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By Richard Boire May 2005

A Practitioner's Viewpoint on Data Mining and Privacy

Case Studies and Examples from the Trenches

The last couple of articles have focused on privacy as a critical business issue which must be addressed by all data mining practitioners. In many ways, the practices and disciplines being exercised by our industry will result in legislation that could either be very tolerant or very restrictive. As stated in previous articles, the legislative direction within this area will ultimately be determined by how respectful we are regarding consumers' rights to privacy. This implies that data miners as well as database marketers be proactive rather than reactive on privacy issues that they encounter on a daily basis. The previous articles attempted to highlight some of the specific issues and details that data miners need to consider as part of their job. As stressed before, there was no attempt to provide any legal opinion but rather a viewpoint from one data mining practitioner. These articles dealt with how data miners handle issues such as consumer consent as well as the use, security and protection of data.

Again, given this extreme interest in privacy by data miners as well as CRM and database marketing experts, I felt the need to write one more article on this topic but with the emphasis solely on case studies and applications. Obviously, one could write a book on this topic of data mining and privacy, but it is probably one book that would be better written once we have acquired more experience and case studies under this new legislation. In the meantime, it is my hope that the case studies and examples outlined in this article provide some insights and thoughts regarding some of the privacy issues that you the reader might have to encounter sometime in the future.

Renting/Exchange of Names

As data miners, our responsibilities often include the sourcing of new names or prospects in order to acquire more customers. For instance, in subscribing to certain magazines, there might be a clause that speaks to the fact that their name might be rented or traded to other organizations. The clause would then require an opt-out clause which implies that the subscriber or customer needs to check off a certain box if they do not want their name to be traded or rented to another third party. In other words, there is a requirement by the subscriber or customer to be proactive in their decision about their name not to be exchanged or rented to other organizations. Many list rental or exchange examples such as the above would fall under this scenario. But what if a magazine such as Playboy decided to exchange or rent its names to another organization. Would a simple opt-out type clause be sufficient in this type of situation?

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One might easily argue that opt-in is the only acceptable type of consent as the sense of what is reasonable (always a very subjective type word in the area of law) is raised to a new standard since one might argue that this information is more sensitive than with other types of magazines. In this case, the consumer must directly communicate to the company if they want their name to be exchanged or rented to another company. Doing nothing in this case implies that the consumer has not given consent. Under this opt-in scenario, consent is explicit through some action by the consumer whereas in the opt-out scenario, consent is implicit with no action by the consumer.

Marketing other products to existing customers

Although the above situation represents a case study on the privacy impact regarding the sourcing of new names, data miners are often more involved in using customer information to promote other types of products and services to existing customers. Let's look at an example. Suppose a credit card company wants to sell creditor type insurance to its customers. This product offers credit card balance protection to a customer if he or she encounters a difficult economic situation such as a job loss. In these situations, the insurance company continues to pay the required payments of any outstanding credit card payments. Before offering this type of product, the company would send an opt-out clause that allows the customer to opt-out of all communication offers. Within this clause, it would probably also mention the fact that customer information is used to help offer the best services and products to a given customer. If the customer does nothing, it is assumed that consent is given. The company would then use the credit card activity and information of all customers who have not opted-out. The appropriate names would then be selected based on certain customer information which would pertain to the likelihood to respond as well their likelihood to be profitable.

But what about a non profit organization that decides to sell a credit card to its donors? The organization is still attempting to offer another product to its donors. One might ask, though, if the opt-out scenario for obtaining consumer consent is sufficient under this scenario. Once again, the answer arises from the fact that the test of reasonability is different for these organizations. For the credit card company offering credit card balance protection, it is reasonable to assume that customers might expect this type of offer as it relates well to the core product which is the credit card. In the case of the non-profit organization, one could argue that it is not reasonable to assume that the customer should expect to receive a credit card offer from a non-profit company. Since this test of reasonability is not passed, the higher standard of obtaining consumer consent such as an opt-in clause might be required.

This above example is not meant to indicate that non-profit organizations are restricted in their activities. It is meant to imply that all organizations, which also include "for profit" organizations, need to consider what is reasonable from the customer viewpoint. Are the offers and services of the organization somehow related to each other so that the customer can understand why they are receiving the promotion in the first place?

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Public Domain Information

The next case involves the use of public domain information. Legal and mortgage registries are public domain information which means that this information is available for public use. As a result, there is no requirement to obtain consumer consent. But what if a major bank decides to gather all the information from the mortgage registry list and then merge purge it with its customer list? The bank could then determine which bank customers do not have a mortgage with the bank and use all the other information from the mortgage registry to both better target as well as communicate to these customers.

