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# Privacy: Recognition of a Consumer Right

Cathy Goodwin

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*This paper presents an overview of consumer privacy that integrates the public policy and behavioral literatures. Consumer privacy is defined in terms of control over information disclosure and the environment in which a consumer transaction occurs. These two dimensions generate a 2x2 matrix, identifying four states of privacy based on control over environment, information disclosure, both, or neither. For each state, managerial and policy implications can be derived.*

Government, industry, and academic sources suggest that consumer privacy has become a critical public policy topic. Bonnie Guiton, special advisor to the president for consumer affairs and director of the U.S. Office of Consumer Affairs, recently cited privacy as one of three major issues for consumers of the 1990s [Dlabay 1990]. The issue was identified as "major challenge of the 1990s" by an officer of the Direct Marketing Association (Barton 1989). A professor of communications noted:

"When I first wrote lectures for a university course called 'Communication Law,' I gave only routine attention to privacy, as compared to what I thought were more important—and, frankly, more interesting—topics. Today, the course risks being dominated by privacy. It has become an important and interesting topic" [Hixson 1987, p. xiv].

Despite the growing importance of this topic, research has been extremely limited [cf. Baker et al. 1986; McCrohan 1989]. This paper undertakes an integrative literature review to identify critical issues, proposing a theoretical framework with research implications.

**Overview** A number of privacy related issues have been addressed by legal, philosophical, and social science researchers. Drawing on this literature, consumer privacy concerns two dimensions: control over presence of others and control over information dissemination in the consumer's environment during commercial transactions. These dimensions are used to develop a taxonomy of four consumer privacy states (Figure 1), based on whether the consumer can control the environment, information, both or neither. Finally, it is suggested that application of the proposed taxonomy can enrich discussion of two key issues: distinction of privacy from other consumer rights and conflict between privacy rights and other consumer rights and values.

## Elements of the Definition of Consumer Privacy

While a number of definitions of privacy have been offered in the literature, the lack of a common definition has been lamented [e.g., Burgoon 1982; Gross 1967; Parent 1983]. Young [1978] wittily concluded that "[P]rivacy, like an elephant, is . . . more readily recognized than described" [p. 2]. A number of countries, notably Great Britain, have used the term "data protection" to avoid ambiguous connotations associated with privacy concepts [Flaherty 1989]. However, the term "privacy" emphasizes that both data protection and disturbances of peace and quiet are not important in themselves; rather, privacy has been viewed as an essential element of human dignity [Benn 1971; Bloustein 1964] or a "sacred element of the person" [Simmel 1971]. This concept of privacy assumes a concept of

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the self as an individual apart from the group, which has evolved historically in the western world [Baumeister 1987; Belk 1984; Shweder and Bourne 1982; Tuan 1982] and which may seem alien to other cultures [Doi 1986; Moore 1984].

Difficulties of definition may be due to the broad application of general privacy concepts, as compared to the specific topic of consumer privacy that will be discussed here. In this narrower realm, consumer privacy will be defined in terms of two dimensions of control. The first dimension includes control of unwanted telephone, mail, or personal intrusion in the consumer's environment, while the second is concerned with control of information about the consumer. Consumer privacy can be viewed in the context of any interaction, profit or non-profit, between marketer and consumer, including (but not limited to) credit and cash sales, consumer inquiries, and marketer-initiated surveys. Behaviors include the full range of consumer behaviors identified in standard consumer decision models, from choice to post-purchase use and disposal.

Dimensions of privacy similar to those proposed here appear in published research of several disciplines. For example, Jourard [1966] sees privacy as allowing a person to "choose the time and place for disclosures of his experience, as well as the company before whom such disclosures are made" [p. 207]. Fried [1970] defined privacy as control over information about oneself as well as "a justified, acknowledged power to control aspects of one's environment" [p. 23]. Posner [1981] identified privacy in terms of freedom from unwanted intrusion and unwanted disclosure. Similar dimensions are proposed by Burgoon [1982] in the communications field.

This focus also reflects recent legal and social trends. In his classic article, Prosser [1960] identified four tort invasions of privacy: 1) appropriation, or use of an identity in advertising without permission; 2) false light, or portrayal of an individual in a negative or embarrassing way that does not accurately represent the person described; 3) intrusion into solitude; and 4) public disclosure of private information. Early discussions emphasized appropriation and false light; for example, *Shibley v. Time, Inc.*, [1974] found that non-public disclosure of personal invasion did not constitute a tort invasion of privacy. However, in today's environment, many authors believe that intrusion into solitude and involuntary information disclosure may represent far greater threats than false light or appropriation [e.g., Hixson 1987; Miller 1971], since they affect nearly everyone, not just the relatively small number of individuals who are identified in advertisements or news reports without their consent [Simitis 1987].

This section discusses the literature of privacy control and the two proposed privacy dimensions, proposes a definition of consumer privacy, and develops a taxonomy (Figure 1). Later sections of the paper apply this taxonomy to develop the notion of the right of privacy and explore related issues.

