



Prescott Report

A N O A K K N O L L L I M I T E D P U B L I C A T I O N

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Join us in our mission to improve address systems world-wide. Be ready for the recovering economy.

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Editor's Note: What's Inside This Month

Privacy overview, legal here and there, 'bots

Our issue is heavy on data protection and legal issues this month. Even in the downturn, we have compliance problems to worry about, as Bob Gellman shows us. Many of us did not know that the US stimulus bill contained new rules on data management in the health field.

In fact, as the administration begins to implement that and related legislation, we will find many unusual and unanticipated provisions. Some banks who took funding have returned it, since the bill subjects them to requirements to further the political agenda of the new administration. One bank, a specialist in commercial real estate, was told it now had to start credit card receivable financing and household mortgage lending in minority neighborhoods, things it knows nothing about. I thought we got into this mess because banks were either buying or creating things they knew nothing about.

Speaking of things we know nothing about, we are enlightened in this issue by the Chair of the Messaging Anti-

abuse Working Group, Michael O'Reirdan, that the Internet is even more dangerous than we realized. He explains those dangers and provides some helpful advice on protecting ourselves. The group brings together the smartest engineers in the Internet world, by the way, who are engaged daily in intellectual combat with the bad guys. See "Report from the front in a silent war".

One thing we all do know about is the complexity of privacy regulations around the world, and developments in that area never stop. We've covered a number of those in Here and There, including an update on the German List Privilege matter.

I am just now returning from the Universal Postal Union in Switzerland and meetings with postal officials from around the world and catalogs from Europe. I bring no bright news, other than that perhaps the rate of descent is slowing somewhat. International trade numbers have plummeted as the "just-in-time" system of manufacture /



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(Editor's Note Continued)

transport / sell grinds to a shuddering stop, its two primary sources of fuel – trade credit and consumer purchasing – are cut off at the source. International parcel volumes are in free fall, commercial mailings are down by double digits, FedEx reduces headcount for the first time in its history, response rates to mailings are evaporating. Even Otto, Quelle, and Trois Suisses have had reductions in force, something normally unheard of in “the old Europe”.

So the speed of the slow-down has been extraordinary, reflecting our global interconnected and interdependent world. Be assured that if we can keep the politicians from descending the easy path into populist protectionism, the system will start up just as quickly as it stopped. If we can't, we'll be in this state for a long time. It has taken my entire working life for the world to realize that prosperity depends on reducing, not creating, barriers to trade and investment.

But, we also bring some good news and even better ideas.

In the dark world of today, there will always be the bright light of the future beckoning us, and so I propose that you join me in a crusade to improve, and develop, address systems world-wide. See Address Crusade. It's a good time to build when things are slowest.

Our International Events calendar is becoming richer as our colleagues discover *The Prescott Report* and

send us their news. Don't forget to check the program from FECEMD's international conference in May, and the domestic and international data protection event organized in Argentina by that country's first data protection commissioner, Dr. Juan Antonio Travieso. In the Middle East, the newly formed Arab Direct Marketing Association is holding its first ever event in Jeddah in conjunction with the US DMA, and, dear to my heart, the June ICEMD professional marketing course in Madrid with great teachers. See International Events.

Finally, to give us all a little world-view and history, we explore some out of the way bits of the British Commonwealth's postal system. Notice how much we are alike? Same issues. Same recession. Same compliance and marketing needs. Hopefully, the same will to good-will.



Special Report: *Report from the Front in a Silent War-Spam*

– An Interview with Michael O’Reirdan, Chair, MAAWG

The name of the emailing game is targeting. It produces better response and, in my recent experience, less embarrassment. My second attempt at promoting *The Prescott Report* with an email campaign resulted in a phone call one morning, not long after I hit the Send button.

A quite cultured English-accented voice asked, in a firm tone, “I’m calling to ask why you are spamming me.” And thus I became reacquainted with Michael O’Reirdan, Distinguished Engineer at a major internet service provider, and Chairman of MAAWG, the Messaging Anti-Abuse Working Group. MAAWG is a non-profit organization comprised of companies whose futures depend on Internet messaging and who “work collaboratively and successfully to address forms of messaging abuse such as messaging spam, virus attacks, denial-of-service attacks, and other forms of abuse.” Since its founding in 2003-4, MAAWG has played an important role in developing dialogue and protocols within the industry and with government in order to protect the Internet.

We first established that I was not a phisher. I had put a url (internationaldm.org) in my promotion piece that was a referring link to prescottreport.com. This immediately aroused Michael’s suspicions because it is a frequent characteristic of a phishing message. Of course, at his request, I dutifully suppressed his email address from further promotion.

Spam, malware, and bots

In a wide-ranging interview, Michael brought me up-to-date on the state of the battle against a wide array of abusive and criminal behavior now plaguing the Internet. He started by noting, “Spam has not gone away, although it was the emphasis for MAAWG’s founding. But spam per se is like spots of measles, a symptom, and the real germ is malware which plants bots.”

Malware is software designed to infiltrate or damage a computer system without the owner's informed consent, and a bot is a software application that runs automated tasks. Malware is used, among other things, to secretly turn

your computer into a robot. A bot might, for example, turn your computer into a transmitting/forwarding station for spam and phishing messages which then become more difficult to trace back to their source. The bad guys can plant a cleverly camouflaged bit of malware on your computer that results in it being part of a “bot net”, sometimes of thousands of computers world-wide, which are controlled to resend more spam and malware-infected messages, or to capture your keystrokes as you log on to your bank account.

Michael observed that the unwanted, ill-targeted, poorly considered spam was somewhat seasonal and cyclical, but that the level, intensity, and complexity of malware continues to rise.

