

# Research Report: What Californians Understand About Privacy Offline

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May 15, 2008

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## Abstract

Many online privacy problems are rooted in the offline world, where businesses are free to sell consumers' personal information unless they voluntarily agree not to or where a specific law prohibits the practice. In order to gauge Californians' understanding of business practices with respect to the selling of customer data, we asked a representative sample of Californians about the default rules for protecting personal information in nine contexts. In six of those contexts (pizza delivery, donations to charities, product warranties, product rebates, phone numbers collected at the register, and catalog sales), a majority either didn't know or falsely believed that opt-in rules protected their personal information from being sold to others. In one context—grocery store club cards—a majority did not know or thought information could be sold when California law prohibited the sale. Only in two contexts—newspaper and magazine subscriptions and sweepstakes competitions—did our sample of Californians understand that personal information collected by a company could be sold to others.

Respondents who shopped online were less likely to say that they didn't know the answer to the nine questions asked than those who never shopped online. In about half of the cases, those who shopped online answered correctly more often than those who do not shop online.

Professor Alan Westin has pioneered a popular "segmentation" to describe Americans as fitting into one of three subgroups concerning privacy: privacy "fundamentalists" (high concern for privacy), "pragmatists" (mid-level concern), and the "unconcerned" (low or no privacy concern). When compared with these segments, Californians are more likely to be privacy pragmatists or fundamentalists, and less likely to be unconcerned about privacy. Fundamentalists were much more likely to be correct in their views of privacy rules. In light of this finding, we question Westin's conclusion that privacy pragmatists are well served by self-regulatory and opt-out approaches, as we found this subgroup of consumers is likely to misunderstand default rules in the marketplace.

# Introduction

## Online Privacy Challenges Have Roots in the Offline World

Much attention is focused upon the privacy problems posed by new technologies and information-intensive business models online. For instance, social networking website Facebook.com's "Beacon" system, an application which informs Facebook users' friends about purchases made and activities on other websites, inspired widespread protests among Facebook users and others when it launched in 2007.<sup>2</sup> Some users objected vigorously to the Beacon application because their activities were reported on an opt-out basis, meaning that the user had to take affirmative action to prevent others from learning about their activities. Facebook responded to these objections by changing its policy to obtain express approval before activities performed on other websites would be shared with friends.

In many cases, these information sharing problems existed in the offline world long before consumers embraced e-commerce. Facebook's Beacon simply lifted the veil on the already common business practice of selling information about consumers and their purchases.

In the offline world, collection and disclosure of personal information is widespread, but less efficient and generally unaccompanied by privacy notices. Companies are free to sell personal information about their customers unless they promise not to under a self-adopted privacy policy or when state or federal law restrains information sale. Many companies quietly sell customer lists and other information, as evidenced by the DirectMag Listfinder, a collection of over 60,000 "datacards," advertisements for the sale of personal information.<sup>3</sup> Catalog sales companies often provide customer lists to "cooperative databases" where many businesses trade personal information. When a company enters into a cooperative database relationship, hundreds of other businesses have access to the company's customer list. Similarly, ordinary consumer behavior such as ordering a pizza for delivery, subscribing to a

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<sup>2</sup> Louise Story & Brad Stone, *Facebook Retreats on Online Tracking*, NEW YORK TIMES, Nov. 30, 2007, available at <http://www.nytimes.com/2007/11/30/technology/30face.html>.

<sup>3</sup> <http://directmag.com/resourcecenter/listfinder/>.

magazine or newspaper, or signing up for a sweepstakes contest often results in contact information being sold to third parties.

In addition to subjecting individuals to potentially unwanted marketing communications, customer list selling also exposes individuals to fraud.<sup>4</sup> Many lists characterize customers pejoratively, with euphemisms such as “spontaneous” and “impulsive” used to mark easy sells and people less skeptical of advertising claims. One such list obtained by the *New York Times* read: “These people are gullible. They want to believe that their luck can change.”<sup>5</sup> The same article goes on to recount multiple incidents where InfoUSA, a direct marketing company, sold information to fraudsters: “Between 2001 and 2004, InfoUSA also sold lists to World Marketing Service, a company that a judge shut down in 2003 for running a lottery scam; to Atlas Marketing, which a court closed in 2006 for selling \$86 million of bogus business opportunities; and to Emerald Marketing Enterprises, a Canadian firm that was investigated multiple times but never charged with wrongdoing.”<sup>6</sup>

In earlier work, to learn more about information selling we used a California privacy law to make requests to 86 companies for a disclosure of their information sharing practices. We found that while many companies have voluntarily adopted a policy of not sharing personal information with third parties, many still operate under an opt-out model, and others simply did not respond to the request.<sup>7</sup>

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<sup>4</sup> Charles Duhigg, *Bilking the Elderly, With a Corporate Assist*, NEW YORK TIMES, May 20, 2007, available at <http://www.nytimes.com/2007/05/20/business/20tele.html>. See also Andrea Coombes, *Identity Thieves Head Off to College*, Oct. 25, 2005, available at <http://online.wsj.com/article/SB113019456857878139.html> (identity thief located victims by acquiring lists of prison inmates); David Lazarus, *Annuities Used as Come On*, SAN FRANCISCO CHRON., Oct. 26, 2005, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/10/26/BUG3CFDSU11.DTL> (marketers buy lists to target customers for grey-market schemes); Adam Smith, *Ruining My Credit Was Easy, Thief Says*, St. Petersburg Times, Oct. 23, 2005, available at [http://www.sptimes.com/2005/10/23/Worldandnation/Ruining\\_my\\_credit\\_was.shtml](http://www.sptimes.com/2005/10/23/Worldandnation/Ruining_my_credit_was.shtml) (identity thieves use list of consumers with good credit to target victims).

<sup>5</sup> Charles Duhigg, *Bilking the Elderly, With a Corporate Assist*, NEW YORK TIMES, May 20, 2007, available at <http://www.nytimes.com/2007/05/20/business/20tele.html>.

<sup>6</sup> *Id.*

<sup>7</sup> Chris Jay Hoofnagle & Jennifer King, *Consumer Information Sharing: Where the Sun Still Don't Shine*, Dec. 17, 2007, available at <http://www.law.berkeley.edu/samuelsonclinic/privacy/219>.

## Strong Support Has Been Found for Opt-In Rules

In his review of the use of public opinion polls to influence legislative policy on privacy laws, Professor Oscar Gandy noted that "...none of the surveys cited in congressional testimony inquired specifically about whether the public preferred that 'opt-in' would be the default. Moreover, there was no mention of any surveys in which consumers were asked to express their preferences for one option over the other."<sup>8</sup> Nevertheless, there is evidence that third party information sharing based on an opt-out standard is strongly opposed by the public. As Joanne McNabb, Chief of California's Office of Privacy Protection, explains, "Consumers are increasingly very unhappy with sharing of their information for marketing purposes."<sup>9</sup> Few public opinion polls directly ask respondents about opt-in preferences. A meta study of 43 opinion polls on privacy by Professor Kim Sheehan found that only four touched upon opt-in issues.<sup>10</sup>

Commercial firms that rely upon information exchange have been the primary sponsors of public opinion research in privacy.<sup>11</sup> That sponsorship allows such firms to control what questions are asked, the framing of the debate, and perhaps even the outcome of those debates.<sup>12</sup> When the opt-in issue is polled, large majorities of Americans indicate that they support requiring businesses to obtain affirmative consent

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<sup>8</sup> Oscar H. Gandy, Jr., *Public Opinion Surveys and the Formation of Privacy Policy*, 59 *Journal of Social Issues* 283, 295 (2003).

<sup>9</sup> Louis Trager, *Cal.'s Unique, Broad New Info-Sharing Law Largely Under the Radar, Says State Privacy Chief*, WASH. INTERNET DAILY, Oct. 7, 2005.

<sup>10</sup> Kim Bartel Sheehan, *How Public Opinion Polls Define and Circumscribe Online Privacy*, FIRST MONDAY, June 16, 2004, available at [http://www.firstmonday.org/issues/issue9\\_7/sheehan/index.html](http://www.firstmonday.org/issues/issue9_7/sheehan/index.html).

