Lecture objectives:

- Define Privacy
- Understand the link between individual privacy and consumer privacy
- Describe the importance of e-commerce in relation to the Privacy Amendment Act 2000
- Acknowledge the affect globalisation is having on legal and privacy aspects of e-commerce

Use Of The Internet For Business

- RELUCTANCE by many Internet users to conduct business over the internet
- Concerns are:
  - Privacy
  - Ownership
  - Access
  - How information will be used - Cookies
  - Security
  - Data integrity
  - Authentication
  - Trust and confidence
  - Availability
  - Legal uncertainty
  - Fraud
  - Identity theft

Organisational structure

- BUSINESS STRATEGY
- IT GOVERNANCE
- IS Infrastructural Security Governance

Question

What is security governance? How does security governance sit within this framework?
Holistic approach to IS security

IT GOVERNANCE

Privacy Governance

Security Framework – goals of IS security

Protection

Availability

Integrity

Non-repudiation

RISK MANAGEMENT

Risk analysis/assessment

Risk mitigation

Compliance/Cobit

Audit (audit)

Access current

Access controls

New access controls

Security management

Security policies

Security culture

Business continuity plans (BCP)

Recovery

Security audit

Detect situations

Computer forensics

Reconstruct the evidence

Re-evaluate access controls and policies

Privacy

What is it?

How do we protect it?

Can it be protected?

Why worry about it?

Privacy Concerns

A new report from Forrester says that USD15 billion, or 27 percent of projected ecommerce revenues for this year, could be lost by online retailers because of consumers' privacy concerns.

Privacy

Privacy is the interest that individuals have in maintaining a personal space, free from interference by other people and organisations (Clarke 1999)

Privacy Dimensions

Privacy of the person

Privacy of personal behavior

Privacy of personal communications

Privacy of personal data

The "claim of individuals, groups, or institutions to determine for themselves when, and to what extent, information about them is communicated to others."

Privacy

The major dilemma facing society is the conflict between the need for private and government agencies to keep information for the common good versus the rights of the individual to be left alone.


Survey results:

- Australians regard privacy as a closely held and highly personal value
- People look for signals that an organisation will manage their personal information:
  - 59% - said they would trust an organisation more if it gave them control over how their information was to be used
  - 55% - said organisations with privacy policies would be more likely to gain their trust


Privacy Concerns

A new report from Forrester says that USD15 billion, or 27 percent of projected ecommerce revenues for this year, could be lost by online retailers because of consumers' privacy concerns.
Privacy Issues

- Both Government and private organisations are increasingly automating the processing of personal information without the consent or knowledge of the individuals affected.
- Personal information is sometimes
  - used legitimately - social security
  - abused - identity fraud
  - Used to obtain financial reward - sold

The Office Of The Federal Privacy Commissioner

- GUIDELINES
  - WORKPLACE E-MAIL,
  - WEB BROWSING AND
  - PRIVACY
  - (30/3/2000)
  - SEE HAND OUT

The Office Of The Federal Privacy Commissioner

- The use of the Internet by governments and organisations has raised concerns about the privacy of staff e-mail and web browsing activities.
- Despite the fact that employees are using government or corporate equipment and networks staff may consider that their e-mails and web browsing activities are private.
- In some cases access controls and security features of a network (passwords etc) give the user an illusion of privacy and they may not be aware that their browsing activities and e-mail content can be scrutinised.
- It MAY NOT BE UNDERSTOOD BY STAFF THAT THE PURPOSE OF ACCESS CONTROLS IS TO PREVENT UNAUTHORISED ACCESS

Privacy Research

Australia
44% of respondents were concerned with privacy issues relating to online services.
71.8% of respondents said that they checked privacy policies before purchasing goods online and 65% said they wouldn't go ahead with an online order if the site didn't have a privacy policy.
(2000)

