

PRIVACY AND INFORMATION SECURITY LAW BLOG

GLOBAL PRIVACY AND INFORMATION SECURITY LAW UPDATES AND ANALYSIS

June 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.

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Key Highlights from Rockefeller's Hearing on Privacy and Data Security June 30, 2011

On June 29, 2011, the [Senate Committee on Commerce, Science and Transportation](#) convened a hearing entitled "Privacy and Data Security: Protecting Consumers in the Online World." In [opening remarks](#), Committee Chair Senator Jay Rockefeller (D-WV) highlighted that the hearing would consider both privacy and data security and discussed three bills focused on these issues. First, Senator Rockefeller noted S. 917, the [Do-Not-Track Online Act of 2011](#), a bill he introduced that would allow consumers to tell online companies that they do not want their personal information collected and require companies to honor those requests. Second, the Senator referenced S. 799, the [Commercial Privacy Bill of Rights Act of 2011](#), legislation introduced by Senators John Kerry (D-MA) and John McCain (R-AZ) that would comprehensively address privacy protection. Finally, Senator Rockefeller spoke about S. 1207, the [Data Security and Breach Notification Act of 2011](#), which he and Senator Mark Pryor (D-AR) reintroduced. That bill would impose an obligation on companies to adopt basic security measures to protect sensitive consumer data and require companies to notify affected consumers in the event of a breach. Senator Rockefeller emphasized several times his committee's jurisdiction over privacy and data security issues. [Continue Reading...](#)

Council of Europe Considers Amendments to Convention 108 **June 30, 2011**

On June 28-30, 2011, the Council of Europe's Bureau of the Consultative Committee of the Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (known as the "T-PD-Bureau") [met in Strasbourg, France](#), to discuss, among other things, amending the Council of Europe's Convention 108. Convention 108, which underlies the European Union's legal framework for data protection, is the only legally-binding international convention that addresses data protection. Amendment of the Convention is thus closely linked to the [current review of the EU data protection framework](#), and many of the same actors are involved in both exercises. [Continue Reading...](#)

FCC-FTC Forum Highlights the Benefits and Risks of Advances in Location-Based Services **June 30, 2011**

On June 28, 2011, the Federal Communications Commission and the Federal Trade Commission convened a public education forum entitled "[Helping Consumers Harness the Potential of Location-Based Services](#)." Representatives of telecommunications carriers, technology companies and consumer advocacy organizations discussed technological developments and how best to realize the benefits of location-based services without compromising privacy. [Continue Reading...](#)

Commerce Department Shares Guidance on Mexico's New Data Protection Law **June 24, 2011**

On June 24, 2011, the U.S. Department of Commerce's International Trade Administration released a [PowerPoint presentation](#) on [Mexico's new private sector data protection law](#) that was shared at a meeting of the [OECD Working Party on Information Security and Privacy](#) by Mexico's Ministry of Economy and [Federal Institute for Access to Information and Data Protection](#) ("IFAI"). The presentation provides guidance on the creation of privacy notices and establishment of self-regulatory schemes, and also outlines the responsibilities of the Ministry of Economy and the IFAI with respect to implementation of the law. As we [previously reported](#), the requirements concerning self-regulation and providing privacy notices to consumers go into effect this July, with the balance of the law, granting individual participation rights to consumers, effective in January 2012.

Use of Facial Recognition Technology Raises Privacy Concerns **June 24, 2011**

Recent developments involving the use of facial recognition technology [have raised privacy concerns](#) in the United States, Europe and Canada. [As we reported earlier this month](#), the Electronic Privacy Information Center ("EPIC") and several other consumer privacy advocacy groups filed a complaint with the Federal Trade Commission against Facebook for its use of facial recognition technology. According to EPIC's complaint, Facebook's Tag Suggestions feature recognizes individuals' faces based on photographs already on Facebook, then suggests that users "confirm Facebook's identification of facial images in user photos" when they upload new photos to their Facebook profiles. [Continue Reading...](#)

Supreme Court Strikes Down Vermont Prescriber Privacy Law **June 23, 2011**

On June 23, 2011, in a 6-3 decision, the United States Supreme Court ruled in [IMS Health Inc. v. Sorrell](#) that a Vermont law prohibiting the sale of prescriber-identifiable data to drug companies was an

unconstitutional violation of the First Amendment right to free speech. [Thomas Julin](#), a partner at Hunton & Williams LLP, represented IMS Health in this case. The Supreme Court's ruling affirmed the holding of the U.S. Court of Appeals for the Second Circuit, resolving a split with the First Circuit (which upheld a similar law in New Hampshire), and likely preventing the enactment of similar restrictive laws across the country. [Continue Reading...](#)

EU Commissioner Reding Signals Intention to Introduce Mandatory Data Breach Notification **June 21, 2011**

Speaking at the British Bankers' Association's [Data Protection and Privacy Conference](#) in London on June 20, 2011, Viviane Reding, Vice President of the European Commission and Commissioner for Justice, Fundamental Rights and Citizenship, signaled her intention to streamline data protection to "simplify the regulatory environment" and "substantially reduce the administrative burden" for businesses. In return, Reding expects businesses to ensure "safe and transparent digital products and services." [Continue Reading...](#)

PCI Data Security Standards Council Provides Cloud Compliance Guidelines **June 21, 2011**

On June 14, 2011, the PCI Security Standards Council's [Virtualization Special Interest Group](#) published its "[Information Supplement: PCI DSS Virtualization Guidelines](#)" (the "Guidelines") to Version 2.0 of the PCI Data Security Standard ("PCI DSS"). The Guidelines provide context for the application of the PCI DSS to cloud and other virtual environments, and offer at least three critical reminders:

- the PCI DSS applies to cloud environments without exception;
- critical analysis of the application of the PCI DSS to rapidly evolving cloud offerings is essential to compliance; and
- cloud providers must be prepared to document and contract for necessary controls.

