



Compliance with Canadian Data Protection Laws: *Are retailers measuring up?*



www.cippic.ca

Compliance with Canadian Data Protection Laws:

Are retailers measuring up?

April 2006

The Canadian Internet Policy and Public Interest Clinic
www.cippic.ca

ACKNOWLEDGEMENTS

CIPPIC gratefully acknowledges the financial support of the Office of the Privacy Commissioner of Canada and the Social Sciences and Humanities Research Council for this study.

The study was directed by Philippa Lawson, Executive Director and General Counsel of CIPPIC, and coordinated by Jennifer Seligy, student-at-law. Annie Binet provided administrative support. The following law students conducted assessments and/or submitted access requests: Anne Ko, Brian Harvey, Christopher Deeble, Damien Fox, David Lam, Dixie Ho, Dyna Lou, Grace Skowronski, Ioulia Vinogradova, Karen Poon, Kathy-Anne Chin Quee, Katrina Marciniak, Lara McGuire, Lukasz Kuzio, Michael Leach, Nyaal Engfield, Rhoderica Chan, Shane O'Herlihy, Steven Choi, Suzanne Orsborn, Tanya Woods, Thomas Legault. Jennifer Seligy analysed and compiled the assessment results. The report was drafted by Jennifer Seligy and edited by Philippa Lawson.

Canadian Internet Policy and Public Interest Clinic
University of Ottawa, Faculty of Law
57 Louis Pasteur St.
Ottawa, Ontario K1N 6N5
Canada

Tel: 613-562-5800 x.2553
Fax: 613-562-5417
Email: cippic@uottawa.ca

This work is licensed under the Creative Commons Attribution-NonCommercial-ShareAlike 2.5 Canada License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-sa/2.5/ca/> or send a letter to Creative Commons, 543 Howard Street, 5th Floor, San Francisco, California, 94105, USA.

ISBN 0-9781083-0-2

This publication is also available on our website at www.cippic.ca

EXECUTIVE SUMMARY

The *Personal Information Protection and Electronic Documents Act* ("PIPEDA") was introduced in 2001 to protect Canadians from inappropriate collection, use and disclosure of their personal data by organizations in the course of commercial activities. Five years later, it is not clear to what extent organizations are in fact respecting the legislation. This study was designed to shed some light on that question, by assessing the compliance of retailers with certain key provisions of PIPEDA.

We assessed the compliance of 64 online retailers with the PIPEDA requirements for Openness, Accountability and Consent. We also assessed the compliance of 72 online and offline retailers with the PIPEDA requirement for Individual Access. The results of our assessment indicate widespread non-compliance in all four areas.

While almost all companies we assessed had a privacy policy and were thus aware of the need to respect customer privacy, many failed to fulfill even basic statutory requirements such as providing contact information for their privacy officers, clearly stating what they do with consumers' personal information, and responding to access to information requests. A significant proportion of the policies we examined were unclear on key points such as whether or not consumer information is shared with other companies. Many failed to provide a clear and conspicuous method for consumers to opt-out of unnecessary uses and disclosures of their personal information, often relying on a clause buried deep in a lengthy privacy policy that consumers are unlikely to review.

A number of policies we examined were misleading, suggesting for example that no secondary use or sharing of personal information would take place without the consumer's explicit consent, but then assuming such consent unless the consumer exercised an often inconspicuous or incomplete opt-out.

The following are key findings from the compliance assessments:

GENERAL PRACTICES

- Almost all online retailers have privacy policies (94% of our sample), and most post them on their websites (92%).
- Privacy policies tend to be lengthy: 63% of those in our sample were over 1000 words long, and 35% were over 2000 words long.
- The vast majority of online retailers (at least 93% of our sample) use personal consumer information (“consumer information”) for their own marketing purposes.
- A large proportion of online retailers (1/2 to 2/3 of our sample) share consumer information with other companies for purposes beyond those necessary for the transaction or service in question. Only one-third of our sample stated that they do not do so.
- Only one of the 29 companies in our sample that admitted to sharing consumer information with other organizations restricted its data-sharing to affiliates.
- A large majority of retailers (78% of our sample) rely on opt-out methods to obtain consumer consent to secondary uses or disclosures of their personal information.

PRINCIPLE 4.1 – ACCOUNTABILITY

- Online retailers are doing a poor job of ensuring that front-line staff are aware of the existence of the privacy policy, know who is responsible for it, and can direct inquirers to both the policy and the responsible officer. 68% of companies we contacted took over five minutes, and 22% took over ten minutes, to answer the questions: “Do you have a privacy policy?”, “How can I get it?” and “Who in your company is responsible for privacy matters?”
- 56% of companies we contacted by phone could not provide the name of an individual responsible for privacy when asked. Moreover, 30% of privacy policies we reviewed did not provide contact information for a person responsible for compliance with the policy.
- Few of the retailers we tested (only 14%) provided consistent contact information for designated privacy officers in their privacy policies and over the phone.

PRINCIPLE 4.8 – OPENNESS

- It is unreasonably difficult for consumers to acquire information over the phone about companies' policies and practices with respect to the management of personal information. As noted above, 68% of companies we contacted took over five minutes, and 22% took over ten minutes, to answer the questions: "Do you have a privacy policy?", "How can I get it?" and "Who in your company is responsible for privacy matters?"
- Four companies (6%) in our sample had no privacy policy whatsoever.
- While most online retailers make their privacy policies accessible online, 63% of companies in our sample could not or would not provide a copy by mail, fax or email when requested to do so.
- A significant proportion of privacy policies fail the test of clarity, even when tested by people with university education. Although 87% of policies reviewed were considered "generally understandable" by Assessors, many fewer were found to be clear on key points once Assessors looked more closely. Specifically, Assessors found that companies were unclear about the purpose of collection in 22% of cases, about what personal information they collect in 27% of cases, about how they use the information in 30% of cases, and about to whom they disclose the information in 45% of cases.
- An even higher proportion of privacy policies were incomplete:
 - o 30% did not provide contact information for a privacy officer;
 - o 38% made no reference to the consumer's right to access his or her personal information held by the company;
 - o 27% did not describe the type of consumer information held by the company;
 - o 18% did not describe what the company does with consumer information;
 - o 34% of those that admitted to sharing consumer information with other organizations did not describe the type of information that they share;
 - o 86% of those that admitted to sharing did not indicate with whom they share consumer information; and the remaining 14% provided examples only.

PRINCIPLE 4.3 – CONSENT

- Not surprisingly, the vast majority of online retailers we surveyed (78%) rely on opt-out methods, at least in part, to obtain consumer consent for secondary uses and disclosures of their personal information. Only 8% use opt-in methods exclusively, and a surprising 14% do not bother to get consent through any means when customers register or order on their site, even though they admit to secondary uses or disclosures or are unclear on this point.
- Under PIPEDA, consent must be informed. Yet, 17% of the privacy policies reviewed were unclear about whether the company uses consumer information for marketing purposes, and 18% were unclear about whether the company shares consumer information with other companies. A further 6% of companies did not have privacy policies at all. In 31% of the cases we reviewed, the companies provided no notice via the privacy policy or otherwise during the registration or ordering process.
- Moreover, during the registration or ordering process, the majority of the 64 companies we assessed (53%) provided notice to customers only via a link to the privacy policy, requiring consumers to visit the privacy policy and read through it for an understanding of what the company does with their personal information. Of these, 56% failed to bring the link to the privacy policy to the customer's attention during the registration or ordering process.
- We found a number of misleading privacy policies. In particular, of the 60 privacy policies assessed, 18% suggest that the company uses opt-in consent when in fact it relies on opt-out consent. This misleads consumers into thinking that their information will not be used for secondary purposes when in fact it will.
- Twenty-nine companies (48% of our sample) admitted to sharing consumer information with other companies for purposes other than the transaction in question (another 11 (18%) were unclear). Yet, ten of these companies (34% of those that clearly share) did not offer consumers a choice regarding this practice during the registration or ordering process.
- The methods used by many online retailers to obtain consent from consumers do not meet the requirements for valid consent.
 - o Of those companies relying on opt-out consent, 50% did so merely via a link to an often lengthy privacy policy as part of the

- registration or ordering process. In these cases, the majority (52%) failed to bring the link to the privacy policy to the customer's attention.
- Of those companies that included an opt-out in their privacy policy, 60% buried it inconspicuously in the often lengthy policy.
 - Ten companies in our sample offered fewer opt-out options during the registration or ordering process than via their privacy policies, without any indication to consumers that additional opt-out options were available via the privacy policy. This misleading practice was exacerbated by the fact that none of these companies bothered to bring their privacy policy to the attention of consumers during the registration or ordering process.
 - Of those companies relying on opt-out consent, 50% did not offer an immediate opt-out option as part of the transaction; rather, consumers have to consent against their will initially and then take additional steps to opt-out.
- In seven cases (11%), the retailer clearly required consent to a secondary purpose in order for the consumer to transact. In none of these cases did the consumer receive any value in exchange for such consent. In an additional 18 cases, Assessors were not sure whether consent to a secondary use or disclosure was mandatory, due to lack of clarity in the privacy policy or an absence of a written privacy policy. Thus, potentially 39% of companies we assessed are violating PIPEDA's "refusal to deal" section.

PRINCIPLE 4.9 – INDIVIDUAL ACCESS

- A large proportion of companies are failing to comply with the PIPEDA requirement to inform individuals of the existence, use and disclosure of their personal information upon request, and to give individuals access to that information.
- One-third (35%) of the companies we tested did not respond at all to access requests.
- Of the companies that did respond,
 - 42% failed to provide details about the Requestor's personal information they had on file;
 - 37% provided no account or an inadequate account of how they use the personal information; and

- 58% did not give a list of companies to whom they have or may have disclosed personal information about the Requestor;
despite being specifically asked for this information by the Requestor.

TABLE OF CONTENTS

1. Introduction	1
2. Scope and Samples	1
3. Objectives	2
4. Research Methodology	2
4.1. Compliance with Accountability, Openness and Consent	3
4.1.1. <i>Assessors</i>	3
4.1.2. <i>Survey Sample</i>	3
4.1.3. <i>Assessment Review and Tabulation of Results</i>	4
4.2. Compliance with Individual Access	5
4.2.1. <i>Requesters</i>	5
4.2.2. <i>Survey Sample</i>	5
4.2.3. <i>Assessment Review</i>	5
5. Findings under PIPEDA	6
5.1. Part 1: Compliance with Accountability, Openness and Consent	6
5.1.1. <i>General Practices</i>	6
5.1.1.1. <i>Privacy Policies</i>	6
5.1.1.2. <i>Internal Marketing</i>	7
5.1.1.3. <i>Sharing with Other Companies</i>	8
5.1.1.4. <i>Opt-In vs. Opt-Out Consent</i>	9
5.1.1.5. <i>Online Ordering Practices</i>	9
5.1.2. <i>Accountability</i>	10
5.1.2.1. <i>Designated Privacy Officer</i>	11
5.1.2.2. <i>Staff Training</i>	12
5.1.3. <i>Openness</i>	13
5.1.3.1. <i>Making Information Available</i>	14
5.1.3.2. <i>Availability of Privacy Policies</i>	17
5.1.3.3. <i>Clarity of Privacy Policies</i>	17
5.1.3.4. <i>Completeness of Privacy Policies</i>	19
5.1.3.5. <i>Openness About Disclosure Practices</i>	21

5.1.4. Consent	22
5.1.4.1. Knowledge and Consent	24
5.1.4.2. Adequacy of Notice	24
5.1.4.3. Methods of Notifying Consumers	25
5.1.4.4. Form of Consent	26
5.1.4.5. Conspicuousness of Opt-Out Option in Privacy Policy	27
5.1.4.6. Timeliness of Opt-Out	28
5.1.4.7. Misleading Policies and Practices	28
5.1.4.8. Requiring Consent as a Term of Service	30
5.2. Part 2: Compliance with Individual Access	32
5.2.1.1. Access Requirement	32
5.2.1.2. Time Requirement	32
5.2.1.3. Access to Personal Information	33
5.2.1.4. Account of Use	34
5.2.1.5. Disclosure to Third Parties	35
5.2.1.6. Overall Compliance with Principle 4.9	36
5.2.1.7. Authentication	36
6. Conclusions	37
6.1. Retailer Compliance with PIPEDA	37
6.2. Common Pitfalls of Privacy Policies	37
6.2.1. Incomplete Information	37
6.2.2. Hidden Consents	38
6.2.3. Misleading Reassurances	38
6.2.4. Repetition of PIPEDA Principles	39
6.3. Recommendations for PIPEDA Reform	40
6.3.1. Vague Standards	40
6.3.1.1. "Unreasonable Effort"; "Generally Understandable"	40
6.3.1.2. Opt-In vs. Opt-Out Consent	41
6.3.2. Drafting Gaps	41
6.3.2.1. Notice: Criteria for Valid Notice	41
6.3.2.2. Notice: Content	42

6.3.2.3. <i>Refusal to Deal</i>	42
6.4. Enforcement Regime	42
6.5. Topics for Further Research	43
6.5.1. <i>Comprehensibility/Readability</i>	43
6.5.2. <i>Authentication</i>	43
6.5.3. <i>Audits</i>	43
6.5.4. <i>Enforcement Regime</i>	43
Appendix A: Compliance with Accountability, Openness and Consent — Survey Sample	45
Appendix B: Compliance with Accountability, Openness and Consent — Sample by Company Size	48
Appendix C: Compliance with Accountability, Openness and Consent — Assessment Form	50
Appendix D: Template Letters for Access to Information Requests	65
Appendix E: Compliance with Individual Access — Assessment Form	68
Appendix F: Compliance with Principle 4.9 — Survey Sample	71
Appendix G: Table of Report Results	74

1. INTRODUCTION

The *Personal Information Protection and Electronic Documents Act* (“PIPEDA”) was introduced in 2001 to protect Canadians from inappropriate collection, use and disclosure of their personal data by organizations in the course of commercial activities. It is not clear however, to what extent such organizations are in fact respecting the legislation. To our knowledge, no study has yet been conducted to confirm the extent to which organizations subject to PIPEDA are complying with it.