37% of online consumers said they would buy more if privacy was not an issue
34% of consumers said that they would start buying online if privacy was not an issue
54% believe that government should regulate online privacy
(Forrester 2001)

27% of projected eCommerce revenues could be lost due to consumer privacy concerns
39% of online consumers said they would buy more if privacy was not an issue
34% of consumers said that they would start buying online if privacy was not an issue
34% believe that government should regulate online privacy
(Forrester 2001)

Information Sheet 6 – 2001 Security And Personal Information (see handout)

National Privacy Principle (NPP) 4.1
- provides that an organisation must take reasonable steps to protect the personal information it holds from
  - misuse and loss and from
  - unauthorised access,
  - modification or
  - Disclosure

About Information Sheets

- Information sheets are advisory only and are not legally binding.
  - (The NPPs of the Privacy Act 1988 do legally bind organisations.)
- Information sheets are based on the Office’s understanding of how the Privacy Act works.
- They provide explanations of some of the terms used in the NPPs and good practice or compliance tips.
- They are intended to help organisations apply the NPPs in ordinary circumstances.
- Organisations may need to seek separate legal advice on the application of the Privacy Act to their particular situation.
- Nothing in an information sheet limits the Federal Privacy Commissioner’s freedom to investigate complaints under the Privacy Act or to apply the NPPs in the way that seems most appropriate to the facts of the case being dealt with.
- Organisations may also wish to consult the Commissioner’s guidelines and other information sheets.
National Privacy Principles

<table>
<thead>
<tr>
<th>NPP</th>
<th>Privacy Principle</th>
<th>Area of Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Collection</td>
<td>Manner of collection and notice to be given</td>
</tr>
<tr>
<td>2</td>
<td>Use and disclosure</td>
<td>Restrictions on use and disclosure for secondary purposes</td>
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<tr>
<td>3</td>
<td>Quality</td>
<td>Maintenance of data currency and accuracy</td>
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<tr>
<td>4</td>
<td>Security</td>
<td>Protection from unauthorised access, modification and disclosure</td>
</tr>
<tr>
<td>5</td>
<td>Openness</td>
<td>Provision of policy and other information</td>
</tr>
<tr>
<td>6</td>
<td>Access and Correlation</td>
<td>Provision of access for individuals to their personal information</td>
</tr>
<tr>
<td>7</td>
<td>Identifiers</td>
<td>Manner of organisational use of identifiers</td>
</tr>
<tr>
<td>8</td>
<td>Anonymity</td>
<td>Preservation of option to remain anonymous</td>
</tr>
<tr>
<td>9</td>
<td>Transborder data flows</td>
<td>Conditions on transferring personal information outside Australia</td>
</tr>
<tr>
<td>10</td>
<td>Sensitive information</td>
<td>Conditions on collection and handling of sensitive personal information</td>
</tr>
</tbody>
</table>

Privacy protection

- Privacy Legislation
  - Privacy Act 1988
  - Privacy Amendment Act 2000
  - Privacy Amendment Act 1990
- Commonality
  - Commonwealth
  - New South Wales
  - Victoria

Privacy Act 1988

- Protects the way personal information is handled by private sector organisations and government agencies
- Covers:
  - The collection
  - The use
  - The disclosure
  - The security of personal information
- Allows individuals the right to access and correct their data
- Provides rules for making a complaint using a free account to the Privacy Commissioner

Virgin Credit Card

- What is the Privacy Policy about?
  - This policy sets out how Virgin Money handles your personal information. It explains the key measures we have taken to make sure we abide by the Commonwealth Privacy Act 1998, which includes the National Privacy Principles.
- It aims to answer all the questions you might have, but if you have a different question you can always call our Customer Care Team on 1800 080 000 or email them at expert@au.virginmoney.com

Privacy Protection Principles

- Notice/Awareness—Customers must be given notice and be able to make informed decisions.
- Choice/Consent—Customers must be made aware of their options as to how their personal information may be used.
- Access/Participation—Customers must be able to access their personal information and challenge the validity of the data.
- Integrity/security—Customers must be assured that the data is secure and accurate.
- Enforcement/Redress—There must always exist a method of enforcement and remedy. The alternatives are government intervention, legislation for private remedies, or self-regulation.
Cybercrime Bill 2001 – still evolving

ACS Unhappy With Cybercrime Bill

Alarmed by the broad range of powers being given to Commonwealth security agencies under the Federal Government's Cybercrime Bill 2001, the Australian Computer Society (ACS) last week presented a submission to parliament.