**Control** The element of control has been included in definitions of privacy offered by a variety of social scientists [e.g., Altman 1976; Foddy and Finnighan 1980; Kelvin 1973; Marshall 1974], as well as writers with a political science [Westin 1967] or philosophical [Bok 1982] orientation. Westin's [1967] frequently cited "components" of privacy—solitude, anonymity, intimacy, and reserve—identify ways in which individuals control information about themselves. In one of the few empirical studies available, Marshall [1974] suggests that solitude, reserve, and anonymity can be regarded as strategies to calibrate desired levels of privacy. Three of the six factors emerging from a principal components analysis of Marshall's Privacy Preference Scale represented control of self-disclosure, while two others related to physical barriers established to facilitate privacy.

Control has also been identified with territoriality [Bakker and Bakker-Rabdau 1973]; this concept of territoriality emphasizes claiming, occupying, and defending

property and possessions [Brown 1987]. However, Edney and Buda [1976] distinguished privacy from territoriality both conceptually and empirically. Their findings suggest that territoriality contributes to an individual's sense of identity, while privacy contributes to feelings of freedom and autonomy.

Legal distinctions of privacy often rest on the degree to which an interruption can be controlled by the individual, possibly because this concept offers a potential standard to measure the individual's need for protection and intervention. Haiman [1972] suggests that legal interventions should occur only when the "target" lacks ability to escape the situation or the message, including the ability to create "self-imposed inattention." As he observes, legal decisions have distinguished the ability to defend against messages proclaimed by loudspeakers in the street as compared to messages communicated in writing. These decisions appear to emphasize control over unwanted intrusions, an important element of the proposed definition of consumer privacy.

#### Control Over Unwanted Presence in the Environment

One element of control concerns avoiding unwanted persons or contact during an interaction. For example, Altman [1976] emphasizes the element of control over intrusions which occur when others enter one's "space." In a consumer context, this intrusion occurs if the consumer is unable to control the physical presence of unwanted participants during a commercial interaction or consumption behavior. Physical presence may be manifested by a personal visit, phone call, or other means available to the senses, such as mail.

Specifying this dimension emphasizes that the presence of another person can reduce privacy independent of that person's knowledge about the transaction or the individual participants. Parker [1974] graphically makes this distinction: A lover with knowledge of his partner's body will still violate her privacy by observing her through a window, and an astronaut whose minute activities are monitored by computer will shut off the on-board cameras to perform personal hygiene functions. In a marketing research setting, a mail intercept may invade the consumer's privacy, even if recorded data contains no identifying information about the consumer; in direct marketing, the privacy invasion of a telephone call can be distinguished from the computer information which resulted from or led to the telephone call.

Therefore, privacy loss associated with this dimension may come from discomfort associated with the feeling of being watched or "sensed" [Parker 1974]; Goffman [1961] observed that institutional inmates felt more relaxed when relatively free from surveillance. Additionally, people create personal boundaries, even in public places, when other participants are experienced as too many or too close. Interference with these boundaries invades personal space [Sommer 1969]. Examples include street vendors who intercept urban pedestrians, researchers who intercept shoppers, and crowded transactional settings.

Benn [1971] notes that because possessions count as part of the self, unwanted observation of or interference with possessions may also seem intrusive. A special instance of possession, the home, has been viewed as a symbol of the self, with the interior representing aspects of the self that are disclosed to a limited group of intimates [Cooper 1971] or as a place of special freedom and control [Lyman and Scott 1967]. Haiman [1972] finds that the special quality of privacy in the home can be identified in legislative and judicial trends to restrict door-to-door commercial soliciting, unwanted telephone calls and mail, and (of less interest to marketers) residential picketing. Reflecting this concern, direct marketing and marketing research association codes of ethics contain provisions against late-night telephone calls. Therefore, there is both legalistic and theoretical support to argue that intrusion into the home, such as unwanted visitors, telephone calls, or even mail [Baer 1978] may be perceived as especially serious privacy invasions.

This aspect of privacy remains critical. The average person received 265 pieces of second, third, and fourth class mail in 1986, compared to 152 pieces in 1970 [Marx 1989]. Telephone solicitation is facilitated by random-dialing and computer-dialing devices. However, human behavior increasingly takes place in public and quasi-public areas that do not enjoy the protections of the home [Marx 1989]. Information collected about an individual can be used not only to enable intrusions into the home, but also for a variety of purposes unforeseen by the consumer. Therefore, attention has begun to shift to what this paper identifies as the second dimension of consumer privacy.

#### Control Over Information Obtained During Marketing Transactions

During the course of an ordinary transaction, information about the consumer as well as the transaction itself may be obtained, stored in a data base, and released without the consumer's knowledge. Every time a consumer uses a credit card, orders merchandise by telephone or mail, or rents a videotape, a report of the transaction as well as information about the consumer may be entered into a data base. Even the customer who telephones with an inquiry but does not place an order ["Marketers Tap Into Toll-Free Calls to Build Database" 1988] or the child who enjoys a birthday party at an ice cream store [Baker et al. 1986] may find that these simple actions have long-term consequences.

Informational privacy can be invaded without entering the home or in any way disturbing the individual [Posner 1981]. Secret watching of others has been considered insulting to human dignity [Benn 1971], as well as potentially more damaging, because of unforeseen uses of data obtained. Therefore, compared to physical intrusions, this aspect of consumer privacy is less visible but potentially of greater concern to consumers, industry representatives, and regulators [Passavant 1985; Hoffman 1985]; indeed, this dimension has been regarded as "the most talked about and the most problematic aspect of privacy today" [Hixson 1987, p. 66].