With privacy protection increasingly becoming one of Canadians’ top concerns and the five-year Parliamentary Review of PIPEDA scheduled for the fall of 2006, the time is ripe for testing of private industry compliance with PIPEDA. Such testing can contribute to a more informed Parliamentary review of PIPEDA, as well as provide a useful tool for holding companies accountable under PIPEDA and thus making Canadian privacy laws more effective.

It was within this context that the Office of the Privacy Commissioner of Canada provided funding under its 2005-2006 Contributions Program to the Canadian Internet Policy and Public Interest Clinic (“CIPPIC”) to evaluate organizational compliance with PIPEDA.

2. SCOPE AND SAMPLES

This report assesses the policies and practices of 64 online retailers¹ with respect to PIPEDA provisions covering Accountability, Openness and Consent. Of the 64 retailers examined, 42% were large, 20% were medium-sized, 24% were small, and 3% had fewer than five employees. Seven companies in our sample refused to provide us with information about their size.

¹ Both goods and service providers.

Table 1: Sample by Company Size

Company Size (self-identified by company)	Company Responses	Percentage
Micro (1-4 employees)	2	3%
Small (5-49 employees)	15	24%
Medium (50-499 employees)	13	20%
Large (500+ employees)	27	42%
Unknown (company did not want to provide company size)	7	11%

This report also assesses the practices of a separate sample of 72 online and offline retailers with respect to Individual Access rights under PIPEDA. Although there is some overlap, this sample is different from the former sample given the nature of testing required for Individual Access.

3. OBJECTIVES

This study has the following goals:

- To assess the extent to which retailers are complying with PIPEDA requirements for Openness, Accountability, Consent and Individual Access;
- To develop a tool for assessing compliance and holding companies accountable under PIPEDA; and
- To identify problems in the interpretation/application of PIPEDA that could be resolved through amendments to PIPEDA.

4. RESEARCH METHODOLOGY

This study focuses on those obligations under PIPEDA that can be tested either by calling the company's main telephone number, by writing to the company, or by reviewing the company's privacy policy and ordering practices. CIPPIC conducted a series of pre-tests on a variety of PIPEDA principles and ultimately settled on testing Principle 4.1 (Accountability), Principle 4.8 (Openness), Principle 4.3 (Consent), and Principle 4.9 (Individual Access). Assessment guides and

questionnaires were drafted, tested, and revised over the course of three months (October to December 2005) before being finalized.

CIPPIC developed one methodological approach for testing Principles 4.1, 4.3 and 4.8, and another for Principle 4.9. Each is described below.

4.1. COMPLIANCE WITH ACCOUNTABILITY, OPENNESS AND CONSENT

4.1.1. ASSESSORS

Eleven University of Ottawa law students acting as ordinary consumers ("Assessors") conducted assessments of 64 companies' privacy policies and practices over a three month period from January to March 2006. Assessors performed each assessment in part by calling the company's general telephone number, in part by reviewing the company's privacy policy, and in part by analyzing the company's ordering practices. All Assessors underwent training sessions of approximately two hours prior to conducting their assessments. Training consisted of a tutorial on PIPEDA followed by an overview of the PIPEDA Compliance Testing project and a sample assessment.

4.1.2. SURVEY SAMPLE

To avoid bias in the selection of companies for testing, CIPPIC used two externally compiled lists from which to draw its survey sample: one containing a list of online retail, travel, and ticketing services² ("Directory 1") and another with a list of magazines sold online³ ("Directory 2").

From Directory 1, all of the companies listed in the "Major Retailers" category, and all of the companies listed under the first subheadings in the "Health/Beauty", "Computers", "Electronics", "Books/Music/Movies", "Sporting Goods", "Travel/Vacation" (except for the luggage stores) and "Other Retailers" categories were selected and

² Available online at: <http://www.davidjohnson.ca/html/onlineshopping.shtml>

³ Available online at: <http://www.canadaretail.ca/>

placed on a master list in the same order as they appear in the Directory. From Directory 2, all the magazines listed on the first two pages in the “Magazines” section were selected and added to the master list in the same order as they appear in the Directory.

Any company that appeared more than once on the master list, that was no longer in operation, or that did not allow for online transactions was removed from the list. The final master list (Appendix A) contained 64 companies. Assessors were assigned companies from this list beginning with the first company on the list and working down the list. The number of companies assigned to each Assessor varied depending on the amount of time the Assessor was available for participation in the study. Each company in the survey was contacted and asked to self-identify as being either micro (1-4 employees), small (5-49 employees), medium (50-499 employees) or large (500+ employees) (Appendix B).

Of the 64 companies in the survey sample, Assessors were unable to reach five companies by telephone to conduct the phone assessment portion of the study. This left 59 companies available for the phone assessment portion of the study.

Of the 64 companies in the sample, Assessors found that 59 companies post privacy policies on their websites. Of the five companies who do not post privacy policies online, one supplied its privacy policy by fax, while the remaining four could not supply a written privacy policy because they had none. As a result, a total of 60 companies’ privacy policies were available for assessment.

All of the 64 companies in the survey sample provide online ordering services. Assessors were therefore able to test online ordering practices of all 64 companies.

4.1.3. ASSESSMENT REVIEW AND TABULATION OF RESULTS

Assessors recorded their results on a standard Form (Appendix C) and submitted them to the project coordinator (“the Coordinator”) for review and entry into a database. The Coordinator reviewed all assessments to make sure that Assessors recorded answers correctly. The Coordinator corrected factual errors, but did not change any of the Assessors’ responses to subjective questions, even where

the Coordinator disagreed with Assessors' answers. Results were inputted into a database, and correlations were done manually.

4.2. COMPLIANCE WITH INDIVIDUAL ACCESS

4.2.1. REQUESTERS

Four CIPPIC staff members and 17 University of Ottawa law students ("Requesters"), in their personal capacities, conducted access requests for this study. Requesters used a template letter for their requests (Appendix D) and an assessment form to record the results of their requests (Appendix E). Requesters conducted access requests in two phases: February - June 2005, and November 2005 - February 2006.

4.2.2. SURVEY SAMPLE

Requesters were asked to submit access requests to companies with whom they had done business. All the companies that Requesters volunteered to contact were recorded on a master list of companies and organized by sector (Appendix F). Where more than one request was made of a company, only the first request was used for this study. Otherwise, all requests were recorded and used in the study.

4.2.3. ASSESSMENT REVIEW

The Coordinator reviewed all assessment forms for accuracy and entered the information contained in the forms into a database. Ultimately, 72 access requests were made to 72 different companies.

5. FINDINGS UNDER PIPEDA

5.1. PART 1: COMPLIANCE WITH ACCOUNTABILITY, OPENNESS AND CONSENT

5.1.1. GENERAL PRACTICES

Key Findings

Almost all online retailers have privacy policies (94% of our sample), and most post them on their websites (92%).

Privacy policies tend to be lengthy: 63% of those in our sample were over 1000 words long, and 35% were over 2000 words long.

The vast majority of online retailers (at least 93% of our sample) use personal consumer information (“consumer information”) for their own marketing purposes.

A large proportion of online retailers (1/2 to 2/3 of our sample) share consumer information with other companies for purposes beyond those necessary for the transaction or service in question. Only one-third of our sample stated that they do not do so.

Only one of the 29 companies in our sample that admitted to sharing consumer information with other organizations restricted its data-sharing to affiliates.

A large majority of retailers (78% of our sample) rely on opt-out methods to obtain consumer consent to secondary uses or disclosures of their personal information.

5.1.1.1. Privacy Policies

Of the 60 privacy policies reviewed, 37% were less than 1000 words, 28% were between 1000 and 2000 words, and 17% were over 3000 words in length. In most cases (83%) Assessors found the privacy policies to be contained in a single document, however, there were a number of cases (17%) where Assessors had to follow links to other documents to fully understand the companies’ information management practices.

Table 2: Privacy Policies

How long is the privacy policy (in words)?	Assessor Responses	Percentage
1 - 500 words	10	17%
500 - 1000 words	12	20%
1000 - 2000 words	17	28%
2000 - 3000 words	11	18%
Over 3000 words	10	17%
N/A: Company has no written privacy policy	4	N/A

Of the 59 companies who post privacy policies on their websites, a majority (70%) provide a link to the policy in small font with other links at the bottom of the homepage and 24% provide a link to the privacy policy on a menu bar at the top or side of the homepage. Six companies provide a privacy link on their homepages only; most companies include the link to the privacy policy on other pages in addition to the homepage.

5.1.1.2. Internal Marketing

Most companies (83%) state in their privacy policies that they use consumer information for their own marketing purposes. Six companies (10%) do not state that they use consumer information for internal marketing purposes, but do use opt-in or opt-out during the registration or ordering process to obtain consumer consent to use their personal information for internal marketing. This brings the total number of companies who use consumer information for these purposes to 93%. However, actual use of consumer information for internal marketing purposes may be as high as 100% because in the remaining four cases, Assessors found privacy policies to be unclear on this point.

Table 3: Internal Marketing

According to the privacy policy, does the company use consumer information for its own marketing purposes?	Assessor Responses	Percentage
Yes	50	83%
No	0	0%
Unclear, but company asks consumers to opt-in or opt-out to internal marketing during registration/ordering	6	10%
Unclear	4	7%
N/A: Company has no written privacy policy	4	N/A

5.1.1.3. Sharing with Other Companies

Assessors found that a significant proportion of companies (48%) admit to sharing consumer information with other companies for purposes other than the transaction or service in question. In 34% of cases, companies stated that they do not share consumer information with other companies except as necessary for the transaction or service in question. The remaining 18% of policies were unclear on this point. Hence, actual sharing of consumer data with other companies could be as high as 66%.

Table 4: Sharing with Other Companies

According to the privacy policy, does the company share consumers' personal information with other companies for purposes other than the transaction or service in question?	Assessor Responses	Percentage
Yes	29	48%
No	20	34%
Unclear	11	18%
N/A: Company has no written privacy policy	4	N/A

Of the 29 companies who admit to sharing consumers' personal information with other companies for secondary purposes, Assessors found that only one company limits its sharing to affiliates.

Table 5: Sharing with Affiliates and Third Parties

According to the privacy policy, with whom does the company share consumers' personal information?	Assessor Responses	Percentage
Affiliates only	1	4%
Third parties only	14	48%
Both affiliates and third parties	14	48%

5.1.1.4. Opt-in vs. Opt-out Consent

Assessors reported that of the 64 companies in the survey sample, the vast majority (78%) use an opt-out method during the registration or ordering process to obtain consumer consent to at least some secondary uses and disclosures of consumers' information. Only five companies (8%) use opt-in exclusively, and nine (14%) do not use opt-in or opt-out consent during the registration or ordering process, even though they either admit to secondary uses or disclosures or are unclear on this point.

5.1.1.5. Online Ordering Practices

A significant proportion (41%) of the 64 companies assessed require customers to register with the company before they can place an order. In six (9%) of these cases, customers are asked to consent (or withdraw deemed consent) to secondary uses or disclosures of their personal information during the registration process only.

Table 6: Online Ordering Practices

Registration vs. Ordering	Number of Companies	Percentage
Registration required before ordering	26	41%
No registration required	38	59%
Opt-in / Opt-out Option		
Opt-out during registration only	3	5%
Opt-out during both registration and ordering	19	30%
Opt-out during ordering only	23	36%
Opt-out and opt-in during ordering	5	7%
Opt-in during registration only	3	5%
Opt-in during ordering only	2	3%
No opt-out or opt-in during registration or ordering	9	14%

5.1.2. ACCOUNTABILITY

Key Findings

Online retailers are doing a poor job of ensuring that front-line staff are aware of the existence of the privacy policy, know who is responsible for it, and can direct inquirers to both the policy and the responsible officer. 68% of companies we contacted took over five minutes, and 22% took over ten minutes, to answer the questions: “Do you have a privacy policy?”, “How can I get it?” and “Who in your company is responsible for privacy matters?”

56% of companies we contacted by phone could not provide the name of an individual responsible for privacy when asked. Moreover, 30% of privacy policies we reviewed did not provide contact information for a person responsible for compliance with the policy.

Few of the retailers we tested (only 14%) provided consistent contact information for designated privacy officers in their privacy policies and over the phone.

5.1.2.1. Designated Privacy Officer

Principle 4.1 requires that:

An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization’s compliance with the foregoing principles.

Principle 4.1.2 further requires that:

The identity of the individual(s) designated by the organization to oversee the organization’s compliance with the principles shall be made known upon request.

To test these elements of accountability, Assessors, acting as ordinary customers, phoned each company’s general customer service number and asked whether the company had a designated individual responsible for handling privacy inquiries and/or complaints, and for that individual’s contact information. In five cases, Assessors were unable to reach a person at the company by phone, despite repeated efforts.

Of those that could be reached, a majority (56%) replied that they did not have a designated individual who is accountable for the organization’s privacy policies and practices, although 70% of companies name such a person in their privacy policies (see Table 15).

Table 7: Designated Privacy Officer

Do you have someone that is responsible for handling privacy inquiries/complaints?	Company Responses	Percentage
Yes (contact information provided)	26	44%
No	33	56%
N/A: Assessor unable to reach anyone at the company by phone	5	N/A

5.1.2.2. Staff Training

Principle 4.1.4 states:

Organizations shall implement policies and practices to give effect to the principles, including

...(c) training staff and communicating to staff information about the organization's policies and practices.

To test this principle, Assessors phoned each company's general customer service inquiry number and asked (a) whether they have a privacy policy and (b) how to get a copy of the privacy policy.

While the majority of companies contacted (91%) ultimately responded 'Yes' to the question of whether or not they had a privacy policy, a significant number of company representatives (32%) only responded positively to the question after prompting from the Assessor. In these instances, Assessors had to explain what a privacy policy is before the company representative could answer the question.

Table 8: Does the Company Have a Privacy Policy

Do you have a privacy policy?	Company Responses	Percentage
Yes	35	59%
Yes, but only after Assessor explained what a privacy policy is	19	32%
No	5	9%
N/A: Assessor unable to reach anyone at the company by phone	5	N/A

When asked where customers can obtain a copy of the privacy policy, most company representatives (78%) referred Assessors to the company website.

