engage in data sharing, and receive such a request, must either disclose the names of companies with which they have shared a consumer's information or provide the consumer with a cost-free opportunity to opt out of future sharing.

The results of the survey show that,

while some California businesses respond quickly and courteously to "Shine the Light" law information requests, many consumers were frustrated in their efforts to find out whether and how their personal information is shared with other businesses. **Only about one-third (33 percent) of survey participants reported receiving a response consistent with the terms of the "Shine the Light" law.**

More than one-third of consumers reported receiving no response at all to their request for information.

- Of the 52 participants in the survey, 31 (60 percent) received some type of response from the company within 30 days, 20 (38 percent) received no response at all, and one (2 percent) received a response after 30 days.
- Consumers who contacted companies by e-mail were far more likely to receive a response (87 percent response within 30 days), than consumers who contacted companies by regular mail (40 percent response within 30 days).

Of the 31 consumers who received some response from a company, 17 reported receiving a response consistent with the “Shine the Light” law.

- Ten consumers were informed that the company does not share their personal information with others, while six others received a cost-free opportunity to opt out of further information sharing. One consumer received a response on how their information was shared for non-marketing purposes.
- On the other hand, six consumers were instructed that they needed to take additional steps (for example, visit a Web site or call a toll-free number) to receive the information they were seeking, while three others were told they would receive a response later, but did not report ever receiving a response.

Many consumers reported that they were not satisfied with the companies’ response to their requests or faced hurdles in receiving an appropriate response.

- More than one-half of survey participants reported that they were not satisfied by the companies’ response to their request for information.
- While the majority of participants spent less than 15 minutes submitting and following up on their requests for information, five consumers (10 percent) reported spending more than a half-hour and two consumers reported

spending more than two hours of their time communicating with the companies.

- Several participants reported having to make multiple attempts to receive an appropriate response to their request. As one consumer put it, “I was disappointed for the run-around ... I will continue with this process, but it is frustrating and discouraging to do so.”

The survey demonstrates that, while the Shine the Light law enabled some consumers to find information and take action to preserve their privacy, the law is difficult to use, businesses’ response to the law is inconsistent, and steps should be taken to improve the law.

- Companies that do business with California consumers should be required to respond to privacy requests, regardless of whether they share information with third parties.
- Companies should be required to both disclose the personal information shared, and the third parties with which it is shared, and provide consumers with an opportunity to opt out of future sharing.
- Companies should be required to disclose their information sharing practices on their Web sites.
- Companies should be required to place a box on their Web sites’ privacy pages allowing consumers to opt out of information sharing.

Introduction

Many Californians are understandably concerned about how their personal information is shared by companies with which they do business. The wide sharing of consumers' personal information can expose consumers to a variety of threats – including privacy infringements, increased telemarketing and spamming, the inclusion of inaccurate consumer information within credit reports, increased identity theft, vulnerability to scams, and targeted price-setting based on past consumer behavior.

As a result, strong regulations and laws such as California's groundbreaking 2003 "Shine the Light" law are necessary to prevent the abusive use of personal information by businesses.

The Shine the Light law was passed to help consumers learn more about the

process of "list brokerage" (the compilation and sale of personal information to third parties) and, most importantly, to give them an opportunity to limit the sharing of their personal information.

To gauge how businesses are responding to the Shine the Light law, we asked CALPIRG members to ask businesses for information about how their personal data has been shared with third parties. The results of our survey indicate that, while some businesses are complying with the law, many are either simply not responding to consumer requests or are responding in ways that make it difficult and frustrating for Californians to protect their privacy.

The Shine the Light Law is a good first step in addressing these problems, but more must be done to protect the privacy of California consumers.

Protecting Consumers' Privacy: The Shine the Light Law

In 2003, California passed a pioneering consumer privacy bill known as the “Shine the Light” law, which officially went into effect on January 1, 2005.¹ This groundbreaking legislation empowers individuals to learn about how and to whom businesses sell their personal information by requiring companies that do business with California residents, and that share personal information about their customers with third parties for direct marketing purposes, to either allow customers to opt out of information sharing, or make a detailed disclosure of how personal information was shared.

The Shine the Light law is unique in that it is one of the first attempts to address “list brokerage.” List brokerage is a process through which businesses compile consumers’ personal information and sell them to third parties—often without the consumer’s knowledge or consent.² The uncontrolled spread of a consumer’s personal information can expose that consumer to a host of problems, ranging from greater potential for identity theft to greater exposure to invasive e-mail, telephone and direct mail marketing campaigns.