Although this practice is legal, is it good business practice? In previous articles, I discussed that many organization were exhibiting business practices that went well beyond the law by being highly respectful of the consumer's right to privacy. In this example, the bank is conducting a mortgage promotion to its own customers who are completely unaware that this type of information is being used to target and communicate to them. In this case, it is doubtful that the bank is being very respectful of the consumer's privacy rights. Definitely legal but not a sound business practice.

Time Period for Consumer Consent Decisions

Suppose a consumer chooses not to give consent to future promotions and/or offers. One of the areas that the legislation does not address is the period of time under which the consumer's decision should be honored. Should a name forever not be marketed once he or she has refused consent? Marketers realize that this "do not promote" file will grow over time and at some point represent an opportunity. This is somewhat similar to customers that lapse within an organization. Although a customer has done nothing for a lengthy period of time (lapse), the marketer will at some point attempt to resuscitate the activity of this lapsed customer. For "do not promotes," the logic works the same way in that after some period of time, it would appear to be reasonable to attempt to rechange the status of these customers. Perhaps after a year, a promotion specifically geared to rechange the status of these customers might be tried. An opt-in statement could also be presented on their monthly billing statement if they ever decided to change their mind.

The same type of issue also arises when a person gives consent. What is a reasonable time period for customer consent? Like the above issue, there is no real hard rule. Certainly, the legislation doesn't address the issue of period of time that is relevant for both consent and non-consent. Suffice it to say that this is one of those issues that will evolve as we acquire more history on the privacy front.

All the above examples refer to customers, but what about prospects. Suppose a company sources its names from the telephone book and as part of its overall acquisition strategy decides to build a prospect history database. As the database

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becomes populated, they begin to run acquisition campaigns against this database. Over time, they are able to collect and store information related to type of promotion, frequency of promotion and recency of promotion at an individual prospect level. This information is tremendously valuable as organizations can segment prospects based on promotion frequency and recency. Are organizations being respectful of consumers' right to privacy? One could argue it both ways. Certainly, there is no way that the consumer would know that this type of information is being used to target them. Strictly on that basis, one might say that this is not respecting consumer privacy. But let's consider the actual information that is being used in more detail. The actual information that is being collected relates to what the company has done to the prospect in terms of previous promotions. This type of information is company-driven rather than customer-driven. There is no customer-driven information here which relates to specific consumer activities or consumer transactional behaviour. From this perspective, this prospect history information could arguably be considered somewhat less sensitive since no customer-driven information is contained on the database. Given its less sensitive nature, marketers might be inclined to use this information to better target their prospects without being overly intrusive.

Using Credit Risk Data

The use of credit risk data has always represented excellent information in attempting to target customers for marketing purposes. In many marketing models, it was often one of the strongest variables. Certainly, the consumer expects that this information is going to be used in making credit decisions since this is clearly stated in any application where the consumer is seeking credit. However, one might ask whether or not the consumer reasonably expects that this information is going to be used for marketing purposes. Clearly, the test of reasonability would fail here and in fact the use of credit risk data for marketing purposes is simply not a current business practice. However, organizations like Equifax, which understand the value of data, have created data products that contain this credit-related information but at a postal code level. Organizations purchase this data as another source of geographic level information which can be overlaid onto the database. Although the geo-level or postal code credit risk data is not as powerful as credit-risk data at an individual customer level, it still can provide another piece of valuable information which can be used to help target customers for various products and services.

Consent by Channel

In looking at consent, one must also consider the channels that are being used. Marketers need to be more sensitive to the channel because consumers will react differently to the channel that is being used to market to them. For instance, I may not want you to call or email me but am very willing to receive direct mail. Conversely, someone may be more receptive to email marketing but be adverse to direct mail and telemarketing. Using a blanket opt-out clause or opt-in clause would prevent marketers

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from using any channel to market to the customer when in fact there may be only certain channels that should be restricted to the customer.

As this represents the last piece dealing with the issue of privacy, it is important to understand that truly no one is a real expert in this area since consumer privacy is still in its infancy. The lawyers, though well versed in the discipline of law, do not have the deep understanding of database marketing and analytics that many of you readers do. As a result, we are dealing with legislation which has been designed to protect the consumer but without always necessarily understanding the practical business implications. However, it is my belief that as time goes on, we (lawyers and the database marketing community) will acquire enough business history which will enable us to continually improve the legislation in the interests of both business and the consumer.

Having said the above, it is still my belief that the vast majority of the database marketing community has been very proactive in dealing with consumer privacy long before the privacy legislation came into effect. Why? Simply put, it just makes good business sense to market to consumers that want to hear from you.

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