Assessors also asked each company representative for the name and contact information of a person responsible for handling privacy-related inquiries. Assessors then compared this information to the contact information supplied in the privacy policy. Of the 26 company representatives who supplied Assessors with contact

information over the phone (see Table 7), only eight (31%) provided the same contact information that appears in the company's privacy policy.

Table 9: Contact Information for Company Privacy Officer

Is the contact information supplied in the privacy policy the same as the contact information supplied by the company representative?	Assessor Responses	Percentage
Yes	8	31%
No	18	69%
N/A: Can't compare because company representative did not supply contact information upon request	33	N/A
N/A: Assessor unable to reach anyone at the company by phone	5	N/A

Ultimately, of the 59 companies contacted, only 8 (14%) provided consistent contact information for the individual responsible for handling privacy matters both in their privacy policies and upon request.

5.1.3. OPENNESS

Key Findings

It is unreasonably difficult for consumers to acquire information over the phone about companies' policies and practices with respect to the management of personal information. As noted above, 68% of companies we contacted took over five minutes, and 22% took over ten minutes, to answer the questions: "Do you have a privacy policy?", "How can I get it?" and "Who in your company is responsible for privacy matters?"

Four companies (6%) in our sample had no privacy policy whatsoever.

While most online retailers make their privacy policies accessible online, 63% of companies in our sample could not or would not provide a copy by mail, fax or email when requested to do so.

A significant proportion of privacy policies fail the test of clarity, even when tested by people with university education. Although 87% of policies reviewed were considered "generally understandable" by Assessors, many fewer were found to be clear on key points once Assessors looked more closely. Specifically, Assessors found that companies were unclear about the purpose of collection in 22% of cases, about what personal information they collect in 27% of cases, about how they use

the information in 30% of cases, and about to whom they disclose the information in 45% of cases.

An even higher proportion of privacy policies were incomplete:

- 30% did not provide contact information for a privacy officer;
- 38% made no reference to the consumer's right to access his or her personal information held by the company;
- 27% did not describe the type of consumer information held by the company;
- 18% did not describe what the company does with consumer information;
- 34% of those that admitted to sharing consumer information with other organizations did not describe the type of information that they share;

86% of those that admitted to sharing did not indicate with whom they share consumer information; and the remaining 14% provided examples only.

5.1.3.1. *Making Information Available*

Principle 4.8. states that:

An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

Principle 4.8.1 further requires that organizations:

Be open about their policies and practices with respect to the management of personal information. Individuals shall be able to acquire information about an organization's policies and practices without unreasonable effort. This information shall be made available in a form that is generally understandable.

According to the Privacy Commissioner, making information "readily available", includes making privacy policies available to the public in a variety of ways. This is particularly important for those who do not have Internet access.⁴

⁴ Privacy Commissioner Finding #304, June 7, 2005 <http://www.privcom.gc.ca/cf-dc/2005/index2-5_e.asp>

To test compliance, Assessors reported the time and level of difficulty required to find out: (a) if the company had a privacy policy; (b) how it could be obtained; and (c) who in the company deals with privacy matters. The survey sample for this testing comprised 59 companies, since five companies could not be reached by phone.

In 68% of cases, Assessors had to spend over five minutes on the phone before they could get answers to their questions. In 13 cases (22%), Assessors had to spend more than ten minutes on the phone. It is also worth noting that while in most cases Assessors reported that it was easy to get answers, often those answers were inconsistent with the privacy policy (see Table 9).

Table 10: Time Spent on Phone

How long were you on the phone before you got answers to the following questions: Do you have a privacy policy? If yes, how can I access it? Do you have someone responsible for handling privacy inquiries?	Assessor Responses	Percentage
1 - 5 minutes	19	32%
5 - 10 minutes	27	46%
10 - 15 minutes	8	13%
15 - 20 minutes	4	7%
20 - 25 minutes	1	2%
N/A: Assessor unable to reach anyone at the company by phone	5	N/A

When Assessors asked if they could obtain a copy of the privacy policy by fax, email or mail, a majority of companies (63%) responded that this was not possible even when Assessors claimed not to have Internet access. The most common reason cited for the inability to furnish the privacy policy by mail, fax, or email was that the privacy policy is only available by printing it off the website. This reason was given in 57% of the cases where the company representative refused to supply the privacy policy by mail, fax or email. These findings indicate a general unwillingness on the

part of most companies in the sample to furnish their privacy policies in more than one format.

Table 11: Availability of Privacy Policy in a Different Format

Can I obtain a hard copy of the privacy policy by fax, mail or email?	Company Responses	Percentage
Yes	22	37%
No	37	63%
N/A: Assessor unable to reach anyone at the company by phone	5	N/A

Assessors also recorded whether they were able to understand the information about the company’s data management policies and practices without unreasonable effort both over the phone and in the course of the online assessment of the companies’ privacy policies and ordering practices. In addition, Assessors timed how long it took, overall, to assess companies’ privacy policies and online ordering practices. No restrictions were placed on Assessors’ time to complete each assessment, rather Assessors were encouraged to take all the time they needed to fully understand the company’s information management practices.

Assessors reported that they were unable to understand the company’s data management practices and policies without unreasonable effort in 31% of cases. In addition, the majority of assessments (76%) took Assessors between 1 and 2.5 hours to complete. This represents a considerable amount of time spent trying to understand companies’ basic information management practices, an amount of time that is likely far greater than any consumer would spend on their own attempts to understand a company’s policies and practices regarding their personal data.

Table 12: Information About Privacy Practices

In general would you say that you were able to understand the company's data management policies and practices without "unreasonable effort"?	Assessor Responses	Percentage
Yes	44	69%
No	20	31%
How long did it take you to get answers to questions about the company's information management practices (website assessment only)?		
Less than 1 hour	11	17%
1 - 1.5 hours	25	39%
2 - 2.5 hours	24	37%
3 - 3.5 hours	3	5%
4 hours	1	2%

5.1.3.2. Availability of Privacy Policies

Of the 64 online retailers tested in the survey sample, Assessors found that five did not post privacy policies on their websites, and four of these five (6%) had no written policy at all. Of those with privacy policies online, most (70%) link to the policy only via a link in small font at the bottom of the webpage.

5.1.3.3. Clarity of Privacy Policies

Assessors were asked to review the companies' privacy policies and to answer the question "is the privacy policy clearly worded and generally understandable?", followed by a series of specific questions to measure Assessors' ability to determine what the company does with consumer information.

While only 13% of policies reviewed failed the "generally understandable" test, many more failed the test of intelligibility once Assessors dug deeper. In 27% of cases, Assessors found it difficult to determine what personal information the company

collects; in 22% of cases, Assessors found it difficult to determine why the company collects personal information; in 30% of cases, Assessors found it difficult to determine how the company uses consumer information; and in 45% of cases, Assessors found it difficult to determine to whom the company discloses consumer information.

Table 13: Clarity of Privacy Policy

Is the privacy policy clearly worded and “generally understandable”?	Assessor Responses	Percentage
Yes	52	87%
No	8	13%
N/A: Company has no written privacy policy	4	N/A

Table 14: Assessors’ Understanding of the Privacy Policy

Is it easy to determine from the privacy policy what personal information the company collects?	Assessor Responses	Percentage
Yes	44	73%
No	16	27%
N/A: Company has no written privacy policy	4	N/A
Is it easy to determine from the privacy policy why the company collects the personal information?		
Yes	47	78%
No	13	22%
N/A: Company has no written privacy policy	4	N/A
Is it easy to determine from the privacy policy how the company uses consumers’ personal information?		
Yes	42	70%
No	18	30%
N/A: Company has no written privacy policy	4	N/A

(cont’d)

Table 14: Assessors' Understanding of the Privacy Policy (cont'd)

Is it easy to determine from the privacy policy to whom the company discloses consumers' personal information?	Assessor Responses	Percentage
Yes	33	55%
No	27	45%
N/A: Company has no written privacy policy	4	N/A

It is important to note that all Assessors who participated in this study are highly educated law students. According to Statistics Canada's 2001 Census, only 25% of the adult population in Canada has some university education. In contrast, 45% have only elementary to secondary school level education. It is therefore likely that many more policies would be rated as difficult to understand if Assessors were drawn from a sample of ordinary consumers.

5.1.3.4. Completeness of Privacy Policies

Principle 4.8.2 stipulates that the information made available by companies regarding their information management practices shall include:

- (a) the name or title, and the address, of the person who is accountable for the organization's policies and practices and to whom complaints or inquiries can be forwarded;*
- (b) the means of gaining access to personal information held by the organization;*
- (c) a description of the type of personal information held by the organization, including a general account of its use;*
- (d) a copy of any brochures and other information that explain the organization's policies, standards, or codes; and*
- (e) what personal information is made available to related organizations (e.g., subsidiaries).*

Assessors reviewed each company’s privacy policy to test whether it included these requirements (other than item (d)). The results show that many companies’ privacy policies are deficient.

Over one quarter of the policies reviewed (30%) failed to provide contact information for a privacy officer. 50% failed to provide adequate instructions on how to access one’s information, and 38% failed to even address the issue. Over one quarter (27%) of the policies reviewed failed to describe the types of information about consumers that they hold, and 18% failed to describe what the company does with that information. Almost half of our sample of companies (47%) failed to describe the types of personal information they share with other organizations. Even ten (34%) of the 29 companies who admit in their privacy policies to sharing customer information with other organizations (see Table 4), did not describe the type of information they share with other companies.

Table 15: Compliance with Principle 4.8.2

Does the privacy policy provide contact information for the person accountable for the organization’s privacy policies and practices?	Assessor Responses	Percentage
Yes	42	70%
No	18	30%
N/A: Company has no written privacy policy	4	N/A
Does the privacy policy specifically describe how consumers can get access to their personal information held by the company?		
Yes: Privacy policy clearly states how consumers can access their personal information	30	50%
Somewhat: Privacy policy discusses the right to access one’s personal information but does not make it clear how or where to send access requests	7	12%
No: Privacy policy does not address this issue	23	38%
N/A: Company has no written privacy policy	4	N/A

(cont’d)

Table 15: Compliance with Principle 4.8.2 (cont'd)

Does the privacy policy describe the type of information the company holds about consumers?	Assessor Responses	Percentage
Yes: Privacy policy clearly describes the type of consumer information the company holds	44	73%
No: Privacy policy does not specify the type of consumer information it holds	16	27%
N/A: Company has no written privacy policy	4	N/A
Does the privacy policy describe what the company does with personal consumer information?		
Yes	49	82%
No	11	18%
N/A: Company has no written privacy policy	4	N/A
Does the privacy policy describe what consumer information the company shares with other organizations including affiliates?		
Yes: Privacy policy specifies the types of personal information the company shares with other organizations	9	15%
Somewhat: Privacy policy gives examples, but not a complete list, of personal information shared OR the company specifies types of information shared in some contexts but not in others	23	38%
No: Privacy policy does not indicate what types of personal information the company shares with other organizations	28	47%
N/A: Company has no written privacy policy	4	N/A

5.1.3.5. Openness About Disclosure Practices

Assessors also reviewed privacy policies to determine the extent to which companies that share consumer information with affiliates and third parties are open about whom they share the information with. Results show that 45% of privacy policies assessed were unclear, even generally, on whom the companies disclose

information to (see Table 14). Moreover, of the 29 companies in the survey sample who claim in their privacy policies to share consumer information with affiliates or third parties for secondary marketing purposes (see Table 4), none provided a complete list of the companies with whom they share information.

Table 16: Openness About Disclosure Practices

Where the company shares customers' personal information with other companies for secondary purposes, does the company provide in the privacy policy the names of companies with whom they share customers' personal information?	Assessor Responses	Percentage
Yes: Company provides a complete list	0	0%
Yes: Company gives examples by providing the names of some of the companies with whom it shares personal information	4	14%
No	25	86%

5.1.4. CONSENT

Key Findings

Not surprisingly, the vast majority of online retailers we surveyed (78%) rely on opt-out methods, at least in part, to obtain consumer consent for secondary uses and disclosures of their personal information. Only 8% use opt-in methods exclusively, and a surprising 14% do not bother to get consent through any means when customers register or order on their site, even though they admit to secondary uses or disclosures or are unclear on this point.

Under PIPEDA, consent must be informed. Yet, 17% of the privacy policies reviewed were unclear about whether the company uses consumer information for marketing purposes, and 18% were unclear about whether the company shares consumer information with other companies. A further 6% of companies did not have privacy policies at all. In 31% of the cases we reviewed, the companies provided no notice via the privacy policy or otherwise during the registration or ordering process.

Moreover, during the registration or ordering process, the majority of the 64 companies we assessed (53%) provided notice to customers only via a link to the privacy policy, requiring consumers to visit the privacy policy and read through it for an understanding of what the company does with their personal information. Of these, 56% failed to bring the link to the privacy policy to the customer's attention during the registration or ordering process.

We found a number of misleading privacy policies. In particular, of the 60 privacy policies assessed, 18% suggest that the company uses opt-in consent when in fact it relies on opt-out consent. This misleads consumers into thinking that their information will not be used for secondary purposes when in fact it will.

Twenty-nine companies (48% of our sample) admitted to sharing consumer information with other companies for purposes other than the transaction in question (another 11 (18%) were unclear). Yet, ten of these companies (34% of those that clearly share) did not offer consumers a choice regarding this practice during the registration or ordering process.

The methods used by many online retailers to obtain consent from consumers do not meet the requirements for valid consent:

- Of those companies relying on opt-out consent, 50% did so merely via a link to an often lengthy privacy policy as part of the registration or ordering process. In these cases, the majority (52%) failed to bring the link to the privacy policy to the customer's attention.
- Of those companies that included an opt-out in their privacy policy, 60% buried it inconspicuously in the often lengthy policy.
- Ten companies in our sample offered fewer opt-out options during the registration or ordering process than via their privacy policies, without any indication to consumers that additional opt-out options were available via the privacy policy. This misleading practice was exacerbated by the fact that none of these companies bothered to bring their privacy policy to the attention of consumers during the registration or ordering process.

