

PRIVACY & INFORMATION SECURITY LAW BLOG

Global Privacy and Cybersecurity Law Updates and Analysis



October 2017

This Client Alert is a monthly update on privacy and cybersecurity 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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French DPA Publishes a Compliance Pack Regarding Connected Vehicles

October 27, 2017

On October 17, 2017, the French Data Protection Authority ("CNIL"), after a consultation with multiple industry participants that was [launched](#) on March 23, 2016, published its compliance pack on connected vehicles (the "Pack") in line with its [report of October 3, 2016](#). The Pack applies to connected vehicles for private use only (not to Intelligent Transport Systems), and describes the main principles data controllers must adhere to under both the current French legislation and the EU General Data Protection Regulation ("GDPR"). [Continue Reading...](#)

Advocate General Rejects Facebook's Claim of Sole Irish Jurisdiction in EU

October 26, 2017

On October 24, 2017, an [opinion](#) issued by the EU's Advocate General Bot ("Bot") rejected Facebook's assertion that its EU data processing activities fall solely under the jurisdiction of the Irish Data Protection

Commissioner. The non-binding opinion was issued in relation to the CJEU case C-210/16, under which the German courts sought to clarify whether the data protection authority (“DPA”) in the German state of Schleswig-Holstein could take action against Facebook with respect to its use of web tracking technologies on a German education provider’s fan page without first providing notice. [Continue Reading...](#)

CIPL Responds to CNIL and Irish DPC on Transparency and Data Transfers under the GDPR October 24, 2017

The Centre for Information Policy Leadership at Hunton & Williams LLP (“CIPL”) recently submitted responses to the Irish Data Protection Commissioner ([IDPC Response](#)) and the CNIL ([CNIL Response](#)) on their public consultations, seeking views on transparency and international data transfers under the EU General Data Protection Regulation (“GDPR”).

The responses address a variety of questions posed by both data protection authorities (“DPAs”) and aim to provide insight on and highlight issues surrounding transparency and international transfers. [Continue Reading...](#)

FTC Issues Policy Statement on COPPA and Voice Recordings October 23, 2017

On October 23, 2017, the Federal Trade Commission [issued](#) a [policy enforcement statement](#) providing additional guidance on the applicability of the Children’s Online Privacy Protection Rule (“COPPA Rule”) to the collection of children’s audio voice recordings. The FTC previously updated the COPPA Rule in 2013, adding voice recordings to the definition of personal information, which led to questions about how the COPPA Rule would be enforced against organizations who collect a child’s voice recording for the sole purpose of issuing a command or request. [Continue Reading...](#)

Article 29 Working Party Releases Guidelines on Automated Individual Decision-Making and Profiling October 23, 2017

On October 17, 2017, the Article 29 Working Party (“Working Party”) issued [Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679](#) (the “Guidelines”). The Guidelines aim to clarify the EU General Data Protection Regulation’s (“GDPR’s”) provisions that address the risks arising from profiling and automated decision-making. [Continue Reading...](#)

Trump to Nominate New FTC Chair and Commissioner October 19, 2017

On October 19, 2017, the White House [announced](#) that President Donald J. Trump plans to nominate two individuals to serve as commissioners of the Federal Trade Commission. President Trump selected Joseph Simons to lead the FTC as its chairman for a seven-year term, beginning September 26, 2017. Simons’ background primarily has focused on antitrust matters. From June 2001 to August 2003, he led the FTC’s antitrust initiative as Director of the FTC’s Bureau of Competition. [Continue Reading...](#)

European Parliament’s LIBE Committee Approves Amended ePrivacy Regulation October 19, 2017

On October 19, 2017, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs ("LIBE Committee") narrowly voted to approve an amended version of the e-Privacy Regulation ("Regulation"). The committee vote is an important step in the process within the European Parliament. This vote will be followed by a vote of the European Parliament in its plenary session on October 23-26. If the plenary also votes in favor, the European Parliament will have a mandate to begin negotiations with the Member States in the Council. If these negotiations (commonly known as "trilogue") succeed, the Regulation will be adopted. [Continue Reading...](#)

