

# PRIVACY AND INFORMATION SECURITY LAW BLOG

GLOBAL PRIVACY AND CYBERSECURITY LAW UPDATES AND ANALYSIS

## May 2013

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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### **French Data Protection Authority Launches Public Consultation on Digital Right to Be Forgotten May 30, 2013**

On May 30, 2013, the French Data Protection Authority ("CNIL") launched a [public consultation](#) on the digital "right to be forgotten."

The CNIL recalled that the principle of a digital "right to be forgotten" is established in the [Proposed EU Data Protection Regulation](#) and that this new right will have to be exercised in accordance with freedom of expression, freedom of the press and the duty of remembrance.

In this context, the CNIL decided to consult web users with a goal of defining the broad outlines of the digital right to be forgotten. The CNIL also announced that it will consult industry experts and other professionals in parallel.

### **Mandatory Data Breach Notification Bill Proposed in Australia May 30, 2013**

On May 29, 2013, a [bill](#), accompanied by an [explanatory memorandum](#), was proposed in the Australian Parliament that requires businesses and government agencies that experience a serious data breach to notify affected individuals and the Office of the Australian Information Commissioner (“OAIC”). The proposed legislation requires organizations to notify individuals only when they are “significantly affected” by a “serious” data breach. Breaches that merely pose a “remote risk” of harm would not require notification. The factors organizations should assess when determining whether a breach is “serious” include: (1) harm to a person’s reputation, (2) economic harm, (3) financial harm, and (4) physical and psychological harm. Additionally, the bill specifies that implementing regulations may identify other situations that would require notification even if the breach does not give rise to a risk of serious harm. Organizations should notify affected individuals through the normal method of communication they have previously used to communicate with those individuals. Absent a normal method of prior communication, organizations must take reasonable steps to notify the affected individuals via email, telephone or postal mail. If passed, the legislation would become effective in March 2014. [Continue reading...](#)

### **Hunton & Williams LLP’s Global Privacy and Data Security Practice Tops Chambers Rankings May 30, 2013**

Hunton & Williams LLP is pleased to [announce](#) the firm’s global [Privacy and Data Security](#) practice again ranked in “Band 1” in 2013 *Chambers USA*, *Chambers Global* and *Chambers UK*.

Global practice group leader [Lisa Sotto](#), who was recently named among *The National Law Journal’s* “The 100 Most Influential Lawyers in America,” was recognized in *Chambers USA* as a “Star” performer, the guide’s highest ranking. Sotto was the only privacy lawyer in the U.S. to receive this distinguished ranking. In the same guide, New York partner [Aaron Simpson](#) was highlighted for his notable work in advising on global privacy and data security matters. [Continue reading...](#)

### **Privacy Piracy Radio Interview on Cybersecurity with Sotto May 29, 2013**

On June 3, 2013, [Privacy Piracy](#) host Mari Frank will interview [Lisa J. Sotto](#), partner and head of the Global Privacy and Data Security practice at Hunton & Williams LLP, on KUCI 88.9 FM radio in Irvine, California. Listen to the latest developments in cybersecurity, including legal issues businesses should consider when dealing with cybersecurity threats and the types of information being targeted. The radio interview will be featured at 8:00 a.m. Pacific Time on KUCI 88.9 FM and is available via audio streaming at [www.kuci.org](http://www.kuci.org).

### **Article 29 Working Party Proposes a Definition and Provision on Profiling Within the Proposed EU General Data Protection Regulation May 29, 2013**

On May 13, 2013, the Article 29 Working Party (the “Working Party”) adopted an [Advice Paper](#) on profiling (the “Advice Paper”). The Advice Paper serves as the national data protection authorities’ contribution to the [ongoing legislative debate](#) before the European Parliament and the Council of the

European Union on the proposed EU [General Data Protection Regulation](#) (the “Proposed Regulation”). [Continue reading...](#)

### **Estonian Data Protection Authority Issues Annual Report May 24, 2013**

On May 20, 2013, the Estonian Data Protection Inspectorate [issued](#) its [Annual Report 2012](#) (the “Report,” [summary available in English](#)). The number of inquiries, complaints and supervision proceedings have remained the same over the last few years. The main topics of complaints include employment relations, CCTV, electronic direct marketing and social media. The Inspectorate stated that its primary goal is to stop violations of the law, not to impose sanctions. According to the Report, the Inspectorate issued orders regarding compliance in 48 cases and imposed fines in 39 cases. [Continue reading...](#)

