CLIENT ALERT

HUNTON& WILLIAMS

September 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:

- Global Privacy Enforcement Authorities Launch Cooperative Network and Website
- Council of Europe Prepares to Review Convention 108
- Parental Control Software Developer to Pay $100,000 for Children's Privacy Violation
- Appeals Court Finds Employee Who Auto-Forwarded Supervisor's Emails Violated Wiretap Act
- Updates on Federal Cybersecurity Legislation
- New Zealand Update: Google Street View Investigation & New Cross-Border Privacy Laws
- Connecticut Insurance Department Issues Five-Day Breach Reporting Requirement

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Global Privacy Enforcement Authorities Launch Cooperative Network and Website

September 22, 2010

The United States Federal Trade Commission ("FTC") recently joined forces with privacy authorities from eleven other countries to launch the Global Privacy Enforcement Network ("GPEN"), which aims to promote cross-border information sharing and enforcement of privacy laws. On September 21, 2010, GPEN unveiled its new website, www.privacyenforcement.net, designed to educate the public about the network. The GPEN website, which is supported by the Organization for Economic Co-Operation and Development ("OECD"), provides guidelines and application instructions for government agencies interested in participating in GPEN. It also sets forth GPEN's action plan and mission of "sharing information about privacy enforcement issues, trends and experiences; participating in relevant training; cooperating on outreach activities; engaging in dialogue with relevant private sector organizations on privacy enforcement and outreach issues; and facilitating effective cross-border privacy enforcement in specific matters by creating a contact list of privacy enforcement authorities interested in bilateral cooperation in cross-border investigations and enforcement matters."

In his remarks about the network, which was officially launched in March, FTC Chairman Jon Leibowitz stated that "to protect consumers' privacy in today's global economy, all of us who work in law enforcement around the world need to cooperate with each other. We at the FTC are looking forward to working closely with our colleagues overseas to make this happen."

Council of Europe Prepares to Review Convention 108
September 20, 2010

The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (generally referred to as "Convention 108"), enacted in 1981, is the only legally-binding international treaty dealing with privacy and data protection. The Convention is also of fundamental importance in providing the underlying legal framework for instruments such as the EU Data Protection Directive 95/46. So far, 42 countries have become parties to Convention 108.

As the European Commission reviews the EU Directive, the Council of Europe also is preparing to review Convention 108. The review will be conducted by the Council of Europe's Consultative Committee on data protection (referred to as T-PD) in a process that will likely take several years. The T-PD, which meets at the Council of Europe's headquarters in Strasbourg, is primarily composed of representatives of national governments and data protection authorities, with the International Chamber of Commerce being the only private-sector entity with formal observer status. The group has commissioned a legal study from an outside consultant to analyze Convention 108 and provide any revisions by the end of 2010, and the T-PD will begin discussions at its upcoming meeting in November. Continue Reading…

Parental Control Software Developer to Pay $100,000 for Children's Privacy Violation
September 17, 2010

On September 15, 2010, New York State Attorney General Andrew Cuomo announced a $100,000 settlement with EchoMetrix, a developer of parental control software that monitors children's online activity. The settlement comes one year after the Electronic Privacy Information Center ("EPIC") alleged in a complaint to the Federal Trade Commission that EcoMetrix was deceptively collecting and marketing children's information. Continue Reading…

Appeals Court Finds Employee Who Auto-Forwarded Supervisor's Emails Violated Wiretap Act
September 16, 2010

The United States Court of Appeals for the Seventh Circuit has rejected a defendant's argument that the Wiretap Act's prohibition on interception of communications applies only to an acquisition that is contemporaneous with the communication. In *United States v. Szymuszkiewicz*, No. 07-CR-171 (7th Cir. Sept. 9, 2010), the defendant faced criminal charges under the Wiretap Act for having implemented an automatic forwarding rule in his supervisor's Outlook email program that caused the workplace email server to automatically forward him a copy of all emails addressed to his supervisor. The defendant argued that (i) the forwarding happened only after the email arrived at its intended destination and was thus not contemporaneous with the communication, (ii) the Wiretap Act prohibits only unauthorized contemporaneous interceptions (i.e., only interceptions of communications "in flight" as opposed to communications at rest or in storage), and (iii) only the Stored Communications Act applies to unauthorized access to non-contemporaneous communications. Continue Reading…

Updates on Federal Cybersecurity Legislation
September 10, 2010

The United States Congress is currently considering several bills addressing cybersecurity issues. Below are brief summaries of four such bills.

The Grid Reliability and Infrastructure Defense ("GRID") Act

The GRID Act was passed by the House of Representatives on June 9, 2010. This bill would amend the Federal Power Act to grant the Federal Energy Regulatory Commission ("FERC") authority to issue emergency orders requiring critical infrastructure facility operators to take actions necessary to protect the bulk power system. Prior to FERC issuing such an order, the President would have to issue a written directive to FERC identifying an imminent threat to the nation's electric grid. FERC would be required to consult with federal agencies or facility operators before issuing an emergency order only "to the extent practicable" in light of the nature of the threat. The GRID Act is being considered by the Senate Committee on Energy and Natural Resources at this time. Continue Reading…

New Zealand Update: Google Street View Investigation & New Cross-Border Privacy Laws

September 7, 2010

On September 2, 2010, police in New Zealand issued a statement to confirm that there was no evidence Google committed a criminal offense in relation to the data it collected from unsecured WiFi networks during the Street View photography capture exercise. The case has now been referred back to the New Zealand Privacy Commissioner. A spokesperson from the New Zealand police force took the opportunity to underline the need for Internet users to make sure that security measures are properly implemented when using WiFi connections in order to prevent their information from being improperly accessed. Continue Reading…

Connecticut Insurance Department Issues Five-Day Breach Reporting Requirement

September 3, 2010

On August 18, 2010, the Connecticut Insurance Department (the "Department") issued Bulletin IC-25, which requires entities subject to its jurisdiction to notify the Department in writing of any "information security incident" within five calendar days after an incident is identified. In addition to providing detailed procedures and information to be included in the notification, the Bulletin states that the Department "will want to review, in draft form, any communications proposed to be made" to affected individuals. The Bulletin further indicates that, "depending on the type of incident and information involved, the Department will also want to have discussions regarding the level of credit monitoring and insurance protection which the Department will require to be offered to affected consumers and for what period of time." Continue Reading…

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