Under the Shine the Light law, consumers are empowered to contact companies with which they have done business and that shared customers’ information with third parties to request an accounting of their information-sharing practices. Once a company has received such a request, it must do one of two things:

- 1) Reveal the companies with which they have shared customers’ personal information for marketing purposes within the previous calendar year, OR
- 2) Provide an opportunity for customers to opt out of information sharing at no charge (in which case the company is not required to tell customers what other businesses have received their information).

The businesses that must comply with the Shine the Light law are those that:

- have 20 or more employees;
- have an “established business relationship” (either an ongoing relationship

involving the sale or lease of goods or services, or a relationship in which the business has sold or leased a product to a consumer within the preceding 18 months) with a customer who is a California resident;³ and

- have provided customers' personal information to third parties for direct marketing use during the previous calendar year.⁴

Businesses do not have to be physically located in California to be subject to the law. Rather, they must do business with California residents. Importantly, the Shine the Light law does not impose any obligations on companies that do not share customers' information with third parties for direct marketing purposes.

The law offers companies many options for the format in which they can require consumers to submit requests. Companies may offer consumers the option to submit a request via phone, fax, e-mail and/or regular mail, as well as to submit a request in person at a store or branch. The law's only specific requirement about how companies inform consumers of their right to submit a request comes into play on-line: if the company chooses to allow consumers to submit a request through its website, it must use a link with the words "Your Privacy Rights" or "Your California Privacy Rights."

After a business receives a request from a consumer, it must respond within 30 days (or, if the request is received at a location other than that designated by the company,

within a "reasonable period" not to exceed 150 days).

If a business shares customers' private information, it must either:

- provide consumers a list of what personal information has been disclosed to third parties for direct marketing purposes during the previous year (including the name and address of all third parties and the nature of their business if it can't be determined by the name), or
- give consumers the choice to opt out of information sharing.

If a business has not shared a customer's personal information within the previous calendar year, it does not need to reply to a request under the Shine the Light law.⁵

In addition, a company may legally not respond to a Shine the Light law request if the company lists designated contact information on its "Your Privacy Rights" Web site, but receives the request at a different address, e-mail address or telephone number than that listed on the Web site.

If a business that is required to respond under the law's provisions fails to respond to a consumer's request, the consumer can seek a limited civil penalty for each violation (up to \$500 or up to \$3,000, if the violation was willful, intentional, or reckless). Consumers are allowed to request that companies disclose information on the sharing of personal data annually.⁶

Companies' Responses to Privacy Requests Are Often Inadequate

The "Shine the Light" Survey

In the spring and summer of 2006, CALPIRG Education Fund conducted a survey of companies' responses to information requests submitted under the Shine the Light law.

In May 2006, CALPIRG Education Fund sent out a recruitment e-mail for the survey to a list of self-selected e-mail "activists" of its sister organization, CALPIRG. Fifty-two CALPIRG members responded to the e-mail and completed all the steps required to provide a valid response to the survey.

Would-be participants were asked to select one or more companies with which they have a "business relationship" (as defined by the Shine the Light law) from a list of 18 companies provided. The 18 companies were selected to include a cross-section of businesses, including bricks-and-mortar retailers, on-line retailers, banks, insurance companies, and media companies. Respondents to the recruitment e-mail also suggested several other companies to add to the original list, and three more companies were added, for a total of 21.

Participants in the survey were then assigned one company from the list for further follow up. (The assignment of companies was intended to ensure that an adequate cross-section of companies was represented in the survey.) Participants were also provided with a sample letter to use in making their request for information under the "Shine the Light" law.⁷ Participants were further assigned a mode of contact (phone, mail or e-mail) in order to ensure that a cross-section of contact modes was included in the survey.

Participants were provided with contact information for their assigned company. Contact information was obtained by researching the Web sites of the companies. Where the company provided a specific e-mail, phone number, or mail address for processing privacy requests, this contact information was provided to the survey participant. Where such information was unavailable, general customer service contact information was provided instead.

Participants were asked to enter the results of their contact with the company in a Web-based survey tool (Survey Monkey). In addition, participants were asked to

forward any correspondence they received from the company to CALPIRG Education Fund. Thirty days after receiving their assignments, all participants received a follow-up e-mail from CALPIRG Education Fund reminding them to complete the on-line survey form.

