

ONE SIZE

— DOES NOT —

FIT ALL

*Get Your Privacy
Policy Right*

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Most organizations have a privacy policy. Often, the policy is posted on the organization's Website. Like other corporate policies, a privacy policy should be reviewed and updated on a regular basis.

Organizations need to be aware of overstating or understating their privacy policy: say too much and you could risk liability for not doing what you say you do; say too little and you risk liability for not adequately protecting personal information. Your privacy policy should fairly and accurately reflect your organization's data security practices, as highlighted by two recent incidents in the privacy law area.

In May 2008, Aetna Inc. discovered that the security of its job applicant Website had been breached. The site contained email addresses of 450,000 potential, current and former employees. Aetna notified only 65,000 users whose personally identifiable information may have been accessed as a result of the breach. In June 2009, a class action complaint was filed against Aetna in federal court in Pennsylvania on behalf of the 450,000 individuals whose email addresses were contained on the site. Among the claims raised is one of "negligent misrepresentation" alleging that Aetna did not live up to the terms of its posted privacy policy. The policy stated, in part, that "Aetna has adopted and adheres to stringent security standards designed to protect non-public personal information... against accidental or unauthorized access or disclosure."

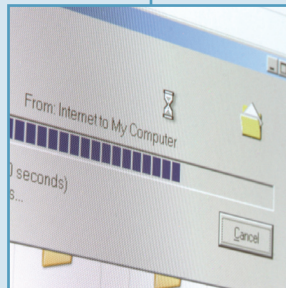
In an unrelated matter, the Federal Trade Commission brought a complaint against Sears Holding Company that its privacy policy accompanying a software

download failed to adequately disclose to consumers that the software would track online activities, including users' purchase transactions on Websites not affiliated with Sears. The disclosure at issue was found on line 75 of Sears' scroll-down privacy policy. Sears agreed to make more elaborate disclosures and to obtain users' express consent to the software download.

Here are some tips to make sure your privacy policy fits your organization and its practices:

- Don't copy a privacy policy from another organization. Not only could the copying constitute copyright infringement, your privacy policy should be tailored to your industry and to your organization's actual business practices.
- Make sure your policy adequately addresses how it deals with user-generated content, if such content is permitted on your Website.
- Periodically review and update your privacy policy. If you can't remember the last time your policy was reviewed or updated, it's time to take another look.

Exercising diligence in drafting and maintaining an accurate and informative privacy policy can help prevent claims, both private and regulatory, against your organization. Call the author or Carla M. Perrotta at 313.496.8472 if you'd like some help.



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