

NetChoice *Promoting Convenience, Choice, and Commerce on the Net*

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Chairman Thomas M. Middleton
Senate Finance Committee
3 East Miller
Senate Building
Annapolis, MD 21401

March 18, 2014

RE: SB 950, Consumer Protection - Required Notice

Dear Chairman Middleton:

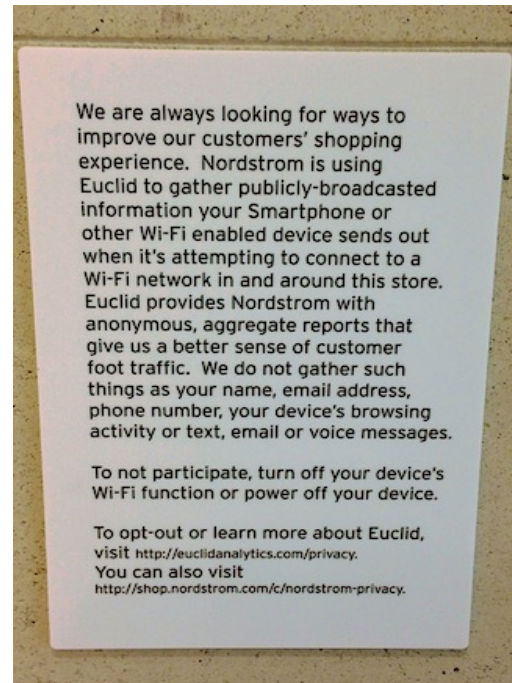
We appreciate the intent of your legislation, but please appreciate that there's a big difference between informing consumers and *alarming* them. Mandated signs can alarm consumers and suppress adoption of a new technology that stores use for efficiency, loss prevention, and for directing deals to customers.

What's the harm in a little sign?

Nordstrom is a department store chain widely known for fanatical customer service. But as Nordstrom learned recently, a sign describing in-store cellphone awareness program alarmed its customers instead of informing them.

Last spring, Nordstrom started its in-store cellphone awareness program to identify (1) how many customers enter the store and how many are repeat customers; (2) how many people walk by a store compared to how many enter; and (3) how customers make their way through the store.¹

Nordstrom posted signs describing its program, as seen at in the figure at right. Their sign described privacy practices, customer consent options, and benefits of the program. Many customers read the signs and some of them chose to opt-out. But several others posted complaints on websites and sent letters claiming to be "creeped-out" by the program. They raised such an alarm that Nordstrom cancelled the program, rather than struggle to explain how it benefits their business and serves their customers.



A sign Nordstrom used for its cellular awareness program

¹ Department of Legislative Services Maryland General Assembly 2014 Session Fiscal And Policy Note, *Consumer Protection - Monitoring Consumer Behavior and Shopping Habits - Required Notice*.

What if we required these state-mandated signs for credit cards?

Imagine if Maryland required every store that accepted credit cards to display signs at every entrance describing how credit card companies collect and use information about customer purchases. After all, credit card issuers know significantly more about us than would a cellphone awareness program since they know where we shop, what we buy, and our banking information. All of us are familiar with the annual credit card notices that appear in the mail running several pages long – for every credit in your wallet.² Congress did not require these notices be “clearly and conspicuously” posted on windows and walls of every store accepting credit cards.

State-mandated signs might not convey consumer choices and the benefits of in-store cellphone awareness.

A state-mandated sign is not sufficient to explain the benefits, options, and privacy protections of the different in-store cellphone awareness systems. For example, PayPal’s Beacon requires customers to twice authorize any collection of information.

First, customers agree to terms of service when they install the PayPal App.

Second, customers are required to choose whether to participate with a specific store they enter, indicating “Always,” “Never” or “One Time” otherwise no information is shared with that merchant.

That’s two chances to inform consumers and give them control over their information. Moreover, a consumer can revoke these permissions they grant individual merchants at any time. And, that’s more than can be conveyed in a window sticker or sign that’s far more likely to alarm consumers.

Instead of informing, SB 950’s mandated signs will dissuade stores from implementing cellphone awareness programs, denying consumers their right to choose whether to participate.

New technologies often seem creepy at first, but this often fades when benefits are understood.

For decades consumers have grown accustomed to anti-theft devices on clothing, and with cameras that monitor store spaces. The first time these systems were used, consumers may have been concerned, but they grew to understand how they help prevent theft and keep us safe while in the store. While in-store cellphone identification may seem “creepy” to some customers today, these concerns could be diminished with appropriate education about consumer privacy and control.

In-store cellphone identification helps consumers shop and lowers prices.

Store managers have often logged how many customers enter a store, which isles saw the most traffic, and correlated this with sales data. This has helped store managers staff for peak hours high-traffic spaces, and to decide on what merchandise merits prime shelf space.

The technology regulated by SB 950 does the same thing; it just does so without a clipboard and click-counter.

In addition, some new systems offer consumers coupons and discounts for using the in-store cellphone identification. This is similar to loyalty card programs consumers enjoy today – providing them custom coupons for the kinds of things they actually want to buy.

² These mailings are required under the Gramm-Leach-Bliley Act.

Loss prevention is an added benefit of in-store cellphone awareness.

This technology can help stop in-store theft. Estimates place retail store theft at \$33 billion each year, and these costs are passed along to customers in the form of higher prices. Using in-store cellphone awareness helps retail stores to reduce theft losses and avoid price increases.

Industry Self-Regulatory program is already being adopted.

Retail stores are already implementing a self-regulatory code around the use of mobile location analytics.³ This code provides consumers:

- the ability to opt-out of in-store cellphone identification,
- requires stores to get affirmative consent if: (1) the analytics company will maintain personal information linked to a mobile device identifier, or (2) a customer will be contacted based on the analytic information, and
- requires stores to limit the collection and retention of data.

SB 950 fails to define critical terms.

The scope of SB 950 turns on the definition of “wireless internet signal,” but this term is not defined in SB 950 or elsewhere in Maryland law. Likewise, the bill requires clear and conspicuous” signage. But as we discussed there are many nuances and choices that do not lend themselves to signs outside stores.

When a bill includes the possibility of imprisonment, it becomes essential to avoid these types of ambiguous terms.

For these reasons we ask you oppose SB 950 and instead allow the industry self-regulatory program to grow and give in-store cellphone awareness programs the chance to prove their worth to customers.

Thank you for considering our views. Please let me know if we can provide further information.

Sincerely,



Carl Szabo
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NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org

³ See, e.g., Smart Store Privacy, <http://www.smartstoreprivacy.org>