Privacy and Data Security Risks in M&A Transactions: Part 2 of Video Series October 19, 2017

In our final two segments of the series, industry leaders [Lisa Sotto](#), partner and chair of Hunton & Williams' Privacy and Cybersecurity practice; [Steve Haas](#), M&A partner at Hunton & Williams; [Allen Goolsby](#), special counsel at Hunton & Williams; and [Eric Friedberg](#), co-president of Stroz Friedberg, along with moderator Lee Pacchia of Mimesis Law, continue their discussion on privacy and cybersecurity in M&A transactions and what companies can do to minimize risks before, during and after a deal closes. They discuss due diligence, deal documents and best practices in privacy and data security. The discussion wraps up with lessons learned in the rapidly changing area of data protection in M&A transactions, and predictions for what lies ahead. [Continue Reading...](#)

EU Commission Releases Report on First Annual Review of the EU-U.S. Privacy Shield Framework October 18, 2017

On October 18, 2017, the EU Commission ("Commission") released its [report](#) and accompanying [working document](#) on the first annual review of the EU-U.S. Privacy Shield framework (collectively, the "Report"). The Report states that the Privacy Shield framework continues to ensure an adequate level of protection for personal data that is transferred from the EU to the U.S. It also indicates that U.S. authorities have put in place the necessary structures and procedures to ensure the proper functioning of the Privacy Shield, including by providing new redress possibilities for EU individuals and instituting appropriate safeguards regarding government access to personal data. The Report also states that Privacy Shield-related complaint-handling and enforcement procedures have been properly established. [Continue Reading...](#)

Working Party Adopts Revised Guidelines on Data Protection Impact Assessments Under the GDPR October 18, 2017

On October 4, 2017, the Article 29 Working Party (the "Working Party") revised and adopted the final version of the [Guidelines on data protection impact assessments \(DPIA\) and determining whether processing is "likely to result in a high risk" for the purposes of Regulation 2016/679](#) (the "Guidelines"). The Guidelines were first published for comment on April 4, 2017, and the final publication of these revised Guidelines follows the public consultation that ended in May 2017. [Continue Reading...](#)

FTC Posts Final Blog in Its "Stick with Security" Series October 17, 2017

On October 13, 2017, the Federal Trade Commission published the twelfth and final blog post in its ["Stick with Security" series](#) (the "Series"). The Series focused on the 10 principles outlined in the FTC's [Start with Security Guide for Businesses](#) and sought to provide insights and lessons learned on data security from recent FTC cases, closed investigations and questions and comments received from businesses. The final post, entitled [Stick with Security: FTC resources for your business](#), outlines the resources

available to businesses to put the principles detailed in the Series into practice. These can be found on the FTC's [Data Security page](#). [Continue Reading...](#)

FTC and DOE to Host Workshop on Privacy Issues Related to Education Technology October 5, 2017

On October 4, 2017, the Federal Trade Commission and the Department of Education (“DOE”) [announced](#) that they will co-host a workshop to explore privacy issues related to education technology. The Ed Tech Workshop, which will take place on December 1, 2017 in Washington, D.C., will examine how the FTC’s Rule implementing the Children’s Online Privacy Protection Act (“COPPA”) applies to schools and intersects with the Family Educational Rights and Privacy Act (“FERPA”), which is administered by the DOE. [Continue Reading...](#)

Data Protection and Privacy Commissioners Issue Global Connected Car Guidance October 5, 2017

Last week, at the 39th International Conference of Data Protection and Privacy Commissioners in Hong Kong, data protection authorities from around the world issued [non-binding guidance](#) on the processing of personal data collected by connected cars (the “Guidance”). Noting the ubiquity of connected cars and the rapidity of the industry’s evolution, the officials voiced their collective concern about potential risks to consumers’ data privacy and security. The Guidance identifies as its main concern the lack of available information, user choice, data control and valid consent mechanisms for consumers to control the access to and use of their vehicle and driving-related data. Building on existing international guidelines and resolutions, the Guidance urges the automobile industry to follow privacy by design principles “at every stage of the creation and development of new devices or services.” [Continue Reading...](#)

