

September 2014

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Appeals Court Holds User Consent Required to Enforce Website Terms of Use September 26, 2014

A recent decision by the United States Court of Appeals for the Ninth Circuit reinforces the importance of obtaining affirmative user consent to website Terms of Use for website owners seeking to enforce those terms against consumers. In *Nguyen v. Barnes & Noble Inc.*, the Ninth Circuit held that Barnes & Noble's website Terms of Use ("Terms") were not enforceable against a consumer because the website failed to provide sufficient notice of the Terms, despite having placed conspicuous hyperlinks to the Terms throughout the website. [Continue reading...](#)

Article 29 Working Party States Principles in EU Data Protection Law Apply to Big Data September 26, 2014

On September 16, 2014, the Article 29 Working Party (the "Working Party") adopted a [Statement on the impact of the development of big data on the protection of individuals with regard to the processing of their personal data in the EU](#) ("Statement"). This two-page Statement sets forth a number of "key messages" by the Working Party on how big data impacts compliance requirements with EU privacy law,

with the principal message being that big data does not impact or change basic EU data protection requirements. [Continue reading...](#)

Article 29 Working Party Issues an Opinion on Internet of Things September 25, 2014

On September 22, 2014, the Article 29 Working Party (the “Working Party”) released an [Opinion](#) on the Internet of Things (the “Opinion”) that was adopted during the last plenary session of the Working Party in September 2014. With this Opinion, the Working Party intends to draw attention to the privacy and data protection challenges raised by the Internet of Things and to propose recommendations for the stakeholders to comply with the current EU data protection legal framework. [Continue reading...](#)

FTC Settles COPPA Violation Charges Against Yelp and TinyCo September 23, 2014

On September 17, 2014, the Federal Trade Commission [announced](#) that the online review site Yelp, Inc., and mobile app developer TinyCo, Inc., have agreed to settle separate charges that they collected personal information from children without parental consent, in violation of the Children’s Online Privacy Protection Rule (the “COPPA Rule”). [Continue reading...](#)

Article 29 Working Party to Establish a Common Approach on the Right to be Forgotten for All EU Data Protection Authorities September 19, 2014

On September 18, 2014, the Article 29 Working Party (the “Working Party”) [announced](#) its decision to establish a common approach to the right to be forgotten (the “tool-box”). This tool-box will be used by all EU data protection authorities (“DPAs”) to help address complaints from search engine users whose requests to delete their search result links containing their personal data were refused by the search engines. The development of the tool-box follows the Working Party’s [June 2014 meeting](#) discussing the consequences of the European Court of Justice’s judgment in [Costeja of May 13, 2014](#). [Continue reading...](#)

French Data Protection Authority Reviews 100 Websites During EU Cookies Sweep Day September 19, 2014

On September 18, 2014, the French Data Protection Authority (the “CNIL”) [announced](#) plans to review 100 French websites on September 18-19, 2014. This review is being carried out in the context of the European “cookies sweep day” initiative, an EU online compliance audit. The Article 29 Working Party organized this joint action, which runs from September 15-19, 2014, to verify whether major EU websites are complying with EU cookie law requirements. [Continue reading...](#)

UK ICO Launches Consultation on Criteria for Privacy Seal Schemes September 16, 2014

On September 2, 2014, the UK Information Commissioner’s Office (“ICO”) published a [consultation](#) on the framework criteria for selecting scheme providers for its privacy seal scheme. The consultation gives organizations the opportunity to provide recommendations for the framework criteria that will be used to assess the relevant schemes. The consultation is open until October 3, 2014.

Under the draft framework criteria, the ICO’s proposals include the following:

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Vermont Attorney General Reaches Settlement with Aaron's Franchisee Over Unlawful Debt Collection Practices **September 12, 2014**

On September 8, Vermont Attorney General William Sorrell [announced](#) that SEI/Aaron's, Inc. has entered into an assurance of discontinuance, which includes \$51,000 in total fines, to settle charges over the company's remote monitoring of its customers' leased laptops. The settlement stems from charges accusing SEI/Aaron's, an Atlanta-based franchise of the national rent-to-own retailer Aaron's, Inc., of unlawfully using surveillance software on its leased laptops to assist the company in the collection of its customers' overdue rental payments. The Vermont Office of the Attorney General claimed that such remote monitoring of the laptop users' online activities in connection with debt collection constituted an unfair practice in violation of the Vermont Consumer Protection Act. [Continue reading...](#)

Discovery of 13-Year Hacking Scheme Highlights Questions About Cyber Insurance Coverage **September 11, 2014**

Hunton & Williams [Insurance Litigation & Counseling](#) partner [Lon Berk](#) reports:

An Israeli security firm recently uncovered a hacking operation that had been active for more than a decade. Over that period, hackers breached government servers, banks and corporations in Germany, Switzerland and Austria by using over 800 phony front companies (which all had the same IP address) to deliver unique malware to victims' systems. The hackers purchased digital security certificates for each phony company to make the sites appear legitimate to visitors. Data reportedly stolen included studies on biological warfare and nuclear physics, plans for key infrastructure, and bank account and credit card data. [Continue reading...](#)

Mobile Apps Fail to Provide Basic Privacy Information According to GPEN's Mobile Apps Sweep Results **September 11, 2014**

On September 10, 2014, the Global Privacy Enforcement Network ("GPEN") [published](#) the results of an enforcement sweep [carried out](#) in May of this year to assess mobile app compliance with data protection laws. Twenty-six data protection authorities worldwide evaluated 1,211 mobile apps and found that a large majority of the apps are accessing personal data without providing adequate information to users. [Continue reading...](#)

New Irish Data Protection Commissioner Appointed **September 11, 2014**

On September 10, 2014, Helen Dixon was announced as the new Data Protection Commissioner for Ireland. Dixon currently is registrar of the Companies Registration Office and has experience in both the private and public sectors, including senior management roles in the Department of Jobs. Dixon will take up her appointment over the coming weeks, succeeding Billy Hawkes in the role. Hawkes has served as Commissioner for two terms since 2005.

Article 29 Working Party Releases Statement on ECJ Ruling Invalidating the EU Data Retention Directive

September 8, 2014

The Article 29 Working Party (the “Working Party”) recently released its [August 1, 2014 statement](#) providing recommendations on the actions that EU Member States should take in light of the European Court of Justice’s [April 8, 2014 ruling](#) invalidating the EU Data Retention Directive (the “Ruling”). [Continue reading...](#)

FCC Announces 7.4 Million Dollar Settlement with Verizon September 5, 2014

On September 3, 2014, the Federal Communications Commission [announced](#) that Verizon has agreed to pay \$7.4 million to settle an FCC Enforcement Bureau investigation into Verizon’s use of personal information for marketing. The investigation revealed that Verizon had used customers’ personal information for marketing purposes over a multiyear period before notifying the customers of their right to opt out of such marketing. [Continue reading...](#)

Bank of America Finalizes 32 Million Dollar Settlement in TCPA Class Action September 4, 2014

On September 2, 2014, a federal district court in California granted final approval to a [settlement](#) ending a class action against Bank of America (“BoFA”) and FIA Card Services stemming from allegations that the defendants “engaged in a systematic practice of calling or texting consumers’ cell phones through the use of automatic telephone dialing systems and/or an artificial or prerecorded voice without their prior express consent, in violation of the Telephone Consumer Protection Act (“TCPA”).” The court granted preliminary approval to the settlement in December 2013. [Continue reading...](#)



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