

**MARKLE FOUNDATION  
IDI #9  
PRIVACY JOURNALIST**

**MODERATOR—DEFINE THE INTERNET. AND IF YOU HAD THE POWER TO CHANGE TWO THINGS ABOUT THE INTERNET WHAT WOULD YOU DO TO MAKE IT BETTER?**

Well it's an unregulated un-owned network of networks that links computers with each other. It allows people to query those computers with any information that the site owners want you to see. I think in the last four or five years it's become heavily commercialized, it wasn't originally. I'd like to say I use it as a medium to get information not to give information about myself. What I would change about it is to have perhaps two or three different internets or have it segregated so that first of all family sites, personal sites were separate. And commercial sites were separate what I'll call research sites even though they are commercially run. Sites where you go to get information. But different from that part of the Internet where you go to either get advertisements or to buy a product.

**MODERATOR—SO THE RESEARCH SITES AND THE KID'S SITES WOULD BE ADVERTISING FREE?**

Not necessarily no, just three different sectors. One, the family sites that I think clutter up a lot of the searches we have. For instance if I search under Ben Franklin I'll get a lot of hits on family called Franklin somewhere in Peoria that have their own sites. I think personal sites ought to be separate than family sites. And then one that is essentially a research part of the Internet. And thirdly a commercial site where you can have all the advertising

**MODERATOR—A COMMERCIAL NET NOT A COMMERCIAL SITE?**

Yes.

**MODERATOR—NOW WHAT DO YOU THINK IS THE SINGLE BIGGEST CHALLENGE CONCERNING THE INTERNET AND THE PUBLIC'S USE OF IT OVER THE NEXT TEN YEARS?**

Security, which is different than privacy. But what I call leaky web sites where there is a breach of information out of them just because they are poorly designed. Lack of security for electronic mail, which is a related problem. Thirdly, the sort of scurrilous use of photographs and things without people's consent, I think that's really going to blow up in our faces at some point.

**MODERATOR—PHOTOGRAPHS MEANING PORN PHOTOGRAPHS?**

Not necessarily. Well some maybe. But no, just individual pictures that people put up on the net without consent of the individuals. And then other people cut and paste them. Or employers who put pictures of all their employees up on their web sites. A lot of school systems that are

putting up pictures of all their students, much like an electronic yearbook. Not realizing the implications of all that.

MODERATOR—WHAT ARE THE IMPLICATIONS OF THAT?

The images can be cut and pasted and put on other people's bodies and used for illicit purposes. Employees are finding females that they get a harassing email or phone calls from people because their photographs are on the net without their consent.

MODERATOR—SO YOUR THREE PRIORITIES ARE, SECURITY, MEANING SECURITY OF INFORMATION ON SITES, LEAKING. AND EMAIL, LACK OF SECURITY AND PHOTOGRAPHS.

I've got a few more priorities. The commercial exploitation of information that you leave on a web site. That's a higher priority in Washington than it is for me. But it is a priority. And then I guess fifth, the privacy protection for what I call third party information on the net, like credit reports, medical information, giving the individual some sense of control.

MODERATOR—IS THE INTERNET WORLD SO DIFFERENT THAT IT REQUIRES A NEW SET OF RULES SEPARATE FROM THOSE IN THE OFF-LINE WORLD?

I think the old principles apply but I think they have to be applied strictly to the Internet. In other words, there is a huge difference in the technology that requires special caution when you post information on a web site. It is not the same as a manila folder. However I do think that principles should apply to the information not necessarily to the medium. I don't think the Internet should be regulated as an entity. But because of the Internet certain information ought to be regulated. Whether or not it's on-line or off-line. And that would include credit information, medical information, and personnel information.

MODERATOR—SO YOU'RE SAYING THE NEW REGULATION OF CERTAIN KINDS OF INFORMATION MIGHT BE, BECAUSE IT HAS TO BE DONE, REGULATED IN THE ON-LINE WORLD, MIGHT ALSO BE MORE REGULATED IN THE OFF-LINE WORLD?

Yes. You shouldn't regulate the Internet as an entity but we should regulate certain kinds of information that is both on-line and off-line. I should add here, one of the strengths of the Internet is that it is not regulated.

