PRIVACY AND INFORMATION SECURITY LAW BLOG
GLOBAL PRIVACY AND INFORMATION SECURITY LAW UPDATES AND ANALYSIS

July 2011

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.

Recent posts on the Privacy and Information Security Law blog include:

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Connecticut Restricts Employer Access to Employee Credit Reports
July 29, 2011

As reported in the Hunton Employment & Labor Perspectives Blog, Connecticut recently became the latest state to pass a law regulating employer use of credit reports. The law, which goes into effect on October 1, 2011, prohibits employers from requiring employees or prospective employees to consent to the employer requesting their credit report as a condition of employment. The full post includes a discussion of the exceptions to this restriction.

Read our previous posts on regulatory scrutiny of employee credit checks and a similar Illinois law that went into effect on January 1, 2011.

Mexico's Draft Privacy Regulations: English Translation
July 28, 2011

As we previously reported, the Mexican government has developed draft regulations for the implementation of Mexico's Federal Law on the Protection of Personal Data in the Possession of Private Parties (*Ley Federal de Protección de Datos Personales en Posesión de los Particulares*). The U.S. Department of Commerce recently circulated an English translation of the draft regulations. Public comments on the draft are due on August 3, 2011, and Mexican officials have indicated they will not grant

extensions for late submissions. A final version of the regulations is expected to go into effect in January 2012.

Access the text of the draft regulations in English.

Access the text of the draft regulations in Spanish.

Russia Enacts Amendments to Data Privacy Law
July 28, 2011

As reported in *BNA's Privacy Law Watch*, on July 25, 2011, Russian President Dmitry Medvedev signed a new federal law amending Russia's personal data privacy law, "On Personal Data." The amended law, which was made public on July 27 and is effective retroactively from July 1, 2011, imposes new rules on international data transfers. As we previously reported, and as noted by the BNA, Russia had been considering improving its data protection regime and has enacted two other laws regarding the protection of personal data in the past several weeks. Continue Reading...

Netflix Backs Amendment to Video Privacy Protection Act
July 27, 2011

On July 25, 2011, Netflix stated that it will hold off on the launch of its Facebook integration in the U.S. due to legal issues related to the Video Privacy Protection Act ("VPPA"). The new Facebook feature would allow Netflix subscribers to share their movie viewing information with friends online. Netflix indicated in its second quarter shareholder letter that it supports House Bill 2471 ("H.B. 2471"), a proposed bipartisan amendment to the VPPA intended to clarify the consent requirement for sharing consumer video viewing information. The letter states that "[u]nder the VPPA, it is ambiguous when and how a user can give permission for his or her video viewing data to be shared" and that the VPPA "discourages us from launching our Facebook integration domestically." As a result, the company plans to limit the campaign to Canada and Latin America until questions concerning the VPPA are resolved. Continue Reading...

President Obama Nominates Ohlhausen to be FTC Commissioner
July 25, 2011

As reported in *BNA's Privacy Law Watch*, on July 19, 2011, President Obama announced his intention to nominate Maureen K. Ohlhausen to the Federal Trade Commission. Obama sent his official nomination to the Senate on July 21, 2011. If approved, Ohlhausen will serve a seven-year term beginning on September 26, 2011, replacing Commissioner William E. Kovacic. Continue Reading...

EEOC Letter Suggests Employers May Need to Increase Privacy Safeguards for Employee Medical Information
July 25, 2011

As reported in the Hunton Employment & Labor Perspectives Blog:

The EEOC recently released an informal discussion letter suggesting that employers may be obligated to do more than just maintain a separate file for employee medical records, especially when those records are in an electronic format. Both the Americans with Disabilities Act of 1990 ("ADA"), as amended, and the Genetic Information Non-Discrimination Act of 2008 ("GINA") require employers to maintain a confidential medical record, which is separate from the employee's other personnel file(s), for information about the employee's medical conditions, medical history or "genetic information." The statutes do not,

however, specify how such records are to be maintained or what level of security must be in place to protect the confidentiality of medical or genetic information. Continue Reading...

Class Action Suit Filed Against Cloud Service over Data Breach
July 22, 2011

A putative class action complaint filed on June 22, 2011, in the United States District Court for the Northern District of California alleges that the popular cloud-based storage provider Dropbox, Inc. failed to secure users' private data or to notify the vast majority of them about a data breach. According to the complaint, Dropbox announced in a blog post on its website that it had "introduced a bug" on June 19, 2011, which allowed users logged in to its system to log into other users' accounts and access those users' data stored on Dropbox. The complaint further claims that Dropbox did not notify most, if not all, of its 25 million users that their information had been compromised. The complaint defines the plaintiff class as all current or former Dropbox users as of June 19, 2011, whose accounts were breached. Continue Reading...

Hong Kong Privacy Commissioner Solicits Views on Proposal for Data User Returns
July 20, 2011

The Hong Kong Privacy Commissioner has issued a document soliciting comments regarding a proposal to require a wide range of data users to submit information about their activities to the Office of the Privacy Commissioner for Personal Data. The proposal would be carried out pursuant to the Hong Kong Privacy Ordinance, which authorizes the Privacy Commissioner to require certain data users to submit data user returns. Under the Ordinance, a "data user return" is a form certain data users must submit to the Privacy Commissioner for purposes of maintaining a data user registration database. A "data user" is defined as "a person who, either alone or jointly or in common with other persons, *controls* the collection, holding, processing or use of [personal] data" *(emphasis added)*. Continue Reading...

