

VENTURES

QUARTERLY NEWSLETTER FOR SMALL, MINORITY- AND WOMAN-OWNED BUSINESSES

The Law and eCommerce: Drafting Web Site Privacy Policies

By Brian Darville, Managing Director, Brocadiant IP, PLLC

With the increasing sophistication of the Internet, online privacy has become a critical issue. Online behemoths Google and Facebook recently garnered media attention for alleged breaches of individuals' private data: Google through the unauthorized collection and storage of personal e-mail accounts, passwords and other private data, which it said was unintentional, and Facebook due to 10 popular Facebook applications allegedly transmitting users' personally identifying information to advertising and Internet tracking firms. Privacy breaches will continue to color the legislative debate regarding online privacy. More importantly, they highlight the importance of both protecting online users' privacy and establishing written policies delineating the scope of that protection.

Overview

Internet privacy policies are critical documents required by many different laws in the U.S. including the Children's Online Privacy Protection Act (COPPA), the Financial Services Modernization Act of 1999 (FSMA), the Health Insurance Portability and Accountability Act (HIPAA) and Department of Health and Human Services (HHS) implementing regulations. Also, any business that collects personal data online, and does business internationally, also must comply with European Commission privacy laws, which are more stringent than current U.S. privacy laws.

Basic Data Protection

A typical privacy policy should address the following:

- **Identify data:** identify the personal data being collected.
- **Identify uses and users:** disclose how the personal data will be used and by whom.
- **Security:** delineate the specific security measures intended to protect the data from unauthorized use and disclosure, and how those security measures will be implemented.

- **Data verification:** Users should be provided with the means to review and correct their personal data.
- **Privacy policy audits:** Businesses should audit their privacy measures and compliance with the privacy policy to ensure that they are fulfilling their obligations under the policy.
- **Contracts with data users:** If and to the extent third parties will be granted access to users' privacy data, a contract should be in place governing the disclosure and use of that data and requiring full compliance with the privacy policy.

In addition to the above, other laws address personal data privacy online depending upon the users involved, the subject matter of the business, or both.

Children's Online Privacy Protection Act (COPPA)

When a business deals with children under the age of 13 online and collects personal data, COPPA is implicated. Under COPPA, any online business or individual that knowingly collects personal data from children under the age of 13 must obtain verifiable consent from a parent or guardian before collecting the information. In addition, the privacy policy must be disclosed online before collecting personal data from the child. To comply, the privacy policy must also address:

- identification of the type of data to be collected;
- disclosure of how the data will be used; and
- identification of all other persons or entities that will be able to access the data.

Financial Services Modernization Act of 1999 (FSMA)

FSMA requires organizations that provide financial services to individual consumers to comply with the "Financial Privacy Rule" requiring financial institutions to provide consumers with a privacy notice at the time the consumer relationship is established and each year thereafter, governing the protection of the

consumer's personal nonpublic information. This notice must contain:

- the information collected about the consumer;
- where that information is shared;
- how that information is used;
- how the information is protected; and
- notice of and means for a consumer to opt out of sharing information with unaffiliated parties pursuant to the Fair Credit Reporting Act (FCRA).

FSMA also includes a Safeguards Rule which requires financial institutions to develop a written information security plan describing the company's plans for protecting clients' nonpublic personal data.

Health Insurance Portability and Accountability Act (HIPAA)

Businesses involved in the healthcare industry who collect consumers' private data online must comply with HIPAA and HHS implementing regulations. HIPAA regulations include complex and lengthy Privacy Security Rules which are designed to protect the privacy and ensure the security of individual consumers' health-related data. HIPAA regulations require:

- disclosure in writing of privacy policies;
- allowing consumers to review and correct their personal data;
- written authorization to third parties before they can use the data for non-healthcare related uses; and
- written and effective audit procedures to oversee collection, distribution, and use of the personal data.