“Social engineering works for malware distributors,” Michael remarked. Malware is delivered by email about 40% of the time, which just begs to be opened. Much is also planted from “drive-by infection” when one visits a phishing or other site that invites you to download an enticing image or clever application. Increasingly, unsolicited IM messages and social media sites are carriers of malware. And natural disasters are the occasion for the appearance of phony fund-raising sites and pleas for donations. Tax season brings promises of tax tips and bits of software to “save you money on taxes.” Be suspicious.

This is serious global crime

Michael noted that the seriousness of this cannot be over-stressed since it reflects not a network of “kids playing around”, but a global underground economy of criminal behavior, of individuals who write malware for a living. Where 5 years ago there might be 10 to 20 viruses a year, security software company Symantec recorded 212,000 unique viruses in one quarter of 2007 alone. “This is an arms’ race with the ‘bot writers,” Michael observed. “Today, ‘bots can be of many different types – capturing keystrokes of you entering passwords, DNS (denial of service) attacks, phishing and ransom-ware.”

Ransomware? Do you have an irritating little pop-

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up that says you are infected and you should click to remove a virus? Have you turned on your computer to find everything inaccessible because it is encrypted, and there is a message telling you where to send your credit card details to unlock it? If you do succumb to either the annoying or the paralyzing blackmail, you'll end up paying to get rid of the problem with your credit card, which is then sold, together with expiration date and security number, elsewhere on the Internet, probably within minutes of your sending the information. Call your ISP first.

Geopolitical impact and big business

This is big business, indeed. The Federal Bureau of Investigation estimates that in 2006 cybercrime was responsible globally for some \$67 billion in losses.

While serious, this is relatively minor compared to other things going on that have geopolitical implications. It is suspected that in the deterioration of the Estonia-Russian relationship in 2007 over the movement of a statue of a Russian soldier, there were paralyzing attacks on the country's Internet infrastructure. A denial of service attack on the ISP's in Kyrgyzstan in January is suspected to have been contracted by the Russian government. There was a similar attack on Georgian websites and servers before and during the Russian invasion there last August. There are also allegations that the Chinese are very adept at cyber-spying on other governments and businesses. This is termed "cyberwarfare", and it is real.

As with most profitable crime, this business is syndicated also. There is now trading in botnets, and the access thereto. Michael observed, "This is crimeware as a service. You can rent time on a network. You can rent software. There are trading sites for all the tools and fruits of crime – credit card numbers, full personal identification details of hundreds of people, ISP accounts. It's worse and more sophisticated all the time."

Industry and government respond

Most of the defense of the consumer is in the hands of the ISPs and the carriers, who work closely with government and law enforcement. Michael noted that excellent work is done notably by the FBI, the US Secret Service, the London Police and others, and the priority level of engagement is increasing with the awareness of cyber-warfare incidents.

Within that co-operative context, however, there are complex international and multi-jurisdictional

issues. We are still a world of independent states with, and sometimes without, our own laws. Furthermore, law is bound by the borders of the country where it is written. A fraud could have multiple countries implicated – the source of a phishing message, the location of the server with the website, the victims' residences, the ultimate destination of the stolen credit card numbers. The sharing of information and proof is a complicated, awkward, and time-consuming process. Countries also have different conceptions of what is legal and illegal, and different concerns. Privacy laws in Europe, for example, and the definitions of "illegal" vary. Turkey has no law against spam, but has prosecuted 'botnet owners.

What is a poor consumer to do.

"This technology is very sophisticated", Michael began. "We can't expect people to understand all this. Taking an analogy from the automobile, we can't expect people to gap the spark plugs."

While there is good work being done every day by ISPs large and small, and MAAWG's members world-wide are engaged in this battle every day, there still is need for consumer involvement and responsibility. "There is scope for computer education in schools like driver education."

In addition, there are a few basic rules to follow. Michael, with energy and passion, and the hint of weariness of any expert who knows people will find reasons not to follow the advice, gave me these five "rules":

1. **Update, update, update.** Update your operating software when prompted. Those patches are important. Update you applications when prompted. There are reasons that Microsoft and Linux and other software producers are prompting you. Operational efficiency and security. A highly regarded freeware tool to scan your computer and help you get updates is found at http://secunia.com/vulnerability_scanning/.
2. **Activate your firewall.** Keep malware from groping your computer.
3. **Install antivirus software** if you don't have it. Keep it updated. Remember those 212,000 new viruses every quarter?
4. **Be as healthily suspicious online as offline.** Don't click on links in email whose source you don't know, or who would not normally be emailing you. Would your bank really send you an email inviting you to click

