

Law360

November 4, 2011

Q&A With Hunton & Williams' Lisa Sotto

Lisa J. Sotto is the managing partner of Hunton & Williams LLP's New York office, and head of the firm's global privacy and information security practice group. She assists clients in identifying, evaluating and managing risks associated with privacy and information security practices of companies and third parties. She conducts all phases of online and offline privacy assessments and information-security policy audits.

Sotto was rated "No. 1 privacy expert" for the past three consecutive years by "Computerworld" magazine. She also earned a Band 1 U.S. national ranking for Privacy & Data Security from "Chambers and Partners." In addition, the firm's privacy & information management practice received a Band 1 U.S. national ranking from "Chambers USA" in Privacy & Data Security.

Q: What is the most challenging case you have worked on and what made it challenging?

A: The most challenging issue on which I work involves counseling multi-national companies on the panoply of privacy laws they confront as they do business around the world. The complexity stems from the fact that information, which moves in great volume and at great speed, is not constrained by national boundaries.

The same data set can reside in multiple jurisdictions at once, each with different legal requirements that need to be applied to the same data elements — and there lies the problem. We currently have a patchwork quilt of global privacy laws. The challenge comes when these laws overlap and conflict — yet my clients often must comply with many of them, simultaneously, to do business worldwide

My response to this challenge is to work with clients to develop comprehensive privacy programs that strike a balance between legal compliance and business realities. While their programs must comply with innumerable privacy laws around the world, companies also need to be able to use data in a way that drives revenue and furthers business goals. My work involves bringing these two, sometimes-conflicting realities together into a single program.

Q: What aspects of your practice area are in need of reform and why?

A: This can be answered simply: we need predictability. Companies can thrive only when their operating environments, including regulatory requirements, are stable and predictable.

For companies to continue to innovate and take advantage of new ways of leveraging data, they need a predictable legal framework within which to operate. This will let them focus on what they do best, which is advancing their business, rather than spending time and money trying to comply with a morass of domestic and international privacy laws.

This predictability can be achieved with government intervention, but I also think we need to slow down and, in some cases, allow industry to regulate itself. Businesses are often in a better position than legislators to understand what will and won't work when it comes to privacy requirements.

In terms of a legislative solution, we would do well in the United States to implement a comprehensive federal privacy law to preempt the hundreds of state privacy laws currently in place. Right now, we are still very much in the Wild West, with states promulgating their own privacy rules. Not only is this futile in light of the ubiquitous nature of data, but it also creates significant uncertainty for companies, potentially hindering innovation.

There should be a concerted effort to develop a comprehensive federal scheme to regulate privacy in the U.S. The existing cacophony of state and federal privacy laws needs to be replaced with a comprehensive regime that regulates data the same way, regardless of the state in which the data or the data subject resides.

Q: What is an important case or issue relevant to your practice area and why?

A: Data security is the all-consuming issue for my practice and my clients. Information security breaches are ubiquitous and do not appear to be abating. Since 2005, our firm has handled well over 800 data breaches.

We have learned that security breaches are inevitable; companies can only do so much to prevent a breach. We counsel our clients to put in place technologies and procedures to help minimize the impact and scope of a breach when it does occur. The key, of course, is to prevent a breach altogether by not having the data in the first place. Data minimization is a practice we preach often and loudly.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: I very much admire Joanne McNabb, chief of the California Office of Privacy Protection and one of the first state privacy officials to be appointed. I have worked closely with Joanne as a fellow member of the U.S. Department of Homeland Security's Data Privacy and Integrity Advisory Committee.

Joanne is extremely well-versed in privacy and data security issues, is the quintessential pragmatist, and is a roll-up-your-sleeves colleague. She is the first to volunteer to do the heavy lifting, and her work is uniformly stellar. Joanne is admired by many of us in the privacy community and her diplomatic yet firm approach serves as a model in my own career.

Q: What is a mistake you made early in your career and what did you learn from it?

A: I think it's important for attorneys to specialize and find their niche as soon as possible. I rotated through several practices for the first year of my career, then joined a general litigation group before settling into a narrower regulatory area. There's an inherent competitive advantage

in being known as a specialist in a narrow area of law. And you can serve your clients best if you have an extensive body of knowledge in a narrow field.

The other important lesson is to be flexible in your career path. Both the law and the business world change, and we as lawyers need to be sufficiently nimble to adjust to external shifts. I was an environmental lawyer during the first decade of my career, shifting to privacy law only after establishing myself as a lawyer. My career change was serendipitous — and I consider myself exceptionally fortunate to have found such a fascinating and constantly evolving area in which to practice.