- Of those companies relying on opt-out consent, 50% did not offer an immediate opt-out option as part of the transaction; rather, consumers have to consent against their will initially and then take additional steps to opt-out.

In seven cases (11%), the retailer clearly required consent to a secondary purpose in order for the consumer to transact. In none of these cases did the consumer receive any value in exchange for such consent. In an additional 18 cases, Assessors were not sure whether consent to a secondary use or disclosure was mandatory, due to lack of clarity in the privacy policy or an absence of a written privacy policy. Thus, potentially 39% of companies we assessed are violating PIPEDA's "refusal to deal" section.

5.1.4.1. Knowledge and Consent

Principle 4.3 requires that:

The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

Principle 4.3.2 further requires that:

To make the consent meaningful, the purposes [for which the information will be used] must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed.

5.1.4.2. Adequacy of Notice

CIPPIC tested the informed consent principle in part by asking Assessors to identify whether, based on a reading of the companies' privacy policies, they understood the purposes for which companies use consumer information. Without a clear and complete explanation of what the company does with consumer information, companies cannot be said to be obtaining meaningful consent.

Of the 60 privacy policies reviewed, Assessors indicated that in 22% of cases, it was difficult to ascertain from the privacy policy why the company collects consumer information and in 30% of cases, it was difficult to determine how the company uses consumer information. In a surprising 18% of cases, Assessors reported that the

privacy policy does not specify at all what the company does with consumer information (see Tables 14 and 15). Depending on how the company obtains consent, this suggests that consumers may not even be able to provide informed consent in some cases.

5.1.4.3. *Methods of Notifying Consumers*

Assessors also looked at companies' privacy policies and online ordering practices to determine how companies obtain informed consent from consumers for secondary uses of their personal information. Assessors looked at companies' practices both during the registration process (in cases where companies require customers to register prior to placing an order) and the ordering process.

Of the 64 companies in the survey sample, 34 (53%) provide notice to customers only via a link to the privacy policy, requiring consumers to visit the privacy policy and read through it for an understanding of what the company does with their personal information. Of these cases, 56% of companies fail to bring the link to the privacy policy to the customer's attention during the registration or ordering process. In 31% of cases, the companies provide no notice via the privacy policy or otherwise during the registration or ordering process. Hence, it is likely that many customers are unaware of the uses and disclosures of their personal information to which they are ostensibly agreeing.

Table 17: Notice Methods

Methods of notifying customers of secondary uses and disclosures of consumer information during registration/ordering.	Number of Companies	Percentage
Via link to privacy policy; link not brought to customer's attention	19	30%
Via link to privacy policy; link brought to customer's attention	12	19%
Customer is required to review the privacy policy as part of the registration/ordering process	3	4%
Notice included in the registration/ordering process	10	16%
No notice during the registration/ordering process	20	31%

5.1.4.4. *Form of Consent*

According to Principle 4.3.4:

The form of consent sought by the organization may vary, depending upon the circumstances and the type of information.

While opt-in consent is the strongest form of consent and is thus preferable from a privacy perspective, the Privacy Commissioner has approved the use of opt-out consent for secondary marketing purposes where the following requirements are met⁵:

- The personal information is demonstrably non-sensitive in nature and context.
- The information-sharing situation is limited and well-defined as to the nature of the personal information to be used or disclosed and the extent of the intended use or disclosure.
- The organization's purposes are limited and well-defined, and stated in a clear and understandable manner.
- As a general rule, organizations should obtain consent for the use or disclosure at the time of collection.
- The organization must establish a convenient procedure for opting out of, or withdrawing consent to, secondary purposes. The opt-out should take effect immediately and prior to any use or disclosure of personal information for the proposed new purposes.

Of the 64 companies in the survey sample, the vast majority (78 percent) use an opt-out consent method to obtain consent from customers for at least some secondary uses of their personal information during the registration or ordering process. Only five (8%) use opt-in consent exclusively, while a surprising nine companies (14%) do not employ either opt-in or opt-out consent during the registration or ordering process.

⁵ Taken from the Office of the Privacy Commissioner of Canada Fact Sheet: *Determining the appropriate form of consent under the Personal Information Protection and Electronic Documents Act*, online: <http://www.privcom.gc.ca/fs-fi/02_05_d_24_e.asp>

Of the 78% of companies that use opt-out consent, 50% do so merely via a link to the privacy policy, requiring that consumers access the privacy policy and read through it to understand how they can opt-out of unnecessary uses of their personal information. In these cases, the majority (52%) fail to bring the link to the privacy policy to the customer's attention. Once again, it is therefore likely that many customers are unaware of the uses and disclosures of their personal information to which they are ostensibly agreeing.

Table 18: Consent Practices

During the registration/ordering process, how does the company obtain consumers' consent for secondary uses and disclosures of their information?	Assessor Responses	Percentage
Opt-out (exclusively)	45	70%
Opt-out and opt-in	5	8%
Opt-in (exclusively)	5	8%
No opt-out or opt-in option during registration/ordering	9	14%

Table 19: Opt-out During Registration/Ordering

During the registration/ordering process, how does the company bring the opportunity to opt-out to the consumer's attention?	Assessor Responses	Percentage
Via link to privacy policy on registration/ordering page; link not brought to the consumer's attention	13	26%
Via link to privacy policy on registration/ordering page; link brought to the consumer's attention	7	14%
Consumer is required to review or agree to the linked privacy policy as part of the registration/ordering process	5	10%
Opt-out forms part of the registration/ordering process	25	50%

5.1.4.5. Conspicuousness of Opt-out Option in Privacy Policy

Assessors found that, in the 47 cases where companies provide an opt-out option in their privacy policies, the majority of those opt-out options (60%) were inconspicuously buried in the privacy policy.

Table 20: Conspicuousness of Opt-out in Privacy Policy

Is the opt-out option in the privacy policy conspicuous?	Assessor Responses	Percentage
Yes	19	40%
No	28	60%

5.1.4.6. Timeliness of Opt-out

In addition, Assessors reported that of the 50 companies who offer opt-out consent during the registration or ordering process, 50% allow consumers to opt-out only after agreeing to allow secondary uses or disclosures. In such cases, consumers must email, telephone, or mail a request to the company to be removed from the marketing list or to otherwise restrict secondary uses and disclosures. Such extra efforts no doubt increase the likelihood that consent will be assumed incorrectly.

Table 21: Timeliness of Opt-out

Does the company provide an immediate opt-out method for the consumer?	Assessor Responses	Percentage
Yes: Consumer can select the opt-out option before or during registration/ordering	25	50%
No: Consumer can only opt-out after agreeing to allow secondary uses or disclosures	25	50%
N/A: Company does not provide opt-out at all but uses opt-in consent only during registration/ordering	5	N/A
N/A: Company does not provide any opt-out method during registration/ordering	9	N/A

5.1.4.7. Misleading Policies and Practices

In the 50% of cases where companies do provide a mechanism for customers to actively opt-out during the registration or ordering process, Assessors noted a number of discrepancies between what consumers can opt-out of during the registration or ordering process and what consumers can opt-out of via the company's privacy policy.

In the 11 cases where such discrepancies were noted, all but one concerned cases where the opt-out during registration or ordering did not provide all of the opt-out options that were available in the privacy policy. Yet in these cases, the privacy policy was not brought to the consumer's attention. This finding suggests that customers of these online retailers may be misled into assuming that they have exhausted the full range of opt-out options during the registration or ordering process, when in fact, if they visited the policy, they would discover they had more opt-out options.

Table 22: Opt-out Discrepancies

Are there any discrepancies between what you can opt-out of during the registration/ordering process and what you can opt-out of via the privacy policy?	Assessor Responses	Percentage
Yes	11	26%
No	31	74%
N/A: Can't opt-out via privacy policy, only during registration/ordering	8	N/A
N/A: Can opt-out via privacy policy, but only opt-in during registration/ordering	4	N/A
N/A: Can't opt-out via privacy policy, only opt-in during registration/ordering	1	N/A
N/A: Can't opt-out via privacy policy or during registration/ordering, nor can you opt-in during registration/ordering	7	N/A
N/A: Can opt-out via privacy policy, but not during registration/ordering	2	N/A
What is the nature of the discrepancy?		
Opt-out during registration/ordering process does not provide all of the opt-out options available in the privacy policy	10	91%
Opt-out during registration/ordering process allows consumers more opt-out options than available in the privacy policy	1	9%

Disturbingly, Assessors also found that a number of companies in the survey sample purport to use opt-in consent when they do not in fact do so. Of the 60 companies whose privacy policies were available for assessment, 14 (23%) suggest in their privacy policies that they use opt-in consent for secondary uses of consumer information. However, only three companies that claim to use opt-in consent actually use opt-in consent during the registration or ordering process. The remaining 11 companies, (18%) are misleading consumers into believing that their personal information will not be used for secondary purposes when in fact it may be so used.

Table 23: Opt-in Consent

According to the privacy policy, does the company engage in certain secondary uses or disclosures only with positive opt-in consent of the consumer?	Assessor Responses	Percentage
Yes (accurate)	3	5%
Yes (inaccurate)	11	18%
No	46	77%
N/A: Company has no written privacy policy	4	N/A

5.1.4.8. Requiring Consent as a Term of Service

According to Principle 4.3.3, organizations must not:

As a condition of the supply of a product or service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfill the explicitly specified, and legitimate purposes.

Assessors noted seven cases in which companies require consumers to agree to secondary uses or disclosures in order to get the product or services. In none of these cases was the consumer given something of value in exchange for the consent. In 18 additional cases, Assessors were unable to determine whether the company required such consent as a condition of purchase.

Table 24: Requiring Customers to Agree to Secondary Uses of Personal Information

Does the company require that consumers agree to secondary uses or disclosures in order to get the product or service?	Assessor Responses	Percentage
Yes	7	11%
No	39	61%
Unclear	18	28%

5.2. PART 2: COMPLIANCE WITH INDIVIDUAL ACCESS

Key Findings

A large proportion of companies are failing to comply with the PIPEDA requirement to inform individuals of the existence, use and disclosure of their personal information upon request, and to give individuals access to that information.

One-third (35%) of the companies we tested did not respond at all to access requests.

Of the companies that did respond,

- 42% failed to provide details about the Requestor's personal information they had on file;
- 37% provided no account or an inadequate account of how they use the personal information; and
- 58% did not give a list of companies to whom they have or may have disclosed personal information about the Requestor;

despite being specifically asked for this information by the Requestor.

5.2.1.1. Access Requirement

According to Principle 4.9:

Upon request, and individual shall be informed of the existence, use and disclosure of his or her personal information and shall be given access to that information.

Despite this requirement, 35% of the 72 companies to whom access requests were sent failed to respond at all.

5.2.1.2. Time Requirement

Pursuant to Principle 4.9.4:

An organization shall respond to an individual's [access] request within a reasonable time...

And section 8(3):

An organization shall respond to a [access] request with due diligence and in any case not later than thirty days after receipt of the request.

Requesters tested compliance with PIPEDA's time requirements by recording the dates they sent their access requests and the dates they received the company's response to their requests, allowing five business days for mail delivery. Most companies that responded did so within the 30 day time limit.

Table 25: Company Response Times

Response Time	Companies	Percentage
No response	25	35%
Within 30 days	41	57%
Within 45 days	4	5%
Within 60 days	2	3%

5.2.1.3. Access to Personal Information

As noted above, PIPEDA requires companies to give individuals access to their personal information held by the company.

Requesters asked companies to provide them with a copy of all the specific information about the Requester that the company contains in their files.

Of the 43 companies that both responded to the Requesters' requests and claimed to have information about the Requester, a significant minority (42%) did not provide Requesters with copies of specific information about them that the company had in its files.

Table 26: Provision of Customer Information

Did the company give you a copy of all specific information about you that they claim to have in their files?	Requester Responses	Percentage
Yes	25	58%
No	18	42%
No: Company claimed not to have any information about the Requester	4	N/A

5.2.1.4. Account of Use

Principle 4.9.1 requires that:

In addition, the organization shall provide an account of the use that has been made or is being made of this information...

Requesters tested this principle by asking companies to provide them with a full account of the uses to which the company had made or was planning to make of their personal information.

Of the 43 companies that both responded to the Requesters' requests and claimed to have information about the Requester, 37% of companies failed to provide a full account of how they use the individual's personal information.

Table 27: Account of Use

Did the company give you a full account of how they use your information?	Requester Responses	Percentage
Yes	27	63%
No	16	37%
No: Company claimed not to have any information about the Requester	4	N/A

5.2.1.5. *Disclosure to Third Parties*

Principle 4.9.1 requires that:

In addition, the organization shall provide an account of the use that has been made or is being made of this information and an account of the third parties to which it has been disclosed.

Further, Principle 4.9.3 states:

In providing an account of third parties to which it has disclosed personal information about an individual, an organization should attempt to be as specific as possible. When it is not possible to provide a list of the organizations to which it has actually disclosed information about an individual, the organization shall provide a list of organizations to which it may have disclosed information about the individual.

Requesters asked companies to provide them with a list of all companies with whom they had (or may have) shared the Requester’s information, or to whom they may have disclosed the information if they could not identify with certainty the specific companies to whom they had disclosed the information.

Of the 33 companies that responded to requests, do not deny sharing information with third parties and admit to holding information about the Requestor, the majority (58%) did not comply with this requirement.

Table 28: Disclosure of Customer Information

Did the company give you a list of companies to which they have disclosed or may have disclosed your information?	Requester Responses	Percentage
Yes	14	42%
No	19	58%
No: Company claimed it does not share information with third parties	10	N/A
No: Company claimed not to have any information about the Requester	4	N/A

5.2.1.6. Overall Compliance with Principle 4.9

Overall, only a disappointing 21% of the 72 companies that received access to information requests complied fully with the Individual Access Principle of PIPEDA, i.e., responded within 30 days and gave a full account of use, a copy of all information they had about the Requester, and a full account of companies to whom they have or may have disclosed Requester's information.

