

**DOING BUSINESS ON THE INTERNET:  
LEGAL ISSUES**

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**Technology Tigers Breakfast  
Hampton Roads Technology Council  
February 22, 2001**

# ISSUES

- **Privacy**
- **Protection of confidential information**
- **Enforcement of on-line contracts**

**6 UCITA**

**6 UETA / E-SIGN**

- **Intellectual Property Rights**
- **On-line content (liability)**
- **Jurisdiction**

# PRIVACY

- **In general, no statutory right of privacy to personal information disclosed on a commercial Web site**

6 **No general federal or Virginia law setting standards or even requiring a privacy policy**

6 **Exceptions are:**

- **Children's Online Privacy Protection Act**

– **applies to commercial Web sites directed at children 13 or under or which knowingly collect info from those 13 or under (Fed. Gov't also adopted as matter of policy)**



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# PRIVACY

*(cont.)*

- **Website operators must provide notice on the site of the data collected from kids, how the operator uses it, and the operator’s disclosure practices for such info.**
- **Website operators must obtain verifiable parental consent for the collection, use, or disclosure of personal data from kids.**
- **Upon request, website operators must provide parents with a description of the info collected from their child. Parents can prohibit further collection, maintenance or use of info from their kids.**



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# **PRIVACY**

*(cont.)*

- Website operators may not condition a child’s participation in a game or prize offering upon the child’s disclosure of more info than is reasonably necessary to participate in that activity.**
- Website operators must establish & maintain reasonable procedures to protect confidentiality, security, and integrity of personal data collected from kids.**
- Some limited exceptions and “safe harbor” provisions**



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# PRIVACY

*(cont.)*

- **U.S. Gramm-Leach-Bliley Act**

- 6 **Applies to “financial institutions” (i.e., banks, insurance companies, broker-dealers, finance companies & mortgage lenders).**

- 6 **Requires each financial institution to provide customers with its policies & practices for protection of “nonpublic personal information.”**

- 6 **Prohibits disclosures to others unless customer is given clear notice and an opportunity to decline such disclosures.**



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# **PRIVACY**

*(cont.)*

- **EU DATA PROTECTION DIRECTIVE**

- 6 **Restricts ability of EU companies to send personal data to any country that does not meet EU privacy standards**
- 6 **U.S. & EU have reached agreement on “safe harbor” principles by which U.S. companies will be considered in compliance**
- 6 **Companies “self-certify” to U.S. Dept. of Commerce that they adhere to the following standards and that deviation from these may be enforced by FTC or other appropriate agency**



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# PRIVACY

(cont.)

- **“SAFE HARBOR PRINCIPLES”**

6 ***NOTICE*** -- Individual must be given clear notice of the purpose for which the data is collected, to whom it will be disclosed & for what purpose, any rights the individual may have to limit the use of the info and how to contact the organization collecting the data

6 ***CHOICE*** -- Individual must be given clear & conspicuous choice as to whether info may be disclosed to others where the disclosure is not for the purpose the data originally was collected or is incompatible with that purpose



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# PRIVACY

- **“SAFE HARBOR PRINCIPLES”** (*cont.*)

6 ***ONWARD TRANSFER*** -- Where collecting organization has not given choice to individual, data can only be transferred to a party that subscribes to “Safe Harbor” principles, is subject to EU Directive or enters into written agreement that provides at least the same level of protection as “Safe Harbor.”

6 ***SECURITY*** -- Data must be protected from loss, misuse, unauthorized access, disclosure alteration, and destruction. Protections must include logical (i.e., passwords) & physical (i.e., firewalls) protections.

# PRIVACY

- **“SAFE HARBOR PRINCIPLES”** (*cont.*)

6 ***DATA INTEGRITY*** -- Collecting organization must take reasonable steps to ensure that the data is used in a manner relevant to its purpose.

6 ***ACCESS*** -- Individuals must have access to their personal data to review it and correct any inaccurate material, except where the expense of providing access would be disproportionate to the risks to the individual’s privacy or where the rights of other persons would be violated through access.

# PRIVACY

- **“SAFE HARBOR PRINCIPLES”** (*cont.*)

**6 ENFORCEMENT -- Collecting organization must have method by which it ensures that “safe harbor” principles are complied with, as well as method by which individuals can bring complaints for non-compliance with those principles. Monetary damages and sanctions must be available in order to ensure compliance.**



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# PRIVACY

*(cont.)*

- ***WORTH NOTING:***

- 6 **FTC has brought legal enforcement actions against companies that violated their own announced privacy policies (e.g., Toysmart tried to sell customer data even though it had promised customers that such data “will never be shared with a third party.”)**
- 6 **FTC has proposed federal legislation guaranteeing Internet customers certain privacy rights with respect to data collected about them.**