Of the 21 companies included in the survey, we received completed surveys for 17. The companies surveyed, and the number of respondents for each, are listed below.

1. Allstate Insurance (5 responses)
2. Amazon.com (3)
3. American Automobile Association (AAA) (1)
4. Disney (on-line sales only) (3)
5. Home Depot (5)
6. Macy's (3)
7. *Martha Stewart Living* magazine (3)
8. MetLife Insurance (1)
9. Netflix (7)
- 10 Rite-Aid (2)
- 11 Toys R Us (1)
- 12 Union Bank of California (2)
13. United Airlines (1)
14. Victoria's Secret (6)
15. Vons (5)
16. Wal-Mart (1)
17. *Wall Street Journal* (3)

The objective of the survey was not to produce statistically valid conclusions about companies' compliance with the Shine the Light law. As noted above, companies that do not share customers' information with third parties for direct marketing purposes are not required to comply with the terms of the Shine the Light law and are under no obligation to respond to consumers' requests for privacy information. Moreover, the small sample size of the survey prevents us from making such statistically valid conclusions.

Rather, the survey was designed to provide a "consumer's eye" view of companies' responses to requests for privacy information. The following findings are a summation of those consumers' experiences

in attempting to use the Shine the Light law to obtain information about the sharing of their personal information with other businesses.

Findings of the Survey

More than One-Third of Consumers Received No Response to their Shine the Light Law Request

More than one out of three people who participated in the survey reported that their request for privacy information under the "Shine the Light" law did not draw any kind of response from the company. Of the 52 participants in the survey, 31 (60 percent) received some type of response from the company within 30 days, 20 (38 percent) received no response at all, and one (2 percent) received a response after 30 days.

Consumers who contacted companies by e-mail were far more likely to receive some form of response to their request (87 percent response within 30 days), than consumers who contacted companies by regular mail (40 percent response within 30 days).

Several companies did a good job of responding quickly and effectively to consumers' requests for information—at least those received via e-mail. Vons, the grocery store chain, responded to all four e-mail requests sent to the company within two days, informing consumers that the company does not share their information with third parties. Victoria's Secret responded to two e-mail requests by providing consumers with a cost-free opportunity to opt out of further data sharing. However, requests made to these two companies by phone or mail did not receive the same response. One survey participant described Victoria's

Secret's response to her phone inquiry as "very unresponsive."

Failure to respond to a consumer request for data-sharing information does not necessarily mean that a business is violating the Shine the Light law. As noted above, businesses that have not shared consumers' information in the previous calendar year are under no obligation to respond. However, failure to respond to consumers' requests does indicate poor customer service on the part of these companies. It also leaves consumers in the dark about whether the businesses are not sharing their personal information (and are therefore exempt from the law) or are violating the law by failing to disclose their data-sharing practices. As a result of this ambiguity, consumers are unable to determine whether companies are, in fact, complying with the law, and are unlikely to bring the issue to the attention of law enforcement.

The difference in the response rate to privacy queries received via e-mail versus by phone or mail also raises questions about whether all consumers—particularly those who lack access to the Internet or e-mail—are adequately protected by the law. As noted above, less than half of all requests for privacy information made via mail received any kind of response.

Many Consumers Received Inadequate or Incomplete Responses

While the majority of participants received some response to their privacy request, the quality of the initial response varied greatly. Several consumers reported receiving automated e-mails that had little if anything to do with the nature of their request. For example, one subscriber of Martha Stewart Living magazine writing to the e-mail address listed in the privacy policy of the Martha Stewart Web site received the following reply:

Thank you for writing to Martha Stewart Living Omnimedia.

We appreciate your interest in the Martha Stewart Living family of publications and home merchandise.

We regret to inform you that we do not accept products or product ideas. All of the products Martha Stewart Living Omnimedia offers are designed in-house.

We do not purchase or manufacture ideas invented, developed or designed by individuals outside of our organization.

We do not test, review or promote products. We do not invest in companies unrelated to our organization.

We do not accept or review business proposals.

We value your continuing interest in our brand. We apologize for being unable to consider your proposal and wish you the best in your future endeavors.

