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EDITORIALS

A pretext of privacy

THINK YOUR phone records are private? Ask Wesley Clark, the former head of NATO and a candidate for president. For \$89.85, a blogger was able to get the records of the retired Army general's recent cell-phone calls.

It was legal, quick and easy. It was also a stunt aimed at pointing out the peril of pretexting, the by-now familiar tactic of posing as a consumer to obtain that person's phone-call roster. The tactic is at the heart of a dispute among Hewlett-Packard board members, who are at each other's throats over chasing down leaks to news media.

Pretexting may be the latest example of the Internet leaving the law books behind. California Attorney General Bill Lockyer believes the tactic, as seen in the HP case, points to an illegal breach in privacy guarantees. But the tactic has been around for years, and his office hasn't filed any recent criminal charges.

The problem is the murky nature of privacy laws. There are laws against identity theft, misuse of computerized data and the sale or dupli-

cation of such records. But there's nothing specific about the pretexting tactic.

That why a recently passed bill, SB202, should be signed by the governor. The measure by state Sen. Joe Simitian, a Palo Alto Democrat, should end the confusion. It outlaws the buying and selling of phone records without the consent of the customer.

Beyond the HP board soap opera, there are genuine reasons to back the bill. The market for phone-call records is a borderline crowd: jealous boyfriends, unethical business competitors and garden-variety snoops and stalkers, who want to peer into private lives. Backers of the bill include law enforcement, phone companies and privacy advocates. There's also movement at the federal level to ban the practice.

Whether HP's top executives knew that phone records were improperly searched remains to be seen. But this method shouldn't be tolerated. California has a chance to set an important standard by banning pretexting and ensuring privacy.

San Jose Mercury News

September 8, 2006

Phone privacy bill on track

WOULD EFFECTIVELY MAKE
PRETEXTING ILLEGAL; AWAITS
SCHWARZENEGGER SIGNATURE

By Sarah Jane Tribble
Mercury News

A bill that would effectively make pretexting - the act of pretending to be someone else in order to get that person's phone records - illegal was approved by state legislators in August and awaits Gov. Arnold Schwarzenegger's approval.

While the bill's author, state Sen. Joe Simitian, D-Palo Alto, had been working on it for more than a year, its potential passage arrives at a time when gathering phone records under false pretenses is at the forefront of Silicon Valley minds.

Hewlett-Packard confirmed Wednesday that its chair, Patricia Dunn, worked with outside investigators to find out who was leaking confidential information to the news media. Those investigators, in turn, hired others to pose as someone else to get the board member's phone records.

The bill, SB202, prohibits the buying and selling of information that was pretexted.

"Your home phone records and your cell phone records are a road map to your daily life," said Simitian, reasoning that "if you shut down the buyers and sellers, the hope is you simply solve the problem."

Attorney General Bill Lockyer has pointed to two existing laws that could be used to prosecute pretexters, but privacy experts say

those laws still aren't enough to protect the average consumer.

Civil action

Only the strongest laws - from the wire fraud act to identity theft laws - can be prosecuted by the government, said Chris Hoofnagle, a privacy expert and professor at Boalt Hall's Law, Technology and Public Policy Clinic.

"A specific ban would give individuals an opportunity to bring suits more easily in civil court," Hoofnagle said.

A movement to ban pretexting practices is gaining momentum nationwide. Politicians from Maine to California introduced bills this year to protect phone records in some form, and attorneys general in several states, including California, have filed lawsuits against companies that are collecting and selling such data.

Nationally, the Federal Communications Commission earlier this year reviewed the rules for telecommunications companies that oversee phone data, and Congress held special committee hearings on pretexting. In one hearing, the

nation's wireless telecommunications association president declared that data brokers breaking into their customer information had "given our industry a black eye."

There's also a bill in Congress, introduced by Rep. Edward Markey, D-Mass., that makes it unlawful for anyone to obtain or attempt to obtain a customer's information. Its goal would be to stop those who practice pretexting. California's law makes pretexting illegal by banning the buying or selling of information gathered through pretexting.

Both the proposed federal and state laws make an exception that would give law enforcement officials the ability to access people's home and mobile phone records.

The California bill won broad bipartisan support, and Schwarzenegger must approve it by the end of this month or it will die. The governor's press office said Thursday that Schwarzenegger has not taken a position on the bill.

If approved, the new law would take effect in January. The first time a person purchased or sold information, or offered to do

so, without the written consent of the customer would be a misdemeanor, and a person could be fined up to \$2,500 and imprisoned for up to a year. A second offense would bring a fine of up to \$10,000 and imprisonment up to a year.

Beyond phone calls

Many privacy rights advocates say legislation is needed to protect information other than just phone calls.

The term pretexting and the act of posing as someone else to get information has made headlines in cases involving phone records, but it can also be used to obtain a wide array of private information -- from medical to financial -- said James Dempsey, policy director and West Coast president of the Center for Democracy & Technology.

"For years privacy advocates have been arguing that we need to take a generic across-the-board look at privacy," Dempsey said. "We need to have general baseline privacy protection for all kinds of sensitive information."



Simitian

State senator worked on the bill for more than a year. It arrives at a time when gathering phone records under false pretenses is in the spotlight.

San Mateo County Times



October 1, 2006

Bill signed to ban pretexting

FROM STAFF REPORTS

State Sen. Joe Simitian, D-Palo Alto, announced Saturday that Gov. Arnold Schwarzenegger has signed into law his bill outlawing telephone "pretexting."

Pretexting has gained widespread attention in recent weeks because of the scandal at Hewlett-Packard.

The company's chairwoman initiated an investigation into leaks to the media that resulted earlier this year in the personal phone records of HP board members, employees and a number of journalists being obtained through pretexting.

Simitian introduced his bill, SB 202, before the HP scandal broke. He said all California residents should be concerned about the practice.

"Right now anyone who wants to can purchase your phone records for as little as \$100," Simitian said. "It's an unconscionable invasion of privacy. Your phone records are like a road map to your personal life."

Simitian's bill will take effect Jan. 1. It makes it illegal to buy or sell an individual's phone records without their written consent.

Violators could be fined a maximum of \$2,500 for the first offense and be sentenced to a year in county jail.