It can be argued that technological advances have not only shifted the balance of concern from physical intrusion to informational privacy, but have also broadened the scope of informational privacy. "Narrow" definitions of informational privacy consider (a) the specific content of information that is stored in a data base and (b) the likelihood that this data will actually be used to harm the individual. A broader view emphasizes potential rather than actual use of stored data; moreover, the nature of items stored may be irrelevant, because the combination of items, rather than a particular datum, holds the potential for harm.

#### Definition of Privacy and Taxonomy of Privacy States

Based on the elements discussed above, this paper defines the specific realm of consumer privacy as

**the consumer's ability to control (a) presence of other people in the environment during a market transaction or consumption behavior and (b) dissemination of information related to or provided during such transactions or behaviors to those who were not present.**

Four states of privacy correspond to the taxonomy generated by the dimensions of this definition [Figure 1]. Cell 2 represents the greatest degree of privacy, as close to total control as is feasible in current society: The consumer can control both who is present and who will know about the transaction or behavior. Consumers who request that their names, addresses, and telephone numbers be unlisted are trying to obtain this state of privacy as they engage in consumption decisions in their homes. Transactions that fall into this category require the least amount of regulation for privacy protection. Most cash transactions fall into this cell; however, if retailers ask for identifying information to create a mailing list, consumers who respond will be in the state of privacy described in Cell 1, Environmental Control.



Environmental control represents a state of privacy where the consumer retains control over the presence of others in his/her environment but loses control over disclosure of information. Examples of this privacy state include videotex or catalog shopping transactions, where the consumer remains at home, undisturbed, while information may be recorded invisibly. This state encompasses a large class of transactions utilizing a credit card, debit card, library card, or other mechanisms that will allow consumer-specific information to be entered into a multiple-use data base. Information on videotape rentals or library books represents one of the more controversial examples [Wolter 1989].

For this category of transactions, privacy protection requires disclosure to consumers of the way information will be disseminated and used as well as about limits on collection and storage of data. Consumers must use some care in releasing information indiscriminately and in monitoring data banks, such as credit bureaus. The nature of transactions in the Environmental Control cell reflects the need for the broader definition of informational privacy previously discussed, since specific transactions may not be critical until they are matched with other information in a data base.

In Cell 4, Disclosure Control, the consumer's environment is disturbed, but person-specific information remains undistributed. Marketing examples include mall or door-to-door surveys, with anonymity granted to respondents. This state of privacy may be the easiest to conceptualize and regulate. Indeed, protection is often provided by laws against nuisance and harassment, rather than privacy. However, some ambiguity may exist regarding the degree of intrusion necessary for the incident to be characterized as a privacy invasion: One phone call at 5 P.M. may be less invasive than one call at 10 P.M. or several calls at 5 P.M.

Cell 3, No Control, represents the lowest degree of privacy within this framework: The consumer controls neither who is present nor the distribution of the information gathered by the intruder. Marketing examples include unsolicited telephone and personal contacts by telemarketers, salespersons, or market researchers. Again, while the mail and telephone intrusions appear most visible to the consumer, the storage of data for indeterminate future use may represent the greater danger.

Classification of privacy states enables researchers and policymakers to tailor protection policies to specific potential intrusions or disclosures. Additionally, severity of privacy intrusion may be discussed in terms of the consumer's ability to exercise environmental or disclosure control: Less control may be associated with less privacy; for example, unwanted junk mail will be a greater invasion than unwanted ads in a newspaper, because the newspaper was invited into the home. However, perceptions of privacy invasions and consumer reactions to specific annoyances may vary idiosyncratically. Haiman [1972] suggests that the content of an interruption may influence individual perceptions of privacy invasion. A later section of this paper examines approaches to identifying consumer privacy preferences as an alternative to evaluating the severity of a particular action or episode.

### **Emergence of Privacy As a Consumer Right**

The concept of a consumer right was suggested in President Kennedy's 1962 speech that identified rights to safety, information, choice, and redress. This framework was also used to organize a public policy conference sponsored by the American Council on Consumer Interests [Maynes 1988]. In addition to the four original rights, this conference added discussions on the right to redress and the right to environmental quality, which were not incorporated into a separate section but were mentioned in a number of individual sessions. Similarly, Engel et al. [1990] note that rights to a healthful environment and to fair treatment of minority

consumers have been added by “social consensus.” Thus, the notion of consumer rights seems to incorporate both a “guide to future action,” in Lampman’s [1988] terms and a recognition of consumer demands which often precede legal constitution of rights.

The concept of right seems to have become even stronger among the American public. In the recent Equifax poll [Harris 1990], 79 percent of respondents agreed with the statement, “If we rewrote the Declaration of Independence today, we would probably add privacy to the list of ‘life, liberty, and the pursuit of happiness’ as a fundamental right.” This movement toward recognition of consumer privacy as a right seems analogous to the recognition of minority and environmental rights described by Engel et al. [1990], where consumer demand fueled legislation and industry self-regulation.

Evolution of privacy as a consumer right has paralleled a change in perception of content of privacy rights. Emphasis has shifted from concern with phone and mail intrusions to the current focus on informational privacy. The taxonomy presented in Figure 1 contributes to an understanding of these social and legislative trends.