MODERATOR—DO YOU THINK THE PUBLIC HAS MORE OR FEWER PROTECTIONS ON-LINE RELATIVE TO OFF-LINE?

Well the protections are there but the public's understanding of the Internet is really at a low level. People do not realize how leaky web sites are and email. There's an awful lot of trust. They don't know anything about cookies for instance. And a lot of the problems obviously can be cured if you just don't go to some of these sites. So the tools are there, I just don't think people have an awareness that they are there or how to use them.

**MODERATOR—BUT DO PEOPLE IN FACT LEGALLY HAVE FEWER PROTECTIONS?**

No I think the same principles apply. For instance false advertising on-line is false advertising anyway. You have a fraud committed on-line it's still fraud. But people just so trusting and naïve on-line. I think they have the same legal rights but they don't, they're not aware of how they can use the technology to protect themselves.

**MODERATOR—TO WHAT EXTENT HAVE YOU FOUND THAT PEOPLE ARE STAYING OFF THE INTERNET BECAUSE OF CONCERNS ABOUT ENTERING A NEW MEDIUM THAT HAS FEW REGULATIONS?**

Well there are lots of polls around about that. I think the polls show two things. People love to shop on the Internet. And they're worried about privacy. This hasn't shaken down yet. We don't know which way people are going to go. I think they're quite happy to leave a credit card with a recognized brand names. Names on dot com or Filines. But they're a little shy about non-recognized brand names.

**MODERATOR—WELL PEOPLE YOU KNOW, IF YOU KNOW ANYBODY WHO IS STAYING OFF-LINE.**

I have purchased only an airline ticket. And in that instance the convenience outweighed any fear I might have. I don't trust web sites to use credit cards. I don't think we should be using credit cards on-line. I think there are other methodologies we should be using in keeping with the 21<sup>st</sup> century. Credit cards too much trust, they are an outdated technology, they invade privacy and they should not be used on-line, so. I don't shop as much. I'm not a shopper anyway. I think that has a lot to do with it. I think if you don't buy into the consumer culture then you don't get caught up in a lot of these problems on-line.

**MODERATOR—BUT YOU'RE STAYING OFF-LINE BECAUSE IT'S NOT REGULATED ENOUGH RIGHT?**

No, no, not necessarily regulated enough. It's just there's just not that trust. There are other ways to establish trust besides regulations. No I don't trust many web sites. Well here's a good example. This doesn't have anything to do with privacy but. In order to hear an audio reproduction of something I was interested in professionally I had to download Real Player, which is the software that makes it possible. And I went to the web site and I was even bold enough to leave my credit there. And then at the end of the process, which was cumbersome in itself, and then it tells me it's going to take an hour to download that. Well I should have known that at the very beginning and then I could have done it at night, done the thing at 10 o'clock at night and let the thing run. During my business day do I want to tie up that line for an hour? Those are the kinds of consumer needs that have to be communicated up front. It wasn't an experience that made me confident of e-commerce.

**MODERATOR—THAT'S NOT SOMETHING YOU WANT THE FEDERAL TRADE COMMISSION OR PRODUCTS COMMISSION GETTING INTO?**

No, no, all the ills I point out about the Internet are not things I think can be solved with governmental action.

**MODERATOR—THE FTC HAS ASKED CONGRESS TO GIVE IT AUTHORITY TO MAKE RULES ON INTERNET PRIVACY. WHAT IS YOUR VIEW OF THIS REQUEST?**

Well I think that's appropriate. Once again, it sort of ups the ante from the off-line. The FTC has authority over false advertising, deceptive consumer practices, and unfair practices. And some privacy. I think it's a very modest proposal. It's appropriate. It's not something businesses should be afraid of either.

**MODERATOR—HAS SELF-REGULATION OF THE INTERNET WORKED?**

No.

**MODERATOR—AND WHERE HAS IT FAILED?**

It doesn't necessarily follow to me, sort of a closet conservative, that that means governmental regulation is next. But self-regulation has not worked.

**MODERATOR—IN WHAT WAYS HASN'T IT WORKED?**

Well because the government approach self-regulation as laissez-faire. There is a vigorous self-regulation that can work if government sets standards and exposes the bad guys and gives incentives to good guys and insists that trade associations develop standards. All of that.