While supporting the legislation "in principle", the ACS has serious reservations about the bill, which allows the Defence Signals Directorate and Australian Security Intelligence Organisation to legally hack systems.

The bill forces companies by law to reveal passwords, keys, codes and cryptographic and stenographic methods used to protect information.

Australian Industry Standard July 2001

How is Private Information Collected?

- Reading your newsgroups’ postings
- Finding you in the Internet Directory
- Making your browser record information about you
- Recording what your browsers say about you
- Reading your e-mail

(Rainone et al 1998)

Cookies

- Reasons for using cookies
  - to personalize information
  - to improve online sales/services
  - to simplify tracking of popular links or demographics
  - to keep sites fresh and relevant to the user’s interests
  - to enable subscribers to log in without having to enter a password every visit
  - to keep track of a customer’s search preferences
  - personal profiles created are more accurate than self-registration

- Solutions to cookies
  - users can delete cookie files stored in their computer
  - use of anti-cookie software (e.g. Cookie Cutter and Anonymous Cookie)

Key Privacy Issues

- World wide trend for privacy
  - Why??
- Principles of the Privacy Act based on the Organisation for Economic Cooperation and Developments (OECD)
- Guidelines on the protection of privacy and transborder flows of personal data developed in 1980
- Most European countries have passed laws for public and private sectors based on the OECD principles

Privacy Policy Basics

OECD

1. Data Collection
   - Data should be collected on individuals only to accomplish a legitimate business objective.
   - Data should be adequate, relevant, and not excessive in relation to the business objective.
   - Individuals must give their consent before data pertaining to them can be gathered.

2. Data Accuracy
   - Individuals have a right to access data about themselves and to have it corrected if it is inaccurate or incomplete.
   - Individuals have a right to request deletion of data that is no longer needed.

3. Data Confidentiality
   - Data should be kept confidential and stored securely.
   - Access to data should be restricted to those who need it.
   - Data should be protected against unauthorized disclosure.

Wanted Chief Privacy Officer (CPO)

- Under the new Health Insurance Portability and Accountability Act (HIPAA) (USA) all health care providers will be required to have a CPO
- CPOs are being appointed as a result of e-commerce

Pieces of software that transparently allows a Web site to record one’s comings and goings

- Reasons for using cookies
  - to personalize information
  - to improve online sales/services
  - to simplify tracking of popular links or demographics
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- Solutions to cookies
  - users can delete cookie files stored in their computer
  - use of anti-cookie software (e.g. Cookie Cutter and Anonymous Cookie)
Dow Jones v Gutnick: Cyberspace and Libel!

- Joe Gutnick sues media group Dow Jones (USA) under Australian libel laws in Melbourne.

**HISTORY:**
An article was downloaded by 140 Australians from a Dow Jones website (Melbourne) rather than in the US where the article was written.

**LEGAL RULING:**
Any internet publisher can now be sued for libel if the article relates to an Australian identity and can be downloaded here, ignoring the fact that the article may not have contravened the libel laws of the country in which it was written or from which it was transmitted.

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**International Aspects of Intellectual Property**

- The World Intellectual Property Organization
  - more than 60 member countries to come up with an international treaty
  - part of the agreement is called the ‘database treaty’
  - its aim is to protect the investment of firms that collect and arrange information.