Through the mid-1970s, judicial support emphasized concern with violations that would be categorized as Disclosure Control, i.e., control over intrusions into an individual’s physical “space.” Moreover, the courts focused on actual rather than potential harm from privacy invasions [Scheppelle 1988]. Up to the 1970s, “case law indicates that ‘run of the mill’ intrusions by telephone solicitors are annoyances that must be endured ad nauseum” [Haiman 1972]. In *Lamont v. Commissioner of Motor Vehicles* [1967], a New York court upheld the right of the state to sell names and addresses of registered motorists as a source of mailing lists. The majority opinion included the statement: “The short, though regular, journey from mail box to trash can . . . is an acceptable burden, at least as far as the Constitution is concerned” [quoted in Baer 1978]. Thus, the court in effect categorized the sale of mailing lists as a possible intrusion of Cell 4 (Disclosure Control), ignoring information loss implications that would place the transaction in Cell 3 (No Control).

In the 1974 case of *Shibley v. Time, Inc.*, a class action suit claimed that subscriber privacy was invaded by publishers and credit card companies that disseminated names, addresses, and other personal information. The Ohio court, refusing to recognize a separate right of privacy, indicated that tort invasions had not occurred because identifying information about individuals was not made public. Thus, potential rather than actual harm was not considered.

By the mid-1970s, following Watergate and passage of the 1974 Privacy Act, privacy concerns had become more salient [Barton 1989]. In 1979, Sentry Insurance Company reported what it called “the first major survey on privacy issues in the United States” [Harris 1979]. Fifty-four percent of those surveyed saw their personal privacy threatened by increased computer use; 63 percent agreed with the statement, “If privacy is to be preserved, the use of computers must be sharply restricted in the future.” Simitis [1987] reports that Canadian, American, and West German polls of the early 1980s obtained similar results.

Of special interest to marketers, 61 percent of respondents to the Sentry Insurance study agreed on the importance of regulations concerning the type of information that organizations can collect for use in mailing lists. However, when asked, “Have you personally ever been the victim of what you felt was an improper invasion of privacy?” a small percentage—less than 2 percent—identified marketing-related intrusions, such as telephone or door-to-door sales pitches or market research surveys. Junk mail and mail order accounted for even smaller intrusions. These percentages may understate concerns: As respondents listed incidents in response to open-ended questions, marketing incidents

been less salient than incidents involving police officers or medical care providers. However, these survey results suggest that while many consumers were concerned about informational privacy, Disclosure Control (Cell 4) was most visible.

More recently, Harris [1990] conducted another privacy poll, this time sponsored by Equifax. This poll showed greater concern with information disclosure: 84 percent of people who are aware of potential misuse of computerized information and 76 percent of people who are not aware are concerned about threats to privacy. This survey also incorporated a number of consumer privacy issues, such as preference for receiving catalogs and credit card offerings by mail. One complete chapter was dedicated to privacy issues associated with direct marketing. Among reported findings, 69 percent of the public believed that sale of information about consumer characteristics was a "bad thing," and 86 percent of the public was either "very concerned" or "somewhat concerned" about the selling of mailing lists.

A recent review of privacy polls [Katz and Tassone 1990] echoed these trends. People seem to be more concerned with control over information disclosure than with environmental control, reflecting a shift in concern from Cell 4 (Disclosure Control) to Cell 1 (Environmental Control). Specifically, a growing proportion of those surveyed believed they had to give up privacy to "participate in a consumer society." The authors note that responses vary, depending on whether privacy is described as a threat, concern, or problem. Additionally, many of the polls reviewed seem to ask consumers to evaluate privacy in general without specifying the context as consumer, workplace, medical, or government. Concerns about privacy in general may have limited application to specific consumer issues.

The legislative trend today reflects movement toward acceptance of privacy as a consumer right. Hundreds of privacy related bills have been proposed in state legislatures [Posta 1989], even in such "traditionally pro-business states" [Posch 1988a] as Georgia ["Why Wait for Daddy to Limit Calls?" 1986], and by representatives such as McCandless (R-California) with a "pro-business record" [Posch 1988b]. These bills focus less on control of telephone and mail interruptions than on dissemination of information obtained during transactions, with special focus on release of information assembled in mailing lists.

Indeed, if the courts find no existing grounds to declare list release illegal, public opinion on privacy may encourage state legislatures and consumer groups to fill the gap. For example, in January, 1990, the state of Alaska initiated legislation to limit release of tourism mailing lists following a legal opinion that the lists were public record ["Bill Would Limit Mailing Lists" 1990]. Florida allows consumers to use an asterisk in the telephone directory to indicate their wishes to avoid unsolicited calls, while Private Citizen of Illinois sends a directory of privacy seekers to telemarketers, brokerage houses, and other firms [Miller 1989].

The direct marketing industry, which has been most affected by this trend, generally accepts increased privacy concerns as inevitable, particularly the increased focus on mailing lists and data bases. Posta [1989] notes that the Direct Marketing Association is working with state and federal legislators to be sure laws passed are not too broad. Nearly all direct marketers are urging their industry as well as individual firms to voluntarily adopt basic privacy standards [Enscoe 1989]; a TRW vice president observed that such industry standards are necessary because technology often cannot be anticipated by the law [Posta 1989]. As a direct marketing practitioner wrote:

"The question is no longer direct-mail pieces in letterboxes or names on a list. The question is the collection and aggregation of so much information about individuals that even the Internal Revenue Service has become interested in using it" [Passavant 1985, p.32].