Best Wishes,

MSLO Customer Relations

One company that received consistently low marks for its response to consumers' requests was the on-line movie rental agency, Netflix. Requests sent via e-mail to the privacy@netflix.com address listed on the company's Web site received a response from "an automated mailbox which is periodically reviewed" and were directed to the privacy policy on the company's Web site, which states that the company does not share information with third parties without the advance notification and approval of the consumer. As a company that does not share information with third parties for marketing purposes, Netflix appears not to be covered by the terms of the "Shine the Light" law. However, the company's formulaic response to privacy requests does not bolster its reputation for customer service—of the seven survey participants that attempted to contact the company, only one reported that he or she was satisfied with the company's response.

These and other consumers who received automated responses were faced

with a choice: continue waiting for a response or to invest more of their time and energy in pursuing an answer to their question. As noted below, some consumers who continued to pursue an answer had to make several additional attempts, and spend significant amounts of time, before achieving satisfaction.

Companies that Share Information Generally Responded by Providing a Cost-Free Opportunity to Opt-Out of Future Sharing

The California Shine the Light law provides two options for companies that share consumers' information with third parties for marketing purposes. The companies may either provide consumers with data on how their information has been shared, or provide a cost-free opportunity to opt-out of future sharing. Businesses that did respond to consumers participating in our survey overwhelmingly chose the latter option.

Of the 52 participants in the survey, 17 received responses that were consistent with the terms of the Shine the Light law. Of those 17 consumers, 10 were told that the company they contacted did not share their personal information with third parties. Another six reported that they were provided with a cost-free opportunity to opt out of future sharing.⁸

One customer of Allstate Insurance was provided with the names of organizations with which his or her information was shared. Allstate reported that it provided the customer's name and address to a company that "helps us with informational mailings about our products and services" and provided name, address and Social Security number to a company that assists Allstate in obtaining information from credit and motor vehicle reports. These types of information sharing appear to be unrelated to marketing and thus outside

the purview of the Shine the Light law. But Allstate's detailed response made a positive impression on one survey participant, "I must say their response was quick, courteous and concisely outlined in what ways, why and with whom they share personal information."

We were unable to identify any other instance in which a consumer received a response including how their personal information was shared with third parties for marketing purposes.⁹ To the extent that companies doing business with California consumers are sharing their personal information with third parties, therefore, they appear to be using the "cost-free opportunity to opt-out" option of the Shine the Light law.

Many Consumers Were Frustrated by the Process of Asserting Their Rights Under the Shine the Light Law

For several participants in the survey, asserting their rights under the Shine the Light law was a difficult and frustrating experience. Six respondents to the survey were told that they needed to take additional steps (for example, visit a Web site or call a toll-free number) to receive a response to their request, while three others were told they would receive a response later, but did not report ever receiving a response.

Several participants were forced to make multiple contacts with the companies in order to receive an adequate response to their request. One participant, for example, sent three separate queries to Martha Stewart Living magazine before finally receiving a response that related to the original request. Others expressed frustration at the multiple contacts required:

At first the company responded with the [customer service phone number] and said to contact them for information. I had already done that and was directed to the e-mail route. I was disappointed for the run-around.

The next day I got another e-mail with a snailmail address to contact. I will continue with this process, but it is frustrating and discouraging to do so.

Another participant wrote of her experiences with Disney:

The company is playing "cat and mouse" with who to contact. They kept saying contact so and so, contact so and so, contact so and so, and then that person would say contact this department, who would say they would get back to me, never did, and would transfer me to another department. I never did get an answer from the company.

Of the 52 consumers who participated in survey, five reported that they spent more than 30 minutes communicating with the company in an effort to have their privacy request fulfilled, with two consumers reporting that they spent more than two hours in pursuit of an adequate response. For many Californians who might desire more information about how their personal information is shared with third parties, such an investment of time and effort is difficult to make.

Procedural roadblocks were not the only impediments to consumers' efforts to assert their rights under the Shine the Light law. One participant who contacted United Airlines received a reply citing a section of the company's rules for its frequent flyer program:

Program Rule #12: By participating in the Mileage Plus Program, members understand and acknowledge that their names and addresses may be shared with some or all Mileage Plus partners and may receive promotional materials, mailings and e-mails from United and its partners.

However, the e-mail also stated that the consumer could "opt out" of partner mailings and communications through the company's Web site. The survey participant was left confused about whether opting out would jeopardize his participation in the Mileage Plus program. He

was further confused when he visited the United Web site.

