

November 2012

This Client Alert is a monthly update on privacy and information management developments as posted on Hunton & Williams' [Privacy and Information Security Law Blog](#). If you would like to receive email alerts when new posts are published, please visit our [blog](#) and enter your email address in the subscribe field.

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German Advertisers Launch Self-Regulation Initiative for Online Behavioral Advertising November 27, 2012

On November 19, 2012, 40 German advertising associations launched the "German Data Protection Council for Online Advertising," a new initiative to coordinate and enforce self-regulation in the German online behavioral advertising ("OBA") sector. The initiative is linked to the [European Interactive Digital Advertising Alliance](#) ("EDAA"), which manages the self-regulation efforts of the European online advertising industry. [Continue reading...](#)

Hunton & Williams Maintains Top-Tier Rankings in Data Protection by Chambers UK November 26, 2012

Hunton & Williams is pleased to [announce](#) the firm maintained its top-tier "Band 1" ranking in [Data Protection](#) in the 2013 edition of [Chambers UK](#). Our London-based principals also maintained their high rankings as leading Data Protection lawyers:

- [Bridget Treacy](#), managing partner of the firm's London office and head of the UK Privacy and Data Security practice, was ranked as a "Star Individual."

- [Richard Thomas](#), Global Strategy Advisor to the [Centre for Information Policy Leadership](#) at Hunton & Williams LLP, was ranked as a “Senior Statesman.”
- [Rosemary Jay](#), a senior attorney, was ranked in “Band 1.”

For more information, please read our [press release](#).

Time Running Out for Mobile App Operators Targeted by California Attorney General November 26, 2012

In late October 2012, California Attorney General Kamala D. Harris began sending [letters](#) to approximately 100 mobile app operators, informing them that they are not in compliance with the [California Online Privacy Protection Act](#) (“CalOPPA”). Pursuant to CalOPPA, “an operator of a commercial Web site or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit its commercial Web site or online service” must post a privacy policy that contains specified elements. A mobile app arguably could be an “online service” under CalOPPA, which provides that an online service operator that collects “personally identifiable information” and “fails to post its policy within 30 days after being notified of noncompliance” is in violation of CalOPPA. The law affects a wide range of mobile app operators because of its very broad definition of “personally identifiable information,” which includes any “individually identifiable information about an individual consumer collected online by the operator from that individual and maintained by the operator in an accessible form,” such as a name, an email address or any other identifier “that permits the physical or online contacting of a specific individual.” [Continue reading...](#)

European Data Protection Supervisor Publishes Cloud Computing Opinion November 21, 2012

On November 16, 2012, European Data Protection Supervisor Peter Hustinx published an [Opinion](#) on the European Commission’s [Communication](#) on cloud computing (part of the Commission’s broader [cloud computing strategy](#)). The Opinion focuses on the accountability principle and emphasizes the importance of clearly defining the responsibilities of all parties involved in cloud computing, and analyzes specific cloud computing issues in the context of both the current EU data protection framework, as well as the proposed [General Data Protection Regulation](#). [Continue reading...](#)

UK ICO Publishes Anonymization Code of Practice November 21, 2012

On November 20, 2012, the UK Information Commissioner’s Office (“ICO”) [published](#) “[Anonymisation: Managing Data Protection Risk Code of Practice](#)” (the “Code”). The purpose of the Code is to provide organizations with a framework for assessing the risks of anonymization. It also sets forth good practice recommendations that may be adopted by organizations to provide a “reasonable degree of confidence” that the publication and sharing of anonymized data will not lead to an “inappropriate disclosure of personal data.” The published Code follows a [consultation on the same topic earlier this year](#). The ICO also announced the creation of the UK Anonymisation Network, which will promote the sharing of good practices related to anonymization across the public and private sectors. [Continue reading...](#)

Keynote Sessions at the 2012 IAPP Europe Data Protection Congress November 20, 2012

On November 13-15, 2012, delegates at the [IAPP Europe Data Protection Congress](#) in Brussels were given insight into how discussions with key policymakers are progressing. As European Parliament rapporteur and Member of the European Parliament Jan Philipp Albrecht aims to finalize the reform of the

EU Data Protection Directive by the end of the current European Parliament's mandate in 2014, this ambitious goal faces numerous hurdles. [Continue reading...](#)

Court Certifies Class in Text Message Suit Against Papa John's November 20, 2012

On November 9, 2012, a federal District Court in Washington [certified](#) a national class and a Washington state sub-class in an action alleging that [Papa John's International, Inc.](#) ("Papa John's") violated the Telephone Consumer Protection Act ("TCPA") by sending unsolicited text messages advertising its pizza products. The court determined that plaintiffs had standing and satisfied all other requirements for class certification. [Continue reading...](#)

German DPAs Publish Guidelines on Data Processing Separation in the Context of Shared IT Systems November 16, 2012