**MODERATOR—SO IN OTHER WORDS YOU WANT TO SEE THE GOVERNMENT DO WHAT?**

Promote self-regulation seriously in a very vigorous way with sanctions and punishments. That's what self-regulation is. But in fact the last 3 years self-regulation has been a euphemism for laissez-faire, which is totally leave it to the private sector.

**MODERATOR—WHAT IS YOUR REACTION TO THE FTC'S CLAIM THAT FEW COMPANIES FOLLOW THAT AGENCIES INTERNET PRIVACY GUIDELINES?**

I'm not surprised at all. I haven't read a privacy policy on commercial site that is understandable or is reaches the current state of the art. Or has the consumer at heart at all. Still waiting to read the first one.

**MODERATOR—ARE YOU FAMILIAR WITH THOSE GUIDELINES?**

There are not formal guidelines. Yes there are, there are principles, yes.

**MODERATOR—THAT'S THE FORMAL PRINCIPLES FAIR PRACTICE?**

Yes. And commercial sites don't even come close.

MODERATOR—AND WHY DON'T YOU SAY WHAT THE FAIR PRACTICE CODE IS.

Well it was developed back in 1974. And there has been general acceptance and agreement of it. The principles roughly are, the consumer has a right to see your own information and to correct it. That web sites have an obligation of accuracy and security. That the information that you are gathering, facts that you are gathering should be publicly disclosed so everybody knows about them. All transparencies. And then most importantly, the principle of secondary use. Thou shalt not take information that was provided for one purpose and use it for a purpose that is different from the one you got unless you get permission from the individual.

MODERATOR—AND THIS WAS IN WHAT LAW, IN THE PRIVACY ACT?

Not in a law. It was developed by a study commission, committee, the Department of Health, Education and Welfare. And they issued it in a report in 1974.

MODERATOR—WHAT REPORT?

It was called 'A Records Computer and the Rights of Citizens.' Either 73 or 74. And it was endorsed by the Business Roundtable and by most of the Fortune 500. By IBM which then was sort of a leader in computers. And then it became part of the privacy act, the law affecting student records and some other things. And it became part of most European laws.

MODERATOR—IS THIS A CODE THAT HAS BEEN AFFECTING PRACTICE ON DATA BASES AND PERSONAL RECORDS LONG BEFORE THE INTERNET CAME ALONG.

Yes, yes.

MODERATOR—ARE LAWSUITS BROUGHT ABOUT THIS AND PEOPLE WHO WANT THEIR RECORDS PROTECTED?

It's not enforceable to that extent. I think that a creative lawyer could bring a lawsuit against a company that back in 1976 said we will abide by these principles. Not many people know that. Know that these companies publicly agreed to comply with this code.

MODERATOR—THEY ONLY AGREED IN 1976 OR THEY AGREE SINCE?

No, back in 1976, they haven't agreed since.

MODERATOR—BECAUSE NO ONE PROMOTES IT?

Yes, yes.

MODERATOR—SO IT'S KIND OF DORMANT?

Exactly. It's lying dormant. But you see that's a breach of contract with the consumer. Somewhere even though it's kind of hidden, somewhere you agreed to abide by certain principles, that I shop with you and you violate those principles, that's a breach of contract.

MODERATOR—BUT THE SAME COMPANY MIGHT NOT EVEN BE AROUND NOW.

Well these are Fortune 500 companies by and large.

MODERATOR—SO IN '76 MOST FORTUNE 500 COMPANIES AGREED.

In writing they agreed with the Department of Commerce that they would abide by these principles. Now one of the problems is one of the important on-line companies were not around then so this is new stuff to them.

MODERATOR—IF REGULATIONS GOVERNING THE INTERNET WERE TO INCREASE, WHO WOULD YOU TRUST TO MAKE RULES OR LAWS? PRIVATE SECTOR, GOVERNMENT, EXECUTIVE AGENCIES OR CONGRESS, STATE GOVERNMENTS, NON-PROFITS OR ICANN OR SOMETHING LIKE W3C?