The European Commission – Safe Harbor Status

U.S. privacy laws do not meet the requirements of the European Commission (EC) Privacy Directive that is much more protective of consumers' personal data than is U.S. law. However, the EC and the U.S. have negotiated a temporary "safe harbor" that enables U.S. companies to use European citizens' personal data until U.S. privacy laws are updated.

To qualify for this status and be able to collect personal data from European citizens, a U.S. party must meet several requirements:

- **Notice:** Organizations must note the purposes for which they collect and use personal data, how the individual can contact the organization, the types of third parties to which the data are disclosed, and the choices and means for limiting disclosure and use of the data.

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Handling the “New Normal” of Pressure

By Tom Finn, Global Leadership Consultant, Tom Finn Associates, Inc.

The third in a four-part series on “going global” for companies looking to be leaders in one of the most diverse countries in the country.

Pieces of one of my teeth fell out this week,” a CEO told me. “I haven’t had time to go to the dentist.”

When my customer said this, all I could think was: OK, we’ve gone over the edge. We’ve reached the tipping point for workplace overload. If a leader is conducting meetings, running a business, and having lunches (ouch!) with busted teeth, aren’t we officially overwhelmed?

In article one of this series, we established that Fairfax County business and government leaders face two challenges of a global nature: how to handle cultural nuance, and how to handle 24/7 pressure. We talked culture last quarter. Now let’s talk pressure.

Just like this CEO, most of my customers aren’t addressing overload, even though they are all experiencing it. And yet the costs of workplace frenzy are integral to the effectiveness of any private or public sector organization. My customers cite:

- lost sales
- fewer product and service offerings
- fewer creative ideas
- compromised service
- long-term bottlenecks unsolved
- deferred or non-existent professional development.

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The Fairfax County Economic Development Authority (FCEDA) promotes Fairfax County, Virginia, USA, as a world-class center of commerce and trade and the technology hub of the east coast. The FCEDA assists businesses interested in locating, relocating or expanding their commercial office or industrial operations in Fairfax County. Services are available on a confidential, no-cost basis. As an independent authority created under state law, the FCEDA operates under the direction of seven Commissioners appointed by the Fairfax County Board of Supervisors. Its activities are funded by Fairfax County.

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Think about your own reactions under pressure. Does your pattern serve you and your people? Are you, for example, a rescuer who always saves the day? Or do you find yourself consistently disappointed in the support you are/are not getting from superiors or colleagues?

What To Do About Pressure

With costs like those, I’ve become a champion of sorts about pressure because I don’t believe leaders realize the consequences of overload or see what they can do about it.

There are two places for a leader to start:

- Know your “Pressure Profile”
- Think systems

Your Pressure Profile

Our self-assessment instrument, called “The Pressure Profile,” pinpoints how our customers react to pressure. Think about your own reactions under pressure. Does your pattern serve you and your people? Are you, for example, a rescuer who always saves the day? Or do you find yourself consistently disappointed in the support you are/are not getting from superiors or colleagues?

Self-assessment as an aid to adapting to workplace overload allows you to clarify what you contribute to the pressure cooker. Are you adding to the anxiety or relieving it? Are you increasing your own pressure and in turn not developing the capabilities of those who may be disappointing you with their lack of support?

Think Systems

Pressure in today’s workplace comes from all directions: customer demands, employees, boards, the necessities of growth, and technology that has us “on” all the time. Pressure is systemic.

So leaders who manage pressure need to know how to manage systems.

One way to do that is to know that all systems—family, organizational, political, societal—have some common dynamics, particularly when they are under pressure. If a leader knows those dynamics, he/she will know the sources of the pressure, how not to exacerbate it, and how to relieve it.

System Dynamics

Look for these two common system dynamics when you are under pressure:

Chronic Conditions

Anything chronic takes more than one person to make it continue. Systems include actions by one person that trigger reactions by others. For a pattern to continue, it must have reactive feedback from somewhere in your organization to sustain it. If you have patterns of bad employee behavior, continually disappointing earnings, or recurring screw-ups, resist the temptation to find a scapegoat.