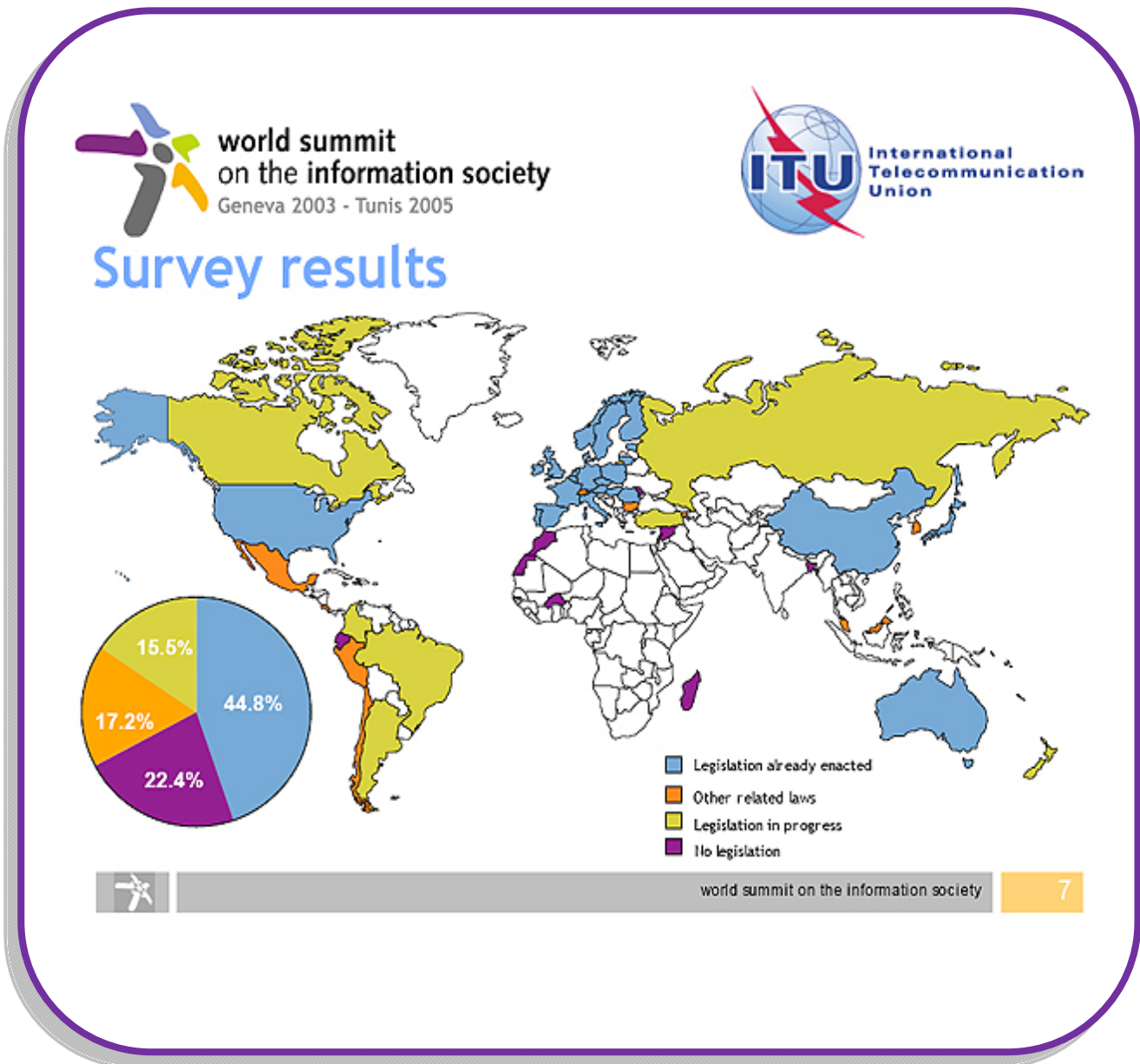
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something? Don't get lured to unfamiliar websites.

5. Secure your wireless router and update its software, at home and business. And don't leave the "manufacturer installed" default sign-in on the router. Change the login id and password. Nearly every router comes with a default password such as "admin" and the manufacturer's name, such as "Linksys," as the default SSID.

Every drive-by hacker in the world knows that. Change them, since, in Michael's words, "If you own someone's router, you own every computer behind it."

Finally, if you wish to follow developments in this topic, *Washington Post* reporter Brian Krebs is an authoritative voice through his blog: <http://blog.washingtonpost.com/securityfix/>. I would caution that frequent reading of this column



The Address Crusade is Launched

Our mission to improve address systems world-wide.



Addresses. I have taken up my lance, mounted my steed, and am prepared to attack the mighty windmills of indifference in order to protect and promote addresses and address systems. That is my quest for the next four years as Chairman of the Consultative Committee at the UPU, and outside of it.

Why Addresses?

In the developed world, we take addresses quite for granted. We put addresses on envelopes and parcels, entrust them to the post or an express company, and they arrive at the intended destination, generally. Like a well-run public utility, we don't notice mail and parcel delivery until it doesn't work. Unfortunately, in much of the world, it doesn't work very well. In fact, even in the best environments, what I call the "address ecology" is suffering from indifference and greed.

Certainly part of the problem is that posts in the 2/3rd's of the world that is developing are under-financed, or are simply incompetent government bureaucracies. But an even more fundamental problem in these nations is the under-development, or even lack, of an addressing system. In these countries, the "address ecology" is often just being born. As recently as the last 3 years, Saudi Arabia, Egypt and Costa Rica began to install systems. I am often asked if direct marketing is prevalent in the Middle East. The answer is only in the pockets with addresses, and there aren't many pockets.

Recent Discussions

At the recent Triangle World Mail and Express Americas conference in Miami, I invited a panel of representatives of five widely diverse organizations to discuss their views of the "address problem". The "address problem" as I defined it is that in much of the world there aren't any, and in the part that has them, obtaining accurate address data and keeping it current is a messy and expensive business.

The contributions were revealing. Paul Herron, Vice President Postal Transportation and Customer Engineering of FedEx said that 30% of their overseas deliveries have a "delivery issue", which could be anything from completely undeliverable to an address off by an apartment number, and only delayed. But every bad address leaves a truck idling and putting carbon into air. He also said, "Addresses are our single biggest problem."

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Jim Wilson, Manager, Address Technology, of the US Postal System noted that despite an expenditure each year of tens of millions of dollars, undeliverable-as-addressed mail volumes in the US remain unchanged year to year and are in total a \$2 billion problem for the USPS, and thus its customers.

Bill Spruill, COO of AddressDoctor noted that the shantytowns of the world contain the largest growing populaces but generally there are no "government recognized" addresses. The residents of these towns, and in thousands like them from South Africa to Russia, can not receive goods and services, and in many countries are not even identified as citizens, because they have no address. Their participation in the official economic and political life of their countries depends upon address systems being developed that contain their information. In Brazil, a local retailer (Casa Bahia) has created its own file and created a significant advantage over other retailers by recognizing this problem as an opportunity. Addresses are essential for identity, credit, and legal rights.

Why Now?

In time, this Great Recession will be over, and all those people out there will start buying on the Internet again, including the half of the world that will be just entering the middle class and who have no address. How, dear readers, will we get our packages to those new customers? How will we structure our databases to record our transactions with them? How will we give them credit? How will we match and dedupe files? We need, and they need, addresses and a functioning address system.