<sup>11</sup> Oscar H. Gandy, Jr., *Public Opinion Surveys and the Formation of Privacy Policy*, 59 *JOURNAL OF SOCIAL ISSUES* 283 (2003); Glenn Simpson, *Consumer-Privacy Debate Raises Questions About a Well-Known Expert's Connections*, WALL STREET JOURNAL, Jun. 25, 2001 ("[Privacy expert and academic advisor to opinion polls Alan Westin] is on the payrolls of many of the large financial services, technology and marketing companies that have resisted new privacy rules and legislation, including GlaxoSmithKline PLC, Equifax Inc. and First Data Corp. In addition to being consulting clients, Merck & Co., Visa International's Visa USA unit, DoubleClick Inc. and Verizon Communications are among the contributors to his nonprofit research group, the Center for Social and Legal Research.").

<sup>12</sup> Oscar H. Gandy, Jr., *Public Opinion Surveys and the Formation of Privacy Policy*, 59 *JOURNAL OF SOCIAL ISSUES* 283, 296 (2003); Ponnurangam Kumaraguru & Lorrie Faith Cranor, *Privacy Indexes: A Survey of Westin's Studies* 20, Dec. 2005, available at <http://reports-archive.adm.cs.cmu.edu/anon/isri2005/CMU-ISRI-05-138.pdf> ("...it is important to keep in mind that these questions were usually asked in the context of studies commissioned by corporations that intended to use the results as part of their efforts to influence the public policy process.").

before selling personal information to third parties. The Pew Internet & American Life Project, an independent research organization, found that 86% of respondents support opt-in consent before companies sell personal information.<sup>13</sup> Similarly, the magazine *BusinessWeek* found that 88% of respondents want websites to gain affirmative opt-in consent before sharing personal information with others.<sup>14</sup> Sheehan notes that of the polls she reviewed that asked respondents about opt-in, support for affirmative consent ranged between 78%-88%.<sup>15</sup>

### **How Well Do Californians Understand the Rules of Offline Information Sharing?**

In this paper, we assess Californians' understanding of information privacy rights concerning ordinary, offline purchases. This paper builds upon the work of Professor Joseph Turow, who in 2003 and 2005, asked national representative samples of Americans about their privacy knowledge.<sup>16</sup> In 2003, Turow focused on a range of online transactions, and in 2005, he added questions concerning offline privacy, online behavioral profiling and price discrimination.

We asked Californians about the sale of personal information in nine contexts where companies commonly collect personal data and sell it to other businesses. These contexts are all common commercial experiences for most Americans, they usually occur offline, and a privacy policy is typically not available to the consumer before or during the transaction. They are: subscribing to a newspaper, ordering a pizza, donating to a charity, participating in a sweepstakes, registering a product warranty, giving a phone number to a cashier at checkout, registering a product rebate, ordering from a catalog, and using a "loyalty card" at a grocery store. We were also

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<sup>13</sup> PEW INTERNET & AMERICAN LIFE PROJECT, TRUST AND PRIVACY ONLINE: WHY AMERICANS WANT TO REWRITE THE RULES, Aug. 20, 2000, available at [http://www.pewinternet.org/report\\_display.asp?r=19](http://www.pewinternet.org/report_display.asp?r=19).

<sup>14</sup> *A Growing Threat*, BUSINESSWEEK MAGAZINE, Mar. 2000, available at [http://www.businessweek.com/2000/00\\_12/b3673010.htm](http://www.businessweek.com/2000/00_12/b3673010.htm).

<sup>15</sup> Sheehan at 9.

<sup>16</sup> Joseph Turow, Americans & Online Privacy, The System is Broken, Annenberg Public Policy Center (June 2003), available at [http://www.annenbergpublicpolicycenter.org/Downloads/Information And Society/20030701\\_America\\_and\\_Online\\_Privacy/20030701\\_online\\_privacy\\_report.pdf](http://www.annenbergpublicpolicycenter.org/Downloads/Information%20And%20Society/20030701_America_and_Online_Privacy/20030701_online_privacy_report.pdf); Joseph Turow, Lauren Feldman, & Kimberly Meltzer, *Open to Exploitation: American Shoppers Online and Offline*, Annenberg Public Policy Center of the University of Pennsylvania, Jun, 1, 2005, available at <http://www.annenbergpublicpolicycenter.org/NewsDetails.aspx?myId=31>.

interested in how attitudes towards privacy are linked to knowledge about these offline business practices. Accordingly, we analyzed responses using Professor Alan Westin's popular "segmentation" of privacy attitudes.

## Methods

Our survey questions were asked as part of the 2007 Golden Bear Omnibus Survey, a telephone-based survey of a representative sample of California residents conducted by the Survey Research Center of University of California, Berkeley. The Samuelson Law, Technology & Public Policy Clinic funded the privacy portion of the Golden Bear survey from general operating funds; no outside organization sponsored the survey. The dual frame sample used random digit dialing of both cell phones and residential landline telephones, with one respondent per landline household selected.<sup>17</sup> English and Spanish speakers over the age of 18 were eligible. 1,186 respondents completed the telephone interview, conducted from April 30th to September 2nd, 2007, for a response rate of 15.9%. However, in order to include more questions in the survey than could be administered to all respondents in a reasonable period of time, the sample was divided into six randomized parts or units. All respondents were asked certain basic demographic and background questions, but most questions were administered only to 5/6th of the complete sample. This reduced the number of respondents who answered our questions to 991. Weights were applied to compensate for probabilities of selection and to match certain demographic distributions.<sup>18</sup> This weighting ensures that the results reflect a representative sample of Californians by age, education, ethnicity, and gender, and compensates for differences in probabilities of selection based on use of landline versus mobile phone.

Responses to nine questions provided the basis of analysis for this paper. The offline questions were prefaced with the following statement to convey that respondents should answer them in the context of ordinary, offline transactions: "Now, I would like to

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<sup>17</sup> For details on the construction of the sample, please see <http://sda.berkeley.edu/src/GB0/2007/Doc/hcbka01.htm>.

<sup>18</sup> For a detailed overview of sampling methods, please see: <http://sda.berkeley.edu/src/GB0/2007/Doc/hcbka02.htm>.

ask a series of questions about shopping in the ‘real world,’ such as in grocery stores or shopping malls.” All questions and the results are reproduced the Appendixes.

### **Our Research Standards**

We hold ourselves to high standards in conducting public polls. We encourage the reader to compare our methods to the best practices articulated in *20 Questions A Journalist Should Ask About Poll Results*, published by the National Council on Public Polls.<sup>19</sup> Furthermore, we go beyond these standards by, first, guaranteeing that we publish all the questions asked and responses received; and second, sharing our results so that others can inspect them (see Appendix I). The Survey Research Office will post the raw data file associated with the Golden Bear Omnibus Survey online later this year.

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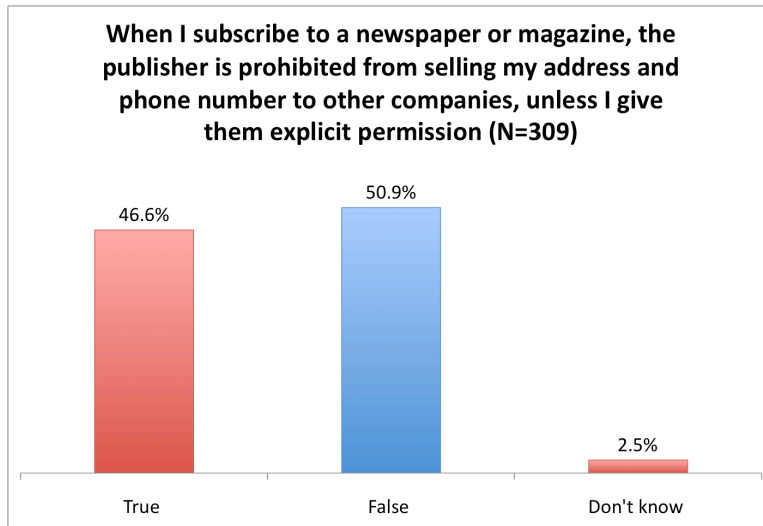
<sup>19</sup> Available at <http://www.ncpp.org/?q=node/4>.