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# PRIVACY

- ***WORTH NOTING (cont.):***

- 6 **The Virginia Internet Privacy Protection Act was proposed this legislative session but did not pass. It was designed to protect consumers' personal information on the Internet.**
- 6 **The Virginia Internet Privacy Policy Act was passed this session. Directs every public body that has an Internet web site to develop an Internet privacy policy and an Internet policy statement.**



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# PROTECTION OF CONFIDENTIAL INFORMATION

- **U.S. Computer Fraud & Abuse Act (“CFAA”)**
- **U.S. Electronic Communications Privacy Act (“ECPA”)**
- **U.S. Right to Financial Privacy Act (“RFPA”)**
- **Virginia Computer Invasion of Privacy Law (“CIP”)**

## **CFAA**

- **Provides criminal & civil penalties for a broad range of “hacking” activities including:**
  - 6 **Obtaining through unauthorized computer access information contained in the financial records of a financial institution, credit card issuer or computer reporting agency**
  - 6 **Gaining unauthorized entry to a computer for the purpose and with the result of committing fraud**
  - 6 **Causing harm to computers through the knowing transmissions of harmful programs (i.e., viruses)**



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## **ECPA**

- **Applies to providers of electronic communications services & remote computing services**
- **Prohibits knowing divulgence of the contents of a communication stored on the service or received from a customer for the purpose of providing storage or computer processing for that customer.**
- **DOES NOT APPLY TO PRIVATE NETWORKS**
- **DOES NOT PROHIBIT DISCLOSURE OF CIRCUMSTANCES OF A COMMUNICATION (e.g., identity of sender or recipient)**



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# **ECPA**

*(cont.)*

- **DOES NOT IMPOSE LIABILITY FOR RECKLESS OR NEGLIGENT DISCLOSURES**
- **PERMITS DISCLOSURE**
  - 6 **Where necessary to provide the service or protect the service provider's interests or**
  - 6 **Where disclosure is required by warrant, subpoena, or other legal process**
- **Also provides criminal & civil liability against anyone who intentionally uses a device to acquire the contents of any electronic communication**

## **RFPA**

- **Limits circumstances in which financial institutions may be required to disclose individual customer records to the federal gov't:**
  - 6 **Warrant (no prior notice to customer)**
  - 6 **Administrative subpoena or summons (but only where the information sought is relevant to a legitimate law enforcement inquiry & after a copy of the subpoena or summons has been served upon the customer).**



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## CIP

- **Imposes criminal liability when a person uses a a computer or computer network and intentionally examines without authority any employment, salary, credit or any other financial or personal information relating to any other person.**



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## **ENFORCEMENT OF ON-LINE CONTRACTS**

- **Uniform Computer Information Transactions Act (UCITA)**
  - 6 **Adopted last year in Virginia; amended this year.**
  - 6 **Takes effect on July 1, 2001**
  
  - 6 **UCITA covers contracts to create, modify, transfer, or license “computer information.” This includes contracts: to license/ buy software; to create computer programs and games; to create multimedia products; for online access to databases; to distribute information on the Internet, etc.**



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## **ENFORCEMENT OF ON-LINE CONTRACTS**

- **UCITA (*cont.*)**
  - 6 Permits formation of an on-line contract through conduct (or lack thereof) after opportunity to review terms of contract**
  - 6 Permits formation of an on-line contract through the use of electronic agents (“bots”) without direct human intervention**

## **ENFORCEMENT OF ON-LINE CONTRACTS**

- **UCITA (*cont.*)**
  - 6 **Recent legislative amendments address some of the criticism of UCITA by consumer groups by**
    - requiring separate purchaser agreement to “self-help” contract clause whereby seller can deactivate software**
    - clarifying that mass market licenses for software cannot prohibit criticism of the product**

## **ENFORCEMENT OF ON-LINE CONTRACTS**

- **Virginia Uniform Electronic Transactions Act (UETA)**

**vs.**

**U.S. Electronic Records & Signatures in Commerce Act  
(E-Sign)**

- 6 **UETA approved last year in Virginia; effective July, 1, 2000.**
- 6 **E-Sign adopted last year by U.S.; effective Oct. 1, 2000 (except for certain provisions dealing with record retention by federal & state gov't agencies)**



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## **ENFORCEMENT OF ON-LINE CONTRACTS**

- **UETA & E-Sign** (*cont.*)
  - 6 **Both laws state that a signature may not be denied legal effect solely because it was rendered in an electronic form nor can a contract be denied legal effect or enforceability because an electronic signature or record was used in its formation.**
  - 6 **Neither law requires a consumer to use an electronic signature**

# ENFORCEMENT OF ON-LINE CONTRACTS

- **UETA & E-Sign** (*cont.*)

6 ***THE PROBLEM:*** Although both laws are substantially similar, there are important differences and it is not clear, in Virginia, which law controls where the laws disagree

- **Example:** UETA deals with the issue of how to determine whose electronic signature appears on a document (the issue of “nonrepudiation”). UETA provides that an electronic signature will be attributed to a person if it was the act of a person. This can be established by any relevant evidence. E-sign is silent on this issue.