As a leader, look for multiple causes. Think about your own behavior in the situation. What pattern—perhaps an attitude or behavior—are you regularly contributing?

One CEO had become pessimistic about employees. This attitude became his mantra. He began working weekends to follow up on the employees he felt he couldn’t trust. After years of thinking this way and getting the same result, one has to ask the chicken and egg question: are all employees untrustworthy, or is your attitude contributing to their behavior?

Systems Don’t Like Change

Entrepreneurs may love change. Human systems hate it. Once a system—a family, an organization, a town—has consolidated, a systemic force called homeostasis tries to keep the system as it is.

The kind of constant change found in today’s high energy workplace causes pressure and produces anxiety. Additionally, resistance to positive change can prevent employees from acting.

As a leader, focus on managing change by:

- Clearly communicating a desired state. Present a better future to which people can aspire.
- Lay out clear first steps on how you’ll get there. Seeing the way it will work reduces change-inspired anxiety.
- Raise, if you need to, dissatisfaction with the status quo. Sometimes change is needed, but homeostasis influences people to want things to stay the same (remember the old cliché “If it ain’t broke, don’t fix it”).

Pressure seems to have become the “new normal” in today’s globally connected marketplace. Pressure costs organizations in so many ways (lost sales, no time for new, strategic ideas and directions, poor service). Leaders who know how to respond under pressure and how system dynamics operate under pressure will manage today’s fast pace with a measurable degree of control and success. ■

Tom Finn is a performance improvement consultant for leaders and is the author of “Are You Clueless? Seven Clues to Profit, Productivity, & Partnership for Leaders in a Multicultural World.” His ideas on handling pressure are online at www.lifelineconsulting.com and on culture at www.areyouclueless.com. For more information, contact Tom at tfinnman@aol.com or 703-709-7947.

LOCAL BUSINESS SERVICES

Fairfax County Business Services Help Entrepreneurs, Companies Succeed

FCEDA's Procurement Academy Drawing Capacity Crowds

Business people interested in cracking the federal government procurement arena or expanding their contracting work attended the first three workshops in the Fairfax County Economic Development Authority's new Procurement Academy series.

The September session, "Successful Strategies for Government Contracting" featured a panel of Fairfax County business people with proven success at navigating through the federal procurement arena. October's session, "Small Business Legislative Update: The Impact on Entrepreneurs," brought in experts from the Small Business Administration, the legal profession and from local business associations who could speak to the legal issues involved in the procurement process. In November, a panel of experts presented "Effective Communication & Marketing Strategies," to address how a strong communications strategy can assist a company to succeed in its procurement efforts.

Future panels—focusing on topics such as how to navigate through the GSA schedule and federal Mentor Protégé Programs—will include representatives from other Fairfax County businesses and organizations who can share their own practical experiences. Visit the Academy's Web page, www.fairfaxcountyeda.org/procurement-academy, for updates as session panels form and registrations open. ■



Panelists from the November 10 Procurement Academy session, "The Federal Procurement Landscape - Effective Communication & Marketing Strategies" gather with the FCEDA's partners on the event. Pictured, l to r are, Ron Paulson, FCEDA resident counselor, SCORE; Randy Philip, chair, Northern Virginia Black Chamber of Commerce; Myra Fitzwater, director, Teqcorner; Mark M. Brown, director of the Small Business Development Center at the Community Business Partnership; Karen Smaw, director, FCEDA Small, Minority and Woman-Owned Business Division; Mary Kay Claus, principal, Blue Shamrock Communications; Danny Vargas, president and founder, VARCom Solutions, LLC; Elizabeth Shea, president and CEO, SpeakerBox Communications; Alan Fogg, vice president of Communications, FCEDA; and Mary Sirvent, Virginia Hispanic Chamber of Commerce.

