

A man in a uniform and hat stands on the left, looking at a tablet. In the foreground, a large, stylized red fish-like graphic is visible. The background is a cloudy sky.

ONLINE FRAUD

Preventative Measures & Legal Remedies

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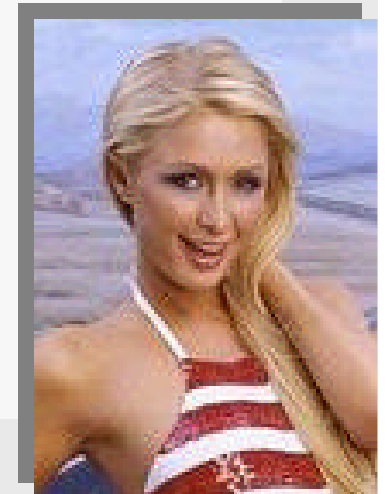
A lot of stuff happens online...

- *[really funny cartoon deleted. Legal reasons...]*



Online Fraud–Session Overview

- Your security obligations
- Proactive – Preventative Measures
 - Technology
 - Legal
 - Managerial / Procedural
- Reactive – Legal Remedies
 - Claims
 - Lawsuits
 - Call the cops!
- Q&A





Online Fraud

- What is fraud?
 - Click-fraud
 - Hacking
 - Identity theft
 - Phishing
 - Cookie-stuffing
 - Any scheme to defraud, deceive or injure
- Why do we care?
 - Consumer expectations
 - Legal requirements
 - Fraud = \$

Consumer Expectations

[even funnier cartoon deleted]



Security Breach Notification Laws

- California started this mess in 2003 (SB 1386)
 - Citibank;
 - Bank of America;
 - University of California-Berkley;
 - CardSystems
 - Marriott Hotels
- Over 20 States with comparable laws
- Federal law on the way...



Security Requirements

California AB 1950 effective January 1, 2005

- “A business that owns or licenses personal information about a California resident shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.”



Third Party Security Requirements

California AB 1950 effective January 1, 2005

- “A business that discloses personal information about a California resident pursuant to a contract with a nonaffiliated third party shall require by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.”



FTC v. BJ's Wholesale Club

Decision and Order - September 23, 2005

BJ's Unfair Practices:

1. Did not encrypt information stored or transmitted;
2. Files could be accessed anonymously;
3. Did not use readily available security measures to prevent unauthorized access through wireless access points;
4. Failed to employ sufficient measures to detect unauthorized access or conduct security investigations; and
5. Created unnecessary risks to the information by storing it when it no longer had a business reason to keep the information.

PREVENTION

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TECHNOLOGY



Prevention - Technology

- [*Cartoon deleted – you really would've liked this one.*]

PREVENTION

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LEGAL



Prevention - Legal

- B2B Terms and Conditions
 - Acceptance
 - Permitted Use; Impermissible Use
 - “...you may not exceed the authorized access granted to you under these terms and conditions...”
 - Payment and dispute terms
 - Audit rights
 - Access to data
 - Intellectual Property
 - Warranties & disclaimer of warranties
 - Limitations of liability
 - Jurisdiction



Prevention - Legal

- AdWords Program Terms
 - <https://adwords.google.com/select/tsandcsfinder>
 - Key provisions
 - Key omissions

- Click Defense, Inc. v. Google, Inc.
(California – Filed June 24, 2005)
*“You will be charged based on **actual** clicks...”*
(Section 5 of AdWords Program Terms)



Prevention - Legal

- B2C Terms and Conditions
 - Similar contractual issues
 - Stronger, but reasonable, terms
 - **Notice to consumers & affirmative acceptance**
 - Make the terms easily accessible to consumers before and after acceptance
 - State specific issues
- Vendor Agreements



Privacy Policies

- You must have a Privacy Policy if you collect personally identifiable information (pursuant to California law and FTC “Fair Information Practice Principles”)
 - Notice
 - Choice
 - Access
 - Security
 - Enforcement
- It’s all about transparency & consumer expectations