5.2.1.7. Authentication

Although the study did not specifically set out to test whether companies in the survey sample had security measures in place to ensure that they provided personal information only to the rightful owner of that information, the study did gather some interesting results in this regard.

Requesters recorded whether the companies they contacted for access requests asked them to supply additional information verifying their identity. Of the 47 companies that responded to individual access requests, only 17% asked for some kind of authentication from the Requester before proceeding with the access request and supplying the Requester with personal information. While no firm conclusions can be made on the basis of these results, they suggest that at least some companies are failing to take appropriate precautions before releasing personal data to individuals.

Table 29: Authentication

Did the company request authentication prior to responding to the access request?	Requester Responses	Percentage
Yes	8	17%
No	39	83%
N/A: No response to access request	25	N/A

6. CONCLUSIONS

6.1. RETAILER COMPLIANCE WITH PIPEDA

The results of our compliance assessment of 64 online retailers under PIPEDA's Openness, Accountability, and Consent requirements, and of 72 online and offline retailers under PIPEDA's Individual Access requirements, indicate widespread non-compliance in all four areas.

While almost all companies we assessed had a privacy policy and were thus aware of the need to respect customer privacy, many failed to fulfill even basic statutory requirements such as providing contact information for their privacy officers, clearly stating what they do with consumer information, and responding to access to information requests. A significant proportion of the policies we examined were unclear on key points such as whether or not consumer information is shared with other companies. Many failed to provide a clear and conspicuous method for consumers to opt-out of unnecessary uses and disclosures of their personal information, often relying on a clause buried deep in a lengthy privacy policy that consumers are unlikely to review.

A number of policies we examined were misleading, suggesting for example that no secondary use or sharing of personal information would take place without the consumer's explicit consent, but then assuming such consent unless the consumer exercised an often inconspicuous or incomplete opt-out.

6.2. COMMON PITFALLS OF PRIVACY POLICIES

6.2.1. INCOMPLETE INFORMATION

Most of the privacy policies reviewed in this study failed to provide at least some of the basic information on the company's data management practices as required under PIPEDA. A surprising proportion (10%) consisted of no more than two paragraphs, leaving consumers with almost no information about the company's information management practices. For example, one company's privacy policy merely stated: "We do not make your name or personal information available to any

third party. All information collected by us is used to provide you with the highest level of convenience and service". This policy fails to inform consumers about the kind of information the company collects, how it is used by the company, how unnecessary uses can be stopped, how an individual can access their information, and who in the company is responsible for handling privacy inquiries.

6.2.2. HIDDEN CONSENTS

Many of the policies we reviewed failed to properly notify and obtain consent from consumers to secondary uses or disclosures of their personal information. Frequently, notice of such uses and disclosures, as well as of how the consumer can opt-out of such uses and disclosures, was hidden in an often lengthy policy and was not at any time brought to the consumer's attention.

Regardless of how long a policy is, it should be easy for a person with limited education to quickly determine:

- a. how and for what purposes their personal information is used internally by the company;
- b. whether their personal information may be disclosed for secondary purposes and if so, to whom for what purposes; and
- c. how the person can stop the use and disclosure of their information for secondary purposes.

6.2.3. MISLEADING REASSURANCES

Many privacy policies we reviewed open with statements designed to reassure consumers of the company's commitment to protecting consumer privacy, particularly with regards to the manner in which the company discloses consumer information. Such statements are fine as long as they are not followed by significant qualifications that essentially gut them of meaning. In a disturbing number of cases we reviewed, however, companies made reassuring statements at the beginning of their privacy policies that were later contradicted in the privacy policy.

In one such instance, the privacy policy states up-front that the company does not: "sell or rent our customers' personal information to third parties". However, several

paragraphs later in the privacy policy, the company admits to sharing consumer information with other companies for secondary marketing purposes. In two other cases, companies claim at the beginning of their privacy policies that they won't share consumer information with other companies, however, the companies later note that they share consumer information for secondary purposes with "affiliates" and "marketing partners".

Another common approach that we encountered is an initial statement such as "We do not sell or share your information without your consent", implying that the company will actively obtain consent from consumers prior to disclosing their information. However, these policies often later reveal, deep in the policy document, that the company is indeed assuming the consumer's consent to the sharing of their information.

In all of these cases, a customer reading the privacy policy may stop after reading the opening statement, feeling confident that their information will not be shared with anyone or will not be shared without their active consent. Meanwhile, the company is actually assuming the consumer's consent to share their information for secondary purposes.

6.2.4. REPETITION OF PIPEDA PRINCIPLES

A common variation of the themes set out above is for companies to merely restate their legal requirements under PIPEDA rather than explaining their own data management practices in detail. Such restatements of the law fail to provide consumers with the information about company policies and practices to which they are entitled to under PIPEDA, and worse, can be misleading in the same way that the reassurances above are.

For example, one company provides the following statement under the heading "8. Openness": "Information about our policies and practices relating to the management of personal information will be made readily available to individuals." The policy does not however explain what consumer information the company collects, how the company uses consumer information and to whom, if anyone,

consumer information is disclosed. This statement is essentially useless to anyone seeking information about the company's privacy practices. Moreover, by failing to actually provide the information about its practices, the company is clearly not complying with PIPEDA's Openness principle.

6.3. RECOMMENDATIONS FOR PIPEDA REFORM

The process of assessing retailer compliance with PIPEDA highlighted some problems with the legislation – problems that retailers must face in determining how to comply with PIPEDA, and that assessors face in determining how to measure compliance. These problems fall into two general categories: vague standards and drafting gaps. In the case of the former, more specific guidance is needed – if not in the statute, then in directions and implementation guidelines from the Privacy Commissioner. The latter can be corrected through amendments to the legislation.

More generally, the results of this study strongly suggest that Canadian data protection legislation provides inadequate incentive for companies to give consumers meaningful control over their personal information, and to be open about their data management practices.

6.3.1. VAGUE STANDARDS

6.3.1.1. *"Unreasonable Effort"; "Generally Understandable"*

Principle 4.8.1 mandates that individuals be able to acquire information about an organization's policies and practices without "unreasonable effort" and that organizations supply information about their policies and practices in a form that is "generally understandable". PIPEDA does not define these broad terms nor does it set out any minimum standards for organizations to follow in order to comply with these requirements. What constitutes "unreasonable effort" and "general understandability" will vary from person to person, depending on their level of education, literacy, patience, and other factors. Assessors, as well as companies, must make subjective judgments on these questions. It would be helpful to have some objective standards to apply to this determination.

6.3.1.2. *Opt-in vs. Opt-out Consent*

Principle 4.3.4 allows for the form of consent sought by an organization to vary, but PIPEDA does not distinguish between express, implied, deemed, and opt-out consent, and provides no prerequisites or criteria for reliance on each type of consent. While the Privacy Commissioner has published guidelines for determining the appropriate form of consent,⁶ our findings demonstrate that this is not sufficient: some organizations lack even a basic understanding of the differences between opt-in and opt-out consent, not to mention the appropriate use of opt-out methods.

6.3.2. *DRAFTING GAPS*

6.3.2.1. *Notice: Criteria for Valid Notice*

The “knowledge and consent” provision set out in Principle 4.3.2 combines two important concepts that warrant separate attention in the statute: notice and consent. As with consent, PIPEDA does not set out specific criteria for notice. We found a number of instances in which companies provide consumers with a clear and conspicuous opt-out during the ordering process, but no clear notice of the secondary uses and disclosures in which the company engages. The Commissioner’s findings regarding the prerequisites for valid opt-out consent⁷ are helpful in this regard, but would be more helpful set out in the statute and applied to notice as well as consent.

We also found a wide range of practices with respect to notice – from clauses hidden in privacy policies to notices that consumers must read and respond to in order to complete an order. While the former is clearly inadequate and the latter is clearly adequate, it is not clear from PIPEDA where the line should be drawn. Setting out a separate requirement for notice with specific criteria would no doubt help companies ensure that their notice meets statutory requirements.

⁶ “Determining the appropriate form of consent under the *Personal Information Protection and Electronic Documents Act*”, <http://www.privcom.gc.ca/fs-fi/02_05_d_24_e.asp>

⁷ Ibid.

6.3.2.2. *Notice: Content*

Principle 4.8.2(e) requires that organizations state what personal information is made available to related organizations, but strangely ignores disclosures to third parties. Based on the results of our study, most organizations share customer information with unrelated third parties. Many do not have affiliates. By limiting this explicit notice requirement to related organizations, PIPEDA suggests that explicit notice regarding disclosures to unaffiliated third parties is not required. In any case, the limited scope of this disclosure requirement makes no sense; organizations should be required to give consumers clear notice of all personal information disclosures they make to third parties.

We also found it odd that the list of required disclosures in Principle 4.8.2, as well as in response to access requests under Principle 4.9.1, does not include sources. Individuals should have the right to know from where an organization obtains information about them.

6.3.2.3. *Refusal to Deal*

Principle 4.3.3 prohibits the refusal to supply consumers with goods or services on the grounds that the consumer does not provide personal information “beyond that required to fulfill the explicitly specified and legitimate purposes”. This clause has been widely interpreted in the commercial context as meaning “beyond that necessary to provide the product or service”. It should be revised accordingly, for application in the commercial (as opposed to employment) context.

6.4. ENFORCEMENT REGIME

PIPEDA's enforcement regime was purposefully designed to be “light handed”, on the theory that a strong stick was not necessary in order to encourage companies to comply with the Act. Our findings — that a large proportion of retailers are not complying even with some of the most basic requirements of the Act — suggest that this “light handed” approach has not been successful and that alternatives should be considered.

6.5. TOPICS FOR FURTHER RESEARCH

6.5.1. *COMPREHENSIBILITY/READABILITY*

This study used University law students as assessors. Yet, only one-quarter of the Canadian adult population has any university education, while close to half have elementary or secondary school education only. Further testing of the readability and comprehensibility of online retailers' privacy policies using a group that is representative of the average consumer population would produce a more accurate picture of how well organizations are communicating their data practices to the public generally. We strongly recommend that such a study be undertaken.

6.5.2. *AUTHENTICATION*

Although the study did not specifically set out to test whether companies in the Individual Access survey sample had security measures in place to ensure that they provided personal information only to the rightful owner of that information, the study did suggest some shortcomings in this regard. Further testing could be conducted to determine whether organizations are complying with PIPEDA's security provisions by taking appropriate precautions before releasing personal data to individuals.

6.5.3. *AUDITS*

This study assessed companies' stated information management policies but did not test whether or how all of the policies we reviewed are actually put into practice. Such testing requires "mystery shopping" and/or on-site audits, which were beyond the scope of this study. The results of a mystery shopping exercise and/or on-site audits could be compared with companies' stated policies for a more comprehensive review of compliance with PIPEDA provisions.

6.5.4. *ENFORCEMENT REGIME*

As noted above, the results of this study suggest that the current enforcement regime under PIPEDA is not working. Perhaps the most important issue for Parliament to consider during its five-year review of the legislation is the

effectiveness of the existing “light-handed” approach to compliance, and alternative approaches to compliance and enforcement.

APPENDIX A: COMPLIANCE WITH ACCOUNTABILITY, OPENNESS AND CONSENT — SURVEY SAMPLE

MAJOR RETAILERS

Deals outlet.ca (HBC)	www.hbc.com
The Shopping Channel	www.theshoppingchannel.com
Canadian Tire	www.canadiantire.ca
Ebay	www.ebay.ca
The Source by Circuit City	www.thesource.ca
The Brick	www.thebrick.com
Future Shop	www.futureshop.ca
Ikea Canada	www.ikea.ca
Mark's Work Wearhouse	www.marks.ca
Rona	www.rona.ca
Sears Canada	www.sears.ca
Staples Business Depot	www.staples.ca
Thane Direct	www.thane.ca

HEALTH/BEAUTY

Sephora	www.sephora.com
Weight Watchers	www.weightwatchers.ca
Tiny's Sport Nutrition	www.tinysnutrition.com
Vision Direct	www.visiondirect.com
London Drugs	www.londondrugs.com

COMPUTERS

Tiger Direct.ca	www.tigerdirect.ca
Dell	www.dell.ca
palmOne	http://canadastore.palm.com

ELECTRONICS

Bose.ca	www.bose.ca
AV Deals	www.avdeals.ca
Best Buy	www.bestbuy.ca
Vidtek Battery Canada	www.batterycanada.com
Black's	www.blackphoto.com
Cana Kit	www.canakit.net
GPS Central	www.gpscentral.ca
HandheldCanada.com	www.handheldcanada.com
Henry's	www.henrys.com
Telephone Depot	www.telephonedepot.ca
Vistek	www.vistek.ca

MUSIC/BOOKS/MOVIES

Amazon.ca	www.amazon.ca
Chapters	www.chapters.ca
DVDSoon	www.dvdsoon.com
HMV	www.hmv.ca
MyMusic.com	www.mymusic.ca

SPORTING GOODS

Sport Mart	www.sportmart.ca
Boardzone.com	www.boardzone.com
Mountain Equipment Coop	www.mec.ca

TRAVEL/VACATION

Travelocity.ca	www.travelocity.ca
Places to Stay.com	www.placestostay.com
Air Canada	www.aricanada.ca
Expedia.ca	www.expedia.ca
WestJet	www.westjet.ca

TICKETING

Admission.com

www.admission.com

Capital Tickets

www.capitaltickets.ca

Ticketmaster

www.ticketmaster.ca

MAGAZINES

Magazine City

<http://www.ccgdata.com>

Canadian Gardening

<http://www.canadiangardening.com>

Chatelaine

www.chatelaine.com

Canadian Business

www.canadianbusiness.com

Canadian Biker

www.canadianbiker.com

Canadian Classics

www.canadianclassicsmag.com

Canadian Geographic

www.canadiangeographic.ca

Canadian Home Workshop

www.canadianhomeworkshop.com

Canadian House and Home

www.canadianhouseandhome.com

Cottage Life

www.cottagelife.ca

Cycle Canada Magazine

www.cyclecanadamagazine.net

Explore

www.explore-mag.ca

Flare

www.flare.com

Franchise Canada

www.cfa.ca/magazine.html

Gam On Yachting

www.gamonyachting.com/cover.html

Money Sense

www.moneysense.ca

APPENDIX B: COMPLIANCE WITH ACCOUNTABILITY, OPENNESS AND CONSENT — SAMPLE BY COMPANY SIZE

MICRO (1-4 EMPLOYEES)