8(a) Workshops Conclude with Session on Program Graduation

The Fairfax County Economic Development Authority's (FCEDA) series of workshops to assist companies in achieving success in the 8(a) set aside business development program concluded November 4 with a session on program graduation. Workshop presenters have included attorneys and commercial bankers who work with 8(a) companies, SCORE representatives and business owners who have led their companies through all phases of the 8(a) program.



L to r: Karen Smaw, director, FCEDA Small, Minority and Woman-Owned Business Division, Kevin Learned, chair, Corporate Practice Group, General Counsel, and Braun Jones, partner, WWC Capital Group, LLC, present a certificate to Samir Sankaran, director, Energy & Chemicals, AMPCUS, Inc., for his participation in the workshop series.

IN THE SPOTLIGHT

The Sixth Annual Veterans In Business Conference

By Mark M. Brown, director, Small Business Development Center, Community Business Partnership

The 6th annual Veterans In Business Conference (VIB) is scheduled for March 25, 2011 from 8 AM to 5 PM at the Mason Inn on the Fairfax campus of George Mason University. The VIB provides education, networking and business opportunities for Veteran (VOSB) and Service Disabled (SDVOSB) Veteran Owned Small Businesses. Created by civic and business leaders in northern Virginia to provide training and exposure to veterans who are seeking to grow their businesses through contracting and subcontracting opportunities with the federal government, the VIB is the signature event of the Small Business Development Center at the Community Business Partnership (CBP). The 2011 keynote speaker is retired Rear Admiral Sean F. Crean, director of the office of small business programs for the department of the Navy. He is responsible for advocating policy and initiatives that promote Navy and Marine Corps contracting opportunities for small businesses and serves as principal advisor to the secretary of the Navy on small business matters.

The Veterans Entrepreneurship and Small Business Development Act of 1999 (Public Law 106-50) created an annual government-wide goal of a minimum of 3 percent of the total value of all prime and subcontract awards for small businesses owned and controlled by veterans and service disabled veterans. The Veterans Benefits Act of 2003 added a contracting mechanism to enable agencies to source and set aside procurement for SDVOSBs. These laws have created enormous opportunities for veterans who have honorably served our country to continue to serve through entrepreneurship. The skill sets developed by veterans through their service in the armed forces make them uniquely positioned to build successful companies and provide the goods and services our nation needs.

The conference will feature a two-track breakout model focused on new and emerging small businesses (reconnaissance track) and those preparing to grow their presence on the federal marketplace (deployment track), and the conference will create maximum opportunity for relationship development through planned networking times built into the day.

The Virginia Small Business Development Center Network and the CBP are funded in part through George Mason University's Mason Enterprise Center at the School of Public Policy and through a cooperative agreement with the U.S. Small Business Administration. CBP is also supported by community organizations such as the Fairfax County Economic Development Authority. ■

For more information, visit www.veteransbusinessconference.com, or contact Mark M. Brown at mark@cbponline.org.

FYI . . .

... **The Fairfax County Economic Development Authority (FCEDA), in partnership with the Virginia Department of Business Assistance (DBA) and the U.S. Small Business Administration (SBA)**, conducts a monthly workshop for individuals interested in starting a business in Fairfax County. Workshops are held the first Tuesday of each month from 7:30 AM-10:00 AM. There is no cost to attend, but pre-registration is required. The 2011 schedule is: January 4 (closed), February 1, March 1, April 5, May 3, June 7, September 13, October 4 and November 1. For more information, visit www.fairfaxcountyeda.org/starting-business-seminar.

... **The Fairfax County Economic Development Authority's "Marketing Communications Essentials" workshops** continue on January 19 with "Building a Media Relations Program." The Marketing Communications Essentials series of workshops will provide companies and entrepreneurs with the tools to formulate and execute an effective communications plan. The series will emphasize a broad range of best practices and are appropriate for small and mid-sized companies. The dates and topics of the 2011 workshops are: Jan. 19 – Building a Media Relations Program, March 16– Building a Social Media Presence and May 18, 2011 – Building a Strategic Business-to-Business Program. Visit www.fairfaxcountyeda.org/marketing-communications-essentials for more information and to register for the January session.