On November 10, 2012, the German working group on technical and organizational data protection matters published [guidelines](#) (in German) on the technical and organizational separation requirements for automated data processing on shared IT systems (the "Guidelines"). The working group is part of the Conference of the German Data Protection Commissioners, which recently [concluded](#) its 84th Conference in Frankfurt (Oder). [Continue reading...](#)

UK ICO Gathers Views on Privacy Seals November 15, 2012

The UK Information Commissioner's Office ("ICO") recently [published](#) a questionnaire to gather feedback on how privacy seals might be used to improve data protection compliance and customer privacy awareness. The questionnaire is available online until November 30, 2012. [Continue reading...](#)

Court Finds Citibank Opt-Out Confirmation Text Does Not Violate TCPA November 14, 2012

On October 30, 2012, the U.S. District Court for the Southern District of California [ruled](#) that an opt-out confirmation text sent by Citibank (South Dakota), N.A. ("Citibank") did not violate the Telephone Consumer Protection Act ("TCPA"). Under a "common sense" interpretation, the court determined that Citibank's opt-out text does not demonstrate the type of invasion of privacy the TCPA seeks to prevent. [Continue reading...](#)

Privacy Attorneys Receive New York Super Lawyers Honors November 13, 2012

Hunton & Williams LLP is pleased to announce that several privacy attorneys were named to the New York Metro [Super Lawyers](#) list for 2012. For the seventh consecutive year, [Lisa J. Sotto](#), partner and head of the Global Privacy and Data Security practice at Hunton & Williams LLP, was selected as a New York Super Lawyer. In addition, partner [Aaron P. Simpson](#) and associate [Mason A. Weisz](#) were included as [Rising Stars](#) for the second year in a row, and associate [Melinda L. McLellan](#) debuted in the Rising Stars category. As members of the firm's [Privacy and Data Security](#) team, their practices focus on complex privacy and data security matters, including assisting clients with the remediation of large-scale data security incidents and compliance with federal, state and international privacy and data security requirements.

Sotto Discusses the Inevitability of Data Breaches in Live Interview with Bloomberg Law November 13, 2012

Bloomberg Law's Lee Pacchia [interviewed Lisa J. Sotto](#), partner and head of the [Global Privacy and Data Security](#) practice at Hunton & Williams LLP, to discuss the recent data security incident involving Barnes & Noble stores. Sotto discussed life in the modern world of technology where there is an increased risk of data security incidents, and many companies only reach out to counsel after a data breach occurs. Sotto also described how large companies should protect themselves against these sophisticated cyberattacks. [View the full live interview now.](#)

Election Results: Key Developments for Federal Privacy and Data Security Legislation November 12, 2012

Reporting from Washington, D.C., Hunton & Williams partner [Frederick Eames](#) writes: Elections have consequences. What are the consequences of the 2012 election on U.S. federal privacy, data security and breach notice legislation? We outline some key developments in the U.S. House of Representatives and Senate and explain how these developments might affect legislative priorities and prospects for the 113th Congress beginning in 2013. [Continue reading...](#)

Data Protection Commissioners Adopt Three Resolutions at 34th International Conference November 12, 2012

On October 26, 2012, three resolutions were adopted by the closed session of the [34th International Conference of Data Protection and Privacy Commissioners](#) and have been published on the [conference website](#). Below we provide an overview of these resolutions. [Continue reading...](#)

FTC Finalizes Settlements Relating to P2P Privacy Violations November 8, 2012

On October 26, 2012, the Federal Trade Commission [finalized](#) its settlement agreements with two businesses that allegedly exposed thousands of customers' sensitive personal information by allowing peer-to-peer ("P2P") file-sharing software to be installed on the companies' computer systems. The approved settlements prohibit Georgia auto dealer Franklin's Budget Car Sales, Inc. ("Franklin") and Utah-based debt collector EPN, Inc. ("EPN") from misrepresenting their privacy and information security practices and requires both businesses to establish and maintain a comprehensive information security program subject to biennial, independent, third-party audits for 20 years. The settlement with Franklin also bars the company from violating the Gramm-Leach-Bliley Act ("GLBA") Safeguards Rule and Privacy Rule. [Continue reading...](#)

UK Justice Select Committee Opinion Critiques the EU Data Protection Framework Proposals November 2, 2012

On October 24, 2012, the UK Justice Select Committee (the "Committee"), appointed by the House of Commons to examine the expenditure, administration and policy of the UK Ministry of Justice, published its opinion on the proposed [General Data Protection Regulation](#) (the "Proposed Regulation") and proposed [Police and Criminal Justice Data Protection Directive](#) (the "Proposed Directive"). In the opinion, the Committee agrees that new proposals are necessary, both to update the existing data protection framework and to "confer on individuals their new rights and freedoms." The Committee expresses reservations, however, regarding a number of key issues, and concludes that the European Union data

protection proposals “need to go back to the drawing board.” The Committee notes that in its present form, the Proposed Regulation will not produce a “proportionate, practicable, affordable or effective system of data protection in the EU.” [Continue reading...](#)



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