

September 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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European Commission Issues New Cloud Computing Strategy September 27, 2012

On September 27, 2012, the European Commission [presented](#) its new strategy on cloud computing, entitled "[Unleashing the Potential of Cloud Computing in Europe](#)." The Commission's strategy is outlined on a [new webpage](#) that includes a communication document and a more detailed [staff working paper](#). [Continue reading...](#)

FTC Settles Spying Case September 27, 2012

On September 25, 2012, the Federal Trade Commission [announced](#) that it had settled a case involving allegations of spying by software company DesignerWare, LLC ("DesignerWare") and several rent-to-own companies that rent computers to consumers, such as Aaron's, Inc., ColorTyme, Inc., and Premier Rental Purchase. The FTC collaborated with Illinois Attorney General Lisa Madigan in its investigation. [Continue reading...](#)

Hunton & Williams' Global Privacy Practice Head Lisa Sotto Named Among Ethisphere's 2012 "Attorneys Who Matter" **September 21, 2012**

On September 20, 2012, Hunton & Williams LLP announced [Lisa J. Sotto](#), head of the firm's Global Privacy and Data Security practice and managing partner of the New York office, was named among [Ethisphere Institute's "Attorneys Who Matter"](#) for 2012. The annual listing includes approximately 100 lawyers from a range of legal disciplines who surpass their peers based on their experience, public service, legal community engagement and client endorsement. [Continue reading...](#)

PCI Security Standards Council Issues Best Practices for Mobile Payment Acceptance Security **September 20, 2012**

On September 13, 2012, the PCI Security Standards Council ("PCI SSC") issued new guidelines entitled "[PCI Mobile Payment Acceptance Security Guidelines](#)" (the "Guidelines"), which outline best practices for mobile payment acceptance security. As [we reported](#) in May, the PCI SSC Mobile Working Group published its "At a Glance: Mobile Payment Acceptance Security" fact sheet, detailing how merchants can more securely accept payments on mobile devices. [Continue reading...](#)

NLRB Invalidates Costco's Social Media Policy **September 20, 2012**

As reported in the [Hunton Employment & Labor Perspectives Blog](#):

On September 7, 2012, the National Labor Relations Board invalidated Costco Wholesale Corp.'s policy of prohibiting employee electronic posts in its first decision involving an employer's social media policy. In *Costco Wholesale Corporation and UFCW Local 371*, Case No. 3A-CA-012421, the Board held, among other things, that Costco's rule prohibiting employees from posting statements electronically that "damage the Company, defame any individual or damage any person's reputation" was overly broad. The Board reasoned that the policy language contained no restrictions on its application and, thus, clearly encompassed protected concerted communications, such as speech that is critical of Costco or its agents. Accordingly, the rule had a tendency to chill employees' protected activity in violation of Section 8(a)(1) of the National Labor Relations Act, which makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by Section 7. [Continue reading...](#)

HHS Announces \$1.5 Million HIPAA Settlement with Massachusetts Facilities **September 19, 2012**

On September 17, 2012, the Department of Health and Human Services ("HHS") [announced](#) a \$1.5 million settlement with the Massachusetts Eye and Ear Infirmary and Massachusetts Eye

and Ear Associates Inc. (“MEEI”) for potential violations of the HIPAA Security Rule. In connection with the announcement, the HHS Office for Civil Rights (“OCR”) Director Leon Rodriguez stated that organizations should pay special attention to safeguarding information “stored and transported on portable devices such as laptops, tablets, and mobile phones” and that “compliance with the HIPAA Privacy and Security Rules must be prioritized by management and implemented throughout an organization, from top to bottom.” [Continue reading...](#)

Article 29 Working Party Issues Favorable Opinion on the Level of Protection of Personal Data in the Principality of Monaco **September 17, 2012**

On July, 19, 2012, the Article 29 Working Party (the “Working Party”) issued an [Opinion](#) finding that the Principality of Monaco ensures an “adequate level of protection” for personal data within the meaning of the European Data Protection Directive ([Article 25 of Directive 95/46/EC](#)) (the “Directive”). Under the Directive, strict conditions apply to personal data transfers to countries outside the European Economic Area that are not considered to provide an “adequate” level of data protection. [Continue reading...](#)