Article 29 Working Party Opines on Consent Requirements
July 15, 2011

On July 13, 2011, the Article 29 Working Party (the "Working Party"), adopted an Opinion on the concept of consent as a legal basis for processing personal data, which includes recommendations for improving the concept in the context of the ongoing review of the EU data protection framework. The Opinion also analyzes the conditions for valid consent under EU data protection law (that consent must be "freely given," "specific," "unambiguous," "explicit," "informed," etc.), and clarifies the obligations of data controllers seeking consent. In addition, the Opinion provides examples of valid and invalid consent with respect to company social media, medical research, body scanners, PNR data and online gaming. Continue Reading...

House Subcommittees Convene Hearing to Launch Review of Internet Privacy
July 15, 2011

On July 14, 2011, the U.S. House of Representatives Energy and Commerce Committee convened a joint hearing of the Subcommittee on Commerce, Manufacturing and Trade (chaired by Rep. Mary Bono Mack (R-CA)), and the Subcommittee on Communications and Technology (chaired by Rep. Greg Walden (R-OR)), to launch a comprehensive review of Internet privacy. The series of hearings began with testimony from officials representing three agencies with jurisdiction over consumer privacy issues: FTC Commissioner Edith Ramirez, FCC Chairman Julius Genachowski, and Department of Commerce Assistant Secretary for Communications and Information Lawrence Strickling. Continue Reading...

Stanford University Study Finds Online Tracking May Continue Even After Opt Out
July 14, 2011

On July 12, 2011, Stanford Law School's Center for Internet and Society reported the preliminary results of tests conducted with experimental software designed to detect third-party tracking. Over the months spent developing "a platform for measuring dynamic web content," researchers at the Stanford Security Lab analyzed tracking on the websites of Network Advertising Initiative ("NAI") participants by observing how cookies are altered when a user opts out of behavioral tracking on the NAI website, or enables Do Not Track. Continue Reading...

Canadian Anti-Spam Regulations Released for Comment
July 13, 2011

Adam Kardash from Heenan Blaikie LLP in Canada reports that Industry Canada and the Canadian Radio-television and Telecommunications Commission ("CRTC") have released draft regulations for Canada's Anti-Spam Legislation ("CASL"). CASL imposes a consent-based anti-spam regime that restricts organizations' ability to send commercial electronic messages. Industry Canada and the CRTC are charged with the task of implementing regulations under CASL. Continue Reading...

Texas Enacts Expansive New Health Privacy Law
July 11, 2011

Last month, Texas Governor Rick Perry signed a health privacy bill into law that imposes new obligations exceeding the requirements in the HIPAA Privacy Rule. The law, which will become effective on September 1, 2012, incorporates the expanded definition of the term "covered entity" in Texas's existing health privacy law and could have a broad impact on many non-HIPAA covered entities. Continue Reading...

HHS Announces $865,500 Settlement with UCLA Health System for HIPAA Violations
July 8, 2011

On June 7, 2011, the Department of Health and Human Services ("HHS") announced a resolution agreement and $865,500 settlement with the University of California at Los Angeles Health System ("UCLA Health System") for violations of the HIPAA Privacy and Security Rules. UCLA Health System employees were accused of violating the Privacy Rule by improperly accessing the protected health information ("PHI") of patients, including several high-profile celebrities who filed complaints with HHS. A subsequent investigation by HHS's Office of Civil Rights ("OCR") revealed that in addition to neglecting to sanction the employees who had improperly accessed patient PHI, UCLA Health System had failed to train its employees on the HIPAA Privacy and Security Rules or implement security measures to "reduce the risks of impermissible access to electronic protected health information by unauthorized users to a reasonable and appropriate level." Continue Reading...

UK ICO's Annual Report Shows Private Sector Companies Reported Most Security Breaches in 2010/11
July 7, 2011

On July 6, 2011, the UK Information Commissioner's Office (the "ICO") released its Annual Report and Financial Statements for 2010/11. Characterizing information as "the currency of democracy," the report highlights the wide range of the ICO's activities during the last twelve months, which focused on education and the provision of good practice guidance in addition to enforcement activities. Continue Reading...

Federal Trade Commission Announces Settlement with Teletrack, Inc.
July 1, 2011

On June 27, 2011, the Federal Trade Commission announced that it had reached a settlement with Teletrack, Inc. ("Teletrack"), a consumer reporting agency that sells consumer reports and other services to businesses that serve financially distressed consumers, after alleging that the company had sold information obtained through its consumer reporting business to marketers to create a marketing database. The FTC considered that the information sold by Teletrack, which included lists of consumers who applied for certain credit products, constituted "consumer reports" under the Fair Credit Reporting Act ("FCRA") because it contained information about a consumer's credit worthiness. The sale of such information by Teletrack to marketers violated the FCRA because marketing is not a permissible purpose by which consumer reporting agencies may furnish consumer reports to third parties. According to the FTC's press release, the "settlement seeks to protect consumers' privacy by ensuring that their sensitive credit report information is not sold for marketing purposes."

The settlement order imposes a $1.8 civil penalty on Teletrack and certain reporting requirements to ensure Teletrack's compliance with the order. In addition, Teletrack must "furnish credit reports only to those people that it has reason to believe have a permissible purpose to receive them under the FCRA, or as otherwise allowed by the FCRA."

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