In the developed world, mail volumes are plummeting. Parcel volumes will rise slowly, but would rise faster if, again, address systems were accurate and change of address systems cheap and easy to access. I recently spoke to a major data processor whose client has backed away from a campaign into the UK because not only is the "run" charge to correct his file expensive, but Royal Mail would charge him US\$ 1 for every corrected address they find! He is beginning to conclude that, given response rates, space ads in targeted magazines will be more cost effective. That's not even digital substitution! It's called pricing yourself out of the market.

Next Steps

In the interest of preserving the post as an economically viable marketing medium, and in the interest of enabling those billions of new consumers coming on-line in the Middle East, China, Russia, India and Latin America, I am proposing the establishment of a Global Addressing Institute which would advocate for the development and deployment of viable, consumer-friendly, business-compatible address and change of address systems world-wide. The Institute would engage in research into systems and technologies, and into financing mechanisms to develop and install them. In international development bodies it would raise the level of awareness of the importance of addressing to social and economic development, thereby elevating the importance of the posts. And it would work hand-in-hand with the working groups at the UPU engaged on these same issues. To see a more detailed picture of what I suggest, download my white paper at www.prescottreport.com/documentlibrary.html. Or email me at Editor@prescottreport.com for a copy.

The recession will get in the way, you say? To the contrary, this is the perfect time to build infrastructure, and an address system is as much a piece of infrastructure as a mobile phone system, an electric power grid, the Internet, or a super highway. This is a perfect building time so the systems are in place when the economies come bouncing back and all those new and aspiring middle class consumers start buying again. Investment in infrastructure that supports development – social and economic, is always timely.

Here and There on Data Protection and Privacy

France. The French Commission for information and liberties (Commission nationale de l'informatique et des libertés, CNIL) has decided that Bluetooth marketing is "particularly intrusive". They have issued new rules which will make marketing via Bluetooth without explicit prior consent impossible in France.

Bluetooth is a communication channel that by its nature requires the user of the phone to set the Bluetooth function on and to also accept the transmission of a message to the phone. Each phone has a Media Access Control (MAC) address, which is the signature of the device. This is somewhat like a computer's IP address, which identifies the device to the transmitter of a message.

CNIL has decided that the MAC address of a device is to be considered personal information. Since the Bluetooth transmitters need to process the MAC address in order to send the messages, consent is thus required prior to establishing the communication. In practical terms, this renders broadcast marketing by Bluetooth impossible without the consent of the receiver.

The CNIL has taken this one step further, however. This ruling was inspired by the development in France, and initial deployment, of Bluetooth message-broadcasting billboards and signs. These broadcast an invitation to connect to the transmitter for a message. In short, CNIL has ruled that sending such solicitations themselves constitutes sending marketing material to everyone walking or driving in the transmitting range of a Bluetooth transmitter. It is not acceptable.

For CNIL, merely having the Bluetooth device in the receipt mode is not consent to receive everything, including even an invitation to receive a commercial message. Having received

a message from one transmitter with full consent, is not legally equivalent to consent for establishing the connection between the Bluetooth enabled phone and all transmitters. In short, the CNIL treats a Bluetooth-powered phone just like a mobile phone, to which unsolicited marketing calls may not be made without consent.

The CNIL suggests in its decision that enough technical solutions are at the industry's disposal to ensure prior consent to establishing a connection. One of their suggestions is that consent could be inferred when consumers knowingly bring their phones closer to the Bluetooth powered sign as an indication that they are interested in receiving the communication.

One supposes that works on the streets of Paris for pedestrians, but not so easily for automobile drivers. Although, on reflection, I have always felt as threatened by Parisian drivers when I 'm on the sidewalk as in the street, since they seem to feel it to be an extension of the roadway. I believe the proclivity to park on the sidewalk is just a way to force pedestrians into the roadway where we are easier prey.

Switzerland. In December 2008 Switzerland signed an agreement with the USA to establish the "US-Swiss Safe Harbour Framework". The Safe Harbour agreement allows US companies, once they have acquired certification proving that they apply a sufficient level of data protection, to transfer data from a Swiss company to the USA. Prior to agreeing to the Safe Harbour Framework, companies had to sign a contract that they would provide for an appropriate level of protection of the personal data. The framework is modelled on the Safe

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Harbour agreement between the US and the European Union, which was approved in 2000. http://www.export.gov/safeharbor/swiss/doc_eg_safeharbor_swiss.asp

Pan-European and Binding Corporate Rules.

The Article 29 Working Group (WP) which is the body of all national data protection commissioners of Europe charged with “advising” on the Data Protection Directive. In December it took up further work on facilitating the use of Binding Corporate Rules (BCR) by multinational companies. In principle, Commissioners have agreed that groups of related corporate entities could develop “binding corporate rules” for the global enterprise which would control their use and exchange of personal information. This would obviate the need for the expense of complying with 27 different jurisdictions and regulatory regimes. This has not been easy to accomplish, as each country has adopted slightly different legislation implementing the Data Protection Directive. In any event, it approved further guidance on the terminology to be used by companies when drafting their BCRs. Furthermore, it established a “mutual recognition procedure”, whereby local Data Protection Authorities (DPAs) will pledge to accept the approval of a set of rules by a “lead” BCR DPA. So far, thirteen DPAs have agreed to use this procedure: Cyprus, France, Germany, Iceland, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, the Netherlands, Norway, Spain and the UK. A major reason for criticism from businesses against BCRs was the lengthy adoption process, because details had to be negotiated and approved by each of the several DPAs. While this is an improvement, it is not a major change, unless, of course, your company’s business is solely within those countries. The process of developing and obtaining approval is so tedious and expensive that for the foreseeable future it will be the exclusive tool of major companies with significant legal resources.

