

March 2011

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Recent posts on the Privacy and Information Security Law blog include:

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Kerry Privacy Legislation Negotiations Ongoing, Updated Draft Expected Soon March 24, 2011

On March 16, 2011, at a U.S. Senate Commerce Committee hearing, Senator John Kerry (D-Mass.) [announced his intention](#) to introduce privacy legislation that would create "a common code of conduct that respects the rights of both the people sharing their information and legitimate organizations collecting and using it on fair terms and conditions." Kerry indicated that he had "reached out to our colleagues on both sides of the aisle, to privacy experts at firms, in academia, and in the advocacy community," and asked for input into the process from witnesses at the hearing. [Continue Reading...](#)

French Data Protection Authority Levies Record Fine Against Google March 22, 2011

On March 21, 2011, the French Data Protection Authority (the "CNIL") published its [decision](#) to fine Google €100,000 for violating the French Data Protection Act.

In 2009, the CNIL inspected Google's geolocation service ("Street View"), which revealed that Google had collected huge quantities of undeclared personal data (e.g., navigation data, email content, logins and passwords) through Wi-Fi connections accessed by its Street View cars. Google responded that the personal data had been collected by mistake, and promised to stop the Wi-Fi data collection. [Continue Reading...](#)

Netflix Sued for Allegedly Violating Movie Renters' Privacy **March 18, 2011**

On March 11, 2011, Virginia resident Peter Comstock filed a class action [complaint](#) against Netflix, Inc. in the United States District Court for the Northern District of California. According to the complaint, Netflix "tracks its users' viewing habits with respect to both videos watched over the Internet...and physical movies ordered through the Internet and watched at home," while encouraging "subscribers to rank the videos they watch." The complaint alleges that Netflix's practice of maintaining customer movie rental history and recommendations, "long after subscribers cancel their Netflix subscription," violates the federal Video Privacy Protection Act ("VPPA"), and California's Customer Records Act and Unfair Competition Law. In addition, the complaint alleges that Netflix's failure to properly store user information and its sale of customer data to third parties led to its unjust enrichment and a breach of its fiduciary duty. Comstock and the putative class are seeking both an injunction to stop Netflix's current practices and monetary damages. [Continue Reading...](#)

China Issues New Measures to Protect Credit Card Holders **March 18, 2011**

On January 13, 2011, the China Banking Regulatory Commission issued [Measures for the Supervision and Administration of the Credit Card Businesses of Commercial Banks](#) (the "Measures"), which took effect that same day. The Measures are reported to be the first comprehensive regulations relating to the credit card business in China, and include a number of provisions on the protection of personal information by commercial banks, as detailed below. [Continue Reading...](#)

European Parliament Meeting Offers Update on Review of EU Data Protection Directive **March 16, 2011**

While much of the attention of the privacy policy community in Washington, D.C. has been focused on the two reports issued in December 2010 by the [Federal Trade Commission](#) and the [Department of Commerce](#), a third government report has received far less press attention, but may have a greater impact on U.S. business and consumers. The work of the [President's Council of Advisors on Science and Technology](#) ("PCAST") and its Health Information Technology Working Group, the report, "[Realizing the Full Potential of Health Information Technology to Improve Healthcare for Americans: The Path Forward](#)," was [released](#) by the White House on December 8, 2010. [Continue Reading...](#)

Department of Commerce Official Asks Congress to Enact "Privacy Bill of Rights" **March 16, 2011**

On March 16, 2011, U.S. Department of Commerce Assistant Secretary for Communications and Information Lawrence Strickling called on Congress to enact robust, baseline legislation to "reform consumer data privacy in the Internet economy." Speaking before the U.S. Senate Committee on Commerce, Science and Transportation, Assistant Secretary Strickling emphasized the Department of Commerce's support for a legislative proposal that would adopt many of the recommendations of the "[Green Paper](#)," a Department report authored last December. [Continue Reading...](#)

Details of UK's Approach to Implementation of EU Cookie Rule **March 16, 2011**

On March 16, 2011, UK Information Commissioner Christopher Graham shared details of the government's proposals for the implementation of the e-Privacy Directive with delegates at the Direct Marketing Association's [Data Protection Conference](#) in London. A letter from the Minister for Culture, Communications and Creative Industries, Ed Vaizey, provides important reassurance to business that "Government is committed to introducing the amended provision in a way that minimises impacts to business and consumers." [Continue Reading...](#)

FTC Accepts Final Settlement with Twitter **March 14, 2011**

On March 11, 2011, the Federal Trade Commission [finalized](#) a proposed settlement with Twitter, which resolved allegations that Twitter deceived consumers and failed to safeguard their personal information. The FTC first announced the [proposed settlement](#) in June 2010. Specifically, the FTC [claimed](#) that Twitter, contrary to its privacy policy statements, did not provide reasonable and appropriate security to prevent unauthorized access to consumers' personal information and did not honor the consumers' privacy choices in designating certain tweets as nonpublic. Intruders exploited these failures and obtained administrative control of the Twitter system. These intruders were able to gain unauthorized access to nonpublic tweets and user information, reset any user's password, and send unauthorized tweets from any user account. [Continue Reading...](#)