# Results & Discussion

## Newspaper and Magazine Subscriptions

Newspapers and magazines may sell their subscriber lists unless they promise not to in a privacy policy. No federal or California sectoral law addresses subscription list sales. Searches of the DirectMag Listfinder, a search engine for direct marketing



databases, reveal that many prominent newspapers and magazines sell their subscriber lists, including the *New York Times*,<sup>20</sup> and the *Wall Street Journal*,<sup>21</sup> as well as California-based publications such as *Sacramento Magazine*,<sup>22</sup> *Los Angeles Magazine*,<sup>23</sup> and Oakland's *Diablo Magazine*.<sup>24</sup>

When we asked Californians whether they knew if newspapers or magazines could sell an individual's address and phone number to other companies without the explicit permission of the subscriber, 50.9% correctly answered false. A simple majority understands that newspapers and magazines are free to sell subscription lists without subscriber consent. But a sizable

<sup>20</sup> THE NEW YORK TIMES, DIRECTMAG LISTFINDER, available at <http://listfinder.directmag.com/market?page=research/datacard&id=162122>. In earlier work, we found that the New York Times sells its print subscription database, but not its online database. See Chris Jay Hoofnagle & Jennifer King, *Consumer Information Sharing: Where the Sun Still Don't Shine*, Dec. 17, 2007, available at <http://www.law.berkeley.edu/samuelsonclinic/privacy/219>.

<sup>21</sup> THE WALL STREET JOURNAL, DIRECTMAG LISTFINDER, available at <http://listfinder.directmag.com/market?page=research/datacard&id=57390>.

<sup>22</sup> SACRAMENTO MAGAZINE, DIRECTMAG LISTFINDER, available at <http://listfinder.directmag.com/market?page=research/datacard&id=153559>.

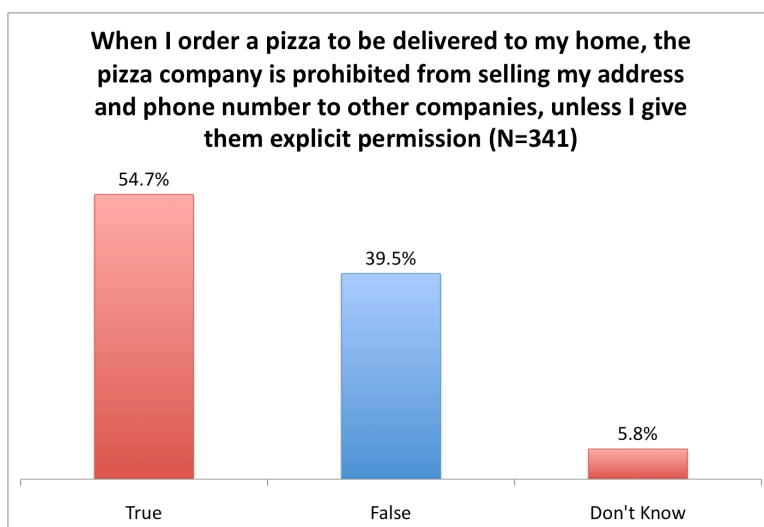
<sup>23</sup> LOS ANGELES MAGAZINE, DIRECTMAG LISTFINDER, available at <http://listfinder.directmag.com/market?page=research/datacard&id=166617>.

<sup>24</sup> DIABLO MAGAZINE, DIRECTMAG LISTFINDER, available at <http://listfinder.directmag.com/market?page=research/datacard&id=177873&aId=1061>.

minority—49.1%—either does not know or believes that opt-in consent is required. These results are similar to those obtained by Turow et al. in a national sample of adults who use the internet. Turow found that 48% correctly answered false to the statement, “When I subscribe to a magazine, by law that magazine cannot sell my name to another company unless I give it permission.”<sup>25</sup> Of the remaining respondents in Turow’s survey, 36% incorrectly answered true and 16% didn’t know.

### Ordering a Pizza for Delivery

Next, we asked consumers about a popular, near-universal treat: ordering a pizza for delivery. Pizza delivery companies, since they are called so frequently by consumers, are a hub for collecting personal information. A delivery company can collect and aggregate caller identification information (typically name and phone number), ask the customer for their phone number (which may be different than what is displayed by caller identification), and in order to process the order, acquire the delivery address. Pizza delivery information is used by private investigators<sup>26</sup> and by governments<sup>27</sup> to track individuals. In the marketing context,



<sup>25</sup> Turow et al. at 20.

<sup>26</sup> The June 2005 issue of The PICA Investigative Reporter contains a half-page advertisement for Merlin Information Services, representing that they obtain personal information from pizza delivery companies. See 3 PICA INVESTIGATIVE REPORTER 15, June 2005, available at <http://www.pica-association.org/images/6-2005.pdf>.

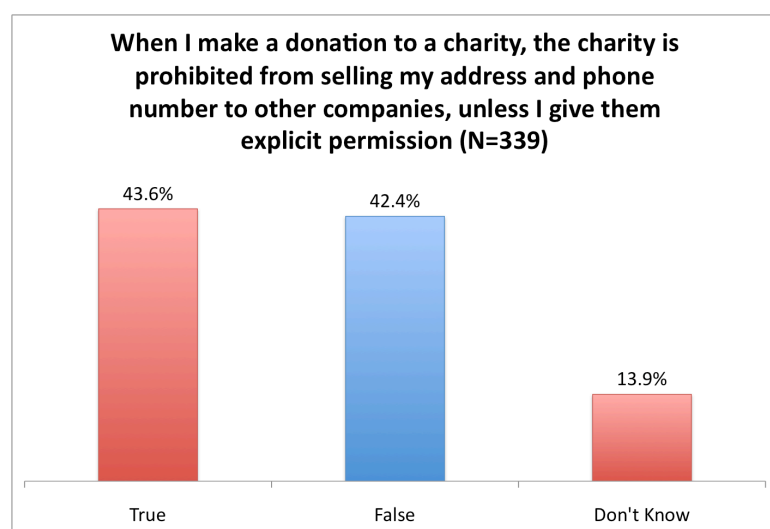
<sup>27</sup> Kelly Wiese, *State says pizza delivery lists can help track scofflaws*, ASSOCIATED PRESS NEWSWIRES, Apr. 10, 2004 (“At least three states confirm that they have contracted with private debt collection agencies equipped with the technologies and database archives to find outlaw debtors through their placement of telephoned pizza orders.”); Milford Prewitt, *Order a pizza, go to jail? Courts could apprehend scofflaws found in chains’ databases*, NATION’S RESTAURANT NEWS, May 31, 2004.

pizza delivery databases have been discussed as source for phone numbers for wireless 411 databases.<sup>28</sup>

When we asked Californians whether they thought pizza delivery companies could not sell personal information without their consent, 54.7% incorrectly answered true and 5.8% said they didn't know.

### Donations to Charities

Our next question asked about charitable donations. Many organizations that solicit charitable donations sell lists of members and donors. A search in the DirectMag



Listfinder shows that even lists of members and donors to pro-privacy causes are sold, including lists of Congressman Ron Paul's supporters,<sup>29</sup> former members of the Sovereign Society,<sup>30</sup> and supporters of NARAL Pro-Choice America.<sup>31</sup> Many other California political candidates, museums, non-profit advocacy

groups, and public radio and television stations appear in the database, offering lists of members and donors for sale.

When we asked Californians whether charities could sell donor contact information without consent, 43.6% thought they could not, and 13.9% said they didn't

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<sup>28</sup> Alex Johnson, *Cell phone directory rings alarm bells, Customers, privacy activists raise doubts about Web service*, MSNBC, Jan. 30, 2008.

<sup>29</sup> RON PAUL SUPPORTERS, DIRECTMAG LISTFINDER, available at <http://listfinder.directmag.com/market?page=research/datacard&id=214397>.

<sup>30</sup> SOVEREIGN SOCIETY FORMER MEMBERS, DIRECTMAG LISTFINDER, available at <http://listfinder.directmag.com/market?page=research/datacard&id=86635>.

