

Old Trick

Hewlett-Packard Was Far From First To Try 'Pretexting'

But Long-Used Device to Gain
Personal Data Now Faces
Stiffer Federal Prohibition

New Reality for Auto Lenders

By JOHN R. EMSWILLER

Hewlett-Packard Co.'s much-criticized campaign this year to trace boardroom leaks has made "pretexting" a dirty word in corporate circles.

But the H-P project was far from the first to rely on pretexting, which generally involves impersonating people to get their phone or financial records, a review of recent business history shows. The practice for years has been almost a commonplace tool, resorted to in efforts ranging from commercial litigation to divorce fights to the search for deadbeat borrowers.

For instance, consumer-finance units of Ford Motor Co., DaimlerChrysler AG, Honda Motor Co., Citigroup Inc. and J.P. Morgan Chase & Co. have been among regular customers of firms that have been implicated in investigations of pretexting. All the companies deny knowing of such practices by investigators they hired.

Pretexting occurs "thousands of times every day," says Robert Douglas, an information-security consultant who has helped congressional panels and federal regulators probe the business. Spurring the practice, he says, is robust demand for personal data by businesses, attorneys, private investigators and, occasionally, law-enforcement agencies.

The legality of pretexting has been rather murky, but it is fast getting clearer. In 1999, Congress made it a crime to acquire financial information through impersonation. The law didn't address pretexting to obtain other data, such as phone records. Filling the gap, the Federal Trade Commission later took the position that this was barred as a deceptive or unfair practice under the Federal Trade Commission Act.

Just this month, Congress passed a bill making phone-records pretexting a crime, too, punishable by as much as 10 years in prison. Like the 1999 law, the bill bars buying or receiving improperly obtained records, but it makes prosecutors' task easier. The 1999 law requires proving a buyer of financial records knew they were obtained illegally. The phone-records bill just requires proving a buyer had "reason to know" this. President Bush is expected to sign it. (See related article on page A4.)

In addition, some states have moved against pretexting as a violation of their own laws barring deceptive practices. California brought state civil charges against H-P, which the computer company recently agreed to settle with a \$14.5 million payment. California also is treating pretexting as a criminal offense, charging five former H-P officials and outside contractors with identity theft and other state-law infractions. They have pleaded not guilty.

Controversy over pretexting first arose in the late 1990s as information such as Social Security numbers and dates of birth was becoming more widely

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available through online databases. In 1999, the FTC went after a Colorado man named James Rapp, alleging in Denver federal court that he and his firm had called financial institutions pretending to be the account holder. With Congress not having yet passed its 1999 law, the FTC accused Mr. Rapp of deceptive practices. He agreed to an injunction without admitting or denying wrongdoing, and later pleaded guilty to a Colorado state criminal racketeering charge in connection with his investigative work. He received probation.

Mr. Rapp says he once had more than 1,500 clients, many of them investigative firms that worked for large insurance, media and industrial companies. In an interview, he estimated his firm, Touch Tone Information Inc., made as many as 200 pretexting calls a day on various cases. To get cellphone records, he said, an employee of his once impersonated former White House aide Monica Lewinsky. Mr. Rapp said he himself impersonated the father of the slain Colorado girl JonBenet Ramsey. Mr. Rapp said he sold the phone records to private investigators who told him they worked for news organizations.

The FTC also ran across suspected customers for data gathered by pretexting. It sent a letter in 2004 to attorneys representing a big Washington law firm now called Venable LLP. "We believe that certain Venable attorneys placed orders

with information brokers to obtain sensitive financial information about consumers for litigation purposes, and that those brokers or their agents likely used pretexting to obtain that information," the FTC letter said. Further, "there was substantial information available that, at a minimum, should have put the attorneys on notice of the likelihood that this information would be obtained wrongfully."

Venable, in a written statement, said "a few" of its lawyers hired outside investigators, mainly in 1999 and 2000, to obtain financial information about parties that owed money to a client. The FTC "claimed, but never established," that the investigators "could only have obtained financial information about third-parties through pretexting," Venable said, adding that the Venable lawyers involved weren't aware of any pretexting. The FTC didn't file a case against the firm.

Pretexting to get telephone records started hitting the headlines in the summer of 2005. A Washington nonprofit group called the Electronic Privacy Information Center urged regulators to look at the practice and provided a list of 40 suspected information pirates. The ensuing months saw a wave of suits against alleged sellers of confidential phone records, filed by phone companies, state attorneys general and the FTC. This year, congressional investigators subpoenaed a number of suspected sellers of pretexted phone records.