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**Taxation**

- The viability of electronic commerce is going to be at least partially determined by the applicable tax regime.
- The US has taken the position that there should be “no discriminatory taxation against Internet commerce” (tariff free) – however this does not apply to tangible goods.
- Australian Tax Office

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**Other Legal Considerations**

- Email usage
- Online Pornography
- Defamation
- Spamming
- Phishing

**Fraud (FTC US Alerts)**
- Business opportunities
- Bulk mail solicitors
- Investment opportunities
- Work-at-home schemes
- Health and diet schemes
- Effortless income
- Guaranteed loans
- Free goods
- Chain letters
- Cable descrambler kits
- Credit repair
- Vacation prize promotions


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**Shortcomings of Existing Legal Remedies**

- Existing laws protect consumers within Australia
  - Trade Practices Act 1974
  - However a certain activity that may be illegal in Australia, for instance, may not be in the country in which a trader, engaging in activities with an Australian consumer, is located
  - Currency exchange issues
- Jurisdiction
  - Which country has jurisdiction to hear the case (trader or consumer)
  - Can papers be served on a global trader.
- Choice of law
  - Difference may occur between countries
- Enforcement
Trade Practices Act

- Regulates business dealings with consumers

"a corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or likely to mislead or deceive"

- Applies to
  - Australia businesses conducting business inside and outside of Australia.
  - Australian citizens or persons ordinarily resident in Australia

- Places restrictions on the collection, storage, disclosure and use of personal information by government bodies and non government bodies.

Other Problems

- disproportionately high costs (e.g. international telephone calls, costs of witnesses’ attendances);
- long delays;
- a lack of familiarity with the foreign legal system;
- the thought of pursuing legal action internationally may be too intimidating;
- language difficulties;
- differences in custom;
- time differences;
- lack of awareness of rights in foreign jurisdictions;
- the probability of success is unpredictable; and
- many consumers cannot afford to pursue the matter in court (most consumers are ineligible for legal aid).

Issues to be Explored

- how national enforcement agencies can more effectively protect the interests of global consumers, through improved enforcement and compliance strategies;
- cooperation between national enforcement agencies and international business and consumer organisations;
- consumer education from government, industry and consumer sources, and how consumers can avoid the ever-growing number of international scams targeted at them;
- the role of industry in the provision of consumer protection mechanisms, and how ethical traders can be encouraged to take self-regulatory action to ensure that the interests of consumers are protected;
- government intervention; and
- the harmonisation of international rules and standards.

Internet Industry Association
– Code of Practice 1998

OBJECTIVES

The aims of this Code include:

- (a) establish confidence in and encourage the use of the Internet.
- (b) to support systems for the classification of content on and management of access to content on the Internet.
- (c) to improve the fairness and accuracy of disclosure to users of the Internet and the community in general.
- (d) to provide standards of confidentiality and privacy afforded to users of the Internet.
- (e) to provide a transparent mechanism for complaint handling for the Internet industry.
- (f) to improve user relations by the Internet industry.

US Principles for eCommerce

- The private sector should lead.
- Governments should avoid undue restrictions on electronic commerce.
- Where government involvement is needed, its aim should be to support and enforce a predictable minimalist, consistent and simple legal environment for commerce.
- Governments should recognise the unique qualities of the Internet.
- Electronic commerce on the Internet should be facilitated on a global basis.

Conclusion

- It is clear that although Australia supports privacy mandates this is not the case in all countries.
- Globalisation makes it difficult for privacy standards, compliance and legal issues to keep pace with the changes organisations are facing with the advent of e-commerce
- Requirements such as that mandated by SOX provides some assurance that privacy of individual information is at the forefront of organisational accountability.
REFERENCES

- http://www.privacy.gov.au
- http://www.law.gov.au
- You will also find other resources but the websites provided are sufficient for our needs in this course
- Australian privacy foundation
- Building consumer sovereignty in e commerce-a best practice model for business