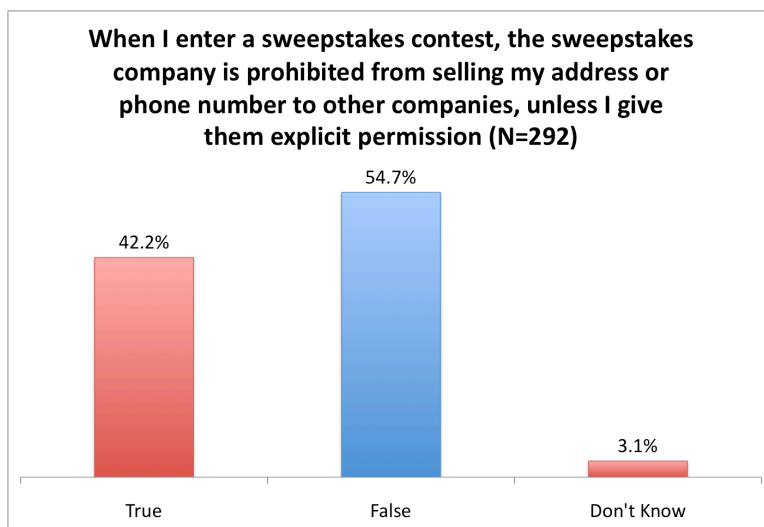
<sup>31</sup> NARAL PRO-CHOICE AMERICA, DIRECTMAG LISTFINDER, available at <http://listfinder.directmag.com/market?page=research/datacard&id=169923>.

know. This means that 57.5% falsely believe or do not know that their personal information is protected from sale when they make a donation to a charity.

Turow et al., in their national sample of internet users, found that 47% incorrectly answered true to the statement, “When I give money to charity, by law that charity cannot sell my name to another charity unless I give it permission.” Of the remaining respondents, 28% answered false and 25% didn’t know.<sup>32</sup>

## Sweepstakes

In many sweepstakes contests, individuals are encouraged to provide personal information for the remote chance of winning a prize. These sweepstakes are marketed as “free” opportunities to win prizes, but they come at the cost of the sale of the individual’s personal information. Often, the individuals who appear on marketing lists of sweepstakes players are characterized as “impulsive” and become the targets for even more targeted messaging. For instance, the “Premium Processing Center” offers its list of customers, which it describes as including, “...entrants [who] have all paid \$9.98 in the hopes of winning a \$15,000 payout. Each entrant indicates the status of their current credit on the entry form. These highly impulsive buyers are an excellent candidate [sic] for other sweeps offers as well as lotteries, fundraisers, a variety of credit offers, magazines and more!”<sup>33</sup>



Most Californians, however, understand that sweepstakes offers can result in the sale of personal information without consent. A majority—54.7%—correctly answered false to a question asking whether sweepstakes companies can sell contact information

<sup>32</sup> Turow et al. at 20.

<sup>33</sup> PREMIUM PROCESSING CENTER, DIRECTMAG LISTFINDER, available at <http://listfinder.directmag.com/market?page=research/datacard&id=104027>.

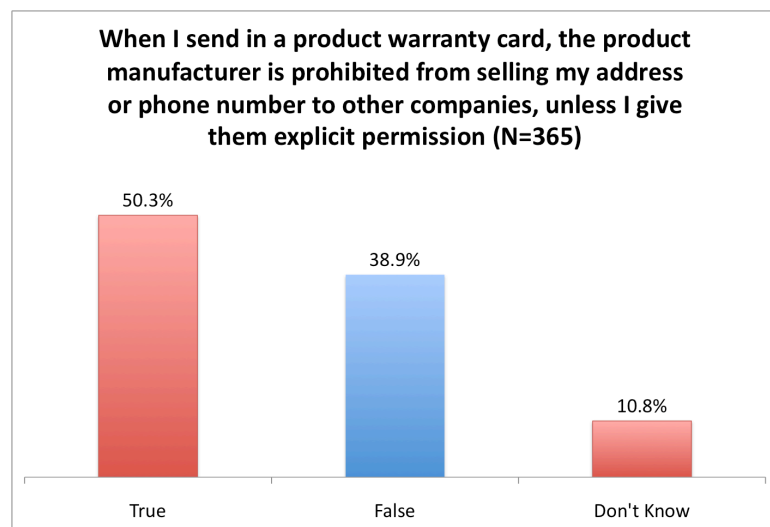
without explicit permission. A minority, 45.3% answered true incorrectly or didn't know the answer.

### Product Warranty Cards

Many consumer products are accompanied by product warranty cards, which request that the consumer register their warranty with the manufacturer. While warranty registration is not necessary for enjoying the protections of the warranty (keeping a copy of the receipt suffices for proving when the product was purchased), many consumers complete registration cards. Completing the card may help to learn about product recalls, especially with baby products and other important purchases.

Often, these warranty cards solicit information from the consumer that is wholly unrelated to the purchase of the product and registration of the warranty (such as income information, number of persons in the household, marital status, ages of children, interests, hobbies, ailments, etc). This information is sold in bulk for direct

marketing purposes.<sup>34</sup>



Most Californians, however, believe that opt-in consent is required before data from product warranty cards can be sold to third parties. Only 38.9% understand that this information can be sold without consent, while 50.3% falsely believe it cannot, and 10.8% answered that they didn't know.

### What's Your Phone Number?

Remember when Radio Shack would ask for your name and address, even for a cash purchase? The company stopped that practice in 2002,<sup>35</sup> but in recent years,

<sup>34</sup> WARRANTY IT! PRODUCT REGISTRANTS, DIRECTMAG LISTFINDER, available at <http://listfinder.directmag.com/market?page=research/datacard&id=123431>.

<sup>35</sup> Greg Saitz, *Radio Shack aims to be less annoying*, STAR-LEDGER, Nov. 26, 2002.

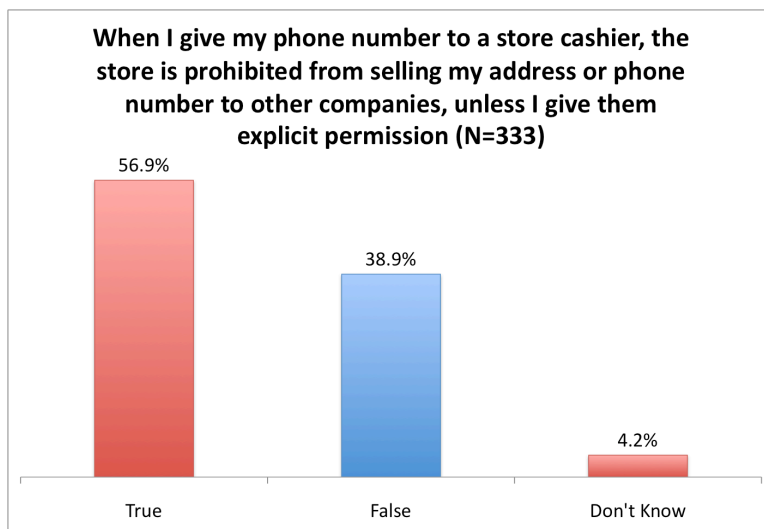
many other retailers have started asking customers for their phone number or other information.<sup>36</sup> Often, no reason is given for this request; the consumer may assume that the question is related to preventing fraud, or that providing the information is required. Retailers are free to sell the information, unless they have promised not to in a privacy policy.

There are privacy risks associated with revealing a phone number. First, many people used to share a single phone number, but the advent of wireless phones has made it more likely that a number belongs to a single individual. Second, because of local number portability, increasingly consumers are retaining the same phone number for many years. These two

developments have converted the phone number into a new form of persistent identifier, one that can track individuals over time. Third, because of a loophole in the Do-Not-Call Telemarketing Registry, businesses can call individuals with whom they have a business relationship. Thus,

providing a phone number to a cashier facilitates telemarketing, even to those who have opted out of telemarketing. Most individuals are unaware of this relationship, as it is not widely publicized, and retailers in the US also do not provide a privacy policy at the point of purchase.

When we asked Californians whether stores could sell their contact information without consent, 56.9% thought the practice was prohibited and 4.2% said they didn't know. Only 38.9% correctly answered false.

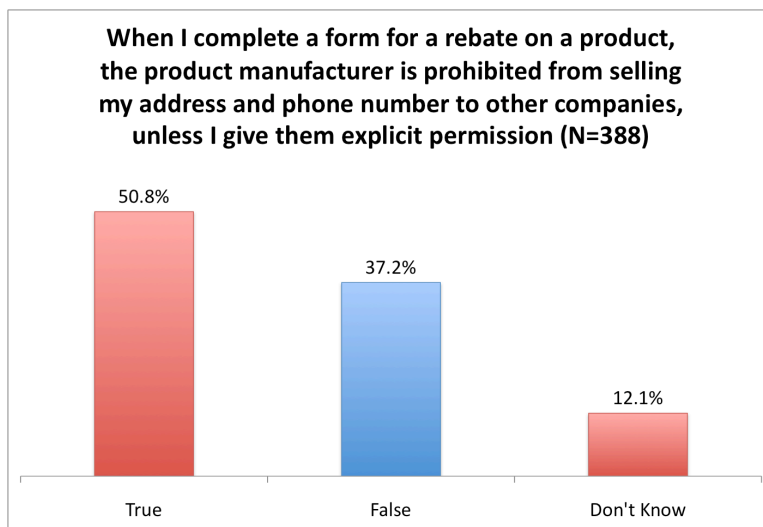


<sup>36</sup> Tony Lucia, *Being checked out: Why do businesses want our personal information at the register?*, McClatchy-Tribune Business News, Oct. 15, 2006.