United States. The American Recovery

and Reinvestment Act of 2009-the stimulus bill-contains provisions relating to HIPPA, the Health Insurance Portability and Accountability Act. What HIPPA has to do with getting people back to work and speeding up infrastructure investment is not entirely clear. However, there is an important bit that relates to terminated employees’ former employers being required to pay a portion of the insurance costs for their continued medical insurance coverage. In the case of the Prescott household, that is a not insignificant amount. With the January increase by the insurance company, our monthly insurance bill for two adults and two teenage children is almost \$1800. My former employer now has to pay about 65% of that amount for 18 months; pretty much what it paid when I was an employee. Frankly, while I’m grateful for the help, I can’t help wondering why there isn’t a better, and cheaper, system.

Also in the stimulus bill are important clarifications regarding use of patient information for marketing purposes. These are discussed elsewhere in this issue by Bob Gelman in Patients and Marketing: HIPAA Provisions of the Stimulus Bill.

United States – behavioral targeting and the FTC. In early February, the Federal Trade Commission, which is responsible for consumer protection (among other things), issued a second report on behavioral advertising and basically told the business world that it better self-regulate and implement the four principles it articulated, or it would take steps to regulate the practice itself. The four principles are stated quite broadly and would be difficult to operationalize. They are: 1. Transparency and consumer control. Websites should clearly disclose their practices and provide a simple opt-out of data collection. 2. Security and limited data retention: "Companies should also retain data only as long as is necessary to fulfill a legitimate business or law enforcement

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need." 3. Affirmative express consent for material

changes to privacy promises. If the policy is changed, they apply only to new data collected unless consumers affirmatively agree to retroactive application. 4. Affirmative express consent to (or prohibition of) use of sensitive data for behavioral advertising, and this must be obtained before the data is collected.

The FTC has tightened up the principles a bit over those put forward for public discussion in late 2007 but has clearly displayed annoyance that business has not accepted the offer set out at that time to wait for business to self-regulate. According to Commissioner Jon Leibowitz, ““Industry needs to do a better job of meaningful, rigorous self-regulation, or it will certainly invite legislation by Congress and a more regulatory approach by our Commission,” Leibowitz said. “Put simply, this could be the last clear chance to show that self-regulation can – and will – effectively protect consumers’ privacy in a dynamic online marketplace.”

Japan. The Japanese law with respect to protection of personal information follows a model that has its origins in the Meiji era constitution modeled on Germany’s, and refined in the post-World War II era of economic reconstruction, when Ministries vied for authority over different sectors of the economy, and became “regulators” and guides of development of those sectors. As a consequence, laws in Japan usually delegate authority for the subject in question to the Ministry or agency “in charge” of a particular sector of the economy (E.g., Agriculture) or governmental subject (e.g., Justice). This is all quite efficient if the subject is an economic, social or political subject that is discrete and clearly within the purview of a particular body. However, when a subject is one that touches the entire economy and/or wide swaths of social/political/economic life, i.e. the subject of personal information protection, each Ministry or agency then ends up involved with respect to its sector of the life of the country. And this is

what has happened with respect to the privacy law. The law itself left the development of the definition of “personal information” to each relevant Ministry with respect to its jurisdictional area. There are 34 agencies in the government. Unless someone takes charge, compliance with the privacy law could be one of the most complex problems a company could face in Japan. Something might be “personal information” in one circumstance, entitled to certain protections, and not in others. Potential compliance nightmare. Stay tuned.

Mexico. Two privacy bills are pending in the legislature and there is political pressure to adopt one or the other. One proposal follows the European model of a Data Commissioner with enforcement authority and includes a requirement that companies register their databases. Much of the bill follows the Spanish model, which for marketing purposes is the most restrictive and business-hostile. The alternative bill is what is referred to as a “third generation” bill, constructed around the OECD principles of privacy such as notice, security, purpose restriction and transfer limitation. This bill follows the APEC principles which have been developed over the last several years. Those not familiar with them may find them discussed here:

http://www.apec.org/apec/news_media/factsheets/apec_privacy_framework.html.

Efforts are underway to attempt to reconcile the differences in the bills and adopt the result before the adjournment of Congress this Spring.

We shall “unpack” the APEC privacy principles and discuss their potential impact on commercial life in the Asia Pacific region in a subsequent issue, and we will report developments in Mexico.

Short-Takes, Letters & PSA's

Support Cross-border E-commerce

Growth. The “guess” is that something like only 3% of retail purchases in Europe are cross-border purchases. The European Commission and many others would like to know why it is so small. After all, there is supposed to be “one market” in Europe.

Help support the growth of international e-commerce by helping IMRW's cross-border purchase survey. Your answers to the survey will help the organization advise business and European government policy-makers on issues surrounding cross-border e-commerce. Take 5 minutes and do a public service:

<https://ecustomeropinions.com/survey/survey.php?id=263494297>

One question not posed in the questionnaire concerns inadvertent barriers. I have noticed that search engines do not return cross-border results on enquiries unless one specifically requests them by inserting a country name in the query, and even then success is spotty. This is due to localization by the search engines, who “know where you live” and apparently have as a policy to return “local results”. This obviously makes commercial sense for the website merchants being crawled, but does it make sense in the light of other reasonable objectives, such as the promotion of the Common Market. Or enabling commerce across the New York and Ontario border!

Geoffrey Peters Comments on Fundraising

(Geof Peters, an expert on international fundraising, was inspired by our piece in our last issue noting differences in behavior of online and offline customers. True to our word that we welcome comment, we share his insightful thoughts and experience.)

“You comment in your newsletter that there are huge differences between online consumers and offline. For nonprofits the reverse is true. 75% of most nonprofits' online database comes from its offline database through such means as e-appends and use of postal mail to encourage online visits and registration. Combining the media, however, does not mean robbing Peter to pay Paul because of a phenomenon created by the multi-touch, multi-channel communication: greater involvement and greater value.