### **Privacy Commissioner of Canada Recommends Updates to PIPEDA May 24, 2013**

On May 23, 2013, the Office of the Privacy Commissioner of Canada (“OPC”) [issued a position paper](#) (the “Paper”) proposing revisions to the Personal Information Protection and Electronic Documents Act (“PIPEDA”) to better align PIPEDA with the risks facing a modern information economy. Privacy Commissioner of Canada Jennifer Stoddart addressed the release of the Paper in her remarks at the IAPP Canada Privacy Symposium, stating that “[i]t is increasingly clear that the law is not up to the task of meeting the challenges of today – and certainly not those of tomorrow.” According to the Paper, the surge in the collection, availability and use of personal data has upset the balance between the privacy rights of individuals and the legitimate needs of businesses originally struck by PIPEDA. In response, the Paper proposes four general revisions to PIPEDA:

[Continue reading...](#)

### **HHS Announces Settlement with Idaho State University May 23, 2013**

On May 21, 2013, the Department of Health and Human Services (“HHS”) [announced a resolution agreement](#) and \$400,000 settlement with Idaho State University (“ISU”) for a breach that affected 17,500 individuals.

The ISU settlement relates to servers that had their firewall protections disabled, which left the electronic protected health information (“ePHI”) of patients at ISU’s Pocatello Family Medicine Clinic unsecured for at least ten months. Following the submission of a breach report to the HHS Office for Civil Rights (“OCR”), an investigation determined that ISU allegedly had not complied with HIPAA Security Rule requirements, including by conducting an incomplete and inadequate risk analysis and by failing to “adequately implement procedures to regularly review records of information system activity to determine if any ePHI was used or disclosed in an inappropriate manner.” [Continue reading...](#)

### **FCC Clarifies Sellers’ Liability for Third Parties’ Telemarketing Violations May 22, 2013**

On May 9, 2013, the Federal Communications Commission (“FCC”) released a [declaratory ruling](#) clarifying the liability of a seller for violations of the Telemarketing Consumer Protection Act (“TCPA”) made by third-party telemarketers and others who place calls to market the seller’s products or services. [Continue reading...](#)

### **Irish ODPC Publishes 2012 Annual Report May 21, 2013**

On May 20, 2013, the Irish Office of the Data Protection Commissioner (“ODPC”) [published](#) its [annual report](#) for 2012 (the “Report”). The Report summarizes the activities of the ODPC during 2012, including its investigations and audits, policy matters, and European and international activities. [Continue reading...](#)

### **China Proposes Amendments to Consumer Protection Law May 16, 2013**

In April 2013, the People’s Republic of China’s General Office of the National People’s Congress published a draft amendment to the Law on the Protection of Consumer Rights and Interests (the “Proposed Amendment”) and solicited public comments on the Proposed Amendment until May 31, 2013. The Proposed Amendment includes provisions that affect the collection and use of consumer personal information. [Continue reading...](#)

### **FTC Reminds Companies of Impending COPPA Deadline May 15, 2013**

On May 15, 2013, the Federal Trade Commission [announced](#) that it sent educational letters to over 90 businesses that appear to collect personal information from children under the age of 13, reminding them of the impending July 1 deadline for compliance with the updated Children’s Online Privacy Protection Rule (the “Rule”). The letters were sent to domestic and foreign companies that may be collecting information from children that is now considered “personal information” under the Children’s Online Privacy Protection Act (“COPPA”) but was not previously considered “personal information.” The definition of “personal information” under COPPA was expanded to include (1) photos, videos and audio recordings of children; and (2) persistent identifiers that may recognize users over time and across various websites and online services ([e.g.](#), cookies and IP addresses). [Continue reading...](#)

### **Obama Administration Considering Electronic Surveillance Proposal to Address “Going Dark” Problem May 14, 2013**

The Obama Administration is in the process of finalizing its review of a statutory electronic surveillance proposal initially developed by the FBI, and is expected to support the introduction of a modified version as legislation. The proposal addresses concerns raised by law enforcement and national security agencies regarding the widening gap between their legal authority to intercept real-time electronic communications pursuant to a court order, and the practical difficulties associated with actually intercepting those communications. According to the government, this gap increasingly prevents the agencies from collecting Internet-based phone calls, emails, chats, text messages and other communications of terrorists, spies, organized crime groups, child pornography distributors and other dangerous actors. The FBI refers to this as the “going dark” problem. [Continue reading...](#)