## Product Rebates

Consumer protection concerns surrounding mail-in product rebates focus mainly on the problem of non-payment of rebate rewards.<sup>37</sup> We are all familiar with the hurdles involved in obtaining a product rebate—often complex, easy-to-violate rules that result in disqualification. Often overlooked in the debate over mail-in rebates is that information submitted on the forms, which like product warranties, often include requests for irrelevant personal lifestyle data. This data is sold to third parties.<sup>38</sup>

In the online context, one example is Onrebate.com. The company's privacy policy requires customers to make a phone call in order to opt out. In addition, the company claims only to share information with "carefully selected" partners: "We may share your name and postal mailing address with a few carefully selected marketing partners. You may opt-out of sharing this information at any time by calling our customer



service department at 888-222-9300.”<sup>39</sup> The company's datacard, a listing of personal information for sale at DirectMag.com, offers to sell information to anyone for \$90 per 1,000 names.<sup>40</sup> When we asked Californians about the sale of personal information submitted in the rebate context, most believed

that opt-in consent was required. A majority, 50.8%, thought the practice was

<sup>37</sup> See e.g. FEDERAL TRADE COMMISSION, FTC CONSUMER ALERT TAKING THE "BAIT" OUT OF REBATES, Jan. 2000, available at <http://www.ftc.gov/bcp/online/pubs/alerts/rebatealrt.shtm>.

<sup>38</sup> REBATE & COUPON BUYERS, DIRECTMAG LISTFINDER, available at <http://listfinder.directmag.com/market?page=research/datacard&id=103222>.

<sup>39</sup> ONREBATE.COM, PRIVACY STATEMENT, 2005, available at <http://www.onrebate.com/privacy.aspx>.

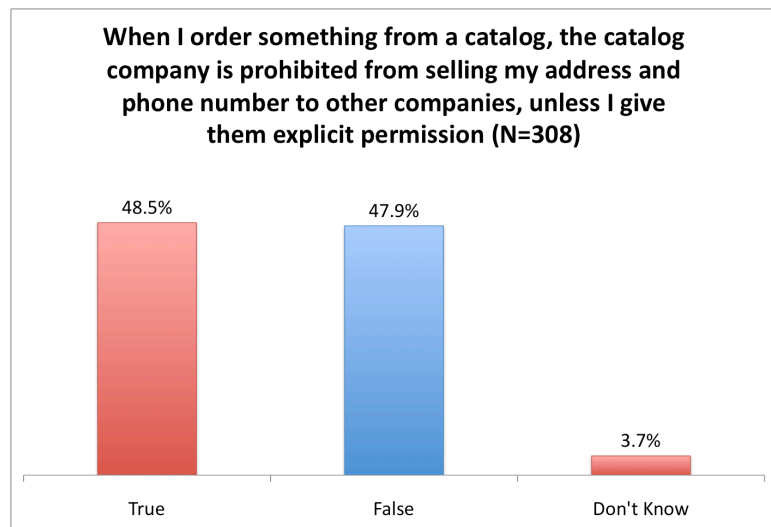
<sup>40</sup> ONREBATE.COM ENHANCED MASTERFILE, DIRECTMAG LISTFINDER, available at <http://listfinder.directmag.com/market?page=research/datacard&id=217102>.

prohibited, and an additional 12.1% answered that they didn't know. Only 37.2% knew the correct answer: false.

## Catalog Sales

Catalog companies have long sold personal information and data about purchases that customers have made. The DirectMag Listfinder returns over 5,000 results when one searches for "catalog." In addition, "cooperative databases" allow catalog merchants to share personal information among

hundreds of companies.<sup>41</sup> When we asked Californians about the sale of contact information from catalog orders, 48.5% falsely thought the practice was prohibited without express consent, and 3.7% said they didn't know.



## Grocery Store "Loyalty" Club Cards

Many grocery stores offer loyalty or club cards to track individuals' purchases with the promise of special discounts and coupons to customers. There is some debate whether cards really offer discounts. A 2003 *Wall Street Journal* study concluded that, "most likely, you are saving no money at all [from supermarket shopping cards]. In fact, if you are shopping at a store using a card, you may be spending more money than you would down the street at a grocery store that doesn't have a discount card."<sup>42</sup> The *Wall Street Journal* study surveyed grocery stores that did and did not use club cards in five different American cities and found that "In all five of our comparisons, we wound up spending less money in a supermarket that doesn't offer a card, in one case 29%

<sup>41</sup> EXPERIAN, COOPERATIVE DATABASES, 2008, available at [http://www.experian.com/products/cooperative\\_databases.html](http://www.experian.com/products/cooperative_databases.html).

<sup>42</sup> Katy McLaughlin, *The Discount Grocery Cards That Don't Save You Money*, WALL STREET JOURNAL, Jan. 21, 2003, available at <http://online.wsj.com/article/0,,SB1043006872628231744,00.html>.



less.”<sup>43</sup> In addition, Turow et al. found in 2005 that the public was concerned with supermarket purchase tracking. In a national survey of 1,500 internet-using adults, 66% disagreed or disagreed strongly with the statement, “It’s OK with me if the supermarket I shop at keeps detailed records of my buying behavior.”<sup>44</sup>

Nevertheless, club cards remain popular. In California, substantive privacy



regulation limits collection of information and sale of data collected through the club programs; for example, supermarkets are prohibited from requesting social security numbers or driver’s license numbers in order to enroll in a loyalty club.<sup>45</sup> Furthermore, State law specifies that “no club card issuer may sell or

share a cardholder's name, address, telephone number, or other personal identification information.”<sup>46</sup>

When we asked Californians about club cards, 49.8% agreed that grocery stores could not sell personal information without explicit permission. The question is somewhat problematic, because California law prohibits all sale of club card information, even with consent, and waivers of the prohibition are unenforceable.<sup>47</sup> Therefore, a true answer isn’t exactly correct, but a false answer, which was chosen by 42.6% is less accurate, and 7.6% said they didn’t know. Therefore, 50.2% of

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<sup>43</sup> *Id.*

<sup>44</sup> Turow et al. at 22.

<sup>45</sup> CAL. CIV. CODE § 1749.64.

<sup>46</sup> CAL. CIV. CODE § 1749.65.

<sup>47</sup> CAL. CIV. CODE § 1749.66.

Californians either don't know or falsely believe that grocery stores can sell club card information.

Turow et al., in their national survey, found that 36% answered "true" to the statement, "My supermarket is allowed to sell other companies information about what I buy." Another 36% answered false, and 28% didn't know.<sup>48</sup>

## Online Shoppers

We divided our sample into respondents who shop online and those who don't in order to determine whether Californians who engage in e-commerce have a more accurate notion of offline privacy rules than those who do not shop online. We asked: "Now, I am going to ask a series of questions about shopping and privacy of personal information. The first questions focus on online shopping. First, how often do you shop online? Every day, a few times a week, a few times a month, rarely, or never?"

