

WANADA DEALER SEMINAR

Privacy & Security Workshop Offers Dealers Roadmap Through Complex, Inconsistent New Regulations

From the size of the dealer turnout for WANADA's recent Workshop on Privacy and Security Laws, it was clear there was great interest – and confusion – about how to comply with the myriad of new laws passed since 9/11. The goals of new laws governing privacy of information, like the FACT Act and the Gramm-Leach-Bliley Act (GLB), are sometimes at odds with security statutes, such as the USA Patriot Act, and Office of Foreign Asset Control (OFAC). But noncompliance with these laws can carry severe penalties. So what's a dealer to do?

To offer answers and a roadmap through this challenging maze of new rules, WANADA assembled a distinguished legal panel which focused on dealer compliance. Speakers included Michael Charapp, Charapp & Weiss; Patrick Kavanaugh, Hamilton and Hamilton, Paul Metrey from NADA's Legal Group; and Andrew Smith, manager of FACT Act implementation for



Above, a large turnout of dealers pays close attention to a panel of top legal experts at WANADA's Workshop on Privacy and Security Laws. At right, from left, workshop speakers Paul Metrey, Pat Kavanaugh, Andrew Smith and Mike Charapp.



the Federal Trade Commission (FTC). What follows is a summary of their presentation:

USA Patriot Act. The importance of strict compliance with cash reporting and the prevention of money laundering requirements under the USA Patriot Act was spotlighted. Dealers need to be concerned about this because of the penalties for failure to report cash transactions of \$10,000 or more.

Attendees were cautioned

that the IRS has taken the position that continuing violations of cash reporting requirements will be deemed a "knowing violation" carrying a \$25,000 civil penalty and, in some cases, criminal penalties.

"It is critical to have a redundant program design that thoroughly trains and monitors employees on their responsibilities under the law for cash reporting and money laundering," said Mike Charapp.

Still unresolved, is the re-

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VA MVDB REPORT

VA Dealer Board Considers Licensing, Ad, Title & Hybrid Vehicle Issues

At its bi-monthly meeting March 14, 2005, the Virginia Motor Vehicle Dealer Board (MVDB) covered the following notable issues:

Licensing. MVDB voted to have a special working session of the licensing committee to consider the present bonding structure for new dealers. Presently, new dealers must have a \$25,000 surety bond for three years. The licensing committee will consider all aspects of the bond, but it will specifically consider whether to increase it to \$50,000 and whether to change the period for which it must be placed.

MVDB also voted to prepare legislation for the 2006 Virginia legislative session to provide that F & I personnel and sales managers must become licensed as sales people.

Direct mail advertisement. MVDB considered a direct mail advertisement by a dealer who is offering free oil changes to all owners of a specified brand of vehicle. The ad specifically said it was open to all vehicle owners and was not tied to the purchase of a vehicle. Since it was not tied to the purchase of a vehicle, MVDB found that use of the word "free" was not a violation of the advertising code.

Title work report. The Virginia DMV reported to MVDB concerning its monitoring of the percentage of dealers' title work submitted within thirty days, which is the DMV's stated goal. The DMV reported on the five

dealers with the worst record for submissions in January 2005 (one of whom had 100% of its 32 deals submitted more than thirty days after the vehicles were delivered), as well as six high-volume dealers who had an excellent record of submission within thirty days. Dealers are reminded that DMV will review submissions of title work within thirty days on a monthly basis. Dealers who are regularly missing a high percentage of their submissions within the required time frame will be visited and counseled by the DMV.

Hybrid Vehicles. MVDB reminded dealers of two items with respect to hybrid vehicles. First, special status of designated hybrid vehicles allowing them to have HOV tags and use HOV lanes during rush hours will expire July 1, 2006. This special status for hybrids could even change sooner depending on actions by the federal EPA. Second, the Honda Accord hybrid *does not* meet the standard necessary to allow issuance of special license tags allowing operation in HOV lanes during rush hours. MVDB emphasized the need for dealers to be careful in their representations to customers concerning their rights if they buy hybrid vehicles.

House Committee Approves AHP Bill

In an action that will hopefully start the ball rolling to successful passage of the Small Business Health Fairness Act (H.R. 525), the House Education and Workforce Committee recently approved the bill on a party-line vote of 25-22. The next step will be consideration of H.R. 525 on the House floor, which will likely take place sometime this spring, according to The Association Health Coalition. TAHC is urging its members, including WANADA, to stand ready to contact their representatives to help push the long-awaited bill over the top.

The action was applauded by Secretary of Labor Elaine L. Chao who urged swift passage of the bill, which would effectively offer small businesses and their employees access to more affordable health insurance by creating Association Health Plans (AHPs)

"This is a big win for small business workers who comprise more than 60% of the uninsured. It will create a level playing field and give small businesses the same benefits of administrative savings, negotiating clout, and uniform regulation enjoyed by large businesses and labor unions," Secretary Chao said.

"AHP plans will provide more choices, increase access to quality care and reduce the cost of health coverage. The legislation also contains strong protections to deter fraud so benefits will be available when workers need them," said Chao.

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Privacy & Security Workshop *(Continued from page 1)*

quirement of a Social Security Number for proof of identity for IRS 8300 reporting. The IRS says businesses must ask for it, but it is still unclear what the liability of dealers is if the customer declines to give a SS number.