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Over 73,000 GBP Recouped from Former T-Mobile Employees Following Data Theft **June 17, 2011**

Two former employees of mobile phone provider T-Mobile have been ordered by a court in the United Kingdom to pay £73,700 (approximately \$120,000) for the theft of T-Mobile customers' personal data. The Chester Crown Court ordered David Turley and Darren Hames to pay £45,000 and £28,700 respectively, under confiscation orders, along with prosecution costs. [Continue Reading...](#)

Representative Mary Bono Mack Releases Discussion Draft of the SAFE Data Act **June 17, 2011**

On June 13, 2011, Representative [Mary Bono Mack](#) (R-CA) released a [discussion draft](#) of the Secure and Fortify Data Act (the "SAFE Data Act"), which is designed to "protect consumers by requiring reasonable security policies and procedures to protect data containing personal information, and to provide for nationwide notice in the event of a security breach." Representative Bono Mack is Chairman of the House Subcommittee on Commerce, Manufacturing and Trade. In a [press release](#), Representative Bono

Mack remarked that “E-commerce is a vital and growing part of our economy. We should take steps to embrace and protect it – and that starts with robust cyber security.” She added that “consumers have a right to know when their personal information has been compromised, and companies and other organizations have an overriding responsibility to promptly alert them.” [Continue Reading...](#)

Live Coverage from Budapest: Day Two of the Hungarian International Data Protection Conference **June 17, 2011**

As [reported yesterday](#), on June 16 and 17, 2011, the [Hungarian Presidency of the Council of the European Union](#) hosted a high-level [international data protection conference](#) in Budapest. The following are some highlights from the second day’s events:

- During the “New principles in the field” panel, Professor Paul De Hert of the Vrije Universiteit Brussel gave an explanation of the case *I v. Finland*, which was decided by the European Court of Human Rights on July 17, 2008, and which both he and European Data Protection Supervisor Peter Hustinx agreed was a key document for the concept of accountability in European data protection law. Endre Szabó of the Hungarian Ministry of Public Administration and Justice noted that the principle of accountability had not yet been fully accepted by all members of the European Council.

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Senators Franken and Blumenthal Co-Sponsor Location Privacy Protection Act **June 16, 2011**

On June 15, 2011, Senator Al Franken (D-MN) and Senator Richard Blumenthal (D-CT) introduced the Location Privacy Protection Act of 2011 (the “Act”). As [we reported previously](#), Senator Franken is chairman of the newly-created Senate subcommittee on Privacy, Technology and the Law. In his [press release](#), Senator Franken explained that the Act is designed to “close current loopholes in federal law” while giving customers the ability to learn about and prevent the collection of their location information. The Act would apply only to non-government entities and would not impact law-enforcement activities. At a May 10, 2011 [hearing](#), both Google and Apple were questioned about their privacy practices, and Franken subsequently [challenged](#) them to require their application developers to adopt clear and understandable privacy policies. [Continue Reading...](#)

Peruvian Privacy Law Expected by July 28, 2011 **June 14, 2011**

On June 7, 2011, the Congress of the Republic of Peru passed the Personal Data Protection Law (*Ley de Protección de Datos Personales, Proyecto de Ley 4079/2009-PE*). If signed into law, the bill would make Peru the newest member of the group of Latin American countries with EU-style omnibus privacy legislation. The broad-ranging legislation would do the following, among other things: [Continue Reading...](#)

Hunton Hosts Webinar on Preparing for the EU Cookie Law **June 13, 2011**

On June 6, 2011, Hunton & Williams hosted a panel discussion on what organizations in the UK, France, Germany and the Netherlands are doing to comply with the EU’s new cookie law. The webinar, [Consent](#)

[for Cookies: Preparing for the EU Cookie Law](#), featured David Evans, Group Manager of Business and Industry of the UK Information Commissioner's Office, and Hunton & Williams Brussels-based associates [Olivier Proust](#), [Dr. Jörg Hladik](#) and [Martijn ten Bloemendal](#). The panel was moderated by [Bridget C. Treacy](#), partner in the London office of Hunton & Williams. [Listen to the webinar now](#).

Class Action Lawsuit Filed Against Google for Tracking Android Users' Location Data June 13, 2011

On June 9, 2011, two plaintiffs filed a [class action complaint](#) against Google in the United States District Court for the Southern District of Florida. The complaint alleges that Google's Android phone "engaged in illegal tracking and recording of [p]laintiffs' movements and locations ... without their knowledge or consent" and that Google violated the Computer Fraud and Abuse Act and Florida statutory and common law by failing to inform Android users that their movements were being tracked and recorded through their phones. [Continue Reading...](#)

Department of Commerce Releases Cybersecurity Report June 10, 2011

On June 8, 2011, the Department of Commerce's Internet Policy Task Force released a report entitled "[Cybersecurity, Innovation and the Internet Economy](#)." The report contains four broad policy recommendations: (1) the creation of a nationally recognized approach to minimize vulnerabilities for the Internet and networking services industry, (2) the development of incentives to combat cybersecurity threats, (3) increased cybersecurity education and research, and (4) the promotion of international cooperation to enable sharing of cybersecurity best practices. [Continue Reading...](#)



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