

July 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.

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

- [Congress Investigates Data Brokers' Use of Consumer Information](#)
- [United States Approved for Participation in APEC Cross-Border Privacy Rules System](#)
- [California Supreme Court's Pineda Decision Applies Retrospectively to Zip Code Collection Class Action Suit](#)
- [California Attorney General Announces the Creation of a New Privacy Enforcement and Protection Unit](#)
- [Hunton & Williams Advises Serbian Commissioner on Data Protection Law](#)
- [Familiar Concept of Multilayered Notices May Prove Helpful in NTIA's Multistakeholder Process](#)
- [NTIA Holds First Meeting on Multistakeholder Process to Develop Privacy Codes of Conduct](#)
- [Hong Kong Personal Data \(Privacy\) Ordinance Amended](#)
- [Serbian Commissioner Emphasizes Data Protection Awareness](#)
- [China Proposes Amendments to Regulation on Internet Information Services](#)
- [HHS Posts Audit Protocol Online](#)
- [Article 29 Working Party Adopts Opinion on Cloud Computing](#)
- [German Data Protection Authorities Issue Resolution and Guidance Paper on Smart Metering](#)

Congress Investigates Data Brokers' Use of Consumer Information July 27, 2012

On July 24, 2012, a bipartisan group of eight members of Congress [sent letters](#) to nine major data brokerage companies requesting information on how the companies collect, assemble and sell consumer information to third parties. Representatives [Ed Markey](#) (D-MA) and [Joe Barton](#) (R-TX), who serve as co-chairmen of the [Bipartisan Congressional Privacy Caucus](#), are leading the inquiry. The Privacy Caucus, which is an ad hoc group rather than a formally constituted congressional committee, is comprised of members who have a common interest in privacy issues. The Caucus cannot call formal hearings, compel production of materials or pass legislation. [Continue reading...](#)

United States Approved for Participation in APEC Cross-Border Privacy Rules System July 27, 2012

On July 26, 2012, acting U.S. Secretary of Commerce Rebecca Blank [announced](#) that APEC's Joint Oversight Panel has approved the United States' request to participate in the APEC Cross-Border Privacy Rules System. The panel also [approved](#) the Federal Trade Commission's participation as the system's first privacy enforcement authority. The next step will be for the United States to nominate one or more accountability agents for the panel's approval. Accordingly, the Department of Commerce will publish a Federal Register Notice in the coming days to provide guidance on how potential accountability agents may seek recognition. Once a U.S. accountability agent has been approved, American companies will be

able to submit their cross-border privacy rules to be recognized as meeting the APEC standard. [Continue reading...](#)

California Supreme Court's Pineda Decision Applies Retrospectively to Zip Code Collection Class Action Suit **July 26, 2012**

As reported in [BNA's Privacy & Security Law Report](#), on June 25, 2012, a federal district court in California ruled that the California Supreme Court's [2011 Pineda decision](#), which held that requesting and recording zip codes during credit card transactions violates the state's Song-Beverly Credit Card Act, applies retrospectively to OfficeMax's collection of zip codes from its customers. The Plaintiffs in [Dardarian v. OfficeMax](#) had filed a class action lawsuit against OfficeMax over the company's collection of zip code information from customers at the point of sale, a practice that OfficeMax ended the day the *Pineda* decision was handed down. [Continue reading...](#)

California Attorney General Announces the Creation of a New Privacy Enforcement and Protection Unit **July 24, 2012**

On July 19, 2012, California Attorney General Kamala Harris [announced](#) the formation of a new Privacy Enforcement and Protection Unit ("Privacy Unit") within the state's Department of Justice. The new unit will centralize existing Department of Justice efforts to protect privacy, educate consumers and forge partnerships with relevant industry players. According to the Attorney General's press release, the broad mission of the Privacy Unit will include enforcing laws on issues such as cyber privacy, health privacy, financial privacy, identity theft, government records and data breaches, to "hold accountable those who misuse technology to invade the privacy of others." California Department of Justice employees will staff the Privacy Unit, which will include six prosecutors focusing on privacy enforcement issues and the California Office of Privacy Protection's Joanne McNabb overseeing education and outreach efforts as Director of Privacy Education and Policy.

Hunton & Williams Advises Serbian Commissioner on Data Protection Law **July 23, 2012**

[Lisa Sotto](#), partner and head of the Global Privacy and Data Security Practice at Hunton & Williams, was interviewed on July 18, 2012 about her participation in the [USAID-funded Judicial Reform and Government Accountability Project's](#) initiative to educate and provide data protection awareness to the Serbian government. As we reported last week, Sotto was invited to Belgrade to assist Rodoljub Sabic, Serbia's Commissioner for Information of Public Importance and Personal Data Protection, and the JRGA Project. Sotto, who also is Chair of the U.S. Department of Homeland Security's Data Privacy and Integrity Advisory Committee, spent last week advising the Commission on steps to enhance Serbia's data protection framework. [Continue reading...](#)

