

PRIVACY & INFORMATION SECURITY LAW BLOG

Global Privacy and Cybersecurity Law Updates and Analysis



January 2017

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UK Prime Minister Seeking to Trigger Brexit Process Sooner than Expected?

January 31, 2017

On January 31, 2017, the Times of London reported that UK Prime Minister Theresa May plans to invoke Article 50 of the Treaty on European Union on March 9, 2017, meaning that formal Brexit negotiations with the EU could begin thereafter. This coincides with a two-day European Council summit in Malta which the leaders of all 28 EU Member States will be attending. The report in the Times of London states that the government informed the House of Lords yesterday that it intends to secure the approval of the [European Union \(Notification of Withdrawal\) Bill](#) (the "Bill") – which would give the Prime Minister the legislative power to trigger Article 50 – on March 7, 2017, just two days before the summit. [Continue Reading...](#)

Privacy Shield: Impact of Trump's Executive Order

January 28, 2017

On January 25, 2017, President Trump issued an Executive Order entitled "[Enhancing Public Safety in the Interior of the United States](#)." While the Order is primarily focused on the enforcement of immigration laws in the U.S., Section 14 declares that "Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information." This

provision has sparked a firestorm of controversy in the international privacy community, raising questions regarding the Order's impact on the Privacy Shield framework, which facilitates lawful transfers of personal data from the EU to the U.S. While political ramifications are certainly plausible from an EU-U.S. perspective, absent further action from the Trump Administration, Section 14 of the Order should not impact the legal viability of the Privacy Shield framework. [Continue Reading...](#)

CIPL Submits Comments to Article 29 Working Party's Proposed DPO Guidelines January 27, 2017

On January 25, 2017, the Centre for Information Policy Leadership ("CIPL") at Hunton & Williams LLP submitted formal [comments](#) to the Article 29 Working Party's ("Working Party's") [Guidelines on Data Protection Officers](#) (DPOs) ("DPO Guidelines") that were adopted on December 13, 2016. CIPL's comments follow its November 2016 white paper on [Ensuring the Effectiveness and Strategic Role of the Data Protection Officer under the General Data Protection Regulation](#), which CIPL submitted as formal initial input to the Working Party's development of DPO implementation guidance under the EU General Data Protection Regulation ("GDPR"). [Continue Reading...](#)

FTC Issues Report on Cross-Device Tracking January 26, 2017

On January 23, 2017, the FTC released a [Staff Report](#) (the "Report") on cross-device tracking technology that can link multiple Internet-connected devices to the same person and track that person's activity across those devices. The Report follows a November 2015 workshop on the same subject and is based on information and comments gathered during that workshop. [Continue Reading...](#)

South Korea Seeks to Join APEC Cross-Border Privacy Rules January 25, 2017

On January 17, 2017, the International Trade Administration ("ITA") [announced](#) that South Korea formally submitted its intent to join the APEC Cross-Border Privacy Rules ("CBPR") system. South Korea would be the fifth APEC economy to join the system, joining the United States, Mexico, Canada and Japan. [Continue Reading...](#)

OCR Settlement Emphasizes Importance of Implementing Safeguards to Protect PHI January 25, 2017

On January 18, 2017, the U.S. Department of Health and Human Services' Office for Civil Rights ("OCR") [entered](#) into a resolution agreement with MAPFRE Life Insurance Company of Puerto Rico ("MAPFRE") relating to a breach of protected health information ("PHI") contained on a portable storage device. This is the second enforcement action taken by OCR in 2017, following the action taken against [Presence Health](#) earlier this month for failing to make timely breach notifications. [Continue Reading...](#)

NERC Releases Draft Standard for Cybersecurity Supply Chain Risk Management January 24, 2017

On January 19, 2017, the North American Electric Reliability Corporation ("NERC") released a draft [Reliability Standard CIP-013-1 – Cyber Security – Supply Chain Risk Management](#) (the "Proposed Standard"). The Proposed Standard addresses directives of the Federal Energy Regulatory Commission ("FERC") in [Order No. 829](#) to develop a new or modified reliability standard to address "supply chain risk

management for industrial control system hardware, software, and computing and networking services associated with bulk electric system operations.” [Continue Reading...](#)

UK Supreme Court Rules That Parliament Must Have Brexit Vote January 24, 2017

On January 24, 2017, the UK Supreme Court handed down its judgment in the case of [R \(on the application of Miller and another\) \(Respondents\) v. Secretary of State for Exiting the European Union \(Appellant\)](#) [2017] UKSC 5. The case concerned the process to be followed to effect the UK’s withdrawal from the European Union and, in particular, whether the UK government may commence the UK’s withdrawal using executive powers, or whether Parliamentary approval is required. The Supreme Court held, by majority, that the UK government cannot commence the UK’s withdrawal from the EU without the approval of Parliament. [Continue Reading...](#)

DHS Issues Updated National Cyber Incident Response Plan January 23, 2017

On January 18, 2017, the Department of Homeland Security (“DHS”) issued an updated [National Cyber Incident Response Plan](#) (the “Plan”) as directed by Obama’s [Presidential Policy Directive 41](#), issued this past summer, and the [National Cybersecurity Protection Act of 2014](#). [Continue Reading...](#)

Article 29 Working Party Releases GDPR Action Plan for 2017 January 17, 2017

On January 16, 2017, the Article 29 Working Party (“Working Party”) published further information about its [Action Plan for 2017](#), which sets forth the Working Party’s priorities and objectives in the context of implementation of the EU General Data Protection Regulation (“GDPR”) for the year ahead. The Action Plan closely follows earlier GDPR guidance relating to Data Portability, the appointment of Data Protection Officers and the concept of the Lead Supervisory Authority, which were [published](#) together by the Working Party on December 13, 2016. [Continue Reading...](#)