Gam On Yachting Magazine

Places to Stay.com

SMALL (5-49 EMPLOYEES)

AV Deals

Boardzone.com

Canadian Biker Magazine

Canadian Classics Magazine

Canadian Gardening Magazine

Cottage Life Magazine

Cycle Canada Magazine

Explore Magazine

Flare Magazine

Franchise Canada Magazine

GPS Central

Magazine City

Money Sense Magazine

Mymusic.com

Tiny's Sport Nutrition

MEDIUM (50-499 EMPLOYEES)

Admission.com

Canadian Geographic Magazine

Canadian House and Home Magazine

Capital Tickets

Chatelaine Magazine

Expedia.ca

Henry's

Mountain Equipment Coop

Sephora

Telephone Depot

Ticketmaster

Vision Direct

Vistek

LARGE (500 + EMPLOYEES)

Air Canada

Amazon.ca

Best Buy

Black's

Canadian home Workshop

Canadian Tire

Chapters

Deals outlet.ca (HBC)

Dell

Ebay

Future Shop

HMV

Ikea Canada

London Drugs

Mark's Work Wearhouse

PalmOne

Rona

Sears Canada

Sport Mart
Staples Business Depot
Thane Direct
The Brick
The Shopping Channel
The Source by Circuit City
Tiger Direct
Weight watchers
Westjet

UNKNOWN (DID NOT WANT TO
GIVE OUT INFO)

Bose.ca
Cana Kit
Canadian Business
DVD Soon
HandheldCanada.com
Travelocity.ca
Vidtek Batteries Canada

APPENDIX C: COMPLIANCE WITH ACCOUNTABILITY, OPENNESS AND CONSENT — ASSESSMENT FORM

PIPEDA COMPLIANCE ASSESSMENT FORM

Name of Company: _____

Name of Assessor: _____

Date(s) of Assessment: _____

PHONE CALL – NO WEB ACCESS

In order to answer questions 1 - 5, you need to call the company's general customer service number which you can get from the company's website (usually found in the "Contact Us" section). If you can't find a general customer service number, look for a number for the company's head office, failing that, look for a number for a local outlet. Make a note of the telephone number you used and where you found it.

Company telephone number:

Where telephone number was obtained:

For questions 1 and 2, record how long it takes to get your answers. Start timing from the moment the company representative answers the phone until you get the name and contact information for the company's privacy officer.

Ask: "Do you have a privacy policy?"

1. Could the company representative confidently answer this question?
 - Yes
 - Yes, but only after I explained what it was
 - No

If Yes, Ask: “How can I get hold of the policy?”

1.a) The company representative said that consumers can get the policy:

- from their website
- upon request, by mail, fax or email
- by talking with someone else
- another way: _____
- N/A

Ask: “Do you have someone that is responsible for handling privacy inquiries/complaints?”

If Yes, ask for the name and contact information.

2. Upon request, did the company supply contact information for someone responsible for handling privacy inquiries?

- Yes or No

Provide the contact information supplied to you.

3. How difficult was it to get answers to questions 1 and 2?

- easy (took three minutes or less)
- easy, but took some time (took more than 3 minutes)
- difficult
- impossible

3.a) How long were you on the phone? _____ minutes

3.b) If the person had to get back to you with information, how long did it take?

_____ hours/days

3.c) How many phone calls did you have to make before you got your answers?

Ask: “Can I get a hard copy of your privacy policy by fax, mail or email?”

4. Could you get a hard copy of the privacy policy by fax, mail or email?
- Yes or No

If Yes, have the policy sent to you. (CIPPIC fax: 613-562-5417)

4.a) If No, why not?

- The company has no written privacy policy.
- The company representative said the only way to get it is to print it off the website.
- The company representative said they’re not allowed to send the policy by fax or mail.
- The company representative said they can’t send it to someone who is not a customer.
- The company representative was unaware of where to access the policy.
- Other reason: _____
- N/A

If you can’t get a copy of the policy from the website, make sure that the company sends you one.

5. At any time was the company representative hostile or defensive to any of your questions?
- Yes or No

5.a) If Yes, describe any instances of hostility or defensiveness:

WEBSITE ASSESSMENT (NO PHONE CALLS)

Keep a general record of how long it takes to complete the website assessment (i.e. how long it takes you to answer questions 6 to 23).

6. Does the company make its privacy policy available on its website?
- Yes or No

If No, but you can get a copy of the policy by email, fax or mail, skip question 7 and continue at question 8 once you have a copy of the policy.

7. Is the privacy policy easy to find (could you find it without “unreasonable effort”)?
-Yes or No

7.a) Is the link on the homepage?
- Yes or No

7.a) i) If No, what page(s) is it on?

7.b) Does the link appear on other pages as you navigate through the site?
- Yes or No

7.c) Is the only link to the policy in small font with other links at the bottom of the page?
- Yes or No

7.c) i) If No, where is it?

Attach screenshot of homepage showing how and where the policy is linked.

8. Is the policy clearly worded, and “generally understandable” (i.e. on one read through you can understand what the company does with consumers’ information.)
-Yes or No

Note: If you have to refer to more than one document in order to understand the policy, treat all documents as part of the policy.

8.a) Does the privacy policy contain links to another document that is necessary in order to understand what the company does with consumers' information?
- Yes or No

8.a)i) If Yes, does the link take you directly to that document?
- Yes or No or N/A

8.b) How long is the policy (in words)?
_____ words

8.c) Is it easy to determine what personal information the company collects?
- Yes or No

8.d) Is it easy to determine why the company collects the personal information?
- Yes or No

8.e) Is it easy to determine how the company uses consumers' personal information?
- Yes or No

8.f) Is it easy to determine to whom the company discloses consumers' personal information?
- Yes or No

8.g) Does the policy use complicated terms without explaining them?
- Yes or No

Print two copies of the privacy policy. Ensure that the printouts are dated. Keep one clean copy and, on the other, highlight any parts or terms of the policy that you feel are unclear and any complicated terms that are not explained in the policy.

9. Does the policy provide contact information for the person accountable for the organization's privacy policies and practices?
-Yes or No

9.a) If Yes, can you find it on a quick read through the policy?

- Yes or No or N/A

9.b) Is the contact information the same as that supplied to you by the company representative in question 2?

- Yes or No or N/A

Highlight the contact information in the privacy policy.

For questions 10 to 16: When you find the relevant section of the policy, note the question number beside it.

10.a) Does the policy specifically describe how you can get access to your personal information held by the company?

- Yes: the policy clearly states how you can access your personal information
- Somewhat: the policy discusses the right to access one's personal information but does not make it clear how or where to send access requests
- No: the policy does not address this issue

10.b) Does the policy describe the type of information the company holds about consumers?

- Yes: the policy clearly describes the type of consumer information the company holds
- No: the policy does not specify the type of consumer information it holds

Note: If the company merely states that it holds "personal information" and defines "personal information" in general terms such as "any information about an identifiable individual", your answer should be No.

10.c) Does the policy describe what the company does with personal consumer information?

- Yes plus: the policy provides a list of specific uses that the company makes of consumer information
- Yes: the policy provides a general account of use sufficient for consumers to understand generally what the company does with consumers' information
- No: the policy does not specify what the company does with consumer information

10.d) Does the policy describe what consumer information the company shares with other organizations, including affiliates?

-Yes: the policy specifies the types of personal information the company shares with other organizations

- Somewhat: the policy gives examples, but not a complete list, of personal information shared OR the company specifies types of information shared in some contexts but not in others

-No: the policy does not indicate what types of personal information the company shares with other organizations

11. According to the policy, why does the company collect personal information about consumers?

List all purposes and/or uses that the company identifies for its collection of personal info.

12. Does the company use consumer information for its own marketing purposes (e.g., “to let you know about other services that you might be interested in”)?

- Yes or No or Unclear

13. Does the company share consumers’ information (with or without consent) with other companies for purposes other than the transaction or service in question and/or “legal” or “sale of business” purposes?

- Yes or No or Unclear

13.a) If Yes, with whom?

- affiliates
- third parties
- unclear
- other: _____
- N/A

13.b) Does the company provide names of companies it shares the information with?

- Yes, it provides a complete list
- Yes, it gives examples by providing the names of some of the companies with whom it shares information
- No
- N/A

According to the company's privacy policy:

14. Does the company engage in certain secondary (i.e. not necessary for the transaction or service in question) uses or disclosures only with *positive* opt-in*consent of the consumer? (*i.e., the company will not use or disclose unless the consumer actively indicates their consent for the particular use or disclosure, by checking a box, signing a form, or otherwise taking action.)

- Yes or No

If No, go directly to question 15.

If Yes:

14.a) What secondary uses or disclosures can consumers opt-in to?

- marketing solicitations by the company itself
- marketing solicitations by affiliates
- marketing solicitations by third parties
- sharing information with affiliates
- sharing information with third parties
- internal profiling
- other: _____

15. Does the privacy policy provide an opportunity for consumers to opt-out* of certain secondary uses or disclosures? (*i.e., the company assumes consumer consent to certain uses and disclosures, but offers consumers a mechanism to withdraw that consent by sending an e-mail or calling a toll-free number, for example.)

-Yes or No

If No, go directly to question 16.

If Yes:

15.a) What secondary uses or disclosures can consumers opt-out of?

- marketing solicitations by the company itself
- marketing solicitations by affiliates
- marketing solicitations by third parties
- sharing information with affiliates
- sharing information with third parties
- internal profiling
- other: _____

15.b) Is the opt-out option conspicuous (e.g. in bold or otherwise obvious to someone quickly reviewing the policy)?

- Yes or No or N/A

15.c) Is the opt-out option clearly worded (i.e. you clearly understand what you are opting out of)?

- Yes or No or N/A

15.d) Does the company provide an opt-out method that is easy and inexpensive to exercise?

- No: the policy mentions the opt-out but provides no opt-out mechanism
- No: the customer must go in person or use snail mail
- Yes: the customer can telephone or email their opt-out request
- N/A

16. Does the company require that consumers agree to secondary uses or disclosures in order to get the product or service? (i.e. **there is no way to opt-out** of the use or disclosure or to withdraw consent.)

- Yes or No or Unclear

If No, go directly to question 17.

If Yes:

16.a) What kinds of secondary uses or disclosures must the consumer agree to in order to get the product or service?

- marketing solicitations by the company itself
- marketing solicitations by affiliates
- marketing solicitations by third parties
- sharing information with affiliates
- sharing information with third parties
- internal profiling
- other: _____

16.b) Does the consumer get value in exchange for agreeing to these secondary uses or disclosures (e.g., reward points, coupons, contest entry)?

- Yes or No or N/A

16.b)i) If Yes, what does the consumer get in exchange for his or her information?

For the following questions, pretend that you are a first time customer subscribing or buying something from the company. Set up a free email account and pseudonym if you don't want your personal information to be recorded by the company. Go through the ordering process (and, if necessary, the registration process) as far as you need to in order to answer the questions, short of giving any payment information or actually transacting. Only register if necessary to place an order. Print screen shots of the registration and/or ordering pages as you go through them.

Note: These questions are deliberately repetitive – we want to identify discrepancies between the policy and the ordering process.

17. Does the consumer have to register or set up an account before, and separately from, placing an order?
- Yes or No

If No, skip questions 18 and 19 and go directly to question 20.

Registration Process

18. As part of the registration process, apart from the privacy policy, does the company ask the consumer to agree to certain secondary uses or disclosures (i.e. uses or disclosures that are not necessary for the transaction or service in question) via *positive* opt-in* consent process? (*i.e., the company will not use or disclose unless the consumer actively indicates their consent for the particular use or disclosure – e.g., by checking a box, signing a form, or otherwise taking action.)
- Yes or No

If No, go directly to question 19.

If Yes:

18.a) What uses or disclosures can the consumer opt-in to?

- marketing solicitations by the company itself
- marketing solicitations by affiliates
- marketing solicitations by third parties
- sharing information with affiliates
- sharing information with third parties
- internal profiling
- other: _____

19. As part of the registration process, does the company provide an opportunity, via the privacy policy or otherwise, for consumers to opt-out* of certain secondary uses or disclosures? (* i.e., the company assumes consumer consent to certain uses or disclosures, but offers consumers a mechanism to withdraw that consent by sending an e-mail, calling a toll-free number, or by un-checking a box for example.)
-Yes or No

If No, go directly to question 20.

If Yes:

19.a) During the registration process, how does the company bring the opportunity to opt-out to the customer's attention?

- (i) via link to the privacy policy on registration page; but the link is not brought to the consumer's attention
- (ii) via link to the privacy policy on the registration page; link is brought to the consumer's attention
- (iii) the customer is required to review or agree to the linked privacy policy as part of the registration process (e.g.: customer must click "I agree" before completing registration)
- (iv) notice and opt-out form part of the registration process
- (v) other: _____

If (i), (ii), or (iii) go directly to question 20.

If (iv):

19.b) What secondary uses or disclosures can consumers opt-out of?

- marketing solicitations by the company itself
- marketing solicitations by affiliates
- marketing solicitations by third parties
- sharing information with affiliates
- sharing information with third parties
- internal profiling
- other: _____

19.c) Is the opt-out method easy and inexpensive to exercise?

- Yes: the customer simply checks or un-checks a box
- Yes: the customer can telephone or email their opt-out request
- No: the customer must go in person or use snail mail
- N/A

Attach webpage screenshot(s) showing the registration page(s).

Ordering Process

20. As part of the ordering process, apart from the privacy policy, does the company ask the consumer to agree to certain secondary uses or disclosures (i.e. uses or disclosures not necessary for the transaction or service in question) via a *positive* opt-in* consent

process? (*i.e., the company will not use or disclose unless the consumer actively indicates their consent for the particular use or disclosure, by checking a box, signing a form, or otherwise taking action.)