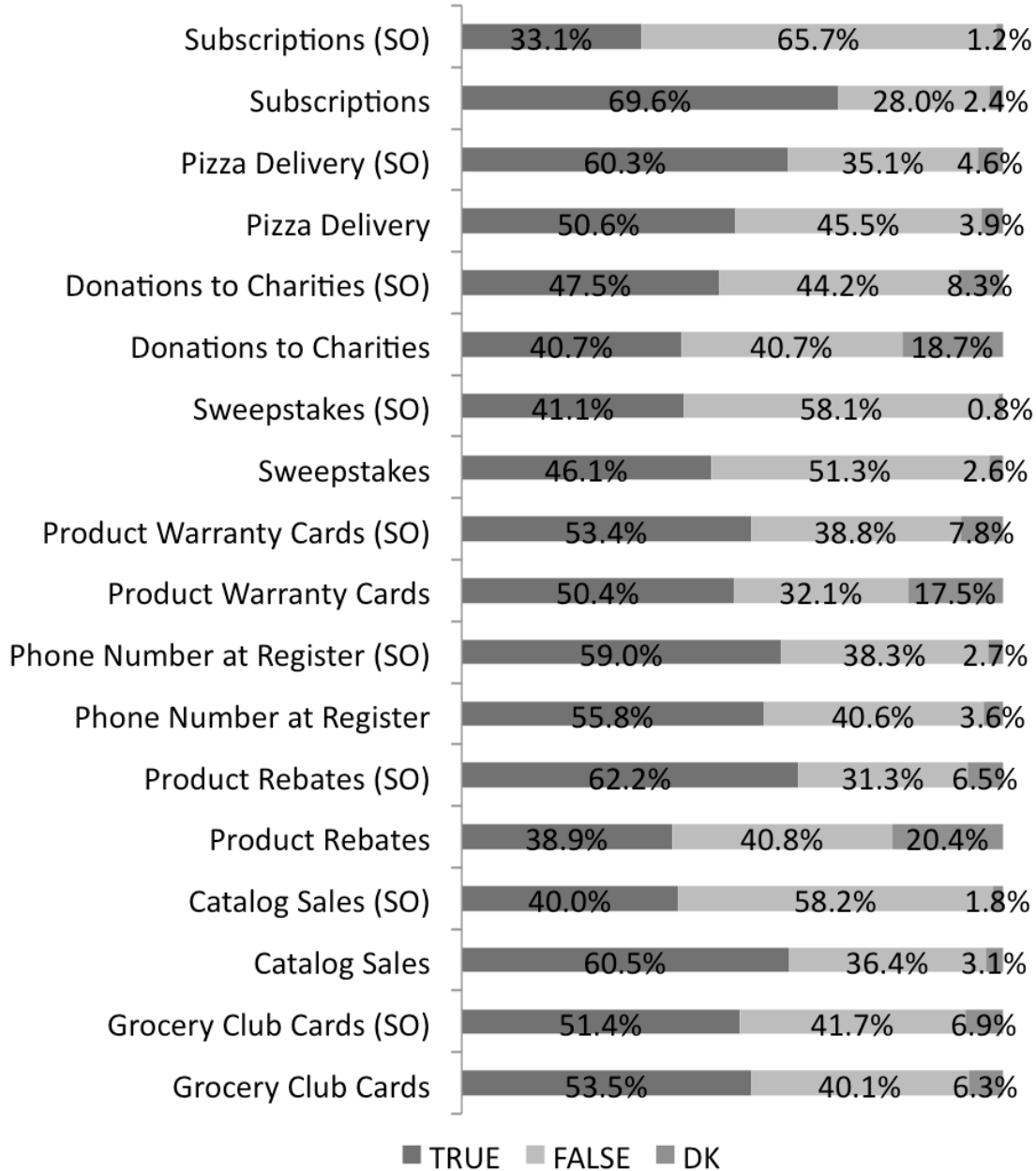
Our sample included many individuals who did not shop online—43.7% responded never, while 56.3% said that they shopped online at least rarely. It is important to note that this question is different from asking individuals whether they use the internet, because there are consumers who will go online to find information but will not use the medium for e-commerce.

Overall, individuals who shopped online were less likely to say that they didn't know the answer than those who never shopped online. In about half of the cases, those who shopped online answered correctly more than those who do not shop online.

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<sup>48</sup> Turow et al. at 20.

## Shops Online (SO) Versus Never Shops Online



# The Westin Taxonomy Applied to Offline Privacy

In 1995, Professor Priscilla Regan concluded that: “Both historical examples and the results of public opinion surveys demonstrate that people value privacy as an ideal that is important in the abstract and as a factor that is understood in real-life situations...a great deal of latent public policy concern about privacy exists.”<sup>49</sup>

Professors Samuel J. Best, Brian S. Krueger, and Jeffrey Ladewig, in their review of 15 years of privacy polls, concluded that, “Americans have maintained that privacy is an important right in the abstract.”<sup>50</sup>

Professor Alan Westin has pioneered a popular “segmentation” of privacy attitudes among the American public to gauge this concern.<sup>51</sup> In it, Americans are divided into three groups: “Privacy Fundamentalists,”<sup>52</sup> who place a high value on privacy and favor passage of strong privacy laws; “Privacy Pragmatists,”<sup>53</sup> who see the relative benefits of information collection and favor voluntary standards for privacy

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<sup>49</sup> PRISCILLA M. REGAN, LEGISLATING PRIVACY, TECHNOLOGY SOCIAL VALUES, AND PUBLIC POLICY 68 (Chapel Hill 2005).

<sup>50</sup> Samuel J. Best, Brian S. Krueger & Jeffrey Ladewig, *Trends: Privacy in the Information Age*, 70 PUBLIC OPINION QUARTERLY 375, 382 (Fall 2006).

<sup>51</sup> Ponnurangam Kumaraguru & Lorrie Faith Cranor, *Privacy Indexes: A Survey of Westin's Studies*, Dec. 2005, available at <http://reports-archive.adm.cs.cmu.edu/anon/isri2005/CMU-ISRI-05-138.pdf>.

<sup>52</sup> "Privacy Fundamentalists (about 25%). This group sees privacy as an especially high value, rejects the claims of many organizations to need or be entitled to get personal information for their business or governmental programs, thinks more individuals should simply refuse to give out information they are asked for, and favors enactment of strong federal and state laws to secure privacy rights and control organizational discretion." *Opinion Surveys: What Consumers Have To Say About Information Privacy, before the House Commerce Subcommittee on Commerce, Trade, and Consumer Protection*, May 8, 2001 (testimony of Alan K. Westin, Professor Emeritus, Columbia University), available at <http://energycommerce.house.gov/reparchives/107/hearings/05082001Hearing209/Westin309.htm>.

<sup>53</sup> "Privacy Pragmatists (about 55%). This group weighs the value to them and society of various business or government programs calling for personal information, examines the relevance and social propriety of the information sought, looks to see whether fair information practices are being widely enough observed, and then decides whether they will agree or disagree with specific information activities -- with their trust in the particular industry or company involved a critical decisional factor. The Pragmatists favor voluntary standards over legislation and government enforcement, but they will back legislation when they think not enough is being done -- or meaningfully done -- by voluntary means." *Id.*

protection; and the “Privacy Unconcerned,”<sup>54</sup> those who have low privacy concern and have little objection to giving government or businesses personal information.

The Westin segmentation has been influential politically and is often used to frame Americans’ privacy attitudes. Generally, Westin has emphasized that public policy and business approaches should be targeted to the privacy pragmatist, explaining that:

*In the politics of privacy, the battle is for the hearts and minds of the Privacy Pragmatists. If most of them feel that their personal information is being used fairly and properly by businesses, especially online, they join the Privacy Unconcerned to make up a 75% level support for the existing rules and practices. But if most of the Privacy Pragmatists feel that information practices are intrusive or their information is being misused, they join the Privacy Fundamentalists to make up a majority seeking legislative or regulatory measures, or consumer boycotts.<sup>55</sup>*

We were interested to see how our sample of California residents fit into the Westin segmentation. We included the three questions (Appendix 2) Westin has used to divide respondents into these categories in our survey instrument.

Westin’s own figures for the three segments are as follows:

**Table 1: Westin’s Figures for Privacy Segments in U.S., 1995 – 2001<sup>56 57</sup>**

Year of Study	Privacy Fundamentalists	Privacy Pragmatists	Privacy Unconcerned
1995-1999	25%	55%	20%
2001	25%	63%	12%

<sup>55</sup> *Id.*

<sup>56</sup> Figures from 1995-1999 are approximate. EQUIFAX-HARRIS MID DECADE CONSUMER PRIVACY SURVEY (1995), EQUIFAX-HARRIS CONSUMER PRIVACY SURVEY (1996), IBM-HARRIS MULTI-NATIONAL CONSUMER PRIVACY STUDY (1999).

<sup>57</sup> 2001 data is found in: Kumaraguru & Cranor, *Privacy Indexes: A Survey of Westin’s Studies*, Dec. 2005, available at <http://reports-archive.adm.cs.cmu.edu/anon/isri2005/CMU-ISRI-05-138.pdf>.