Well right now I would trust the courts to for instance be vigorous in the theory that I just recounted. It's a breach of contract to violate some policy that you previously said publicly that you would abide by. And that's essentially the Federal Trade Commission theory. And we have private lawsuits against Yahoo! and against Doubleclick and others. And I think that's currently the way to go. I feel very strongly that the way congress is constituted right now, they are incapable of coming up with true consumer protection. And as long as it is funded the way it is...

MODERATOR—THE WAY WHAT IS FUNDED?

Congress is funded the way it is, that will be

MODERATOR—DO YOU WANT CAMPAIGN FINANCE REFORM?

Yes exactly. I think that key privacy reform is campaign finance reform. Without that Congress will pass laws that in title will say they are consumer protection but when you read the small print you'll see they take away more than they give. The reason for that is the corporate interest in Washington get the last look at the law and get to put their stamp on it, in fact their language. When I was in Washington I found it a fair fight. I really did. And I don't find that true any longer. The consumer protectors don't even get a chance now with Congress.

MODERATOR—YOU DON'T THINK IT CAN BE SERIOUSLY CONSIDERED UNTIL AFTER WE GET CAMPAIGN FINANCE REFORM?

Yeah I think that's accurate.

MODERATOR—DO YOU KNOW ABOUT OPT-OUT AND OPT-IN?

Oh yes, ad nauseam.

MODERATOR—IF A LAW DICTATED THAT INTERNET USERS COULD EASILY OPT-OUT BY EXAMPLE CHECKING A BOX BEFORE THE SITE WOULD BE PERMITTED TO COLLECT AND SELL THEIR DATA AND THE COOKIES GENERATED COULD BE INSERTED INTO THEIR COMPUTER, WHO WOULD YOU WANT TO ENFORCE IT?

Private lawsuits would be my priority right now. Secondly, the FTC, maybe. I don't think they're very aggressive about consumer protection right now but they could be. There's one privacy law that's really enforced by people going to small claims court and that's been very effective.

MODERATOR—WHICH LAW IS THAT?

It's the telemarketing consumer telephone consumer act. If you tell a telemarketer that you want to be on their do not call list they have to put you on their do not call list and not call you. If they fail to do that you can sue them in small claims court and collect a couple thousand dollars. And people have done that. It's very effective.

MODERATOR—AND WHAT YEAR WAS THAT LAW?

1986.

MODERATOR—SO THAT'S ONE, THAT'S THE ONLY ONE?

That's true, it is. Maybe one reason it works is the sanction is not an atom bomb. It's workable. It can be used a lot by consumers so the companies are aware of it.

MODERATOR—DO YOU THINK THAT WOULD BE A MODEL FOR A PRIVACY LAW FOR SOME KINDS OF PRIVACY?

No because it's all separate, it doesn't get into the code information practices. It's much more simple than the code. The fair reporting act is the closest thing we have to a model even though it has flaws in it.

MODERATOR—AND CAN YOU TELL ME A LITTLE BIT ABOUT THAT?

The act? It gives people the right to see their credit report and to demand that it be corrected. And if it is not corrected at least get their rebuttal in to the record. It prohibits credit information from being used except in certain purposes. It requires that negative information be erased after seven years, a good idea. It required credit bureaus to take due diligence to be accurate. It implements the code.

MODERATOR—WHAT YEAR WAS THAT?

That was 1970.

MODERATOR—WHAT ABOUT THE LOVE VIRUS, IN RELATION TO REGULATION. DO YOU THINK THAT IT WAS HANDLED CORRECTLY, FROM NOTIFYING THE PUBLIC TO FINDING THE PERPETRATORS?

Yes. I mean the perpetrators were found. And the public knew about it very quickly. I think, it's interesting, the more sophisticated and larger the organization, the more they got burned by the

MODERATOR—REALLY, I THOUGHT THE LITTLE PEOPLE.

I don't believe so, I think it was the big ones. The large tech companies. A large company in Montreal got burned by it. Oh and it's made people realize that one reason we're vulnerable to viruses is the Microsoft monopoly that apparently viruses would not be very effective if people were using different operating systems on a competitive basis. So I would say the response to the "I Love You" virus has been about as positive as you can expect.

