

Achieving Compliance- Readiness: Be Prepared Before Trouble Knocks at Your Door!

June 14, 2012

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THE HEADLINES

May 8, 2012 4:54 PM

PRINT 

Myspace settles with FTC on privacy charges

By [Chenda Ngak](#) Topics [Tech Talk](#)

Operators of Virtual Worlds Fined \$3M

Websites Illegally Collected and Disclosed Children's Personal Information

By [Liz Crenshaw](#) | [Friday, May 13, 2011](#) | Updated 5:05 PM EDT

Italian court convicts 3 Google execs in video privacy case

Updated 2/24/2010 8:45 PM | Comments  22 | Recommend  5

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Senate hearing on NebuAd, privacy set for tomorrow

July 8, 2008 — 6:19am ET | By [Jim O'Neill](#)

 +1  0

MediaPost: NebuAd to pay \$2.4m to settle class action [#privacy](#) lawsuit over [#behavioral](#) targeting technology. bit.ly/o5BQJA

Ask questions at any time using Q and A box. Download slides using green Resources button.

WHAT IS COMPLIANCE-READINESS?

- **Compliance-readiness is ...**
 - Having policies, procedures and tools in place to prove your compliance - even if you never have to
 - Having documentation to establish your company's compliance
 - An ongoing operational structure that enables the systematic creation of evidence, training of personnel and monitoring of voices from the market

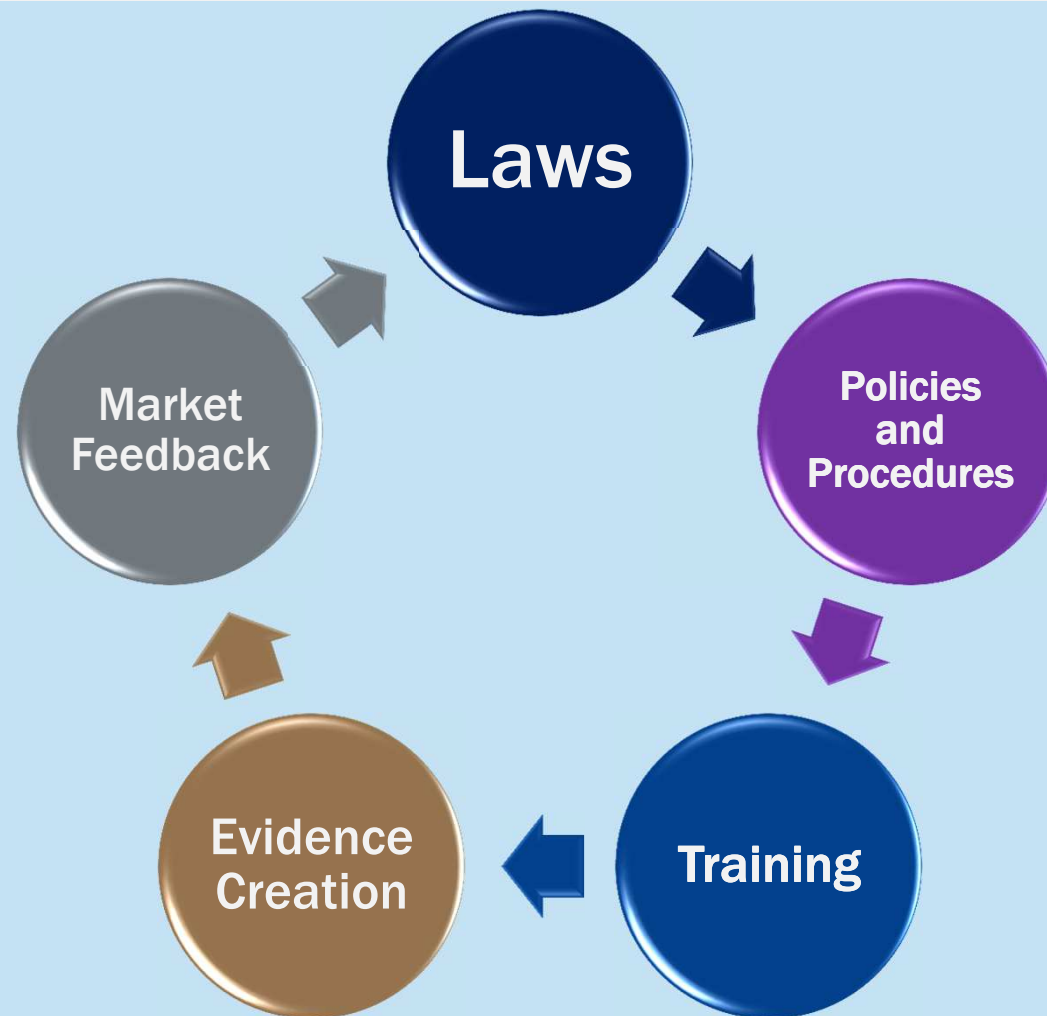
WHY BE COMPLIANCE-READY?