It is estimated that the multi-channel message recipient donates as much as 5 times more than the single channel recipient (postal) and as much as 2.5 times more than the e-only recipient. Thus, the two mediums complement one another greatly and the e-donors, while skewing somewhat younger and more male, are nevertheless very similar in their responsiveness to the offline donors. You can take the best performing mail packages offline and reconstitute them as online appeals with great success.”

Reach Geof at gpeters@cdr-nfl.com.

Patients & Marketing: HIPAA Provisions of Stimulus Bill

At my request, privacy and information policy expert Bob Gellman provided the following “unpacking” of a change or clarification of some rules on use of personal health information which will be of interest to marketers who must be cognizant of HIPAA rules. In the past, Bob was a frequent contributor to DM News, until the ownership and editorial changes some time ago. I feel his expertise in the privacy and data security field is too important not to be published more widely. There is increasing complexity of the legal environment in this area, and the potential impact on marketing and database activities, and companies, is great.

– **Charles Prescott**

Stimulus and Health Marketing: New HIPAA Provisions

Version 1.0

Robert Gellman

Privacy and Information Policy Consultant

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The new stimulus law – known formally as American Recovery and Reinvestment Act of 2009 – will require changes to the existing federal health privacy rule of the Department of Health and Human Services. Some of those changes affect the use of patient records for marketing. That’s the focus of this summary.

The current privacy rule forbids entities covered by HIPAA (mostly health care providers and health plans) to make much use of patient records for marketing. However, some activities that might be viewed as marketing could also be characterized as a health care operation under the current rule. For example, a hospital campaign promoting an anti-smoking clinic might be a treatment activity, a health care operation, or marketing.

The new law tries to clarify the difference between “health care” and “marketing” by stating expressly that a communication about a product or service that encourages recipients of the communication to purchase or use the product or service is not a health care operation. This narrows the ground for some communications with patients.

A second change prohibits the sale of health records. The statutory language is somewhat confusing because it states that a covered entity or business associate cannot *directly or indirectly receive remuneration in exchange for any protected health information* without a patient authorization. While the *exchange* language is not as clear as it might be, the overall intent remains apparent. The new language seems more express than the current rule, but the policy is not much different.

The law includes several exceptions. One continues the current exception for treatment. It is okay

HIPAA Provisions of Stimulus Bill (continued)

under current law and the new provision for a doctor to recommend a treatment for a patient. That appears to be sound public policy.

Another provision addresses a particular marketing activity. The new law will allow a covered entity to receive payment in exchange for making a communication for a drug or biologic currently being prescribed for the patient. In other words, a prescription refill reminder sent by a pharmacy and paid for by the pharmaceutical manufacturer appears allowable. However, a *switch letter* that encourages a patient to consider using a different drug appears prohibited.

There is one more interesting element. The payment received by a covered entity must be *reasonable in amount*. What is surprising here is that they legislated a price cap on the amount that covered entities can be paid for the use of their patient information. Why Congress chose to limit the ability of covered entities to negotiate a price for the use of their patient information is not entirely clear. However, those in the marketing community may look upon this provision with either horror or relief, depending whether they are buying or selling lists.

One more item of note. The new law enhances the ability of patients to opt-out of fundraising activities. That is all that remained from the attempt to ban use of patient information for fundraising altogether.

You can find more about the current HIPAA rule at <http://www.hhs.gov/ocr/privacy/index.html>. More about the other changes coming to HIPAA is at <http://bobgellman.com/rg-docs/Stimulus-Privacy-HIPAA-Analysis.pdf>. We won't know what the changes to the law really mean until the Department of Health and Human Services revises the HIPAA rule in a year or so. Remember, however, that stronger state laws remain effective so that if state law bans a refill reminder program, the federal law will not save it.



**Data
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Computer Services for Global Direct Marketing

Stamps of British Overseas Territories

Since much of direct marketing involves the mail, which involves stamps, and because our editorial calendar this month is titled “The Commonwealth”, I thought bit of history of postal service and stamps in some out-of-the-way islands of The British Commonwealth would be in order. The author is Catherine Prescott, a student at Hamilton College in central New York, Editor.



The British Antarctic Territory (BAT)

In 1962, The British Government declared the area previously known as the Falkland Island Dependencies, excluding South Georgia and the South Sandwich Islands, the BAT. The territory, extending northward from the South Pole to 60°S, and westward from 20°W to 80°W, is governed by the High Commissioner from Stanley, Falkland Islands. The area overlaps territories claimed by both Argentina and Chile, but with the signing of the Antarctic Treaty in 1959 put all territorial disputes on hold.

([Encyclopædia Britannica](#)). Prior to 1983, it was possible to hold British Overseas Territories citizenship (BOTC) through connection with the BAT. Although the BAT's immigration laws do not allow for naturalization, a person born in the BAT would hold BOTC; only one person is known to fall into this category, Emilio Palma, born January 7, 1978 on the Argentine Esperanza Base. ([Wikipedia](#)).

Despite the lack of permanent inhabitants, the BAT issued its first set of stamps on February 1, 1963. The sale of stamps is one of two ways the BAT derives its income, the other being income taxes. While some scientists use the stamps, the stamps are printed mainly for use by tourists and for collectors. The stamps also underline Britain's sovereignty over the area. ([Stamp Magazine](#)).



