CLIENT ALERT

HUNTON& WILLIAMS

October 2010

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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- French Government Secures "Right to Be Forgotten" on the Internet
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FTC to Focus on Self-Regulation by Behavioral Advertising Industry

October 22, 2010

On October 19, 2010, Federal Trade Commissioner Julie Brill indicated that the FTC's forthcoming behavioral advertising report will recommend a self-regulatory framework, as opposed to new legislation, to help protect consumers' privacy. Mediapost.com reported that Ms. Brill offered suggestions on improving privacy practices with respect to Internet advertising, such as by providing "consistent and simplified notice about online tracking and ad-serving," and that such notice should focus more on the unexpected or non-obvious uses of data (such as an e-commerce company's transfer of consumers' addresses to shipping companies).

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French Government Secures "Right to Be Forgotten" on the Internet

October 21, 2010

In November 2009, the French Secretary of State in charge of the digital economy, Nathalie Kosciusko-Morizet, launched a wide-ranging campaign designed to secure the "right to be forgotten" on the Internet ("droit à l'oubli"). The main objectives of the initiative were to: (1) educate Internet users about their

exposure to privacy risks on the Internet; (2) encourage professionals to adopt codes of good practice and to develop privacy-enhancing tools; and (3) foster data protection and the right to be forgotten at both the national and EU level.

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German Government Asks Internet Companies to Develop Self-Regulatory Code for Geo Data Services and Proposes Draft Law
October 20, 2010

On September 20, 2010, the German government under the leadership of the Federal Minister of the Interior held a summit on "Digitization of Cities and States - Opportunities and Limits of Private and Public Geo Data Services." Approximately 50 experts attended, including the Federal Minister of Food, Agriculture and Consumer Protection, the Federal Minister of Justice and representatives from various companies, such as Deutsche Telekom, Google, Microsoft, Apple Inc., OpenStreetMap and panogate. Numerous data protection authorities attended as well, including the Federal Commissioner for Data Protection and Freedom of Information, the Chair of the Düsseldorfer Kreis and the DPA of Hamburg. The discussions at the summit were based on a discussion paper issued by the Federal Minister of the Interior. Continue Reading…

Article 29 Working Party Finds Uruguay's Data Protection Regime Adequate
October 18, 2010

On October 15, 2010, the Article 29 Working Party published an Opinion finding that Uruguay ensures an adequate level of protection within the meaning of the European Data Protection Directive (Article 25(6) of Directive 95/46/EC).

This Opinion was issued pursuant to an official request Uruguay filed with the European Commission in October 2008. While the Article 29 Working Party's Opinion is an important step toward adequacy, the European Commission must now make a formal decision that the Uruguayan legal framework provides an adequate level of data protection under EU data protection law. The European Commission will take the Article 29 Working Party's Opinion into account when determining whether to issue an "adequacy decision" in the coming months. As recently illustrated by the adequacy procedure for Israel, this process may prove to be difficult. Continue Reading…

Mexico Elected to Lead the Ibero-American Data Protection Network
October 15, 2010

Following its recent enactment of an omnibus data protection law, Mexico has been unanimously elected to lead the Ibero-American Data Protection Network, a consortium of the governments of Spain, Portugal, Andorra and 19 Latin American countries. The group's mission is to foster, maintain and strengthen an exchange of information, experience and knowledge among Ibero-American countries through dialogue and collaboration on issues related to personal data protection. The IFAI announced on September 29, 2010, that Jacqueline Peschard, head of Mexico's Federal Institute for Access to Information and Data Protection (the "IFAI"), will represent Mexico during its two-year term.

The IFAI has been keeping busy since the enactment of the new law. It is working with the Secretary of Economy on various matters in the sphere of self-regulation, including a voluntary system under which companies may be certified in compliance with data protection standards. The IFAI also recently issued a

warning to social networks, urging them to take steps to protect minors. Meanwhile, it is preparing to issue rules to implement certain parts of the new omnibus law.

French National Assembly Introduces Resolution to Support International Standards on the Protection of Personal Data and Privacy
October 13, 2010

On October 5, 2010, the Commission for Economic Affairs of the French National Assembly introduced a Resolution (the "Resolution") to support the International Standards on the Protection of Personal Data and Privacy adopted in Madrid on November 5, 2009, at the 31st International Conference of Data Protection and Privacy Commissioners (also known as the "Madrid Resolution").