When you go to the website to opt out, there is no option to opt out, you have to un-select whatever you don't want to receive. It's unclear whether or not they'll still share my information with other companies.

Confusingly worded privacy policies were among the other common complaints of survey participants. In several cases, companies directed consumers to their online privacy policies, which left them confused about whether and how their personal information would be shared with third parties.

The following were among the reactions:

The wording of their opt-out policy was a little confusing, but apparently they treat their customers' e-mail addresses as confidential, but are willing to sell other customer information.

I have previously opted for no sharing of my information, which they offer each year. The "Detailed Notice of ... Information Practices" seems to allow them to share our data with almost anyone. . . . I'm not a lawyer but I'm sure one could justify almost anything based on that document.

Those consumers who were directed to privacy policies or forced to make multiple contacts at least had the opportunity to get an answer to their question. Some survey participants, however, received a form letter or e-mail response and no further communication.

Perhaps the most surprising failure to respond came from Disney's on-line shopping Web site (www.disneyshopping.com). The company's site features a prominent link labeled "Privacy Policy/Your California Privacy Rights" that describes the company's privacy policy and its practices for sharing information with third parties. It also contains instructions for California consumers to request their information consistent with the Shine the Light law.

However, the linked privacy policy

contains two privacy statements—one for the “Walt Disney Internet Group” and a second for “Disney Shopping, Inc.” along with two different e-mail addresses to use in obtaining information under the Shine the Light law. Two survey participants who used the e-mail address provided under the “California Privacy Rights” section of the DisneyShopping.com Web site (privacy-info@disneyshopping.com), received the following reply:

Dear Disney Guest,

Thank you for your recent correspondence. For inquiries concerning our updated privacy policy, please email Member Services at: ms_support@help.go.com.

**If you prefer, you may write us at:
Member Services
WDIG
500 S. Buena Vista St.
Mail Code 7716
Burbank, CA 91521-7716**

**We hope this information is helpful to you.
Thank you for your interest in Disney.**

One survey participant described what happened when she attempted to follow up:

Then, that person sent me an e-mail stating: Hi, Thank you for contacting us. We have received your e-mail and will get back to you as soon as possible. We appreciate your patience and understanding. Regards,

WDIG Member Services. And I never heard back from them.

The participant estimated that she spent more than two hours pursuing her California privacy rights and never received an adequate response.

Survey participants also reported waiting for answers that never arrived from other companies. Several participants reported similar encounters with Netflix:

They didn't really reply to the question. They merely pointed me to a FAQ page & instructed me to e-mail another address if I wanted more.

The company said they would respond at a later date.

The company responded within a day that it would respond later to the specific questions, but so far it has not responded.

They sent me out a form letter advising me to visit their web-site where it outlines their privacy policy.

It was just an automated response with information about contacting customer service, etc.

Clearly, for many survey participants, the act of asserting their rights under the Shine the Light law was a difficult and frustrating experience.

Conclusions and Recommendations

The Shine the Light law was intended to make it easy for California consumers to obtain important information about how their personal information is shared with third parties or to exert their ability to opt out of future sharing. The results of this survey demonstrate that, while the law has given consumers a way to protect their privacy, many companies respond poorly, if at all, to consumers' requests for important privacy-related information.

It is difficult to tell from the survey results whether individual companies are or are not complying with the law. As noted above, the Shine the Light law does not apply to companies that did not share information with third parties for marketing purposes during the previous calendar year. Thus, these companies are under no legal obligation to respond to consumers at all. Consumers who submit a Shine the Light law request to such a company but do not receive a reply, therefore, have no way of knowing whether the company is failing to comply with the law or simply does not share consumers' information with third parties. Moreover, if the company lists designated contact information

on its "Your Privacy Rights" Web site it is not obliged to respond to requests received in other ways.

The law also applies only to companies with a "business relationship" with the consumer. Again, companies without such a relationship have no legal obligation to respond to a Shine the Light law request. In principle, this stipulation makes sense—companies should not be forced to expend time and resources responding to irrelevant requests. In practice, however, consumers (and sometimes the companies themselves) may be confused about which branch of a corporation they have a "business relationship" with and what set of privacy policies and sharing practices apply. Consider the example of Walt Disney's shopping Web site, where customers seeking to assert their California privacy rights are presented with two privacy policies from two seemingly distinct entities, along with two sets of instructions for how to assert their rights under the Shine the Light law. Similarly, subscribers of *Martha Stewart Living* magazine seeking to assert their privacy rights on-line are directed to the privacy policy of the Martha Stewart Web site. It

is not immediately clear whether the policy for use of the Web site is the same as that in place for magazine subscribers.