### The Relationship Between Privacy and Other Consumer Rights

So far it has been argued that in discussions of privacy it is necessary to identify the state of privacy under discussion. Emphasis on protection against unwanted presence of others (Cell 4 of Figure 1) has shifted to emphasis on protection against uncontrolled information disclosure (Cells 2 and 3). This section suggests that policy designs and results of research associated with other consumer rights may have implications for consumer privacy rights. However, these relationships may be specific to the states of consumer privacy shown in Figure 1.

Within the general privacy literature, the issue of distinguishing privacy as a separate right has been raised in both legal and philosophical contexts. A respected minority view holds that privacy rights are covered adequately by protections against nuisance, trespass, and emotional injury, as well as constitutional safeguards of personal liberty [e.g., Davis 1959; Bloustein 1964; Kalven 1966; Thomson 1975], with the implication that specific laws and policies are not needed to protect privacy. However, the more widely held view suggests that privacy deserves protection as a unique right. The strong version of this view holds not only that privacy can be uniquely defined, but that the uniqueness of privacy derives from its association with human dignity, sanity, and sense of identity [Benn and Gaus 1983]. Similarly, a discussion of the uniqueness of the consumer privacy right may be expected to have both theoretical and practical implications.

Figure 1.

Taxonomy of Privacy States

		Control Over Disclosure of Information to Others Not Present During the Original Transaction	
		LOW	HIGH
Control Over Unwanted Physical Presence of Others in Consumer's Immediate Environment	HIGH	<p>1</p> <p>ENVIRONMENTAL CONTROL</p> <p>Control over who is present during transaction or activity</p> <p>No control over information disclosure to those not present</p> <ul style="list-style-type: none"> <li>- ATM transactions</li> <li>- Catalog shopping</li> </ul>	<p>2</p> <p>TOTAL CONTROL</p> <p>Control over unwanted presence of others during transaction or activity</p> <p>Control over information disclosed to those not present</p> <ul style="list-style-type: none"> <li>- Unrecorded cash transaction</li> <li>- Quiet evening at home</li> </ul>
	LOW	<p>3</p> <p>NO CONTROL</p> <p>No control over who is present during transaction or activity</p> <p>No control over distribution of information obtained during transaction</p> <ul style="list-style-type: none"> <li>- Telemarketing calls to home</li> <li>- Survey with recording of identifying information</li> </ul>	<p>4</p> <p>DISCLOSURE CONTROL</p> <p>No control over who is present during transaction or activity</p> <p>No disclosure of information associated with transaction or activity</p> <ul style="list-style-type: none"> <li>- Anonymous survey</li> <li>- Street vendor</li> <li>- Unwanted mail addressed to "occupant"</li> </ul>

Using the framework of Figure 1, the Environmental Control state of Cell 1 resembles circumstances that led to recognition of safety and information rights. This state of privacy can occur without the consumer's knowledge; the unknowing consumer may inaccurately identify his/her privacy state as the total privacy ideal of Cell 2. Thus, the requirement to offer consumers information about product nutrition, freshness, and safety may be extended to require disclosure with regard to selling consumer names. Moreover, just as safety standards are embedded in product designs of cars, food and drug products, and appliances, Simitis [1987] suggests that computer hardware and software meet privacy protection standards.

The privacy state of Cell 4 (Disclosure Control) is also analogous to exposure to unsafe products. Just as the right to safety offers a protection of physical health, privacy invasions—particularly those associated with the inability to escape from the unwanted presence of others—have been associated with decreased psychological well-being [Collette 1984; Jourard 1966]. Just as cigarette manufacturers are required to print health warnings, some direct marketers have begun to issue what may be called “privacy warnings.” For example, many catalogs include a conspicuous notice that subscriber names and addresses may be made available to sellers of related products, and these sellers in turn may enter the consumer's environment through unsolicited mail and phone calls.

However, it is interesting to note that the pattern of information asymmetry differs for privacy and safety. Firms may disclose complete and accurate information about the safety of a product or service that is used within recommended guidelines (“use only as directed”). Consumers may create safety hazards by finding product uses that could not have been anticipated by the manufacturer. In this situation, the consumer has more information than the manufacturer. On the other hand, only the marketer can predict how consumer information will be disseminated. Unless the distributor provides accurate, detailed disclosure, there is no way consumers can anticipate that their names will be sold following placement of merchandise orders. Consumers are even less likely to suspect that calls to 800 numbers may automatically enter their phone numbers into a computer system, allowing a data base to be created with the help of a reverse telephone directory [“Marketers Tap Into Toll-Free Calls to Build Database” 1988].

The Cell 3 “no privacy” state strongly resembles conditions which led to what Engel et al. [1990] call the “right to environmental safety.” Environmental dangers may be both visible (polluted air and oil spills) and invisible (global warming and ozone layer destruction) to the average, non-specialist citizen. Additionally, this average citizen may not be able to trace the source of pollution or to fully identify its consequences.

Similarly, certain transactions can lead to both the unwanted presence of others in the environment and the invisible dissemination of transaction-based information. For example, after ordering a parka from a catalog, Consumer X begins to get mail from dozens of firms specializing in cold weather gear. Consumer X's disturbance is related to the channel of distribution, not to the product, and further is not related to aspects of the product ordered, payment method, or physical delivery system; in fact, X may get into a data base merely by calling an 800 number to ask a question. And while consumers may be more sophisticated each year, X may never associate intrusions from direct marketing mail and phone calls with the original telephone call. X will be even less likely to associate this transaction with a letter from the IRS. Furthermore, like the consumer concerned with destruction of the earth's atmosphere, X may feel particularly vulnerable and out of control.