The Resolution states: "the right to privacy is a fundamental value in our society; the development of information and communication systems must be contained in order to prevent uses of personal data which threaten this right. Continue Reading…

Industry's Response to the UK Government's Call for Evidence
October 13, 2010

On behalf of a group of interested parties (the "Group"), Hunton & Williams and Acxiom submitted a response to the UK Ministry of Justice's ("MoJ") recent Call for Evidence on the effectiveness of current data protection legislation in the UK. The Group is comprised of representatives from more than 40 organizations, including Barclays Bank, Dell, Fujitsu and GE Capital, all of which are committed to using personal data responsibly. Hunton & Williams and Acxiom, a global leader in interactive marketing services, with the attendance of the Group, worked together over the last two months to host two discussion meetings, and produced a submission summarizing the Group's views. Continue Reading…

DOE Releases Report on Consumer Privacy Issues Related to Smart Grid Technologies
October 12, 2010

On October 5, 2010, the Department of Energy ("DOE") released a report entitled "Data Access and Privacy Issues Related to Smart Grid Technologies." The idea behind the Smart Grid is that electricity can be delivered more efficiently using data collected through monitoring consumers' energy use. In connection with the preparation of its report, the DOE surveyed industry, state and federal practices with respect to Smart Grid technologies, focusing on the issue of residential consumer data security and privacy. The DOE noted that advanced meters or "smart meters" were a focal point of the report due to their "ability to measure, record and transmit granular individual consumption." That said, a Smart Grid consists of "hundreds of technologies and thousands of components, most of which do not generate data relevant to consumer privacy." Continue Reading…

French DPA Releases New Guidance on Personal Data Security
October 11, 2010

On October 7, 2010, the French Data Protection Authority (the "CNIL") released its first comprehensive handbook on the security of personal data (the "Guidance"). The Guidance follows the CNIL's "10 tips for the security of your information system" issued on October 12, 2009, which were based on the CNIL's July 21, 1981 recommendations regarding security measures applicable to information systems.

The Guidance reiterates that data controllers have an obligation under French law to take "useful precautions" given the nature of the data and the risks associated with processing the data, to ensure data security and, in particular, prevent any alteration or damage, or access by non-authorized third parties (Article 34 of the French Data Protection Act). Failure to comply with this requirement is punishable by up to five years imprisonment or a fine of €300,000. Continue Reading…

German Federal Office for Information Security Issues Draft Framework Paper on Information Security for Cloud Computing

October 11, 2010

On September 28, 2010, the German Federal Office for Information Security, (the *Bundesamt für Sicherheit in der Informationtechnik* or "BSI") released a draft framework paper on information security issues related to cloud computing. The draft paper defines minimum security requirements for cloud solution service providers, and provides a basis for discussions between service providers and users. Continue Reading…

UK ICO Releases Draft Code on Data Sharing

October 8, 2010

On October 8, 2010, the UK Information Commissioner's Office launched a consultation on a new statutory code of practice on the sharing of personal data.

As stated in the ICO's press release, the draft code sets out a model of good practice, covering routine and one-off arrangements for sharing data with third parties. The code offers guidance on issues such as:

- The factors that an organization must take into account when deciding whether or not to share personal data
- The point at which individuals should be told that their data will be shared
- The security and staff training measures that must be implemented
- The rights of individuals to access their personal data
- Circumstances in which it is not acceptable to share personal data

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Health Care Organizations Comment on Proposed Modifications to HIPAA Privacy, Security and Enforcement Rules

October 4, 2010

The Department of Health and Human Services ("HHS") received numerous comments on its proposed modifications to the Health Insurance Portability and Accountability Act Privacy, Security and Enforcement Rules, which were issued on July 8, 2010. Some highlights from the comments are outlined below.

Enforcement Rule

The American Hospital Association ("AHA") suggested that HHS should continue to require the Secretary of HHS to attempt to resolve a complaint or compliance review through informal means, instead of making the informal resolution process optional. According to the AHA, making "resolution via informal means optional, regardless of the perceived level of culpability of a particular entity" would not be appropriate or

effective. The Coalition for Patient Privacy, on the other hand, recommended stricter enforcement so that "the only category of violators that should not be penalized with fines are those who despite due diligence could not discover the violation, who reported the violation immediately when discovered, and fully corrected the problems within 30 days of discovery." Continue Reading…

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