CVS Sued for Alleged Privacy Violations **March 11, 2011**

On March 7, 2011, Arthur Steinberg and the Philadelphia Federation of Teachers Health and Welfare Fund sued CVS Caremark Corporation ("CVS"), alleging that its unauthorized disclosure of protected health information ("PHI") constituted an unfair trade practice. The complaint claims that CVS, one of the nation's largest pharmacies, sent letters to physicians that listed their patients' names, dates of birth and prescribed medications. The letters encouraged the physicians to prescribe drugs made by pharmaceutical manufacturers, who paid CVS to send them. This purported disclosure of PHI would violate the HIPAA Privacy Rule's prohibitions against disclosing PHI for marketing purposes without an individual's authorization.

This is the second major lawsuit filed against CVS in the past few years. Last December, a group of Texas pharmacies [filed suit against CVS](#) for violations of Racketeer Influenced and Corrupt Organizations Act ("RICO") and misappropriation of trade secrets. The Texas complaint alleged that CVS disclosed PHI to pharmaceutical manufacturers for the manufacturers' marketing purposes. In 2009, [CVS paid \\$2.25 million](#) to the Department of Health and Human Services ("HHS") to settle charges that it violated the HIPAA Security Rule by dumping prescription records in dumpsters.

Council of Europe Issues Draft Recommendations and Guidelines for Search Engines and Social Networking Providers **March 9, 2011**

The Committee of Experts on New Media (the "Expert Committee") of the Council of Europe ("CoE") has issued draft recommendations and guidelines regarding the protection of human rights by search engines and social networking providers. The [draft recommendations and guidelines](#) observe that the way in which search engines and social networking providers operate impacts various human rights, especially the rights to freedom of expression and information and the right to privacy and data protection. Current

drafts of both sets of recommendations and guidelines are open for public consultation and comments until March 18, 2011. [Continue Reading...](#)

Congressman Stearns Discusses Upcoming Privacy Legislation **March 7, 2011**

On March 4, 2011, Congressman Cliff Stearns (R-FL) [announced](#) plans to introduce new online privacy legislation. The proposed bill is based on legislation Stearns drafted in 2005, the [Consumer Privacy Protection Act](#), which was not reported out of committee. While speaking at a [Technology Policy Institute](#) event, "[Online Privacy After the DOC and FTC Reports](#)," Stearns stressed that this new legislation would seek to balance "privacy with innovation," protecting the interests of both businesses and their online customers.

According to Stearns, "[t]he goal of the legislation is to empower consumers to make their own privacy choices." The proposed law would require that entities "provide consumers in clear and easy to understand language what information is being collected and how the information is being used." As we [previously reported](#), Stearns, along with former Congressman Rick Boucher (D-VA), introduced a bill last year aimed at protecting personal privacy.

View Congressman Stearns' [press release](#).

FTC Asserts Authority to Enforce Against Senders of Unsolicited Text Messages **March 3, 2011**

In late December 2010, consumers filed two class action lawsuits against Apple Inc., claiming that several applications they downloaded from Apple's App Store sent their personal information to third parties without their consent. Specifically, the consumers claim that Apple allowed third party advertising networks to follow user activity through the Unique Device Identifiers that Apple assigns each device that downloads applications. The complaint, filed in the U.S. District Court for the Northern District of California, also named several application developers such as Pandora and The Weather Channel as co-defendants. [Continue Reading...](#)

Supreme Court Holds Corporations Do Not Have "Personal Privacy" under Freedom of Information Act **March 2, 2011**

On March 1, 2011, the United States Supreme Court issued a unanimous ruling in [Federal Communications Commission v. AT&T Inc.](#), finding that corporations are not entitled to "personal privacy" and therefore may not invoke Exemption 7(C) of the Freedom of Information Act ("FOIA"). AT&T sought to employ this exemption, which prevents the disclosure of law enforcement records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy," to prohibit the Federal Communications Commission (the "FCC") from turning over documents in response to a trade association's FOIA request. Applicable federal law defines "person" to include "an individual, partnership, corporation, association, or public or private organization other than an agency;" AT&T contended that the adjective "personal" is a derivative of the noun "person," giving it "personal privacy" rights as a "private corporate citizen." [Continue Reading...](#)

EU Council Publishes Its Conclusions on the European Commission's Communication on Personal Data **March 1, 2011**

The [Council of the European Union](#) (the “Council”) released its [conclusions](#) following meetings held on February 24 and 25, 2011, regarding the European Commission’s November 4, 2010 [Communication](#) proposing “a comprehensive approach on personal data protection in the European Union” which we [reported](#) on last November. [Continue Reading...](#)



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