Records of one, Universal Communications Co. of Loveland, Colo., showed that from 2002 through 2005, its biggest customers for telephone toll-call records included finance units of Ford, Daimler-Chrysler and Honda. Learning what numbers are called by a missing borrower can help locate him, say debt collectors.

Universal charged \$50 to \$65 to retrieve an individual's phone records. The car companies' annual spending for data from Universal ranged from \$3,000 to \$19,000, the records showed.

Universal President James Welker says his firm never did any pretexting and obtained phone records only from vendors it believed had legally obtained the data. He says Universal stopped offering to sell toll-call records in April after congressional investigators expressed the belief that such records couldn't be obtained without using deception.

Spokesmen for the car makers said they don't condone pretexting, and their finance units no longer use Universal. For the most part, they declined to discuss specific dealings with the firm.

Honda's finance unit said in a written statement that its records showed Universal obtained toll records on "50 delinquent customers" in 2005. It said pretexting "was not a specific service sought by" Honda.

A Honda spokesman said that, following an inquiry from a Wall Street Journal reporter, the car maker contacted Universal and "they were not able to assure us

that their methods were entirely aboveboard. So, we terminated them." Honda said it then reviewed the practices of its other vendors and "made the immediate decision to expressly prohibit pretexting and similar practices."

Universal's Mr. Welker said he wasn't aware that Honda had called his company or what it was told. "Our policy is to be completely aboveboard," he said.

Some information providers have defended pretexting as an important tool

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to help find people who are trying to evade their obligations. In a letter to congressional investigators, Laurie Misner, co-owner of Global Information Group Inc. in Temple Terrace, Fla., said she checked the legality of phone-records pretexting with her attorneys and with Joel Winston, an FTC associate director. She said he told her there were no specific laws that would be violated.

Mr. Winston says he doesn't recall talking with her. He says he has routinely told people that while there

wasn't a specific U.S. law against getting phone records through pretexting before the one Congress just passed, the general ban on deceptive practices prohibited it.

In her letter, Ms. Misner told Congress that Global worked mainly for financial institutions trying to find nonpaying borrowers. She acknowledged that Global obtained phone records through pretexting. According to its subpoenaed records, Global's customers in 2005 included units of Citigroup, J.P. Morgan Chase and Wells Fargo & Co. Their payments to Global ranged as high as about \$260,000. Not shown in the records was how much was for phone-records searches and how much for other services, such as checks of utility or motor-vehicle records.

The customers all said they didn't condone pretexting. The Citigroup unit said it quit using Global in late 2005 after becoming aware of allegations Global engaged in pretexting. Wells Fargo said it also stopped late last year but didn't say why. J.P. Morgan declined to discuss specifics of its dealings with Global. Ms. Misner, who couldn't be reached for comment, wrote to Congress that Global had ceased operating this year, after Florida's attorney general and others sued it over its activities.

Congressional investigators also have found instances of law-enforcement people getting phone numbers from firms suspected of pretexting. At a June House

hearing, the Immigration and Customs Enforcement agency acknowledged that four agents in Denver used a data broker to get cellphone records.

An agency official testified that the operative could have gotten the records by going directly to the phone companies but said this was much faster. Agency officials said that although they didn't believe the four had acted improperly, the Denver office had been asked to stop using the data provider.

In business litigation, requests for phone records of opposing parties have long been "an everyday deal," says Jim Bearden, an Arlington, Texas, attorney who represents data providers, including Universal. With the recent controversy, he said, his clients have stopped providing telephone records.

Pretexting was an issue in recent Illinois litigation over ownership stakes in an insurance agency. A private investigator testified in a Jackson County state court that one party, Jeffrey Diederich, had hired him to obtain cellphone records of another party, Cynthia Germann. The investigator said he had handled such requests "many times in the past" for various clients. He testified that other investigative firms supplied him with the phone records, which he said he believed had been obtained legally.

The judge found, among other things, that Mr. Diederich had "illegally had the telephone calls" of Ms. Germann "surveilled." The court awarded Ms. Germann about \$800,000, mostly related to the business issues but including \$100,000 of punitive damages. Mr. Diederich's attorney, Ronald Osman, says he doesn't know what methods were used to obtain the phone records. He says the judge's criticism "went way too far," and an appeal is likely if the judge doesn't reconsider his decision.

The pretexting question also surfaced in a 2004 suit by Bridgewater Associates, a big Westport, Conn., money manager, against a former employee it accused of violating noncompete and confidentiality agreements. The ex-employee, Vivin Oberoi, who denied Bridgewater's allegations, asserted in federal court filings that the money manager had accessed his cellphone records as part of its investigation.