- Yes or No

If No, go directly to question 21.

If Yes:

20.a) What uses or disclosures can the consumer opt-in to?

- marketing solicitations by the company itself
- marketing solicitations by affiliates
- marketing solicitations by third parties
- sharing information with affiliates
- sharing information with third parties
- internal profiling
- other: _____

21. As part of the ordering process, does the company provide an opportunity, via a link to the privacy policy or otherwise, for consumers to opt-out* of certain secondary uses or disclosures? (* i.e., the company assumes consumer consent to certain uses or disclosures, but offers consumers a mechanism to withdraw that consent by sending an e-mail, calling a toll-free number or by un-checking a box, for example.)

-Yes or No

If No, go directly to question 22.

If Yes:

21.a) During the ordering process, how does the company bring the opportunity to opt-out to the customer's attention?

- (i) via link to the privacy policy on ordering page; link not brought to the consumer's attention
- (ii) via link to the privacy policy on ordering page; link brought to the consumer's attention
- (iii) the customer is required to review or agree to the linked privacy policy as part of the ordering process (e.g.: customer must click "I agree" before completing the order)
- (iv) notice and opt-out form part of the ordering process
- (v) other: _____

If (i), (ii), or (iii) go directly to question 22.

If (iv):

21.b) What secondary uses or disclosures can consumers opt-out of?

- marketing solicitations by the company itself
- marketing solicitations by affiliates
- marketing solicitations by third parties
- sharing information with affiliates
- sharing information with third parties
- internal profiling
- other: _____

21.c) Is the opt-out method easy and inexpensive to exercise?

- Yes: the customer simply checks or un-checks a box
- Yes: the customer can telephone or email their opt-out request
- No: the customer must go in person or use snail mail
- N/A

Attach webpage screenshot(s) showing the ordering page(s).

22. Are there any discrepancies between *what* you can opt-out of during the registration or ordering process and *what* you can opt-out of via the privacy policy?

- Yes or No or N/A

22.a) If Yes, specify the discrepancy.

23. Does the company provide an immediate opt-out method for the consumer?
- Yes: the consumer can select the opt-out option before or during the registration or ordering process
 - No: the consumer can only opt-out after agreeing to allow secondary uses or disclosures
 - N/A

24. In general, would you say that you were able to understand the company’s data management policies and practices without “unreasonable effort”?
- Yes or No

24.a) Approximately how long did it take you to complete this assessment (website only)? _____ hours

Your response to this question is an overall assessment of the company’s openness with their information management practices. Attach log of efforts if appropriate.

Attachment checklist:

- Log of efforts, noting any instances of hostility or defensiveness
- Clean copy of privacy policy
- Copy of privacy policy with mark-ups
- Printouts/screenshots of webpage(s) showing links to privacy policy
- Printouts/screenshots of any opt-in or opt-out mechanisms that are accessed via a link in the privacy policy
- Printouts/screenshots of registration, ordering pages, or other relevant pages

APPENDIX D: TEMPLATE LETTERS FOR ACCESS TO INFORMATION REQUESTS

Template Letter 1: Used by Requestors during phase one: February to June 2005

Date

Address of Company

Dear Madam/Sir:

Re: Access to Information Request

I am one of your customers. I would like to know what information about me you keep in your files/databases, what uses you make of my information, and with whom you have shared my information. I understand that you are required, under federal privacy legislation, to provide this information to me within 30 days.

In particular, I would like a detailed accounting of:

1. All information about me that you have in your files and/or databases;
2. From where, and how, you obtained that information;
3. The specific uses that you have made, are making, or will be making of this information;
4. A list of all affiliated companies with whom you have shared my information, along with:
 - the specific information that you have shared with them,
 - the frequency with which you share this information with them,
 - the purpose of sharing this information with them, and
 - the uses that they have made or are making of this information;
5. A list of all non-affiliated third parties to whom you have disclosed my information, along with:
 - the specific information that you have shared with them,
 - the frequency with which you share this information with them,
 - the purpose of sharing this information with them, and
 - the uses that they have made or are making of my information, to the extent that you are aware.

If you cannot identify with certainty the specific companies to whom you have disclosed my information, please provide a list of affiliated and non-affiliated companies to whom you may have disclosed information about me.

Thank you for your cooperation.

Original signed
Your name, Address

Template Letter 2: Used by Requestors during phase two: November 2005 to February 2006.

DATE

CONTACT NAME/TITLE (if you can get it)

COMPANY
ADDRESS

Dear Madam/Sir:

Re: Access to Information Request

I am one of your customers. I would like to know what information about me you keep in your files/databases, what uses you make of my information, and with whom you have shared my information.

In particular, I would like:

1. A copy of all specific information about me that you have in your files and/or databases;
2. A detailed accounting of the specific uses that you have made, are making, or will be making of this information; and
3. A list of all companies with whom you have (or may have) shared my information. If you cannot identify with certainty the specific companies to whom you have disclosed my information, please provide a list of companies to whom you may have disclosed information about me.

Thank you for your cooperation.

Your name

Account # (if you have one)

Address

email address

phone number

APPENDIX E: COMPLIANCE WITH INDIVIDUAL ACCESS — ASSESSMENT FORM

ATIP ASSESSMENT FORM

Correspondence Details:

Company Name: _____

Name of Requestor: _____

Date of Request: _____

How Request Sent: _____

Where did you get the address? _____

Automatic Response Date: _____

Authentication Request Date: _____

Authentication Response Date: _____

Access Response Date: _____

Assessment of Response:

1. Did the company give you a copy of all specific information about you that they claim to have in their files? [Note: You should receive a listing of detailed information about you (e.g.: your name, address and contact information on file, items purchased or services used). It is not sufficient for them to list the kinds of information they have about you, or to give you a general statement about their policy.]

Yes: _____ [If Yes, skip to Q.2] No: _____ [If No, answer A)-D) below]

- A) Did the company claim not to have any information about you?

Yes: _____ No: _____

B) Did the company provide general types of information that they have about you?

Yes: _____ No: _____

C) Did the company provide you with general privacy policy information?

Yes: _____ No: _____

D) Did the company say that they can't retrieve your information because of the way their files are organized?

Yes: _____ No: _____

2. Did the company give you a full account of how they use your information?

Yes: _____ No: _____

3. Did the company give you a list of companies to which they have disclosed or may have disclosed your information? [Note: It is not sufficient for the company to simply refer you to their privacy policy. It is also not sufficient for them to provide you with general types of companies that they have disclosed your information to. They should either explain that they have not disclosed your information to anyone, or provide you with a list of companies they have disclosed it to, or may have disclosed it to].

Yes: _____ [If Yes, skip to Q.4] No: _____ [If No, answer A)-B) below]

A) Did they provide you with general types of companies that they have disclosed your information to?

Yes: _____ No: _____

B) Did the company claim not to share information with third parties?

Yes: _____ No: _____

4. Was all the information provided to you in a form that was generally understandable? [Note: The company should explain any complicated terms or codes that they used in their response to you. Their response should be clear and legible].

Yes: _____ No: _____

Comments:

Checklist (documents to append to this form):

- Copy of letter sent (+ cover email if letter attached to email message)
- Copies of all correspondence between you and company (black out personal info if desired)
- Notes from any telephone conversations with company
- Log of telephone calls/correspondence (if more than listed on form)

APPENDIX F: COMPLIANCE WITH PRINCIPLE 4.9 — SURVEY SAMPLE

ACCESS REQUESTS – LIST OF COMPANIES BY SECTOR

ENERGY:

DIRECT ENERGY

ENBRIDGE

OTTAWA HYDRO

FINANCIAL:

AMEX

BMO

CANADIAN TIRE

CIBC VISA

CITIBANK MASTERCARD

ING

MBNA

PAYPAL

PC FINANCIAL

RBC

TD WATERHOUSE

INSURANCE:

COOPERATORS

EMPIRE LIFE INSURANCE

GREAT-WEST LIFE

MELOCHE MONNEX

INTERNET SERVICE PROVIDERS:

BELL SYMPATICO

VIDEOTRON

LOYALTY CARDS:

AEROPLAN

AIR MILES

EDDIE BAUER

HBC

PETRO CANADA

SHOPPERS OPTIMUM

NEWSPAPER/MAGAZINES:

CANADIAN LIVING

CHIRP

GLOBE & MAIL

SELF MAGAZINE

WALRUS MAGAZINE

OTHER:

CLV GROUP

CAA

EBAY

RENTAL CARS:

HERTZ CAR RENTAL

NATIONAL CAR RENTAL

RETAILERS (MISCELLANEOUS):

ALDO

AMAZON.CA

ARITZIA HOLDINGS

BANANA REPUBLIC

BLOCKBUSTER VIDEO

THE BRICK

COSTCO

EASTLINK

FUTURE SHOP

GAP
GENERAL MOTORS CANADA
HMV
INDIGO/CHAPTETS
LEE VALLEY TOOLS
RADIOSHACK
RONA
SAFEWAY
SEARS CANADA
SONY OF CANADA
STOKES
TOSHIBA CANADA

TELECOM SERVICE PROVIDERS:

FIDO
PRIMUS
ROGERS
SPRINT CANADA
TELUS MOBILITY

TRANSPORT INDUSTRIES:

AIR CANADA
VIA RAIL
WESTJET
TRAVEL/TICKETING:
CAPITAL TICKETS
EXPEDIA.CA
INTERCONTINENTAL HOTELS
LASTMINUTECLUB.COM
PRICELINE.COM
TICKETMASTER
TRAVELCUTS

APPENDIX G: TABLE OF REPORT RESULTS

PIPEDA COMPLIANCE REVIEW – TABLE OF RESULTS

PART 1: COMPLIANCE WITH PRINCIPLE 4.1 (ACCOUNTABILITY), PRINCIPLE 4.8 (OPENNESS), AND PRINCIPLE 4.3 (CONSENT)

ASSESSMENT QUESTION	RESULTS
Questions 1 to 5 relate to the phone assessment portion of the study.	
Question 1: Could the company representative confidently answer the question: “Do you have a privacy policy?”	
Yes	35
Yes, but only after the Assessor explained what a privacy policy is	19
No	5
N/A: Assessor was unable to reach anyone at the company by phone	5
Question 1A: How did the customer representative answer the question: “How can I get a hold of the privacy policy?”	
The company representative said consumers can get the policy:	
From their website	46
Upon request, by mail, fax or email	6
By talking with someone else	2
By leaving an address and phone number in the “privacy mailbox”	1
By contacting the federal government	1

Customer representative was unaware of where to access the policy	3
N/A: Assessor was unable to reach anyone at the company by phone	5
Question 2: How did the customer representative answer the question: "Do you have someone that is responsible for handling privacy inquiries/complaints?"	
Yes (contact information provided)	26
No	33
N/A: Assessor was unable to reach anyone at the company by phone	5
Question 3: How difficult was it to get answers to questions 1 and 2?	
Easy (took 3 minutes or less)	12
Easy, but took some time (took more than 3 minutes)	30
Difficult	14
Impossible	8
Question 3A: How long were you on the phone?	
1 – 5 minutes	19
5 – 10 minutes	27
10 – 15 minutes	8
15 – 20 minutes	4
20 – 25 minutes	1
N/A: Assessor was unable to reach anyone at the company by phone	5

Question 3B: If the company representative had to get back to you with information, how long did it take?	
Cases where company representative had to call Assessor back	7
Amount of time it took for the company representative to call back:	
3 minutes	1
15 minutes	1
20 minutes	1
45 minutes	2
1 hour	1
1 day	1
Question 3C: How many phone calls did you have to make before you got your answers?	
1 phone call	47
2 phone calls	5
3 phone calls	4
4 phone calls	3
N/A: Assessor was unable to reach anyone at the company by phone	5
Question 4: How did the customer representative answer the question: "Can I get a hard copy of the privacy policy by fax, mail or email?"	
Yes	22
No	37
N/A : Assessor was unable to reach anyone at the company by phone	5

Question 4A: If the answer to question 4 is No, why not?	
Company has no written privacy policy	6
Can only print the privacy policy off website	21
Company representative is not allowed to send policy by fax or mail	1
Company representative can't send policy to non-customer	0
Company representative is unaware of where to access policy	5
Company representative is not sure if they are allowed to send the policy	1
Company representative did not want to address this issue	1
Company representative did not respond to this question	1
Company representative said to get it from the catalogue	1
Question 5: At any time was the company representative hostile or defensive to any of your questions?	
Yes	7
No	52
N/A: Assessor was unable to reach anyone at the company by phone	5
Question 5A: If the answer to question 5 is Yes, describe any instances of hostility or defensiveness.	
Company representative was defensive; wanted to know exactly why Assessor was asking about the privacy policy.	7
Question 6: Does the company make its privacy policy available on its website?	
Yes	59
No	5

Question 7: Is the privacy policy easy to find (could you find it without “unreasonable effort”)?	
Yes	53
No	6
N/A: No privacy policy on website	5
Question 7A: Is the link to the privacy policy on the homepage?	
Yes	54
No	5
N/A: No privacy policy on website	5
Question 7Ai: If the answer to 7A is No, what page is the link to the privacy policy on?	
Privacy policy forms part of the homepage	1
Privacy policy is on the “Store Policies” page	1
Privacy policy is on the “Customer Service” page	1
Privacy policy is on the “Helpdesk” page	1
On “About Us” page via link called “Shipping and Handling”	1
Question 7B: Does the link appear on other pages as you navigate through the site?	
Yes	53
No	6
N/A: No privacy policy on website	5

Question 7C: Is the only link to the policy in small font with other links at the bottom of the page?	
Yes	41
No	18
N/A: No privacy policy on website	5
Question 7Ci: If the answer to question 7C is No, where is the link to the privacy policy?	
Top navigation bar	6
Side navigation bar	8
Other	4
Questions 8 – 15 relate to assessments of companies' privacy policies.	
Question 8: Is the privacy clearly worded and "generally understandable"?	
Yes	52
No	8
N/A: Company has no written privacy policy	4
Question 8A: Does the privacy policy contain links to another document that is necessary in order to understand what the company does with consumers' information?	
Yes	10
No	50
N/A: Company has no written privacy policy	4