MODERATOR—ARE YOU A MICROSOFT CRITIC?

Well yeah. In my book I gave them great credit too because I used their tools, it makes it much easier in many ways.

MODERATOR—WITH RESPECT TO FUTURE SECURITY REGULATION, DO YOU HAVE AN ALTERNATIVE THAT YOU WOULD LIKE TO SEE THAT MIGHT BE DIFFERENT THAN WHAT HAPPENED WITH THE LOVE VIRUS?

Well I guess it would be new to realize that we need diversity in operating systems in software. And that makes hoisting virus on us much more difficult. We should learn from that.

MODERATOR—WHO WOULD YOU NOT WANT TO BE MAKING AND ENFORCING RULES TO GOVERN THE INTERNET?

Congress. For the reasons I mentioned. And their level of sophistication on technology is not high enough at this point. They may get there, they are not there yet.

MODERATOR—HOW MANY TIMES HAVE YOU BEEN DOWN THERE TO TESTIFY?

I used to testify a lot more until this phenomenon set in that I mentioned. I've been down there only once since 1990. I think I went 12 times in the '80's.

MODERATOR—WHO DO YOU THINK THE PUBLIC WANTS TO BE MAKING AND ENFORCING RULES TO GOVERN THE INTERNET?

Oh, I think the public would like the government, the federal government to take care of it all. People don't want to worry about these things. They want the assurance that the government is

looking after these things and they don't have to worry about it. They would be quite comfortable I think. It's generally a high level of support for the Federal Trade Commission, attorney general. That's one thing I should mention. I think state regulators are strong. I wouldn't trust attorney generals, state insurance departments in maybe half the states to do something.

MODERATOR—INSURANCE DEPARTMENTS?

Yeah where insurance is involved, yeah.

MODERATOR—TO ENFORCE?

Yes, to enforce consumer protection, yes.

MODERATOR—HOW DOES THE PUBLIC INTEREST INFLUENCE PRESENT RULES FOR THE INTERNET?

Well it's what I call government by anecdote. The public, and people like me still have the power to raise a ruckus in the press. That does get a response. Even judges read newspapers so. We still have that power. The power of public relations and negative publicity. And still the users of the Internet, the individual users, the high tech type people have much more sophistication than those that are exploiting it commercially. So they have great influence as well. This denial of service phenomenon, are you familiar with that? Well it's similar to a virus where everybody gets together and makes a query on a web site to shut it down. They have that ability. So that's another power that people have still. And class actions and lawsuits are still possibilities although a lot of these laws immunize the bad actors from lawsuits. But that's still a possibility. Where people have truly lost their influence is in exerting any influence on congress.

MODERATOR—WHAT'S AN EXAMPLE THAT RELATES TO THE INTERNET?

Well the priority in the children's pornography area. Twice now congress passed unconstitutional laws that everybody told them was unconstitutional. Instead of crafting something that was meaningful to parents. There is plenty of expertise, they could have done that. Last year the law that allowed banks to enter into more financial services, the Financial Modernization Act. It came up with a privacy provision that is a joke. And people have been given false hope that there is some privacy protection. But in fact that law opens up all sorts of exchanges of personal data that just 7 years ago would have been unthinkable.

MODERATOR—SUCH AS?

Such as how I use my credit card. The stores I go to and how much I charge and what hour of the day I go there. That information can be used by banks within the huge corporate family. Or unless I smart enough to opt out, it can be traded with anybody. My bank account information, all the checks that write. That information, the same thing, that can be exchanged unless I'm savvy enough to stop it.

MODERATOR—SO THIS LAW APPLIES TO OFF-LINE, TO BANKING IN GENERAL. AND ALSO TO THE ON-LINE COMPONENT OF IT?

Right.

MODERATOR—SO PEOPLE ARE GETTING LESS PROTECTIONS THAN THEY USED TO HAVE THROUGH THAT LAW?

Yes.

MODERATOR—WHEN YOU MAKE DECISIONS ABOUT THE INTERNET ON A DAY-TO-DAY BASIS DO YOU CONSIDER WHAT THE PUBLIC WANTS?

Only a little bit, a tiny bit. I will not engage in certain practices that might be convenient for me because I want companies to think that the public accepts those things.