### **UK ICO Report Highlights Uncertainty on Cost of Data Protection Reform May 14, 2013**

On May 14, 2013, London Economics [published](#) the results of an independent survey commissioned by the UK Information Commissioner’s Office (“ICO”) to help understand the challenges that the European Commission’s proposed [General Data Protection Regulation](#) (the “Proposed Regulation”) may present to UK businesses (the “Report”). [Continue reading...](#)

### **Sotto Speaks on CBS News on the Right to Be Forgotten May 13, 2013**

On May 10, 2013, *CBS News* interviewed two cybersecurity authorities to discuss the growing debate of privacy online. In the feature, entitled "[Should there be a 'right to be forgotten' online?](#)," [Lisa J. Sotto](#), partner and head of the Privacy and Data Security practice at Hunton & Williams LLP, talked about the problem of individuals' rights to delete their online activity. She pointed out that the U.S. has no comprehensive online privacy law, and instead has a framework "comprised of a patchwork quilt of laws." [Continue reading...](#)

### **California AG's Mobile App Case Against Delta Dismissed May 10, 2013**

A state court has dismissed the California Attorney General's claims that Delta Air Lines Inc. ("Delta") violated the [California Online Privacy Protection Act](#) by failing to have an appropriately posted privacy policy for its mobile application, [Bloomberg reports](#). The California AG [sued Delta in December](#) as part of an enforcement campaign that began with the issuance of [warning letters](#) to approximately 100 operators of mobile apps, including Delta. According to the *Bloomberg* report, a basis for the dismissal was the federal Airline Deregulation Act, under which a state "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart." *49 U.S.C. § 41713*.

### **FTC Sends Warning Letters to Data Brokers Regarding FCRA Violations May 9, 2013**

On May 7, 2013, the Federal Trade Commission [announced](#) that it issued letters to ten data broker companies warning that their practices could violate prohibitions against selling consumer information under the Fair Credit Reporting Act ("FCRA"). The FTC identified the ten data broker companies after a test-shopping operation that indicated these companies were willing to sell consumer information without adhering to FCRA requirements. [Continue reading...](#)

### **German Court Rules Apple's Privacy Policy Violates German Law May 8, 2013**

On April 30, 2013, the regional court of Berlin [enjoined](#) Apple Sales International, which is based in Ireland, ("Apple") from relying on eight of its existing standard data protection clauses in contracts with customers based in Germany. The court also prohibited Apple's future use of such clauses. [Continue reading...](#)

### **OpUSA: Criminal Hackers Planning Cyber Attacks Against Bank Websites May 7, 2013**

On May 7, 2013, the hacker group Anonymous announced that it, in concert with Middle East- and North Africa-based criminal hackers and cyber actors, will conduct a coordinated online attack labeled "OpUSA" against banking and government websites today. Anonymous stated that OpUSA will be a distributed denial of service ("DDoS") in which websites may be defaced and legitimate users may be unable to access websites. [Continue reading...](#)

## **LIBE Committee Postpones Vote on Amendments to the Proposed EU General Data Protection Regulation** **May 7, 2013**

On May 6, 2013, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs ("LIBE") [discussed](#) the progress of the proposed [General Data Protection Regulation](#) ("Proposed Regulation"). LIBE's lead rapporteur, Jan Philipp Albrecht, noted that, in light of the [significant number of amendments tabled](#), more time is needed for the other rapporteurs to deliberate. As a result, the vote originally scheduled for May 29, 2013 on the lead rapporteur's report regarding amendments to the Proposed Regulation has been postponed. [Continue reading...](#)

## **FTC Won't Delay COPPA Rule Implementation Deadline** **May 7, 2013**

On May 6, 2013, the Federal Trade Commission [announced](#) that it had voted unanimously to reject a request from industry groups to delay the July 1, 2013 deadline for implementation of the [updated Children's Online Privacy Protection Rule](#) (the "Rule"). The groups had argued that the delay was necessary because they needed more time to comply with the changes to the Rule, which the FTC promulgated on December 19, 2012. In its [response to the groups](#), the FTC asserted that the groups have been on notice of the changes since the beginning of the rulemaking process over three years ago, and a number of the updates constitute only minor changes from existing standards and obligations. The FTC's letter also indicated that, in appropriate cases, in the months immediately following the implementation deadline, the FTC might exercise prosecutorial discretion with respect to small entities that have made a good-faith effort to comply with the updated Rule.

View the [text of the updated COPPA Rule](#).



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