The Falkland Islands

The Falkland Islands had many different names before European explorers had even landed. First sighted in 1592 by John Davis of Desire, and then again in 1594 by Sir Richard Hawkins, who named them Hawkins Maydenlande. In 1598, Sebalde de Weert of the Netherlands named them The Sebaldes. In 1684, William Dampier of England published accurate bearings for the islands; his companion, Ambose

Cowley published a different version, in which the islands are called Pepys Islands. In 1690, British captain of the Welfare, John Strong named “Falkland Channel”, after his financier, Lord Falkland, Treasurer to the Navy. French navigator Louis Antoine de Bougainville founded the first settlement on the islands, Port St. Louis in 1764. British captain John Byron, unaware of the French settlement, claimed, Saunders Island for King George IV and built the first British settlement at Port Egmont. In that same year; Spain acquired Port Louis, and in 1770, attacked Port Egmont. In 1771, a peace treaty with Spain allowed the British to return. By 1811, both Britain and Spain had withdrawn, leaving plaques asserting their claims over the islands. In 1820, the flag of Argentina was raised over Port Louis, and within the decade a settlement and penal colony were founded. In 1832 the British returned to the Falkland Islands. (www.falklands.info)

(Continued on next page)

Stamps of British Overseas Territories (continued)

Until 1880, a schooner called every two months to deliver and pickup letters. Prior to that, mail service was dependent on occasional calls by ships connecting to the Brazil Packet, the regularly scheduled service transporting freight and passengers from the UK to Brazil, via Montevideo. The first stamps were issued on June 19, 1878. These were not printed on watermarked paper, unusual for a British colony. In 1880, the German Kosmos Line was contracted into regular mail service. The first post office was opened in 1887; and in 1929, the first pictorial stamps were issued. On the 50th anniversary of the Battle of the Falkland Islands, the First World War naval battle, a series of four stamps were printed, including the famed HMS Glasgow error, in which the wrong warship was printed on some of the six-pence stamps. In 2003 the Islands were awarded the UK postal code FIQQ 1ZZ, in response to complaints that mail was being sent to Falkirk, Scotland, or the Faeroe Islands. ([wikipedia](#))



Gibraltar

Located on the southern most tip of the Iberian Peninsula, Gibraltar is home to the famed Rock of Gibraltar. The first permanent settlers were the sea-faring traders, the Phoenicians in 950 BC. Control of the area passed from the Romans to the Vandals then to Muslim conquerors. In 1462, the Duke of Medina-Sidonia conquered the area and established the area as a home to exiled Sephardic Jews from Córdoba. In 1704, during the Spanish War of Succession, British and Dutch forces captured Gibraltar.

Subsequently, British sovereignty was recognized under the Treaty of Utrecht. Spain continues to assert a claim to Gibraltar, hoping to regain sovereignty. Gibraltarians, however, strongly oppose this idea. ([www.andalucia.com](#)).

When the British first gained control over the area, mail was delivered on ships whose masters agreed to carry packets. Along with the post of Civil Secretary to the Governor, a postal department was also created. In 1809, a Packet Agent was appointed, and the territory had two postal services. In 1857, the Postmaster General in London took control of all mail service. In 1886, the Colonial Government of Gibraltar took control of the postal service, but with no time to print stamps, they used Bermuda's stamp plates overlaid with "Gibraltar". The first "proper" set of stamps was issued in December that same year. The first pictorial set of stamps was issued in 1931 in the Twelfth Definitive issue. ([www.gibraltar.gov.gi](#))



Montserrat

Montserrat, located in the Leeward Islands, part of the Lesser Antilles, was discovered in 1493 by Christopher Columbus on his second voyage to the new world. It is often called the Emerald Isle of the Caribbean, due both to its resemblance to coastal Ireland, and to the Irish heritage of many of its early settlers. The capital of Plymouth was destroyed by the eruption of the previously dormant Soufriere Hills volcano in July 1995. The village of Brades currently serves as the de facto capital. A new capital is being built at Little Bay. There is currently a volcanic exclusion zone covering the southern half of the island and

extending two kilometers offshore. ([Government of Montserrat](#))

(Continued on next page)

Stamps of British Overseas Territories (continued)

On August 20, 1702, Queen Anne granted the island a regular postal packet service, and the vessel *Bridgeman* began journeys to and from Britain. In 1842, the ships of the Royal Mail Steam Packet took over mail service. ([Montserrat Stamp Bureau](#)).



Pitcairn Islands

Prior to the first known permanent settlement by the mutineers of the HMAV *Bounty* and their Tahitian companions, the Pitcairn Islands were home to various Polynesians who left stone statues guarding sacred sites, and were used as a stopover by whalers who were looking for fresh food and land. After an unsuccessful emigration to Tahiti, the islanders returned to continue their isolated existence. After many years, the islanders attempted to move again, this time to the newly uninhabited Norfolk Island, but nostalgia

and homesickness forced several families to return to Pitcairn just in time to stop the French from annexing the island. ([The Government of the Pitcairn Islands](#))

Beginning in 1926, mail used New Zealand stamps and rates. Prior to 1926, mail was marked “Posted on Pitcairn Island: no stamps available” and delivered, free of charge, in New Zealand and elsewhere. On October 15, 1940, the first postage stamps were issued. The first post office was built in the Square of Adamstown in 1941, significantly increasing the amount of mail in and out of the Island. In 1960 a new, larger post office was built, following the first Postmaster, Roy Clark’s request for a larger office. ([Pitcairn Islands Study Center](#)).

Image Credits:

½ penny stamp, depicting *MV Kista Dan*, from the 1963 first issue, canceled on Signy Island. www.wikipedia.org

HMS *Glasgow* error, only one sheet of 60 was produced, only 17 have been recorded. Recently sold for £30,555. www.wikipedia.org

Gibraltar Commemorative Royal Wedding Stamps, Prince Charles and Diana Spencer began their honeymoon from Gibraltar, stampinfo.wordpress.com

1-penny stamp, 1929, commons.wikimedia.org

Schoolhouse 1949, 8 pence. www.scotstamps.co.uk

Do you shop on-line and buy outside your country?
Why? Why not?

Internet Marketing Retailers World (UK) is researching shoppers’ cross-border shopping habits and tendencies.

Please help us by completing a short survey at

<https://ecustomeropinions.com/survey/survey.php?sid=263494297>

International Events:

APRIL

Relationship Building & Business Development in Uncertain Economic Times

When: April 2, 2009, 8:15-noon

Where: Midtown location

Contact: Andrea@nierenberggroup.com or register online at www.nierenberggroup.com/workshop22.php or call 212-980-0930

- *Building your strategic network
- *Leveraging your contacts into strong connections
- *Raise your sales to the next level
- *Incorporating the 5 drivers of business networking success and more...includes breakfast, refreshments and copy of Savvy Networking by Andrea Nierenberg

Mail Order in Russia 2009.