- **Compliance-readiness can ...**
 - Head off problems before they lead to expensive investigations and lawsuits
 - Allow companies to have immediate access to evidence needed to prove compliance
 - Save time and expense
 - Reduce or prevent full-blown investigations or lawsuits

COMPLIANCE-READINESS STEP BY STEP

- What laws apply to my business?
- What policies and procedures do I need to ensure compliance?
- How should I train and track employees?
- What documentation (evidence) do I need to create and maintain?
- How should I monitor sources relating to my business and industry?

THE COMPLIANCE-READINESS CYCLE



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WHAT LAWS/REGULATIONS GOVERN HOW YOU MARKET/ADVERTISE?

- **Work with compliance counsel to identify business-specific laws, rules and regulations**
- **Compliance-readiness requires understanding what your company does and how it markets its products and services**

WHAT LAWS/REGULATIONS GOVERN HOW YOU MARKET/ADVERTISE?

- Identify all locations where your company and affiliates are located
- Identify all locations where your customers are located
- Identify the applicable laws, regulations, guidance and enforcement activity in each of those locations
- Identify what products or services you sell

WHAT LAWS/REGULATIONS GOVERN HOW YOU MARKET/ADVERTISE?

Identify how you sell your products and services:

- Direct sales
- Traditional retail
- Email and internet
- Television
- Direct mail
- Telemarketing/mobile
- Home-based solicitations
- Affiliates

WHAT LAWS/REGULATIONS GOVERN HOW YOU MARKET/ADVERTISE?

Identify to whom you sell your products or services:

- Consumers
 - Financially challenged/seniors/children
- Businesses
- Direct sales
- Retailers and affiliates

LAWS/REGULATIONS GOVERNING MARKETING/ADVERTISING

- Federal and state statutes and case decisions
- Regulations by the FTC and other agencies
- Industry self-regulatory rules
- Relevant Attorney General enforcement activity
- Consent Orders/Agreements of Voluntary Compliance (AVC)

MARKETING/ADVERTISING COMPLIANCE

- All advertising—whether using traditional media or new media channels—is heavily regulated at the state and federal level
- Promotions—such as sweepstakes and contests—are also heavily regulated
- Mobile promotions add another layer of regulation
- Privacy of consumer data is also part of the regulatory framework

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YOUR POLICIES AND PROCEDURES

- Policies and Procedures help ensure that your company complies with applicable laws and regulations

AND

- Written policies and procedures serve as evidence of corporate intention, motivation and plan of execution

YOUR POLICIES AND PROCEDURES

What policies are needed:

- Telemarketing – Do Not Call procedures and Telemarketing Sale Rule compliance procedures
- Particular groups of clients
- Email – polices on business use of email by employees and CANSPAM compliance
- Consumer data – privacy policies
- Promotions/contests – promotional rules and guidelines
- Gift/incentive/rebate cards – policies for each type of card
- Refunds – refund policy

YOUR POLICIES AND PROCEDURES

Your policies and procedures should include:

- **Complaint and complaint-response procedures**
- **Marketing material creation and review policies**
- **Document retention policies**
- **Training, testing and documentation procedures**
- **Policy for maintaining and updating your compliance-readiness plan**

COMPLIANCE-READINESS STEP BY STEP

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EMPLOYEE TRAINING AND TESTING

Developing company policies and procedures for operating the business in compliance with relevant laws is meaningless unless employees are adequately trained and understand how to carry out their responsibilities in compliance with those policies and procedures.