Familiar Concept of Multilayered Notices May Prove Helpful in NTIA's Multistakeholder Process **July 20, 2012**

On July 12, 2012, the National Telecommunications and Information Administration ("NTIA") of the U.S. Department of Commerce initiated a [multistakeholder process](#) to develop guidance for transparency in the mobile environment. The NTIA has announced that they will schedule a second meeting in August, and encouraged small group discussions in the interim. This is not the first multistakeholder process to wrestle with transparency in the mobile environment, and those previous efforts – which date back almost a decade – may prove useful to such discussions. [Continue reading...](#)

NTIA Holds First Meeting on Multistakeholder Process to Develop Privacy Codes of Conduct July 13, 2012

On July 12, 2012, the National Telecommunications and Information Administration (“NTIA”) of the U.S. Department of Commerce convened the first meeting of its multistakeholder process to develop industry codes of conduct. As [we reported in June](#), the stated purpose for this meeting, entitled “[Seeking Common Ground Regarding Mobile Application Transparency](#),” was to establish “a working dialogue that will eventually lead to a code of conduct that is broadly adopted.” Lawrence Strickling, Department of Commerce Assistant Secretary for Communications and Information, opened the session, which he characterized as an effort to highlight the key issues and explore topics to be addressed. Strickling emphasized that the structure and approach to the work would likely differ from that with which participants were familiar, and that it would be important to arrive at a constructive process that encourages collaboration and open engagement. [Continue reading...](#)

Hong Kong Personal Data (Privacy) Ordinance Amended July 12, 2012

On June 27, 2012, the Hong Kong Legislative Council passed a bill to amend the Personal Data (Privacy) Ordinance (the “Ordinance”). The amendment will become effective in phases. Most provisions will become effective on October 21, 2012, and the others will take effect on a day to be announced by publication in the *Hong Kong Government Gazette*. [Continue reading...](#)

Serbian Commissioner Emphasizes Data Protection Awareness July 10, 2012

In a July 9, 2012 [press release](#) issued by Rodoljub Sabic, [Serbia’s Commissioner for Information of Public Importance and Personal Data Protection](#), the Commissioner commented on his meeting with Hunton & Williams’ Lisa Sotto, who was invited to Serbia by the Commissioner and the USAID-funded Judicial Reform and Government Accountability Project to provide advice and education on data protection issues. [Continue reading...](#)

China Proposes Amendments to Regulation on Internet Information Services July 6, 2012

In June, China’s National Internet Information Office and its Ministry of Industry and Information Technology jointly published draft amendments to the Regulation on Internet Information Services (the “Regulation”). The amendments update the Regulation to cover new issues related to the rapid development of Internet services in China since the Regulation first took effect on September 25, 2000. Although the Regulation originally contained no specific provisions directly pertaining to the protection of personal information, the draft amendments do address personal information protection issues. [Continue reading...](#)

HHS Posts Audit Protocol Online July 5, 2012

The Department of Health and Human Services Office for Civil Rights (“OCR”) has posted an [audit protocol](#) on its website to provide information about the procedures currently being used by OCR as part of its new audit program.

The protocol is presented in a sortable table format listing the applicable sections of the relevant rules and the established performance criteria, key activities and audit procedures associated with each section. The audit protocol for the HIPAA Security Rule also lists whether the implementation specification is required or addressable pursuant to that Rule. [Continue reading...](#)

Article 29 Working Party Adopts Opinion on Cloud Computing July 4, 2012

On July 1, 2012, the Article 29 Working Party (the “Working Party”) adopted [WP196](#) (the “Opinion”) setting out an analysis of the legal framework associated with cloud computing, as well as recommendations directed at both data controllers and data processors in the European Economic Area (the “EEA”). The Opinion identifies two data protection risks associated with the deployment of cloud computing services, namely: (1) lack of control over the data and (2) lack of information on data processing. Cloud computing and the range and geographical dispersion of the various parties involved also have raised significant uncertainty in terms of applicable law, which the Working Party previously analyzed in its [Opinion 8/2010](#). Below is an overview of the different topics covered in the Opinion issued on July 1. [Continue reading...](#)

German Data Protection Authorities Issue Resolution and Guidance Paper on Smart Metering July 2, 2012

On June 27, 2012, the Conference of the German Federal and State Data Protection Commissioners (the “Conference”) issued a [Resolution](#) and a comprehensive [guidance paper](#) regarding data protection compliance with respect to smart metering.

Smart metering is the use of intelligent energy networks and meters for monitoring and billing purposes. According to the Resolution, smart meter systems help guarantee a sustainable energy supply in terms of resource efficiency, environmental friendliness and the efficient production, distribution and use of energy. The guidance paper issued by the Conference describes and analyzes the individual processing activities involved in the various uses of smart metering in light of German data protection law. In particular, the guidance paper describes the “use cases” in terms of the respective level of data protection involved. [Continue reading...](#)



Visit our award-winning Privacy and Information Security Law Blog at www.huntonprivacyblog.com for global privacy and information security law updates and analysis.