Finally, the complete privacy state of Cell 2 may be difficult to achieve in the modern world. To the extent that such an ideal is feasible, the consumer's option

to seek such a state may resemble the right to choose not only a particular seller, but the nature of one's relationship with the seller. This relationship may be characterized by repeated sales calls or being left alone, by anonymity, or a personalized relationship.

In summary, discussions of the right to privacy may actually focus on a particular privacy state without regard to others. A comparison of privacy with other consumer rights requires identification of the particular privacy state for which protection is sought.

### Trade-Offs Associated With Consumer Privacy

Defining and recognizing the right of consumer privacy does not lead to clear policy implications. The need to trade privacy against competing claims has been identified as the "crux of the privacy problem" [Simitis 1987]. Just as privacy of citizens in a democracy must be balanced against the need for information to exercise the right of choice [Friedrich 1971; Gavison 1980], consumer privacy must be balanced against information needs of marketers as well as conflicting consumer rights and values. Identifying the specific state of privacy that is to be protected or sacrificed will be critical to evaluate privacy claims against conflicting interests.

At least four sources of conflict can be identified: 1) conflicts between the demand for privacy and other expectations of consumer service levels; 2) conflicts between privacy and other consumer rights; 3) conflicts between privacy and costs to consumers which result from protecting privacy; and 4) conflicts between privacy and other societal values. After briefly discussing each source, this section suggests a classification of approaches that has been proposed to evaluate consumer privacy trade-offs and suggests a theoretical approach based on states of privacy identified in Figure 1.

#### Conflicts Between Consumer Privacy and Other Interests

##### *Conflict Between Two or More Consumer Demands*

Consumers who demand higher levels of government and business services may have to offer information in order to receive the desired service levels [Spear 1983]. Therefore, consumers may demand speedy mail order transactions that can take place only if the consumer is willing to disclose a certain amount of potentially sensitive information [Posch 1988a]. In their review of consumer privacy surveys, Katz and Tassone [1990] note that people are unwilling to give up these consumer benefits in order to maintain privacy, but do resist providing more than the minimum information needed.

##### *Conflicts Between One Right and Another*

Many consumers enjoy receiving catalogs and other merchandise offers from direct mail organizations that obtained their names from computerized mailing lists. By denying consumers access to these buying options, enhanced privacy legislation might impair their freedom of choice. On the other hand, some consumer trade-offs are more voluntary than others [Rasor 1986]: Disclosing information to obtain a credit card may be necessary to function in the contemporary commercial environment, while disclosing information to obtain speedy catalog service will be discretionary. The amount of perceived freedom also may vary among customer segments. For example, a consumer in Los Angeles or New York can fill all consumption needs and wants without placing any telephone or mail orders; a consumer in Nome, Alaska, will have considerably fewer options.

*Conflict Between Privacy  
Protection and Increased  
Costs Attributable to Privacy  
Protection*

Since marketing research remains essential to carrying out the marketing concept—developing products and services that meet consumer needs—some intrusion may be necessary to conduct accurate marketing research. For example, obtaining a random sample may require telephone or personal contact with a number of people who are not interested in the product under consideration. If marketing research costs increase substantially due to privacy regulation, all consumers may experience price increases, when in fact only a limited number of people may be concerned about privacy. This trade-off is recognized implicitly when practitioners [e.g., Shaw 1987] urge that research intrusions should have a different priority than telemarketing intrusions.

*Conflict Between Privacy and  
Societal Values*

Protection of consumer privacy may inadvertently harm other segments of society. For example, small business owners in Alaska claimed that they need access to tourism mailing lists to carry out successful promotions and promote entrepreneurial development ["Bill Would Limit Mailing Lists" 1990]. Also, telemarketers create jobs and shopping opportunities for the handicapped [Posch 1989], as well as development of depressed rural areas [Richard 1989].

**Approaches to  
Evaluation of Trade-Offs**

Existing literatures identify many trade-offs but supply few recommendations for resolving these conflicts. For example, Kelvin [1973] and Lundsgaarde [1971] note that legal approaches to privacy require establishment of criteria that will be serve as input to a variety of decisions; therefore, legalistic approaches tend to be clear-cut, past-oriented, and applicable to large numbers of people without consideration of specific individual preferences. Psychologists, on the other hand, tend to be more probabilistic and predictive; as Kelvin suggests, the psychologist will note that X doesn't mind having his phone tapped, but the law may forbid it. In the next section, two legalistic approaches—limits on intrusion and consumer education—are described. Both approaches suggest standards for policy development while avoiding identification of individual preferences. These approaches attempt to reduce ambiguity and to facilitate large-scale policy implementation and enforcement.

On the other hand, three behaviorally based approaches—preference check-offs, cost-benefit perceptions, and situational considerations—are discussed. They rely on input from consumers to evaluate trade-offs. Behaviorally based approaches offer considerable flexibility. They are applicable to the design of privacy policies for individual firms and industries, and application of such policies may reduce consumer pressure for broader-based laws and policies adopted by government.

