



If I Were Them ...

In court, it might not matter how private data was released; you could still end up being put out of business.

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for *Office.com*

July 26, 2000 — In early May, Pacific Bell, which prints and distributes telephone books in California, published the names, numbers and addresses of more than 11,400 unlisted [Cox Communications](#) telephone subscribers in San Diego. These subscribers included undercover police officers, DEA agents, judges, rape victims and others who simply appreciate their privacy.

Prior to PacBell's May distribution, Cox — citing a software error — accidentally provided the names of its unlisted customers to PacBell. PacBell continued to distribute the books after Cox notified the company of the error.

PacBell stopped delivery, then briefly resumed distribution of the books, stating that it had to keep its commitments to advertisers, customers and other telephone companies. PacBell delivered 440,000 copies of the directories to the public before the California Public Utilities Commission granted Cox's emergency request for a temporary restraining order on June 2 to halt PacBell's distribution.

The companies are now contacting consumers who have the books. All 1.3 million directories will be reprinted and are expected to reach doorsteps by mid-August.

Neither company has disclosed the internal costs to fix this problem, though sources indicate that a reprint could cost \$4.5 million. That figure stands on top of the cost Cox will bear to provide its customers new unlisted numbers, free caller ID and other services to compensate them for the unintentional release of their personal information.

Prior to the restraining order, PacBell sold this year's directory information to several third-party sources, including large Internet sites like Yahoo! Though there is little chance of retrieving this information if downloaded, the companies have notified vendors that Cox has updated its database for their use.

Commentary

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Both companies now face a class-action lawsuit and potential suits by individuals with special privacy needs.

This is not the first time release of private information has become public. In 1998, GTE Corp., California's second-largest telephone company, rushed to retrieve phone books leased to telemarketers that mistakenly mentioned unlisted numbers and addresses of more than 40,000 subscribers. GTE covered the costs of retrieval and reprinting, reportedly at no cost to ratepayers.

Now, more than ever, it is harder for a person to protect his or her privacy and for a company to protect itself from lawsuits alleging unauthorized distribution of this information. These breaches in personal privacy and security have prompted Congress and the Federal Trade Commission to consider imposing stricter privacy laws and regulations.

Next page: If small telecommunications companies want to let their fingers do the walking, they must do so with care.

Protect Your Business

If small telecommunications companies want to let their fingers do the walking, they must do so with care. Sales of private information, such as the consumer data recently touted by ToySmart or the residential information published by PacBell, could create multiple liability issues, including the following claims:

- Breach of contract.
- Fraudulent or unfair business practices.
- Infliction of emotional distress.
- Invasion of privacy.
- Negligence.
- Tortious interference with business relationships.

When information over the Internet spreads like wildfire, the legal fees associated with intentionally, or even unintentionally, releasing this information into the public domain can put a small telecommunications company out of business.

It may not matter how the private information was released. The data originator could be left holding the bag and held responsible. Damages, attorneys' fees and costs assessed against the party on the losing side of this type of litigation can soar swiftly into the millions of dollars.

Smaller telecommunications companies and the nascent dot-coms are aggressive, eager and willing to take risks. To survive, these risks must be calculated.

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Harness your aggressive, risk-taking energy and funnel it into your business plan, then prudently protect your assets with a conservative insurance policy.

Legal fees associated with releasing an individual's private information can put a small telecommunications company out of business.

Address your company's specific risk-management issues with your insurer. Consider insuring your company against errors and omissions — particularly the release of customers' personal information. Always secure your data. Check and double-check any information you intend to pass to the other side of the negotiating table. These simple precautions can save your assets.

Finally, consult with an attorney who can advise your business about the issues and liabilities you face. Discuss the competing demands of your advertisers, business partners, customers and investors. Determine how to balance these relationships should private information become public. Seek out a legal innovator willing to focus on discreet issues that not only affect your business, but your business's current situation and future goals.

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