Companies and the state of California can take several actions to fulfill the spirit of the Shine the Light law and increase its effectiveness:

- Companies should take additional steps to ensure that their response to consumers' privacy related requests is quick, courteous and thorough. Several companies responded quickly and thoroughly to consumers' Shine the Light law requests (at least those requests made via e-mail) and there is no legitimate reason why any company dealing with California consumers should have difficulty fulfilling such requests.
- Companies should particularly focus on the handling of privacy requests by mail and by phone. Our survey indicates that less than half of consumers who sent a privacy-related request by mail received any kind of response. While more and more consumers have access to the Internet and are likely to use e-mail to assert their rights under the Shine the Light law, companies must have effective procedures for handling consumer requests made by other means.
- The state of California should consider changes to improve the Shine the Light law, including the following:
 - Companies that do business with California consumers should be required to respond to privacy requests, regardless of whether they share information with third parties. Currently, consumers do not know whether to interpret non-response to a request as failure to comply with the law or as evidence

that a company does not share their personal information to third parties. Requiring a response to any privacy request would enable consumers to better judge a company's compliance with the law.

- Companies should be required to both disclose the personal information shared, and the third parties with which it is shared, and provide consumers with an opportunity to opt out of future sharing. Ideally, companies should also be required to disclose their information sharing practices on their Web sites. Several survey participants responded that they were not satisfied with being added to a "do not share" list, but were curious about how their personal information had been shared before they opted out. As one respondent wrote, "The company never did tell me with whom they share information ...This was disturbing."
- Companies should be required to place a box on their Web sites' privacy pages allowing consumers to opt out of information sharing.
- Companies should be required to get an affirmative "opt-in" from consumers before sharing their information with third parties, as opposed to the current practice of requiring consumers to opt out in order to protect their privacy. As one survey participant wrote, "Why aren't these companies required to ask me if I want to share information rather than I must ask them not to? All of the burden is put on the consumer." The Shine the Light law, while an admirable step toward openness, continues to allow businesses to share

consumers' information with third parties without their consent—a situation that is disconcerting to some consumers. As consumer concerns over identity theft and intrusive marketing continue to grow, California should consider the bold step of requiring consumer consent for the sharing of personal information for marketing purposes.

- Finally, the state of California should increase its efforts to educate consumers about their rights under the Shine the Light law.

California consumers expect that the companies with which they do business will treat their personal information with the utmost care. The Shine the Light law provides consumers with an opportunity to lift the veil on the sharing of their personal information with third parties. However, companies' response to the law, and the law itself, are imperfect. This survey demonstrates that California companies need to take their obligations to respond to consumer privacy requests far more seriously than they currently do. It also demonstrates that consumers need stronger, better tools to ensure that their privacy is adequately protected.

Appendix: Survey Instrument and Annotated Results

Survey N=52 (53 responses were received, but one was excluded based on failure to respond to a majority of questions.)

Thanks for helping with CALPIRG's survey of company privacy practices. This survey has just 18 questions and so shouldn't require much time to complete.

Background Information

1. Please enter your first and last name.

2. Please enter your email address.

3. Please select the name of the company you contacted. (N=52)

- Allstate Insurance (5)
- Amazon.com (3)
- American Automobile Association (AAA) (1)
- Disney (on-line sales only) (3)
- Home Depot (5)
- Macy's (3)
- Martha Stewart Living magazine (3)

- MetLife Insurance (1)
- Netflix (7)
- Rite-Aid (2)
- Toys R Us (1)
- Union Bank of California (2)
- United Airlines (1)
- Victoria's Secret (6)
- Vons (5)
- Wal-Mart (1)
- Wall Street Journal (3)

4. How did you contact the company? (N=51)

- By mail (25)
- By e-mail (23)
- By phone (3)
- [No response] (1)

5. When did you submit your request for information to the company?

6. Did you receive a response from the company within 30 days? (N=52)

- Yes, within 30 days (31)
- No, more than 30 days (1)
- No, no response at all. (Skip ahead to question 15.) (20)