NIST Releases Proposed Updates to Cybersecurity Framework January 13, 2017

On January 10, 2017, the National Institute of Standards and Technology (“NIST”) [released](#) proposed updates to the [Framework for Improving Critical Infrastructure Cybersecurity](#) (the “Cybersecurity Framework”). The proposed updates, which are found in Version 1.1 of the Cybersecurity Framework, are derived from feedback received by NIST regarding the first version, including from responses to a December 2015 request for information and discussions at a workshop held in April 2016. [Continue Reading...](#)

Email Privacy Act Reintroduced in Congress January 13, 2017

On January 9, 2017, Representatives Kevin Yoder (R-KS) and Jared Polis (D-CO) reintroduced the Email Privacy Act, which would amend the Electronic Communications Privacy Act (“ECPA”) of 1986. In particular, the legislation would require government entities to obtain a warrant, based on probable cause, before accessing the content of any emails or electronic communications stored with third-party service providers, regardless of how long the communications have been held in electronic storage by such providers. Although ECPA currently requires law enforcement agencies to obtain a warrant to search the

contents of electronic communications held by service providers that are *less than 180 days old*, communications that are more than 180 days old can be obtained with a subpoena. [Continue Reading...](#)

OCR Settles First Enforcement Action for Untimely Reporting of a Breach January 12, 2017

On January 7, 2017, the U.S. Department of Health and Human Services' Office for Civil Rights ("OCR") [entered](#) into a resolution agreement with Presence Health stemming from the entity's failure to notify affected individuals, the media and OCR within 60 days of discovering a breach. This marks the first OCR settlement of 2017 and the first enforcement action relating to untimely breach reporting by a HIPAA covered entity. [Continue Reading...](#)

Draft of E-Commerce Law Published for Comment in China January 12, 2017

Last month, the Standing Committee of the National People's Congress of China published a full draft of the E-commerce Law (the "Draft") and is giving the general public an opportunity to comment on the draft through January 26, 2017. [Continue Reading...](#)

Swiss-U.S. Privacy Shield Announced January 11, 2017

On January 11, 2017, the Swiss Federal Data Protection and Information Commissioner announced that it has reached an agreement with the U.S. Department of Commerce on a new [Swiss-U.S. Privacy Shield framework](#) (the "Swiss Privacy Shield"), which will allow companies to legally transfer Swiss personal data to the U.S. The Swiss Privacy Shield will replace the U.S.-Swiss Safe Harbor framework, and according to the Swiss government's [announcement](#), will "apply the same conditions as the European Union, which set up a comparable system with the U.S. last summer," referring to the EU-U.S. Privacy Shield. According to the announcement, "[t]he fact that the two frameworks are similar is highly significant, as it guarantees the same general conditions for persons and businesses in Switzerland and the EU/EEA area in relation to trans-Atlantic data flows." A [press release](#) from the U.S. Department of Commerce states that the Department will begin accepting certifications on April 12, 2017, and additional information will soon be available [here](#).

EU Commission Publishes Communications on Data Transfers and the EU Data Economy January 11, 2017

On January 10, 2017, the European Commission published a communication addressed to the European Parliament and European Council on [Exchanging and Protecting Personal Data in a Globalized World](#) (the "Communication"). The Communication aims to facilitate commercial data flows and foster law enforcement cooperation. In the Communication, the European Commission states that it will: [Continue Reading...](#)

European Commission Announces Final "Digital Single Market" Strategy for Europe January 10, 2017

On January 10, 2017, the European Commission [announced](#) the final elements of its long-awaited "digital single market" strategy for Europe. The announcement includes two new proposed EU regulations as well as a European Commission Communication, as described below. [Continue Reading...](#)

Chile Expected to Consider New Data Protection Legislation January 6, 2017

On January 3, 2017, [Bloomberg Law: Privacy and Data Security](#) reported that Chilean legislators are soon expected to consider a new data protection law (the “Bill”) which would impose new privacy compliance standards and certain enforcement provisions on companies doing business in Chile. [Continue Reading...](#)

NIST Releases Privacy Engineering and Risk Management Guidance for Federal Agencies January 6, 2017

On January 4, 2017, the National Institute of Standards and Technology (“NIST”) [announced](#) the final release of NISTIR 8062, [An Introduction to Privacy Engineering and Risk Management in Federal Systems](#). NISTIR 8062 describes the concept of applying systems engineering practices to privacy and sets forth a model for conducting privacy risk assessments on federal systems. According to the NIST, NISTIR 8062 “hardens the way we treat privacy, moving us one step closer to making privacy more science than art.” [Continue Reading...](#)

OMB Publishes Memorandum on Responding to Data Breaches January 5, 2017

On January 3, 2017, the Office of Management and Budget (“OMB”) issued a [memorandum](#) (the “Breach Memorandum”) advising federal agencies on how to prepare for and respond to a breach of personally identifiable information (“PII”). The Breach Memorandum, which is intended for each agency’s Senior Agency Official for Privacy (“SAOP”), updates OMB’s breach notification policies and guidelines in accordance with the [Federal Information Security Modernization Act of 2014](#) (“FISMA”). [Continue Reading...](#)

New York Updates Cybersecurity Regulation for Financial Institutions January 3, 2017

On December 28, 2016, the New York State Department of Financial Services (“DFS”) [announced](#) an updated version of its cybersecurity [regulation](#) for financial institutions (the “Updated Regulation”). The Updated Regulation will become effective on March 1, 2017. [Continue Reading...](#)



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