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Web Site Privacy Policies May Limit Database Transferability in Bankruptcy

No-one likes to consider possible bankruptcy ramifications at the outset of any venture, but some of those dot-com's that became "dot-bombs" have realized that – unlike "bricks and mortar" enterprises – their major salable asset after the party's over is their customer-information database. Just this past January, failed e-tailer Toysmart reached a settlement in bankruptcy that allowed a subsidiary of major-shareholder Disney to pay $50,000 for Toysmart's d-base – only then to destroy it to avoid consumer-privacy issues.

Now Congress has gotten into the act, with pending Bankruptcy Code amendments which would prohibit a Bankruptcy Trustee from selling or using customer-information database assets in a manner contrary to any privacy policy in effect at filing, unless the effect of the sale is considered by a court-appointed "consumer privacy ombudsman" and approved by the Court. The provisions of course apply to financial and other sensitive information, but also extend to simple names and addresses. *Bankruptcy Reform Act of 2001*, Tit. II, subtitle C, §§ 231-232 (H. Res. 333, S. 220, S. 420 -- passed by the Senate March 15, 2001 as amended and pending floor action by House a/o March 20, 2001).

Privacy continues to be a growing concern in e-commerce. These provisions are strong reminders to: (a) build some flexibility into privacy policies, where possible; (b) revisit your site's policy periodically to assess its currency and better help monitor compliance; and (c) stay on top of business conditions that might warrant changes, if permitted under the original policy, with appropriate notice to users/consumers.

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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