OCR Issues Guidance on Disclosures to Family, Friends and Others October 4, 2017

On October 3, 2017, the U.S. Department of Health and Human Services’ Office for Civil Rights (“OCR”) issued an announcement clarifying when protected health information (“PHI”) can be shared with family, friends and others. This announcement, prompted by the recent mass shooting in Las Vegas, outlines the purposes for which PHI can be disclosed to these parties pursuant to HIPAA and the conditions that apply, which are summarized below. [Continue Reading...](#)

Facing Privacy Suits About Facial Recognition: BIPA Cases Move Forward as More States Consider Passing Biometric Data Laws October 4, 2017

Recent judicial interpretations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14, present potential litigation risks for retailers who employ biometric-capture technology, such as facial recognition, retina scan or fingerprint software. Federal judges in various district courts have allowed BIPA cases to move forward against companies such as Facebook, Google and Shutterfly, and retailers who use biometric data for security, loss prevention or marketing purposes may also become litigation targets as federal judges decline to narrow the statute’s applicability and additional states consider passing copycat statutes. [Continue Reading...](#)

Irish High Court Refers Standard Contractual Clauses Challenge to CJEU October 3, 2017

On October 3, 2017, the Irish High Court referred a legal challenge to the validity of the EU Standard Contractual Clauses (“SCCs”) to the Court of Justice of the European Union (“CJEU”) for resolution. Max Schrems, who had previously successfully [challenged](#) the validity of the now defunct U.S.-EU Safe Harbor Program in the *Schrems* case, had brought a similar claim in relation to the SCCs, and had requested that the Irish Data Protection Commissioner (“DPC”) declare that the SCCs do not provide sufficient protection when personal data is transferred outside the EU to the US and thus are invalid. The Irish DPC declined to make such a ruling, but instead referred the case to the Irish High Court, and requested that the case be referred to the CJEU for a final decision on the validity of the SCCs. [Continue Reading...](#)

CNIL Publishes GDPR Guidance for Data Processors October 3, 2017

On September 29, 2017 the French Data Protection Authority (CNIL) published a [guide for data processors](#) to implement the new obligations set by the [EU General Data Protection Regulation](#) (“GDPR”). The guidance addresses the extended scope of the GDPR and the new and direct obligations data processors will have when the GDPR comes into force on May 25, 2018. The guidance elaborates a three-step checklist for data processors. [Continue Reading...](#)

FTC Posts Eleventh Blog in Its “Stick with Security” Series October 3, 2017

On September 29, 2017, the Federal Trade Commission published the eleventh blog post in its “Stick with Security” series. [As previously reported](#), the FTC will publish an entry every Friday for the next few months focusing on each of the 10 principles outlined in its [Start with Security Guide for Businesses](#). This week’s post, entitled [Stick with Security: Secure paper, physical media, and devices](#), highlights the importance of adopting a 360 degree approach to protecting confidential data. This strategy includes securing not only networks and information systems, but also paper, physical media and devices. [Continue Reading...](#)

Samanage USA, Inc. Agrees to Pay to Settle Vermont AG’s Data Security Investigation October 3, 2017

On September 29, 2017, Samanage USA, Inc. (“Samanage”), a North Carolina-based technology company that provided cloud-based IT support services as a subcontractor for Vermont’s health care exchange (“Vermont Health Connect”), [agreed](#) to a \$264,000 settlement with the Vermont Attorney General in relation to a breach that exposed the Social Security numbers of 660 Vermont Health Connect users. [Continue Reading...](#)

CIPL and Hunton Participate in the 39th International Conference of Data Protection and Privacy Commissioners October 3, 2017

Last week, the [Centre for Information Policy Leadership](#) (“CIPL”) and several privacy team members at Hunton & Williams LLP attended the 39th International Conference of Data Protection and Privacy Commissioners in Hong Kong (the “Conference”). The weeklong event hosted by Stephen Kai-yi Wong, Privacy Commissioner for Personal Data, Hong Kong was attended by over 3000 privacy professionals from data protection authorities (“DPAs”), industry and research sectors. CIPL hosted two events at the conference, as well as a joint roundtable with Hunton & Williams and Citibank, throughout the week. [Continue Reading...](#)



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