**Legalistic Approaches**

*Limits on intrusion*

One legalistic approach suggests that limiting the number of intrusions will offer "reasonable" protection levels to consumers. Haiman [1972] suggests that the first exposure to a message or intrusion may be tolerable as a privacy invasion, as long as the consumer is free to refuse future intrusions from the same source. While the consumer's freedom to limit intrusions may incorporate the definition of privacy as control, there is some ambiguity about what constitutes the "first" intrusion. For example, a single survey company may make calls on behalf of different products, and a mailing list may be sold not only to more than one firm, but to firms in more than one industry. Even more ambiguity surrounds notions of what is reasonable; indeed, recent trends have altered conceptions of reasonableness. Furthermore, this approach is limited because it addresses only violations of the

first dimension of consumer privacy, physical intrusion, which are placed in Cell 4 of Figure 1.

#### *Consumer education*

An emphasis on consumer education encourages consumers to protect themselves against privacy invasions. For example, Johnson [1989] recommends educating consumers about the benefits of direct marketing. Education presumably would make consumers more aware of the trade-offs associated with complete bans of mailing list sales and other direct marketing activities which seem intrusive. However, this recommendation ignores the likelihood that consumer segments will differ in the perception of direct marketing benefits. Additionally, the hypothesized link between perception of benefits and tolerance of various forms of privacy invasion has not been tested empirically.

A different form of education has been suggested indirectly by authors who insist that consumers must accept increasing responsibility for protection of their own privacy. Zimmerman [1984] suggests that, "Because we live in an information-obsessed society, we often give out our most private opinions and reveal ourselves to others almost reflexively" [p. 364]. Similar concerns have been expressed by Westin [1967] and Young [1978]. Zimmerman [p. 348] also notes that the British Committee on Privacy concluded that individuals should protect their own privacy through such means as "guarded speech about one's personal affairs, care of personal papers, caution in disclosing information on request, confining private conduct to secluded places, and the use of curtains, shutters, and frosted glass." Similarly, Haiman [1972] suggests that manners and curiosity, rather than necessity, create the difficulties with telephone and in-person intrusions.

To protect themselves in this way, consumers require access to information dissemination plans, as well as the social skills and assertiveness necessary to act on this awareness. A more serious drawback is that information disclosure often has only the appearance of voluntariness [Karst 1966]. An ever-increasing number of transactions require disclosure; even if the consumer avoids renting videos and automobiles—which require display of a credit card—the purchase or rental of a dwelling place requires disclosure of a great amount of information. Assertiveness, disregard of politeness, and discretion may be most effective in limiting invasions of privacy associated with physical intrusion (Cell 4 of Figure 1).

#### Approaches Involving Behaviors

##### *Preference checkoff*

The existence of segments differentiated by privacy preferences is suggested empirically by the recent national Equifax report [Harris 1990]. People who lived in households where someone has responded to mail offers of goods, service, or credit are more likely to be upset (47 percent) than those living in households that did not respond to such offers (33 percent).

Consumers may be invited to make their own privacy trade-offs with respect to a particular firm, product, and/or service without identifying the underlying factors involved. For example, the president of a direct mail firm recently suggested that mailers who send catalogs to rented names also include a postage-paid card for customers to use in removing their names from a mailing list. This method allows the consumer to avoid unwanted mail and the marketer to enhance profitability; experience suggests that people who don't want to receive the catalogs also don't make purchases [Target Marketing Forum 1989]. Similarly, Perlstein [1986] suggests that rates of return can be improved simply by eliciting consumer preferences for receiving information in the mail, particularly after consumers experience such lifestyle changes as marriage or relocation. This approach clearly has



implications for self-regulation of industries and individual firms, although only Cell 4 privacy states are addressed.

### *Cost-Benefit Perceptions*

Some consumers will be willing to disclose information only for research purposes, if they believe disclosure will not subject them to future sales calls or unwanted mail; conversely, other consumers may disclose information in order to receive additional direct mail solicitations (Figure 2). Within each group, consumer willingness to relinquish some aspect of privacy may be influenced by tangible payment.

Russell [1989] identifies a segment of consumers who seem unusually willing to disclose information about themselves for direct mail purposes. Approximately 10,000 consumers have paid \$199 each to have their names and purchasing habits included in the Saver Club data base developed by Kentucky based National Consumer Research. Information about members is sold to direct marketers, and members obtain discounts on selected merchandise as well as bonuses for enrolling new members. Thus, the Cell 3 "no privacy" state is accepted in return for both tangible and possibly psychic compensation.

Although Russell suggests that findings cannot be generalized because this group is self-selected rather than random, data analysis may identify characteristics of this unique segment that welcomes telemarketers. As one industry person stated [Target Marketing Forum 1989]: "The people who use mail as a convenience, such as catalog buyers who place \$500 or \$600 orders, are not calling up the newspaper complaining about direct mail. And they get most of it." Thus, to the extent that cost-benefit perceptions can be evaluated, a wider range of consumers can be satisfied, particularly consumers who enjoy disclosure or who willingly give up some privacy for specific gains.

Figure 2 also identifies the more common cost-benefit trade-offs: Some consumers will not mind disclosure for research if they know they will not subject themselves to a sales pitch, while others may vary in willingness to disclose based on payment. Empirical studies to assess "disclosure elasticity" will be helpful to marketers and policymakers.