Question 8Ai): If the answer to question 8A is Yes, does the link take you directly to that document?	
Yes	9
No	1
Question 8B: How long is the privacy policy (in words)?	
1 – 500 words	10
500 – 1000 words	12
1000 – 1500 words	5
1500 – 2000 words	12
2000 – 2500 words	5
2500 – 3000 words	6
3000 – 3500 words	3
3500 – 4000 words	4
4000 – 4500 words	1
4500 – 5000 words	1
5001 – 5500 words	1
N/A: Company has no written privacy policy	4
Question 8C: Is it easy to determine from the privacy policy what personal information the company collects?	
Yes	44
No	16
N/A: Company has no written privacy policy	4

Question 8D: Is it easy to determine from the privacy policy why the company collects the personal information?	
Yes	47
No	13
N/A: Company has no written privacy policy	4
Question 8E: Is it easy to determine from the privacy policy how the company uses consumers' personal information?	
Yes	42
No	18
N/A: Company has no written privacy policy	4
Question 8F: Is it easy to determine from the privacy policy to whom the company discloses consumers' personal information?	
Yes	33
No	27
N/A: Company has no written privacy policy	4
Question 8G: Does the privacy policy use complicated terms without explaining them?	
Yes	0
No	60
N/A: Company has no written privacy policy	4

Question 9: Does the privacy policy provide contact information for the person accountable for the organization's privacy policies and practices?	
Yes	42
No	18
N/A: Company has no written privacy policy	4
Question 9A: If the answer to question 9 is Yes, can you find the contact information on a quick read through the policy?	
Yes	41
No	1
Question 9B: If the answer to question 9 is Yes, is the contact information the same as that supplied by the company representative in question 2?	
Yes	8
No	18
N/A: Can't compare because company representative did not supply contact information in question 2.	33
N/A: Assessor was unable to reach anyone at the company by phone	5
Question 10A: Does the privacy policy specifically describe how consumers can get access to their personal information held by the company?	
Yes: The policy clearly states how consumers can access their personal information	30
Somewhat: The policy discusses the right to access one's personal information but does not make it clear how or where to send access requests	7
No: The policy does not address this issue	23
N/A: Company has no written privacy policy	4

Question 10B: Does the policy describe the type of information the company holds about consumers?	
Yes: The policy clearly describes the type of consumer information the company holds	44
No: The policy does not specify the type of consumer information it holds	16
N/A: Company has no written privacy policy	4
Question 10C: Does the policy describe what the company does with personal consumer information?	
Yes plus: The policy provides a list of specific uses that the company makes of personal consumer information	23
Yes: The policy provides a general account of use sufficient for consumers to understand generally what the company does with consumers' information	26
No: The policy does not specify what the company does with consumer personal information	11
N/A: Company has no written privacy policy	4
Question 10D: Does the policy describe what consumer information the company shares with other organizations including affiliates?	
Yes: The policy specifies the types of personal information the company shares with other organizations	9
Somewhat: The policy gives examples, but not a complete list, of personal information shared OR the company specifies types of information shared in some contexts but not in others	23
No: The policy does not indicate what types of personal information the company shares with other organizations	28
N/A: Company has no written privacy policy	4
Question 11: According to the policy, why does the company collect personal information about consumers?	
N/A: Results not used in report	N/A

Question 12: According to the privacy policy, does the company use consumer information for its own marketing purposes?	
No	0
Unclear	10
N/A – Company has no written privacy policy	4
Question 13: According to the privacy policy, does the company share consumers’ personal information (with or without consent) with other companies for purposes other than the transaction or service in question?	
Yes	29
No	20
Unclear	11
N/A: Company has no written privacy policy	4
Question 13A: If the answer to question 13 is Yes, with whom does the company share the personal information?	
Affiliates only	1
Third parties only	14
Both affiliates and third parties	14
Question 13B: If the answer to question 13 is Yes, does the company provide names of companies it shares the personal information with?	
Yes: The company provides a complete list	0
Yes: The company gives examples by providing the names of some of the companies with whom it shares personal information	4
No	25

Question 14: According to the privacy policy, does the company engage in certain secondary uses or disclosures only with positive opt-in consent of the consumer?	
Yes	14
No	46
N/A: Company has no written privacy policy	4
Question 14A: If the answer to question 14 is Yes, what secondary uses or disclosures can consumers opt-in to?	
Marketing solicitations by the company itself	9
Marketing solicitations by affiliates	0
Marketing solicitations by third parties	3
Sharing personal information with affiliates	0
Sharing personal information with third parties	2
Internal Profiling	1
Other: Email newsletter subscription	2
Question 15: Does the privacy policy provide an opportunity for consumers to opt-out of certain secondary uses or disclosures?	
Yes	47
No	8
No, but the privacy policy is unclear whether the company engages in secondary uses or disclosures	5
N/A: Company has no written privacy policy	4

Question 15A: If the answer to question 15 is Yes, what secondary uses or disclosures can consumers opt-out of?	
Marketing solicitations by the company itself	41
Marketing solicitations by affiliates	7
Marketing solicitations by third parties	13
Sharing personal information with affiliates	5
Sharing personal information with third parties	10
Internal Profiling	4
Can opt-out of any consent given	1
Policy doesn't specify what consumers can opt-out of	4
Question 15B: If the answer to question 15 is Yes, is the opt-out option in the privacy policy conspicuous?	
Yes	19
No	28
Question 15C: If the answer to question 15 is Yes, is the opt-out option in the privacy policy clearly worded?	
Yes	37
No	10
Question 15D: If the answer to question 15 is Yes, does the company provide an opt-out method in the privacy policy that is easy and inexpensive to exercise?	
No: The policy mentions the opt-out but provides no opt-out mechanism	2
No: The customer must go in person or use snail mail	1
Yes: The customer can telephone or email their opt-out request	43

Question 16: Does the company require that consumers agree to secondary uses or disclosures in order to get the product or service?	
Yes	7
No	39
Unclear	18
Question 16A: If the answer to question 16 is Yes, what kinds of secondary uses or disclosures must the consumer agree to in order to get the product or service?	
Marketing solicitations by the company itself	1
Marketing solicitations by affiliates	0
Marketing solicitations by third parties	1
Sharing personal information with affiliates	5
Sharing personal information with third parties	7
Internal Profiling	0
Question 16B: If the answer to question 16 is Yes, does the consumer get value in exchange for agreeing to these secondary uses or disclosures?	
Yes	0
No	7
Question 16Bi: If the answer to question 16B is Yes, what does the consumer get?	
N/A	N/A

Questions 17 – 23 relate to assessments of companies’ ordering practices. CIPPIC instructed assessors to go through the ordering process as far as needed to answer the questions, short of giving any payment information or actually transacting. CIPPIC also instructed Assessors to only register where necessary to place an order.	
Question 17: Does the consumer have to register or set up an account before, and separately from, placing an order?	
Yes	26
No	38
If the answer to question 17 is Yes:	
Question 18: As part of the registration process, apart from the privacy policy, does the company ask the consumer to agree to certain secondary uses or disclosures with positive opt-in consent?	
Yes	8
No	18
Question 18A: If the answer to question 18 is Yes, what uses or disclosures can the consumer opt-in to?	
Marketing solicitations by the company itself	6
Marketing solicitations by affiliates	0
Marketing solicitations by third parties	1
Sharing personal information with affiliates	0
Sharing personal information with third parties	1
Internal Profiling	0
Other: Company newsletters	3

Question 19: If the answer to question 17 is Yes, as part of the registration process, does the company provide an opportunity, via the privacy policy or otherwise, for consumers to opt-out of certain secondary uses or disclosures?	
Yes, during registration only	3
Yes, during both registration and ordering	19
No	4
Question 19A: If the answer to question 19 is Yes, during the registration process, how does the company bring the opportunity to opt-out to the consumer's attention?	
(i) Via link to the privacy policy on registration page; but the link is not brought to the consumer's attention	5
(ii) Via link to the privacy policy on registration page; link is brought to the consumer's attention	2
(iii) Consumer is required to review or agree to the linked privacy policy as part of the registration process	5
(iv) Opt-out forms part of the registration process	10
Question 19B: If the answer to question 19A is (iv), what uses or disclosures can the consumer opt-out of?	
Marketing solicitations by the company itself	10
Marketing solicitations by affiliates	0
Marketing solicitations by third parties	0
Sharing personal information with affiliates	0
Sharing personal information with third parties	0
Internal Profiling	0

Question 19C: If the answer to question 19A is (iv), is the opt-out method easy and inexpensive to exercise?	
Yes: The customer simply checks or un-checks a box	10
Yes: The customer can telephone or email their opt-out request	0
No: The customer must go in person or snail mail	0
If the answer to question 17 is No:	
Question 20: As part of the ordering process, apart from the privacy policy, does the company ask the consumer to agree to certain secondary uses or disclosures with positive opt-in consent?	
Yes	5
No	59
Question 20A: If the answer to question 20 is Yes, what uses or disclosures can the consumer opt-in to?	
Marketing solicitations by the company itself	5
Marketing solicitations by affiliates	0
Marketing solicitations by third parties	0
Sharing personal information with affiliates	0
Sharing personal information with third parties	0
Internal Profiling	0
Other	0

Question 21: As part of the ordering process, does the company provide an opportunity, via the privacy policy or otherwise, for consumers to opt-out of certain secondary uses or disclosures?	
Yes	47
No	17
Question 21A: If the answer to question 21 is Yes, during the ordering process, how does the company bring the opportunity to opt-out to the consumer's attention?	
(i) Via link to the privacy policy on ordering page; link not brought to the consumer's attention	13
(ii) Via link to the privacy policy on ordering page; link brought to the consumer's attention	7
(iii) Consumer is required to review or agree to the linked privacy policy as part of the ordering process	5
(iv) Opt-out forms part of the ordering process	22
Question 21B: If the answer to question 21A is (iv), what uses or disclosures can the consumer opt-out of?	
Marketing solicitations by the company itself	11
Marketing solicitations by affiliates	1
Marketing solicitations by third parties	5
Sharing personal information with affiliates	0
Sharing personal information with third parties	5
Internal Profiling	0
Other	2

Question 21C: If the answer to question 21A is (iv), is the opt-out method easy and inexpensive to exercise?	
Yes: The customer simply checks or un-checks a box	22
Yes: The customer can telephone or email their opt-out request	0
No: The customer must go in person or use snail mail	0
Question 22: Are there any discrepancies between what you can opt-out of during the registration or ordering process and what you can opt-out of via the privacy policy?	
Yes	11
No	31
N/A: Can't opt-out via privacy policy, only during ordering	8
N/A: Can opt-out via privacy policy, but only opt-in during ordering	4
N/A: Can't opt-out via privacy policy, but can opt-in during ordering	1
N/A: Can't opt-out via privacy policy or ordering process, nor can you opt-in during ordering	7
N/A: Can opt-out via privacy policy, but not during ordering	2
Questions 22A: If the answer to question 22 is Yes, specify the discrepancy.	
Opt-out during registration or ordering process does not provide the all of the opt-out options available in the privacy policy.	10
Opt-out during registration or ordering process allows consumers more opt-out options than available in the privacy policy	1

Question 23: Does the company provide an immediate opt-out method for the consumer?	
Yes: The consumer can select the opt-out option before or during the registration or ordering process	25
No: The consumer can only opt-out after agreeing to allow secondary uses or disclosures	25
N/A: Company doesn't provide opt-out at all but uses opt-in consent only	5
N/A: Company doesn't provide any opt-out method in either privacy policy or during registration or ordering process.	7
N/A: Can only opt-out via privacy policy, not during registration or ordering	2
Question 24: In general would you say that you were able to understand the company's data management policies and practices without "unreasonable effort"?	
Yes	44
No	20
Question 24A: Approximately how long did it take you to get answers to questions about to company's information management practices (website only)?	
Less than 1 hour	11
1 - 1.5 hours	25
2 - 2.5 hours	24
3 - 3.5 hours	3
4 hours	1

PART II: COMPLIANCE WITH PRINCIPLE 4.9 (INDIVIDUAL ACCESS)

ASSESSMENT QUESTION	RESULTS
Method Sent:	
Email	23
Mail	47
Fax	2
Authentication Requested:	
Yes	8
No	39
N/A – Company did not respond at all to the access request	25
Response Time:	
No response	25
Response within 30 days	41
Response within 45 days	4
Response within 60 days	2
Response over 60 days	0
Question 1: Did the company give you a copy of all specific information about you that they claim to have in their files?	
Yes	25
No	22

Question 1A: If the answer to question 1 was No, did the company claim not to have information about you?	
Yes	4
No	18
Questions 1B: If the answer to question 1 was No, did the company provide general types of information that they might have about you in their files?	
Yes	12
No	10
Question 1C: If the answer to question 1 was No, did the company provide you with general privacy policy information?	
Yes	5
No	17
Question 1D: If the answer to question 1 was No, did the company say they can't retrieve your information because of the way their files/databases are organized?	
Yes	2
No	20
Question 2: did the company give you a full account of how they use your information?	
Yes	27
No	16
No, but the company claimed to have no information about me.	4

Question 3: Did the company give you a list of companies to which they have disclosed or may have disclosed your information?	
Yes	14
No	33
Question 3A: If the answer to question 3 is No, did the company provide general types of companies they have disclosed your information to?	
Yes	9
No	24
Question 3B: If the answer to question 3 is No, did the company claim that they do not share information with third parties?	
Yes	10
No	23
Question 4: Was all the information provided to you in a form that was generally understandable?	
Yes	44
No	3
Did the company comply fully with the Individual Access Principle?	
Yes, company responded within 30 days, provided a copy of all information they had about the Requester, provided a full account of use, and provided a full account of companies to whom they have or may have disclosed Requester's information.	15



Canadian Internet Policy and Public Interest Clinic
University of Ottawa, Faculty of Law
57 Louis Pasteur St.
Ottawa, Ontario K1N 6N5
Canada

Tel: 613-562-5800 x.2553
Fax: 613-562-5417
Email: cippic@uottawa.ca