Segmentation of our population is shown in Table 2:

**Table 2: Westin Segments Applied to This Survey of Californians<sup>58</sup>**

	Privacy Fundamentalists	Privacy Pragmatists	Privacy Unconcerned	Unclassified	Total
Count	208	665	30	88	991
Percent of all respondents	21%	67%	3%	9%	100%
Percentage of those who could be classified	23%	74%	3%	N/A	100%

Westin notes that since he began conducting consumer privacy surveys, he has recognized “moving concerns from a modest matter for a minority of consumers in the 1980s to an issue of high intensity expressed by more than three-fourth of American consumers in 2001.”<sup>59</sup> The changes in Pragmatists and the Unconcerned between 1999 to 2001 (the year for which most recent data is available), according to Westin, further reflects the rising popularity of the internet (and its attendant privacy risks), as well as heightened awareness of identity theft.

In comparing our California-specific population to Westin’s general population numbers, it is clear that Californians have even stronger privacy concerns; while Fundamentalists are slightly lower than Westin’s 2001 numbers (23% in CA compared to 25% nationally), Pragmatists are over 10 points higher (74% in CA compared to 63% nationally), and the Unconcerned nine points lower (3% in CA compared to 12% nationally). Considering the change in Westin’s numbers in only two years, it is probable that a national survey using Westin’s rationale conducted in 2008 would produce numbers more in line with our California findings.

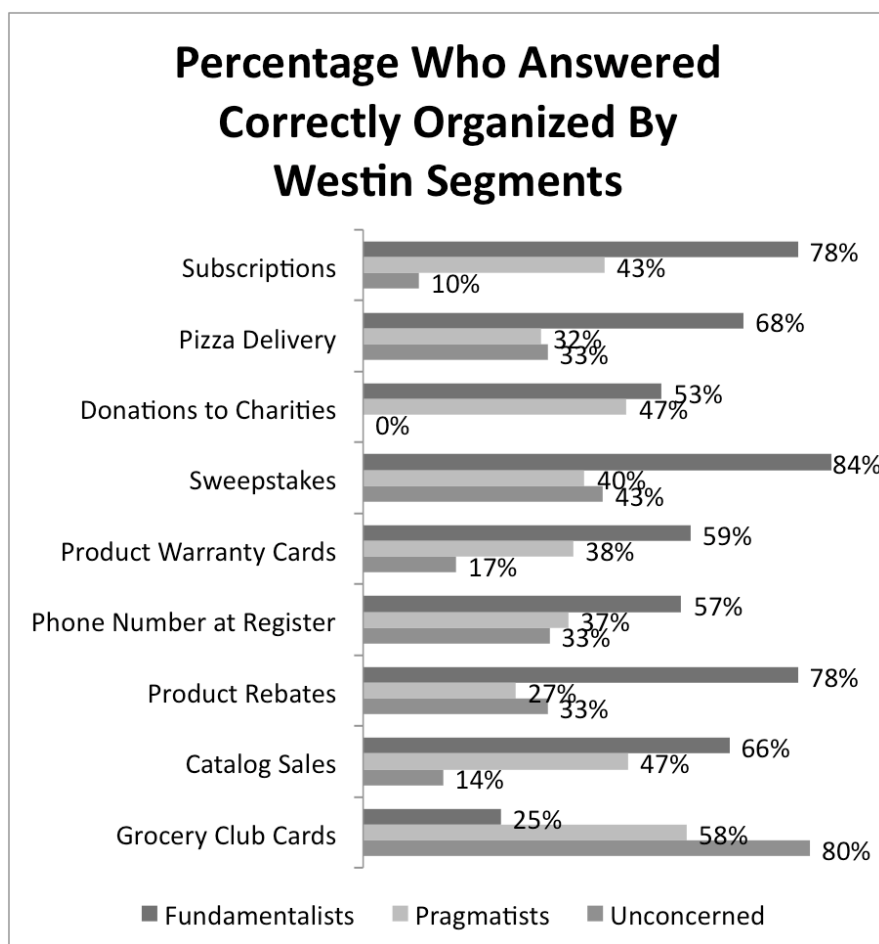
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<sup>58</sup> In order to be included in a segment, a respondent had to provide a valid answer to all three questions. Respondents who provided one or more invalid answers are unclassified.

<sup>59</sup> Ponnurangam Kumaraguru & Lorrie Faith Cranor, *Privacy Indexes: A Survey of Westin’s Studies*, Dec. 2005, available at <http://reports-archive.adm.cs.cmu.edu/anon/isri2005/CMU-ISRI-05-138.pdf>.

## Fundamentalists, Pragmatists, and the Unconcerned

Since our survey gauged Californians' knowledge of privacy rights in nine different contexts, it offered the opportunity to compare how often privacy Fundamentalists, Pragmatists, and the Unconcerned correctly identified their privacy rights. We found that in almost every case, Privacy Fundamentalists answered



correctly significantly higher than Pragmatists and the Unconcerned ( $p=.047$ ). Privacy Fundamentalists, as a group, were more likely to be correct than Pragmatists and the concerned on eight of the nine questions. Only with respect to grocery club card sales did Pragmatists and the unconcerned answer correctly more frequently than Fundamentalists.

In some cases, the Unconcerned answered correctly more than the Pragmatists, but because our sample included only 30 of the individuals in our 991-person sample, this finding is less significant.

In his review of Westin's work, Professor Oscar Gandy found that the privacy segmentation was highly dependent upon knowledge about privacy problems:

*...I discovered that the extent to which people had read or heard about the "potential use or misuse of computerized information about consumers" was a powerful explanatory factor. The more they had heard or read, the more they were concerned about threats to their privacy, the more*

*concerned they were about the sale of personal information by the list industry. And consistent with a view that sees mediated experience as a source of social opinion, the more you heard or read, the less you trusted organizations that collected and used information about consumers.*<sup>60</sup>

Similarly, Turow et al. found using regression analysis that having more years of education correlated with answering questions about online and offline privacy rules correctly.<sup>61</sup> A recent national survey by Bankrate.com found that “consumers who personally know a victim of identity fraud tend to be more concerned about the crime overall.”<sup>62</sup>

Privacy Fundamentalists’ correct answers may be driven by a general pessimism or skepticism concerning privacy protections, rather than knowledge of California law. Under Westin’s segmentation, a privacy Fundamentalist agrees or strongly agrees with the statement, “Consumers have lost all control over how personal information is collected and used by companies.” This skepticism could have caused Fundamentalists, as a group, to reject the idea that there are legal controls to govern consumer data, especially in light of how many fundamentalists incorrectly answered our grocery club card question, where California law offers strong protections. Similarly, privacy Pragmatists may be providing answers relative to their belief that existing laws and regulations fairly protect data, and that businesses are responsible in their stewardship of personal information.

These questions should open one of Westin’s core policy assumptions to more scrutiny—the idea that “In the politics of privacy, the battle is for the hearts and minds of the Privacy Pragmatists.”<sup>63</sup> Professor Turow concluded in 2003 that Americans

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<sup>60</sup> Oscar H. Gandy, Jr., *The Role of Theory in the Policy Process, A Response to Professor Westin*, in TOWARD AN INFORMATION BILL OF RIGHTS AND RESPONSIBILITIES (C. Firestone and J. Schement (Eds.) Aspen 1995).

<sup>61</sup> Turow et al. at 29.

<sup>62</sup> Sheyna Steiner, *Consumers take steps to thwart ID thieves*, Bankrate.com, Apr. 21, 2008, available at [http://www.bankrate.com/brm/news/Financial\\_Literacy/identity\\_theft/ID\\_theft\\_poll\\_national\\_a1.asp?caret=95a](http://www.bankrate.com/brm/news/Financial_Literacy/identity_theft/ID_theft_poll_national_a1.asp?caret=95a).

<sup>63</sup> *Opinion Surveys: What Consumers Have To Say About Information Privacy, before the House Commerce Subcommittee on Commerce, Trade, and Consumer Protection*, May 8, 2001 (testimony of Alan K. Westin, Professor Emeritus, Columbia University), available at <http://energycommerce.house.gov/reparchives/107/hearings/05082001Hearing209/Westin309.htm>.