A lawyer for Bridgewater, Michael Gordon, said he hired an investigator to see if Mr. Oberoi was working for a competitor, and the private investigator came back with records of some of Mr. Oberoi's calls. "I never told him to get phone numbers," and "I don't know how he got them," said Mr. Gordon, adding that Bridgewater didn't know he had hired a private investigator. The Bridgewater-Oberoi dispute is in arbitration.

The FTC's Mr. Winston applauds provisions in the new federal phone-data pretexting bill that make it easier to nab buyers of such data and hopes Congress will give his agency similar powers in civil-enforcement cases. "We have to dry up the demand side," he says.

What's That Student Doing With a Broom? Playing Harry Potter's Favorite Sport

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love of oozeball, or volleyball played in a mud pit, as well as their annual drag races involving beds on wheels. Cornell University undergraduates in Ithaca, N.Y., play footbag foursquare, in which participants kick a Hacky Sack instead of bouncing a ball as they do in the traditional childhood game. At Amherst College in Massachusetts, a dozen students recently tried competitive "boffing," a form of fencing that grew out of fantasy games that involve fake swordplay.

At Middlebury, Alexander Benepe and several friends came up with their spin on Quidditch last year after tiring of a weekly game of bocce ball on Sunday and marveling over the latest Harry Potter movie. About 30 Middlebury students played pickup games almost every weekend this fall, usually two or three matches, before heading to a championship "Quidditch World Cup" that drew five teams and

about 60 players this month.

"We are the first college students who grew up reading Harry Potter," says Mr. Benepe, a sophomore from New York City. "It's very much a book of our generation."

As envisioned by Ms. Rowling, each Quidditch team has seven players aloft on brooms. Three "chasers" throw each other the "quaffle," or game ball, and score 10 points by hurling it through one of three circular goals guarded by a keeper. Meanwhile, two "bludgers," magical black balls, fly around trying to knock players off their brooms. Then, there is the golden snitch. The "seeker"—Harry Potter's position—tries to catch the elusive ball, ending the match, earning 150 points and, in most cases, victory.

At Marlboro, students have ditched the brooms. The toy helicopter is launched from a slingshot to re-create the snitch and must be caught before it touches ground. For bludgers, students hurl water-soaked foam balls. Both schools use a volleyball as the quaffle. At Middlebury, it is aimed at gold-painted Hula Hoops mounted on chairs. Dodgeballs are used as bludgers in the Middlebury game.

Injuries, foul weather and nasty play punctuate the competition at Harry Pot-

ter's academy, the Hogwarts School of Witchcraft and Wizardry. It isn't much different in Vermont. At a windy recent game at Marlboro played in snow flurries, a volleyball quaffle slammed into the face of Sean Gerety, an 18-year-old freshman with a Potter-like shock of dark hair and round glasses. Clutching his bloody nose, he ran from the field.

"You can use any means necessary to get the quaffle," Mr. Benepe, who acted as referee, told the teams before the World Cup games at Middlebury. "It's a dirty game. Tackling, tripping and sliding are all encouraged."

Before the goal posts went up, students had trouble mounting them in the nearly frozen ground at the ends of the field. "Dude, why can't we just enchant them?" asked Noah Feder, a sophomore from Memphis, Tenn.

Middlebury's five World Cup squads included the Falcons, with birds embla-

zoned on their T-shirts; the Lumberjacks, dressed in outdoorsy plaids; and the Wocs (cow spelled backward) wearing black-felt capes with white spots. The trophy consisted largely of a vodka bottle spray-painted gold and mounted on a Halloween platter covered with skulls. "You are competing for eternal glory and the chance to have your name written forever here with a Sharpie," Mr. Benepe told a cheering crowd.

Players passed the quaffle up and down the field, with those holding it often finding themselves face down in the mud underneath a rugby-style scrum. Greta VanDeventer, an 18-year-old freshman, was temporarily sidelined after she took an elbow in the eye that left a small gash.

Mr. Johnson, playing the snitch, snared the spotlight. A 5-foot-6-inch, 135-pound bolt of lightning, he ran backward to keep the sock out of reach, dived through thick mud and evaded players by running through a crowd of spectators cheering "Go, Snitch!"

In one contest, he appeared from behind a dormitory and sprinted onto the field, pursued by a student playing a seeker. Slowing down, he taunted his adversary, then stopped short, bent down and shoved him in the chest, flinging him into a patch of mud before slipping away.



Alexander Benepe



Rainey Johnson



Online Today: *WSJ.com* subscribers can see photos from the Quidditch pitch at Middlebury College, at WSJ.com/OnlineToday.