**Figure 2. Cost-Benefit Perceptions**

Purpose of Disclosure	Reward to Consumer	
	Compensated For Disclosure	Not Compensated for Disclosure
	1	2
Research	Payment to complete a survey  Paid participation in focus group	Survey or experiment participation
Sales	3 Consumers paid for listings  Savers Club [Russell 1989]	4 Name obtained from mail or phone order

*Situations* Each of the privacy states identified by Figure 1 will be tolerated or desired in some circumstances but avoided in others. For example, physical intrusion (Cell 4 of Figure 1), whether initiated by consumers or marketers, may be well-tolerated in shopping malls, airports, and other public places. Disclosure of information about shopping and consumption patterns may be tolerated or even desired by the consumer who voluntarily participates in a diary panel or Nielsen survey, although physical intrusion would be considered invasive; these consumers retain environmental control, reflecting Cell 1 of Figure 1. Consumers may accept loss of control over both physical intrusion and informational privacy—total loss of privacy characterized by Cell 3—when they complete a consumer diary or participate in a personal survey that identifies respondents by name. Finally, consumers may insist on controlling both environment and information in medical, psychotherapeutic, and other personal service settings, where they would like to come as close as possible to total privacy control (Cell 2). Each situational preference may be subdivided further based on whether the privacy invasion is or is not compensated (Figure 2); for example, consumers may be willing to give up environmental control if compensated in shopping malls but not at home.

Overall, behavioral approaches suggest that consumers and marketers will be served most effectively if consumer preferences are addressed specifically rather than generally. Further research will be required to identify the degree of specificity that is both desirable and practical.

**Research Implications** Consumer privacy has been defined by two dimensions of control: control over information disclosure and control over unwanted physical intrusions into the consumer's environment. While contemporary technology suggests that control over information represents the greater concern, much of the previous psychological, legal and philosophical research has focused on control over physical intrusions. Some previous judicial and philosophical orientations emphasized actual rather than potential harm in defining privacy; however, the ease of data base creation and data retrieval suggests that potential for data use cannot be ignored in contemporary discussions of privacy.

Consumer researchers have contributed to policy discussions in such areas as consumer safety and product information. Privacy offers a great deal of potential for a similar research focus. The diversity of consumer preferences about privacy suggests that behavioral research may be useful in designing and evaluating policies. Such research offers special challenges: Kelvin [1973] noted that an investigation of privacy might "in itself be an invasion of privacy" [p. 249], and individuals who strongly value privacy may refuse to respond to surveys, biasing results. However, the increasing importance of privacy suggests the need to meet these challenges.

At least four potential areas for future research can be identified.

*Consumer Awareness and Concern* One potential research stream would investigate whether consumers differentiate intrusion into their environments from information dissemination and whether they experience greater concern over one than the other. Furthermore, just as researchers have studied consumer awareness of health and safety hazards, research is needed to assess the impact of catalog messages that warn of potential mailing list sales. Frey [1986] found that confidentiality warnings may reduce rapport between respondent and interviewer, resulting in increased "decline to answer" responses. Similarly, warning messages may create fear rather than trust.

*Trade-offs and Preferences* As discussed, consumer willingness to disclose information may be influenced by the purpose for which information will be used, as well as the potential gain to the

consumer from voluntary disclosure. Empirical studies will be useful to assess, for example, willingness to balance some privacy loss against speed and convenience of transactions. Along these lines, consumer concerns about privacy might vary with the consumer's immediate environment (such as home versus public settings) as well as the nature of physical intrusions (whether caused by personal visit, mail, or telephone call).

**Cultural Influences** As noted above, various authors have commented on the American propensity to divulge information freely. Relevant research questions include the influence of the potential conflict between courtesy and privacy norms on willingness to disclose information. Additionally, the systems implemented by various countries to regulate privacy may be related to national norms about privacy. Countries may vary in tolerance of regulation as well as privacy concerns.

**Other Domains of Privacy** While this article has focused entirely on consumer privacy from marketer-initiated actions, consumers may also need protection from one another. Many cities have enacted legislation to protect consumers from unwanted cigarette smoke; it is considerably more difficult to protect against crowding, noise, or rudeness, yet such intrusions may be no less irritating than unwanted junk mail. Additionally, consumers may need to be protected from involuntary disclosure of information to other consumers who overhear transactions in crowded environments.

**Conclusion** In conclusion, as consumers express concerns about privacy, they are addressing a more global topic: the way consumers want to relate to marketers in the 1990s and, ultimately, in the twenty-first century. Privacy has been associated with human dignity and respect for others [Benn 1971]. As consumers become aware of privacy issues and demand protection, they may also become aware of other aspects of the marketing relationship that reflect the firm's implicit respect for its customers. Human dimensions of the encounter, such as courtesy and friendliness, have been found to influence perceptions of service quality [Parasuraman et al. 1985]. Even when buying a product, consumers interact with people or use systems which may convey unintended messages. Awkward systems, discomfort perceived as unnecessary, and inaccurate transactions may be perceived as psychic threats; for example, people tend to regard unnecessary waiting time as an insult [Schwartz 1975]. Engel et al. [1990] identify the right of minorities to be treated fairly by marketers, implying a standard of respect derived from consumers' status as individual human beings. Thus, a trend toward more global standards for treatment of consumers, including courtesy and respect, may be evolving, and consumer rights may be more closely understood in terms of basic human rights.

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