“...cannot really engage in the kinds of informed cost-benefit analyses that writers such as Alan Westin suggest take place when consumers ‘pragmatically’ give up information about themselves.”<sup>64</sup>

It is intuitively appealing to frame a public policy approach as serving the interests of a balanced, reasonable group—the privacy Pragmatists. But this survey shows that this group is either misinformed or overly optimistic about rules concerning use of their data in many ordinary, offline transactions. If one’s membership in a segment is explained by knowledge and experience, as Gandy argues, then Westin approach does not serve privacy Pragmatists. Instead it manipulates them, by relying upon their ignorance of rules and practices to support a policy outcome that they would likely oppose, if better informed.

## Conclusion

We asked Californians about default rules for protecting personal information in nine contexts. In six of those contexts (pizza delivery, donations to charities, product warranties, product rebates, phone numbers collected at the register, and catalog sales), a majority either didn’t know or falsely believed that opt-in rules protected their personal information from being sold to others. In one—grocery store club cards—a majority did not know or thought information could be sold when California law prohibited the sale. Only in two contexts—newspaper and magazine subscriptions and sweepstakes competitions—did our sample of Californians understand that personal information collected by the company could be sold to others.

When applying Alan Westin’s privacy segmentation to these results, we found that a significant number of Californians could be classified as privacy Pragmatists as compared to Westin’s most recent work, and privacy Fundamentalists were more likely to answer questions correctly.

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<sup>64</sup> Joseph Turow, *Americans & Online Privacy, The System is Broken*, Annenberg Public Policy Center (June 2003), available at, [http://www.annenbergpublicpolicycenter.org/Downloads/Information And Society/20030701\\_America\\_and\\_Online\\_Privacy/20030701\\_online\\_privacy\\_report.pdf](http://www.annenbergpublicpolicycenter.org/Downloads/Information%20And%20Society/20030701_America_and_Online_Privacy/20030701_online_privacy_report.pdf).

## Appendix I: Data

Newspapers and magazines			TRUE	FALSE	Don't Know
True	46.60%	Privacy Fundamentalists	4%	15.30%	0.40%
False	50.90%	Privacy Pragmatists	42.20%	33.10%	1.50%
Don't know	2.50%	Privacy Unconcerned	3.30%	0.40%	0%
N=309		N=275			
Pizza Company			TRUE	FALSE	Don't Know
TRUE	54.70%	Privacy Fundamentalists	6%	15.80%	1.30%
FALSE	39.50%	Privacy Pragmatists	47.30%	23.50%	3%
Don't Know	5.80%	Privacy Unconcerned	2%	1%	0%
N=341		N=298			
Charity			TRUE	FALSE	Don't Know
TRUE	43.60%	Privacy Fundamentalists	9.90%	13.60%	2%
FALSE	42.40%	Privacy Pragmatists	31%	33.70%	6.80%
Don't Know	13.90%	Privacy Unconcerned	3.10%	0%	0%
N=339		N=294			
Sweepstakes			TRUE	FALSE	Don't Know
TRUE	42.20%	Privacy Fundamentalists	5%	30.10%	0.80%
FALSE	54.70%	Privacy Pragmatists	35.90%	24.30%	1.20%
Don't Know	3.10%	Privacy Unconcerned	1.50%	1.20%	0%
N=292		N=259			
Manufacturer warranty cards			TRUE	FALSE	Don't Know
TRUE	50.30%	Privacy Fundamentalists	3.50%	7.50%	1.90%
FALSE	38.90%	Privacy Pragmatists	48.70%	32.10%	4.40%
Don't Know	10.80%	Privacy Unconcerned	1.60%	0.30%	0%
N=365		N=318			
Cashier requests phone # at register			TRUE	FALSE	Don't Know
TRUE	56.90%	Privacy Fundamentalists	9.20%	12.70%	0.30%
FALSE	38.90%	Privacy Pragmatists	43.20%	26.70%	2.70%
Don't Know	4.20%	Privacy Unconcerned	3.40%	1.70%	0%
N=333		N=292			
Prod Sell Rebate Info			TRUE	FALSE	Don't Know
TRUE	50.80%	Privacy Fundamentalists	4.20%	17%	0.60%
FALSE	37.20%	Privacy Pragmatists	49.70%	20.60%	5.20%
Don't Know	12.10%	Privacy Unconcerned	1.80%	0.90%	0%
N=388		N=330			

Catalog orders			TRUE	FALSE	Don't Know
TRUE	48.50%	Privacy Fundamentalists	6.10%	13.60%	1.10%
FALSE	47.90%	Privacy Pragmatists	37.60%	35.10%	1.40%
Don't Know	3.70%	Privacy Unconcerned	4.30%	0.70%	0%
N=308		N=279			
Grocery			TRUE	FALSE	Don't Know
TRUE	49.80%	Privacy Fundamentalists	6.60%	18.10%	1.90%
FALSE	42.60%	Privacy Pragmatists	41.30%	25.50%	4.60%
Don't Know	7.60%	Privacy Unconcerned	1.50%	0.40%	0%
N=293		N=259			

## Appendix II: Westin Segmentation

In order to calculate membership in one of Westin’s three privacy segments, we categorized respondents based on their answers to the following three questions, using Westin’s rationale: “Privacy Fundamentalists are respondents who agreed (strongly or somewhat) with [Question 1] and disagreed (strongly or somewhat) with [Question 2 and Question 3]. Privacy Unconcerned are those respondents who disagreed with [Question 1] and agreed with [Question 2 and Question 3]. Privacy Pragmatists are all other respondents.” Respondents who did not provide a valid answer for all three of these questions were considered invalid for the purposes of this categorization.

Westin Question 1: For each of the following statements, how strongly do you agree or disagree? First...

"Consumers have lost all control over how personal information is collected and used by companies."

Do you Strongly agree, agree, disagree, or strongly disagree?

Valid %	%	N	Value	Label
38.9	38.7	377	1	Strongly Agree
33.1	31.7	314	2	Agree
13.5	12.9	128	3	Disagree
13.7	13.1	130	4	Strongly Disagree
	4.1	41	8	Don't Know
		1	9	Refused/ Missing Data
100%		949/991 Valid Cases		

Mean: 2.01 Median: 2.0 Mode: 1 Std. Deviation: 1.039

Westin Question 2: How about...

"Most businesses handle the personal information they collect about consumers in a proper and confidential way."

Do you Strongly agree, agree, disagree, or strongly disagree?

Valid %	%	N	Value	Label
12.9	12.2	121	1	Strongly Agree
40.3	38.3	380	2	Agree
25.2	24	238	3	Disagree
21.6	20.5	204	4	Strongly Disagree
	4.8	48	8	Don't Know
		1	9	Missing Data
100%		942/991 Valid Cases		

Mean: 2.56 Median: 2.0 Mode: 2 Std. Deviation: .968

Westin Question 3: How about...

"Existing laws and organizational practices provide a reasonable level of protection for consumer privacy today."

Do you Strongly agree, agree, disagree, or strongly disagree?

Valid %	%	N	Value	Label
10.9	10.2	101	1	Strongly Agree
46.8	43.7	433	2	Agree
26.4	24.7	244	3	Disagree
15.9	14.9	148	4	Strongly Disagree
	6.1	61	8	Don't Know
		4	9	Refused/ Missing Data
100%		926/991 Valid Cases		

Mean: 2.47 Median: 2.0 Mode: 2 Std. Deviation: .887

## Appendix III: Related Reports

- *The FTC and Consumer Privacy In the Coming Decade*, Nov. 8, 2006, available at <http://www.law.berkeley.edu/samuelsonclinic/privacy/48>, reprinted in Joseph Turow, Chris Jay Hoofnagle, Deirdre K. Mulligan, Nathaniel Good, & Jens Grossklags, *The Federal Trade Commission and Consumer Privacy in the Coming Decade*, 3 ISJLP 723 (2007).
- Joseph Turow, Deirdre K. Mulligan & Chris Jay Hoofnagle, *Research Report: Consumers Fundamentally Misunderstand the Online Advertising Marketplace*, Oct. 31, 2007, available at <http://www.law.berkeley.edu/samuelsonclinic/privacy/216>.
- Chris Jay Hoofnagle & Jennifer King, *Consumer Information Sharing: Where the Sun Still Don't Shine*, Dec. 17, 2007, available at <http://www.law.berkeley.edu/samuelsonclinic/privacy/219>.
- Jennifer King and Chris Jay Hoofnagle, *Research Report: A Supermajority of Californians Supports Limits on Law Enforcement Access to Cell Phone Location Information*, Apr. 18, 2008, available at <http://www.law.berkeley.edu/samuelsonclinic/privacy/259>.