When: April 16-17, 2009

Where: Borodino Business Hotel, Moscow

Contact: http://mail-order.ru/cgi-bin/show.pl?tpl=eng_about

National Association of mail-order and distance selling trade (NAMO) together with Marketing Communication Agency Ivanov & Ivanov Direct are organizing the 8th International conference of retail distance selling trade «Mail Order in Russia 2009». Both Russian and invited foreign speakers will cover current issues. In addition, heads of large and well-known mail-order companies, which deal with Russian market and which are planning to begin working here, and representatives of specialized government structures including Communication Ministry, Economic development Ministry, Federal Antimonopoly Service and Russian Post will take part in the conference.

Arab Direct Mail & Marketing Forum

When: April 19-21, 2009

Where: Jeddah, Saudi Arabia

Contact: JSangster@the-dma.org or Arab Direct Mail & Marketing Forum 2009

This intensive three day event will provide you with insight into the market, clearly laying out the opportunities, growth and expansion projection, the benefits for organizations looking to expand globally while controlling costs, and much more! The event will also mark the launch of the Arab Direct Marketing Association and the "Direct Marketing Park" - an economic zone within Saudi Arabia designated specifically for direct marketing organizations, suppliers and agencies that boasts significant tax and energy efficiency benefits along with a business-friendly regulatory system.

Beat your competitors to the punch by getting control of this market early! The Arab Region boasts over 300 million customers who:

- Currently receive less than one direct mail piece per week
- Have been largely unaffected by the economic downturn and have money to spend
- Are young! 75% are under age 35, ideal candidates for the adoption and growth of directing marketing
- Experience only 1% of advertising as direct marketing

International Events (continued):

MAY

NextMarketing 2009

When: May 6 and 7, 2009

Where: Madrid, Spain

Contact: <http://www.nextmarketing.es/>

This will be the second year for FECEMD's new major conference on marketing. Year one (2008) was well received, and this year's event promises to be even better. Note the venue has been changed from Barcelona to Madrid. Please mention *The Prescott Report* when you register. When you are there, look for the Editor. I will be attending.

6th National and International Seminar – "Success and Innovation In Personal Data Protection - towards the Bicentenary of the Argentine Republic"

When: May 13-14, 2009

Where: Bolsa de Comercio de Buenos Aires, Sarmiento 299, Buenos Aires, Argentina

Contact and register: Registration is free upon request to: eventosdnmdp@jus.gov.ar.

Please send full name, title, affiliation and email address. Registration is limited due to restricted room capacity. Registration will be confirmed by email.

Alternate contact: Dr. Juan Antonio Travieso, Dir.Nac. de Proteccion de Datos Personales, Argentina.

This 2-day program is organized by the data protection authority of Argentina. Dr. Travieso expects both national and international officials and experts to attend and participate in the program, which is substantive and timely:

Program - subject to possible modification.

Wednesday 13 – May

- Opening – Welcome Cocktail
- WELCOME by Prof. Dr. Travieso National Director - Personal Data Protection
- OPENING by C.p.a. Dr. Anibal Fernández, Minister of Justice, Security and Human Rights

Thursday 14 – May

- Opening Speech
- Panel I: Development and Update of Credit Information
- Conference: Growth and Progress of Data Protection in Spain
- Panel II: Personal Data Protection in the regional, national and international sphere "New and Better Practices".
- Conference: "Good Practices in Privacy Politics for Public Data Files"
- Conference: "Politics on Electronic Information Exchange"
- Personal Data Protection "Do not call" Act.
- Safety and Privacy in Argentinean Football.
- Prevention in Personal Data and Biometrics
- Prevention in Privacy in the Re-offenders National Registry
- "Surf safe": a public and private compromise of society to protect all children in Internet.

International Events (continued):

MAY

Revision of the EU Data Protection Directive 95/46

When: May 19-20, 2009

Where: To be announced; Brussels, Belgium

Contact: http://ec.europa.eu/justice_home/fsj/privacy/news/index_en.htm.

This public meeting to discuss the need (or not) to revise the Data Protection Directive is organized by the body in European Commission responsible for its enforcement, interpretation, and for recommending changes to the Commission or Parliament.

JUNE

International Senior Management Marketing Programme in Direct, Interactive & Relationship Marketing

When: June 22-25, 2009

Where: ISEC, Madrid, Spain

Contact: <http://www.icemd.com/ismpeNG2009/icemd/home.html>

Held on the campus of ISEC, one of Spain's foremost business schools, on the outskirts of beautiful Madrid, Spain. Students stay in a first class hotel in Downtown Madrid. This intensive and entertaining programme organized by ICEMD and FEDMA brings experienced senior marketers from major companies together for three full days of presentations, interaction, and project work. This is a major learning experience combined with an opportunity to establish relationships with colleagues from all over the world in formal and informal settings. For more information, visit the programme website for complete details and to register. Space is very limited and past attendees have been very grateful they attended. Please mention *The Prescott Report* when you register.

OCTOBER

European TransPromo Summit

When: October 6-7, 2009

Where: Square Brussels Meeting Centre, Brussels, Belgium

Contact: www.transpromosummiteurope.com

Learn how companies are leveraging the power of bold design, vibrant color and variable data to transform bills and statements into highly individualized customer marketing communications. ---Market education on strategies, techniques and tools.

-Peer-to-peer advice – information sharing and networking to learn what works, what doesn't, and why.

-Technological solution demonstrated by leading-edge vendors and service providers.

Supported by The Prescott Report, FEDMA, PostEurop, Xplor, Xplor Italia, Xplor Spain.



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