MODERATOR—ACTING AS A MEMBER OF THE PUBLIC?

Right, more off-line.

MODERATOR—IT'S PRINCIPLE

Right, that's exactly what it is, principle.

MODERATOR—WHAT COULD HAPPEN IN REGARDS TO THE INTERNET THAT WOULD MOTIVATE THE PUBLIC TO PAY MORE ATTENTION TO WHO GOVERNS IT OR TO TAKE A BIGGER ROLE?

Two things. A massive leak of credit card numbers. Or secondly, more Internet stalking that results in death or injury of people. Because someone was careless with information. Those two events, if massive enough, will turn people off. It's what we in the privacy business call the oil spill syndrome. If there's an oil spill on the Internet perhaps people will finally demand regulation, or protection.

MODERATOR—PROTECTION OR REGULATION?

Protection. And there have been events like that in my reckoning are beyond our tolerance. There have been oil spills but the public hasn't seen them so

MODERATOR—YOU MEAN THERE HAVE BEEN OIL SPILLS ON THE INTERNET?

Yes. Like some of these viruses first of all. The Doubleclick situation was another one. And in the winter of '99, January through March we had several leaky web sites, third parties were able to get a hold of a bunch of information that consumers had left behind

MODERATOR—WHAT DO YOU MEAN BY THIS LEAKY THING, THAT IT'S INADVERTENT?

Yeah, it's bad design, bad design.

MODERATOR—HOW DOES IT WORK WHEN IT LEAKS?

If you go to a search engine and happen to enter my name in it you might well, or enter a name that is most common, you might well get, are you familiar with search engines, the whole list of hits you get. You might get hits of my name entered into a commercial site where I purchased a product. And that's just poor design. And if you clicked on that site you would get my credit card number and my address and everything else.

MODERATOR—HOW LIKELY IS THAT TO HAPPEN?

It's happened a lot. Like is say in the first quarter of '99 from some very reputable web sites. I was just surprised that they weren't more outraged than that.

MODERATOR—WHEN YOU GO ON-LINE WHAT DO YOU LOOK FOR IN A PRIVACY NOTE. AND SEPARATELY, IN A CONTRACT.

Well I'm like everybody else, I'm busy and I'm cursory. I look and if it's a complicated, I can tell from the language right away if it looks to be phony. It's just an intuitive thing. If the first line of it says, we value your privacy, or we're very sensitive to privacy, that tells me it's a cookie cutter policy. They've obviously picked it up from somebody else. I've seen privacy policies that have the name of another company in it because they just stole it from some other company. Or where it's blank, fill in the blank, name of your company. I've seen those on the line.

MODERATOR—AND HAVE YOU TRIED LOOKING AT ANY CONTRACTS ON-LINE?

I really don't buy that much, that's one reason, not the prime reason. When I download software I just skim the contract, at least I skim it. I won't give it a thorough reading.

MODERATOR—SO WHAT DO YOU LOOK FOR IF YOU'RE SKIMMING ON A CONTRACT, ANY SPECIFICS?

Well I have seen some sites that say, we reserve the right to use this information any way we want to. We reserve the right to change this policy at any time. That would deter me right away if I saw that.

MODERATOR—OF GROUPS THAT PROVIDE SEALS OF APPROVAL, SAYING THAT A WEB SITE IS SECURE, WHICH DO YOU THINK SERVE THE PUBLIC BEST? THEY PUT IN TRUSTE AND THE BETTER BUSINESS BUREAU ON-LINE.

First of all they don't vouch for the security of the site like they have a privacy policy. I think they're all totally inadequate. But BBB is the best that is around.

**MODERATOR—HAVE YOU EVALUATED THEM FOR YOUR JOURNAL?**

No I haven't.

**MODERATOR—IF YOU HAVE TO CLICK THROUGH ONE OR MORE NOTICES WHEN ENTERING A SITE OR AGREE TO CONTRACTS, HOW FREQUENTLY DO YOU READ THEM?**

I browse through them.

**MODERATOR—IF YOU WERE TRADING STOCKS ON-LINE WOULD YOU TAKE THE TIME TO READ A PRIVACY STATEMENT?**

Yes, that's sensitive information.