OFAC. The Office of Foreign Asset Control publishes a list of persons with whom one should not do business. Theoretically, this should apply to all businesses, even McDonalds. For auto dealerships, the panel noted that each transaction should be compared to the OFAC list, available from OFAC or Internet vendors. If the customer's name is on the list, a dealer needs more information on the customer.

Gramm-Leach-Bliley Act. Under GLB, notice must be given to the customer explaining the dealership's privacy policy for customer information on finance, lease or insurance transaction or when a customer's credit report is assessed. The privacy policy should be given by the time the customer enters the transaction. From that point, the document should be signed and a copy kept on file. This applies to both delivered vehicle sales and "dead" transactions. There is no requirement for customers to sign and some won't. But an employee who consistently takes the position that the "customer won't sign" in all likelihood *not* presenting the

privacy policy properly.

Customer information safeguards under GLB are a "massive requirement," says Charapp, requiring a designated employee as the information security coordinator and a system to assess risks and safeguards. The dealership must also oversee service providers by selecting those who are capable of requiring and maintaining safeguards.

NADA's Paul Metrey warned that the FTC has conducted nationwide enforcement sweeps of dealerships and is insisting on dealership compliance with privacy requirements. Metrey strongly encouraged all dealers to obtain two new dealer guidance publications – *The FTC's Privacy Rule and Auto Dealers: Frequently Asked Questions*, and the IRS' *New Vehicle Dealership Audit Technique Guide 2004* – available from NADA's website, nada.org. (From the home page, scroll down to "Special Features" and click on *FTC and IRS issue guidance to auto dealers.*)

The Fair and Accurate Credit Transaction (FACT) Act reauthorized the Fair Credit Reporting Act, which has been around for 35 years, also implements new requirements with staged effective dates, that impose several new duties on franchised automobile and truck dealers. As the FTC's Andrew Smith pointed out, there is a sharper focus on

enforcement of these rules following several well-publicized security breaches of nation credit bureaus.

In short, the FACT Act preserves uniform national credit reporting standards that were set to expire on December 31, 2003. It also imposes several new duties on consumer reporting agencies (CRAs), users of credit reports, creditors and others that are designed to combat identity theft and enhance the accuracy of credit reports, while providing consumers with greater control over the marketing solicitations they receive.

NADA has prepared and distributed to its member dealers a summary of applicable FACT Act sections (also enclosed with the Nov. 22 WANADA Bulletin), and will post further announcements and summaries of FACT Act developments at www.nada.org/factact (requires member number). Dealers may also obtain FACT Act information directly from the FTC at www.ftc.gov (click on "Fair Credit Reporting Act").

Nick Champeau Moves On

WANADA Staff bid their longtime colleague, Nick Champeau, a fond farewell at a dinner last week where he was recognized and appreciated for his 15 years of service on the association's staff. Chief of Staff Gerry Murphy thanked Mr. Champeau for his many contributions, which "he consistently carried out with enthusiasm and good humor."

During his tenure, Champeau fielded automotive consumer inquiries to the association's AUTOCAP consumer resolution center and assisted in fashioning WANADA's Fair Dealer Advertising Program. He represented WANADA in many high profile community relation endeavors to include the Washington Regional Alcohol Program, which he ultimately chaired. He also represented WANADA on the Virginia Motor Vehicle Dealer Board. More recently, he was staff liaison to The Washington Auto Show and was involved with the association's vocational training programs.

While at WANADA, he completed the US Chamber of Commerce Association Management Program and was inducted into Leadership Washington.

Going forward, Champeau has taken a position in the management company of Easterns Automotive, where he is now an associate member of WANADA. WANADA staff and leadership wish Nick Champeau all the best!



Washington Post Salutes Washington Auto Show Congressional Preview and Gala in a Full Page Ad

A brilliant full color, full page ad appeared in the Arts Section of last Sunday's Washington Post (March 27) praising Washington area dealers for their success in organizing the 2005 Washington Auto Show Congressional Gala and Preview for charities. The business and community relations side of the Post did this for WANADA dealers as part of their sponsorship of the Congressional Gala, but also because of their long standing partnership with WANADA and area dealers on important industry and community events.

Besides the Post, the Congressional Gala was sponsored by the Alliance of Automobile Manufacturers, NADA, and XM Satellite Radio. Beneficiary organizations were Big Brothers Big Sisters, Boys & Girls Clubs, Parkinson Foundation, Primary Care Coalition, Maryland Shock Trauma Center and Washington Hospital Center which turned out scores of their supporters for the elegant *black tie* preview. Members of Congress mixed with many state and local elected leaders and assorted VIPs from the industry and business community.

Next year's Congressional Gala Preview will precede the Washington Auto Show's new dates on Monday evening, January 23, 2006.

A copy of the ad is included for everyone's information.

WANADA is grateful to The Washington Post for the positive media spotlight.

FACTOID: On March 25, 1634, Maryland was founded by English colonists sent by the second Lord Baltimore.

Staying Ahead...

Nothing in life is more exhilarating as being shot at with no result.

-- Winston Churchill, *The Malakand Field Force*

Enclosure:

Washington Post Ad