Markey Introduces Mobile Device Privacy Act **September 13, 2012**

On September 12, 2012, Congressman Edward Markey (D-MA) [released a bill](#) that would require companies to tell customers about monitoring software installed on their mobile devices and obtain customers’ express consent before engaging in monitoring. These requirements would apply to mobile phone makers, network providers and application developers. [Continue reading...](#)

Israeli Court Upholds DPA’s Authority to Issue Market Instructions **September 7, 2012**

Reporting from Israel, legal consultant [Dr. Omer Tene](#) writes:

In a detailed, 27-page decision (Admin. App. 24867-02-11 *IDI Insurance v. Database Registrar*), the Tel Aviv District Court recently upheld the validity of an instruction issued by the data protection regulator restricting financial institutions from using information about a third party’s attachment of their client’s account for the financial institution’s own purposes. The court held that the regulator is authorized to issue market instructions interpreting the law. The decision is likely to have far-reaching effects on the validity and weight given to a series of detailed guidance documents and market instructions published by the Israeli Law, Information and Technology Authority (“ILITA”) over the past two years. These include instructions regarding:

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FTC Issues Mobile App Guidance **September 6, 2012**

On September 5, 2012, the Federal Trade Commission [issued](#) guidelines for mobile app developers entitled "[Marketing Your Mobile App: Get It Right from the Start.](#)" The guidelines are largely a distillation of the FTC's previously expressed views on a range of topics that have relevance to the mobile app space. They are summarized below:

[Continue reading...](#)

Stricter Enforcement of German Advertising and Marketing Rules Effective September 1 September 5, 2012

As of September 1, 2012, all personal data in Germany may only be processed and used for marketing purposes (including address trading) with the express opt-in consent of the affected individuals. Furthermore, the consent language must have been specifically drawn to the attention of the relevant individual as part of the terms and conditions governing the use of his or her personal data. [Continue reading...](#)

European Commission Finds Uruguay's Data Protection Law Provides Adequate Safeguards September 4, 2012

On August 21, 2012, the European Commission formally [approved](#) Uruguay's status as a country providing "adequate protection" for personal data within the meaning of the European Data Protection Directive (Article 25(6) of Directive 95/46/EC). This follows the Article 29 Working Party's earlier favorable [Opinion](#) issued in 2010, and takes into account certain interpretative assurances and clarifications provided by Uruguay. Accordingly, transfers of personal data from the EU to Uruguay may now take place without additional intergovernmental guarantees and in accordance with applicable data protection provisions. [Continue reading...](#)

Sixth Circuit Finds Coverage for Losses Resulting from Retailer's Data Breach September 4, 2012

On August 23, 2012, the United States Court of Appeals for the Sixth Circuit [held](#) in *Retailer Ventures, Inc. v. Nat'l Union Fire Ins. Co.* that losses resulting from the theft of customers' banking information from a retailer's computer system are covered under a commercial crime policy's computer fraud endorsement. [Continue reading...](#)

FTC Files Complaint Against DISH Network September 4, 2012

On August 23, 2012, the Federal Trade Commission [announced](#) that it had filed suit against DISH Network LLC ("DISH Network") alleging violations of the FTC's Telemarketing Sales Rule ("TSR"). The [FTC's complaint](#) claims that DISH Network is a "seller" and "telemarketer" as such terms are defined by the TSR because the company sells satellite television programming to consumers and also markets its programming through a variety of methods, including telemarketing. According to the complaint, since September 2007, DISH Network has engaged in initiating millions of outbound telephone calls (directly and through authorized dealers) to

phone numbers of individuals who have previously stated that they do not wish to be contacted by or on behalf of DISH Network. Accordingly, the FTC argued that DISH Network violated the TSR's entity-specific Do-Not-Call Rule even if the affected individuals were not on the national Do Not Call list.

Read [previous coverage of FTC settlements](#) against telemarketing companies for violations of the TSR.



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