**MODERATOR—AND IF YOU WERE BUYING MEDICINES?**

Yes, even more so.

**MODERATOR—HAVE YOU EVER DECIDED NOT TO MAKE A TRANSACTION OR PROVIDE PERSONAL INFORMATION ON-LINE BECAUSE OF THE PRIVACY STATEMENT?**

Well because of the privacy practice lots of times. I don't use the New York Times site because they make me register. They make me do an email address. So I don't even get to the privacy policy.

**MODERATOR—DO YOU THINK THE PUBLIC LOOKS AT, OR EVEN UNDERSTANDS, PRIVACY STATEMENTS?**

No.

**MODERATOR—DO YOU THINK MANDATORY STATEMENTS SHOULD BE MANDATORY?**

No. A web site can ignore that at its peril. And maybe some people won't shop there. If you're collecting sort of routine information maybe there's no need to have a privacy statement.

**MODERATOR—IF THE INFORMATION ISN'T SENSITIVE?**

Yeah. Maybe you're just collecting name and address to deliver a product, nothing else. You might not need a privacy policy to do that. Or your privacy policy could be one line, 'we will never use your information except for this transaction.' That's what it says on my web site. You

may not call it a privacy policy, I don't know. But it's short and sweet. There are a lot of web sites that collect information that is minimal or not at all so you would not need a privacy policy.

**MODERATOR—SPAM, WHAT DO YOU THINK ABOUT PUTTING LIMITS ON SPAM?**

Well there are about three states now that require it to be labeled. I think that's not a bad idea.

**MODERATOR—WHICH STATES?**

California, Virginia and Washington. And Colorado question mark. They require it to be labeled, which is a good idea. And I think they give you the right to sue if you can track down the person.

**MODERATOR—AND YOU THINK THESE ARE GOOD LAWS?**

Yes, good examples of things that originate at the state level.

**MODERATOR—AND WHAT ABOUT FREE SPEECH?**

Well I don't think, I guess, as a lawyer I would say it's regulating the time, place or manner of the speech, not content. It doesn't regulate the content in any way except maybe an innocuous headline.

**MODERATOR—SO UNDER THE FIRST AMENDMENT IT'S CONTENT BUT THE TIME, PLACE OR MANNER**

Can be regulated reasonably. If the regulation matches the deal. Like getting a permit for a parade, that doesn't violate the First Amendment because it merely regulates the time, place and manner. Regulating lots of speakers is permissible. And I would say merely requiring somebody to put a header on a piece of spam is OK.

**MODERATOR—DOES THE LAW SAY THEY ACTUALLY HAVE TO USE THE WORD SPAM OR SOMETHING**

No, ADV. Advertisement. And a couple of the states say, ADV dash adult if it's adult stuff. So I think these are reasonable regulations. I personally am not exercised by spam but I've taken a couple of precautions. And I think more sophisticated people take even more.

**MODERATOR—SOME OF THESE SOPHISTICATED PEOPLE ARE OUT OF TOUCH WITH THE AVERAGE CITIZEN**

In some way I'm in that category. For instance I use two email addresses. For certain public addresses I use email I go to once every two weeks.

**MODERATOR—DO YOU THINK MOST PEOPLE WANT LIMITS ON SPAM?**

Yes just because it's a muddled thing. I don't think most people see any drawbacks to that. To limiting it. I don't think they would see any negative consequences.

MODERATOR—THERE HAS BEEN SOME TALK ABOUT ELIMINATING ANONYMITY ON THE INTERNET SO AT A MINIMUM A PERSON'S ACTIVITY COULD BE TRACED BACK TO THEM. WHAT IS YOUR OPINION ON THIS ISSUE?

Well I'm glad now there are proprietary services that provide for the Internet and you can pay for it a little bit or you can accept certain advertisements on their web sites and launder your experience on the web. I think it's very important that these be available. And I think it would be terrible if the government tried to shut those down.

MODERATOR—WELL WHAT ABOUT PEOPLE WHEN THEY'RE NOT IN PROPRIETARY SITES, THEY'RE JUST ZOOMING AROUND?