The Company's Response

7. On what date did you receive a response from the company? (N=32) [timing of responses]
- Same day (7)
Next day (7)
Two days to one week (4)
One to two weeks (5)
Two to three weeks (3)
Three to four weeks (2)
After four weeks (4)
8. Did the company tell you the categories of personal information it shared with others and the names of the companies with which it shared your information? (N=32)
- Yes (8)
No (24)
- [Note: We believe this question was misinterpreted by some participants to include companies' response that they do not share personal information. Therefore, the results of this question are likely invalid.]
9. Did the company tell you that it did NOT share your personal information with other companies? (N=32)
- Yes, the company said it did NOT share my information. (10)
No (22)
10. Were you offered a cost-free opportunity to request that your information not be shared? (N=32)
- Yes (9)
No (23)
- [Note: Three respondents replied yes to this question and yes to question 9. These overlapping responses were removed from the data presented in the text of the report.]

Options for Protecting Your Information

11. What were you instructed to do to submit your request? (N=9)
- Mail a request or a completed form (6)
Send an e-mail (0)
Visit a web page (2)
Other (please specify) (1)
12. Were the instructions for how to submit your request clear and easily understandable? (N=9)
- Yes (8)
No (1)
13. Was any attempt made to discourage you from exercising your right to not have your information shared? (N=9)
- Yes (please provide details in box below) (1)
No (8)
(If Yes) Please explain the nature of the attempt to discourage you.
14. Were you told to do anything else before you could exercise your right to protect your personal information? (For example, read the company's on-line privacy policy.) (N=9)
- Yes (2)
No (7)

The Company's Response (cont'd)

15. If the company didn't tell you how your personal data was shared AND they didn't offer you a cost-free opportunity to prevent sharing, please select the answer below that most accurately reflects the company's response. [Respondents could choose more than one option.] (N=19)

The company denied that it has an “existing business relationship” with you. Please add the company’s reasons in the box below. (0)

The company believes it is exempt from the California law. Please add the company’s reasons in the box below. (1)

The company was unfamiliar with the California law. (1)

The company did not respond. (18)

Other. Please add more details about how the company responded to your request in the box below.

16. Overall, were you satisfied that the company responded to your request promptly and courteously? (N=50)

Yes (24)

No (26)

17. How much time do you estimate that you spent communicating with the company before you received a final response (or gave up)?

Less than 15 minutes (32)

15-30 minutes (14)

30-60 minutes (3)

1-2 hours (0)

More than 2 hours (2)

Please add any additional comments, anecdotes or thoughts.

One Last Step

If you requested your information via phone or mail, please send copies of any notes you took during your phone conversations and copies of all correspondence with the company to:

CALPIRG

Attn: “Shine the Light” Survey

1129 State Street, #10

Santa Barbara, CA 93101

If you requested your information via e-mail, please forward any e-mail communication to Elizabeth Ridlington at eridlington@pirg.org.

Notes

- 1 Cal. Civ. Code §1798.83(i)
- 2 Electronic Privacy Information Center, *California S.B. 27 “Shine the Light Law,”* downloaded from www.epic.org/privacy/profiling/sb27.html, 23 January 2007.
- 3 Definition of “established business relationship”: Cal. Civ. Code §1798.83(e)(5).
- 4 Cal. Civ. Code §1798.83(a); §1798.83(c)(1).
- 5 California Department of Consumer Affairs, California Information-Sharing Disclosures and Privacy Policy Statements, 22 November 2004.
- 6 Ibid.
- 7 The sample letter used in the survey was based on a sample letter designed by the Electronic Privacy Information Center, available at www.privacyrights.org/letters/jm3.htm.
- 8 Three additional participants reported that the company informed them that their personal information was not shared AND that they received a cost-free opportunity to opt out of future sharing. These respondents were excluded from the figure cited here.
- 9 A total of eight consumers responded “yes” to the following question: “Did the company tell you the categories of personal information it shared with others and the names of the companies with which it shared your information?” An affirmative answer to this question was intended to indicate that a company was sharing the consumer’s information and had notified the consumer about the extent of that sharing. However, four of those consumers also responded that they were informed that the companies had not shared their personal information with third parties. We believe these consumers interpreted the wording of the question to include instances in which the company informed them that their information was not shared. As a result, we believe the answers to this question are invalid. Of the four other consumers who responded “yes” to this question, three were customers of Allstate Insurance. Allstate is the only company in the survey to have provided information about the companies with which it shares consumers’ information, but that information is not related to marketing.