Sweepstakes

- **Elements of an illegal lottery:**
 - (1) Prize;
 - (2) Chance; and
 - (3) Consideration (\$)
- **Sweepstakes** - Winners are selected in a random drawing from among all eligible entries received
 - How to avoid an illegal lottery
 - Remove consideration (i.e., no purchase necessary)
- **Skill Contest** - A promotion in which winners are selected on the basis of bona fide skill
 - How to avoid an illegal lottery
 - Remove the element of chance
- **NEED OFFICIAL RULES**

PREVENTION

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MANAGERIAL / PROCEDURAL

Internal Security

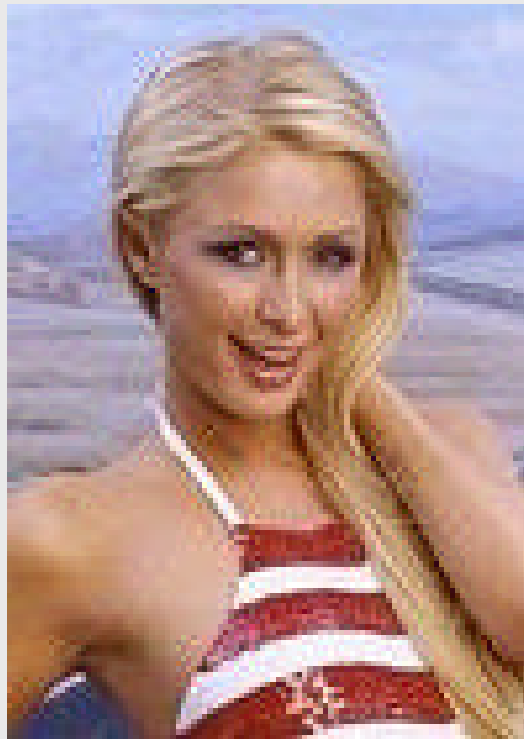
- [*Gary's funny cartoons know no end...*]



Prevention - Managerial

- FTC v. Global Net Solutions (August 2005)
 - Can-Spam settlement re: “adult labeling”
 - Affiliate Monitoring Compliance Program
 - Personally identifiable information of Affiliates
 - Personally identifiable information of Sub-Affiliates
 - Give Affiliates copy of Court Order
 - Get Affiliates to agree in writing to be bound by Can Spam and the Court Order
 - Prior approval of all email campaigns
 - Require every 10th consumer to indicate whether they’ve been directed to the web site via an email
 - Procedures to manage consumer complaints
 - Record keeping

Technical Error + Human Error





Internal Threats May Be The Worst

- Internal Controls and Security
 - Designated employees
 - Privacy and security policies
 - Privacy and security audits
 - Vendor requirements
 - Adequate electronic security
 - Adequate physical security
 - Stay informed
 - Employee training

So hire smart people...

- [*Gary's side-splitting humor intentionally omitted*]

REMEDIES



Remedies

- Breach of Contract
- Federal laws
 - Computer Fraud and Abuse Act
 - *Exceeding authorized access*
 - Digital Millennium Copyright Act
 - *Circumventing a technological security measure*
 - Federal Trade Commission Act
 - *Unfair or deceptive acts or practices in or affecting commerce*
- Comparable State laws
- Cease & Desist Letters
- Filing a lawsuit

Call the Cops!

- *[cue audience laughter from deleted cartoon. Gary's even funnier in person.]*

- Hiring a private dick





Call the Cops!

- State Attorney General
- FBI
 - Internet Crime Complaint Center
(<http://www.ic3.gov/>)
- State Agencies
 - New York State Attorney General's Internet Bureau
(<http://www.oag.state.ny.us/internet/internet.html>)



A man in a uniform, possibly a police officer or investigator, stands on the left side of the frame, looking down at a tablet device. He is wearing a dark cap, a light-colored short-sleeved shirt, and dark pants. To his right, a red and white car is partially visible, with its front end and wheel in the foreground. The background is a blurred, outdoor setting with a cloudy sky.

Q&A / RECAP

- Preventative Measures – Technology
- Preventative Measures – Legal
 - T&Cs
- Preventative Measures – Managerial
 - The insiders
- Lawsuits
- Call the Cops!

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