No what I mean is, you go to, these are commercial services that will provide anonymity for you.

MODERATOR—LIKE ZERO KNOWLEDGE?

Yes, exactly. Two things. You can go there and send email that will be laundered. Or you can go there and then go to a web site and the web site won't know who you are.

MODERATOR—BUT THAT WOULD ONLY BE THROUGH THOSE FILTERS. COULD YOU SUPPORT A SITUATION WHERE ALL THE OTHER TRAFFIC WAS "ID'ED"?

No, no I think you still should have means for anonymity on their own, they should be able to use it. And we may reach the point where that has to be labeled. It may be important for the recipients to know the material is sent anonymously and then they can decide. The Supreme Court has upheld the right of people to circulate political speech anonymously. You don't have to label a flyer for instance that you hand out in a campaign. Again I think we should take that off-line prototype and just apply it to the net. On the other hand I know a lot of scurrilous stuff can get out anonymously so maybe if it is labeled people, let people know it's coming anonymously you don't have to credit with so much credibility.

MODERATOR—WHAT DO YOU SEE IN GENERAL HAPPENING? YOU DON'T SEE A BIG PRIVACY LAW IN THE FUTURE UNTIL THERE'S CAMPAIGN FINANCE REFORM.

Well not, I should advise that a little. I don't think there should be a law until there is campaign finance reform. But if we have the oil spill well then congress will go ahead and pass a law and everybody will cheer and think it's pro-privacy until they read the small print. What do I see in the future. Well I think that there will be sort of a little backlash with regard to the Internet. The novelty will wear off. We'll probably reach saturation, 75 percent of the households in America, people will discover there's a life off-line. Those who value anonymity will go back to the real marketplace until they find sites that are going to honor their anonymity. I'm sounding like the market will regulate all of this, it will, a lot of this stuff. I really believe that the privacy problems that are worth my focus are not the on-line problems.

MODERATOR—WHAT ARE THE WORST TYPES OF PROBLEMS?

Video cameras in the work place and all over our public streets. Lack of privacy in the work place. Amateurs video taping people without their consent. And putting it on the web. Lack of protection for medical records. Inadequacy of credit reports. Some of the Orwellian identity requirements that we now have. The trend towards a national ID card. Those are the privacy issues that consume my interest and I think are much more intense than all the Internet issues.

MODERATOR—SO YOU WOULD LOOK FOR A GENERAL PRIVACY LAW, NOT AN INTERNET PRIVACY LAW?

Oh yes, definitely. I think it would be most unfortunate if we had a law that was aimed solely for the net. That means the privileged people among us able to use the net would have greater privacy protection than those that don't. We've already got that situation now where, we've got greater privacy protections for video rental records than for medical records. I would hate to see us repeat that mistake where you're going to have greater privacy protection for email than for a welfare recipient.

MODERATOR—SO YOU WOULD INTERNET ALERT PEOPLE TO WORK WITH THE PEOPLE SUCH AS YOURSELF, WHAT'S THE BIGGEST PRIVACY ADVOCACY GROUP IN THE COUNTRY?

It's really Balkanized but obviously the ACLU or the Electronic Privacy Information Center. And the Electronic Frontier Foundation. There's just not that many.

(End side 1)

Once again it's not a high level of sophistication. I don't think people realize how much they rely on anonymity in the real market place. You can window shop, you can even pay for it, not know who you are. You can even take it home and wear it without any accountability, without anybody knowing who you are, as long as you pay cash for it. And I think when they discover they can't do that on-line they're going to want that.

MODERATOR—SO YOU'RE SAYING THE MARKETERS ON-LINE, THE MERCHANDISERS ARE DEMANDING MORE ON-LINE THAN THEY ARE IN THE REAL WORLD, IN A NORMAL STORE?

Oh definitely, definitely. Because they will accept credit cards first of all. That's so naïve, there's other technologies. One is, using your modem, you could use your phone bill, that would guarantee anonymity. There would be no security problems. Hackers could get in and they wouldn't get any credit card numbers. Secondly, there's digital cash that's been developed in Europe. You take credit out of a bank. It's an electronic traveler's check. It's a prepaid program from your bank. Pay that way.

(End interview)