... **The FCEDA and SCORE announced the appointment of Kwang Ho Kim as resident counselor.** SCORE is a resource partner of the U.S. Small Business Administration. SCORE volunteers are working or retired business owners, executives and corporate leaders who share their wisdom and lessons learned with small businesses. Mr. Kim joins resident counselor Ron Paulson in holding counseling sessions for business start-ups, business owners and other clients, on Wednesdays at FCEDA headquarters in Tysons Corner. Kwang Ho Kim is a McLean-based private investor with experience in portfolio management. Ron Paulson's background is in technology, management, planning, government contracting, finance and acquisitions. Sessions are one hour long and by appointment only. To schedule an appointment, contact the FCEDA at 703-790-0600 or info@fceda.org. For more information about SCORE, visit www.score.org.

... **The FCEDA has released an updated and revised edition of its popular, free 184-page business primer "Doing Business in Fairfax County."** First published in 1988, "Doing Business in Fairfax County" is a comprehensive guide to starting, financing, running and growing a business in Fairfax County. The 2010 edition has an easy-to-use format that includes a new "Basic Start-Up Checklist." For more information, visit www.fairfaxcountyeda.org/starting-business-fairfax-county.

... **On October 7, 2010, the U.S. Small Business Administration published a final rule** effective February 4, 2011, aimed at expanding federal contracting opportunities for women-owned small businesses (WOSBs). The Final Rule sets forth procedures authorized by the Small Business Act to help ensure a level playing field on which WOSBs can compete for federal contracting opportunities, while helping to achieve the existing statutory goal that 5 percent of federal contracting dollars go to women-owned small businesses. For more information, www.sba.gov.

... **The 6th Veterans in Business annual event will be held March 25, 2011**, focusing on building business relationships among veteran business owners, prime contractors and federal government officials. Workshop topics will examine starting a veteran-owned business, business development through Mentor-Protégé programs, subcontracting strategies and becoming DCAA compliant. Registration is limited to 200 to ensure maximum interaction among attendees. For more information visit www.cbponline.org or contact Mark Brown, Mark@cbponline.org or 703-768-1440.

PRIVACY continued from page 1

- **Choice:** Organizations must give individuals the opportunity to opt out from the disclosure and use of their personal data for a purpose incompatible with the purpose for which the data were initially collected.
- **Transfers to Third Parties:** The notice and choice principles above apply to disclosures to third parties, and third parties must comply with the requirements of the safe harbor.
- **Access:** Individuals must have access to their own personal data and be able to correct, amend, or delete those data.
- **Security:** Organizations must take reasonable precautions to protect the personal data.
- **Data Integrity:** The personal data collected must be relevant to the purposes for which they are collected.
- **Enforcement:** Users must be able to seek redress for any complaints and violations, to verify compliance with the safe harbor principles, and to remedy violations of those principles. Sanctions must also be sufficient to ensure compliance with those principles.

Other detailed provisions govern compliance with EC safe harbor requirements. The Department of Commerce provides detailed information online (www.export.gov/safeharbor/) regarding these requirements and procedures.

Conclusion

A company's Web site privacy policy should be carefully tailored to disclose the collection, use, and storage of its users' private data. A carefully prepared privacy policy not only protects users, it protects the company from lawsuits regarding any alleged unauthorized collection, use, and disclosure of user data. ■

Disclaimer: An attorney should be consulted in preparing any Terms of Use policy.

Brian Darville is Managing Director of Brocadiant IP, PLLC, a law firm handling trademark, copyright, ecommerce and litigation services located in northern Virginia. He can be reached at 703-768-7711 or bdarville@brocadiant.com.

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FAIRFAX COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
BUSINESS FUTURE

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