EMPLOYEE TRAINING AND TESTING EVIDENCE/DOCUMENTATION

Must-haves:

- All training materials provided to your employees
- All testing materials intended to confirm that the knowledge provided was learned
- Proof that the training has taken place and the learning has occurred
- Documentation of employee correction when company policies and procedures are violated

COMPLIANCE-READINESS STEP BY STEP

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OPERATIONAL DOCUMENT/EVIDENCE CREATION

Awareness of applicable laws and regulations, development of policies and procedures and training employees to implement those policies are only as good as the *evidence* a company creates, maintains and can efficiently access to prove its compliance.

OPERATIONAL DOCUMENT/EVIDENCE CREATION

Compliance-readiness requires an operational structure that contemplates:

- **What evidence is needed to prove compliance?**
- **How it would be presented in response to investigations or in litigation?**
- **What format it should take?**
- **Where it should be maintained?**
- **By whom?**

OPERATIONAL DOCUMENT/EVIDENCE CREATION

Important subjects of evidence creation:

- Consumer corporate policies and procedures
- Marketing substantiation
- Employee training, testing and correction
- Customer interactions
- Complaint and complaint-responses
- Third-party feedback and correction based on feedback
- Government agency interaction, analysis and correction

THE MARKETING/ADVERTISING SUBSTANTIATION EXAMPLE

- What express and implied representations are made?
- What evidence is needed to back up those representations?
- Where should the substantiation evidence be maintained?
- How is/should it be kept?
- Who should keep it?

COMPLIANCE-READINESS STEP BY STEP

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- **How should I monitor sources relating to my business and industry?**

INFORMATION AND FEEDBACK

Perception is reality!

It can take a lot of evidence—as well as time, energy and expense—to prove otherwise.

WHO'S WATCHING YOU?

- Federal regulators
- State Attorneys General
- Better Business Bureau
- Plaintiffs' attorneys
- Consumers!

INFORMATION AND FEEDBACK

How a company's marketing and business operations are perceived by consumers, regulators and competitors is critical for...

- Adjusting business operations to avoid problems
- Creating and collecting evidence to respond to investigations or litigation

THE FEEDBACK LOOP

The key to using consumer feedback ...

- **Create an effective system to Collect, Analyze and Address information obtained from all sources on an individual and macro company level**

WHAT FEEDBACK DO YOU NEED?

Consumer feedback includes:

- How are we doing as a business?
- Are we doing what we say we're doing?
- What are consumers actually hearing from our messages?
- Are complaints repetitive?
- Are complaints significant?
- Are complaints wide-ranging?

MAINTAINING THE FEEDBACK LOOP

Monitor information and feedback about the company from every available source:

- **Consumer complaints – and your responses**
- **Better Business Bureau complaints – and your responses**
- **Exit interview data – why don't your customers want to be customers any more?**
- **Self-conducted surveys**
- **Awards, news articles, etc.**

OTHER SOURCES OF FEEDBACK

Monitor information about your industry:

- Consumer complaints
- Better Business Bureau
- “Rip-off Reports”
- AG letters
- News articles

COMPLIANCE-READINESS: THE HARD PART

1. Getting started

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COMPLIANCE-READINESS: THE HARD PART

1. Getting started
2. Keeping current – maintaining current substantiation of your marketing representations is especially critical

COMPLIANCE-READINESS: THE HARD PART

1. Getting started
2. Keeping current – maintaining current substantiation of your marketing representations is especially critical
3. Finding the right person to maintain the company's Compliance Notebook™

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Q&A



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