

PRIVACY AND INFORMATION SECURITY LAW BLOG

GLOBAL PRIVACY AND INFORMATION SECURITY LAW UPDATES AND ANALYSIS

January 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.

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Connecticut AG Announces Agreement with MetLife over 2009 Breach Incident January 27, 2012

On January 24, 2011, Connecticut Attorney General George Jepsen and Consumer Protection Commissioner William Rubenstein [announced](#) that they had reached an [Assurance of Voluntary Compliance](#) ("AVC") with Metropolitan Life Insurance Co. ("MetLife") in connection with an incident involving the disclosure of customer personal information on the Internet. In November 2009, a MetLife employee posted the personally identifiable information of current and former MetLife customers, including their Social Security numbers, on the Internet. Following the discovery of the posting, MetLife acted to mitigate possible harm by providing credit monitoring and identity theft insurance to the affected customers. [Continue reading...](#)

Hunton Hosts Webinar on Current Trends in Global Privacy Enforcement January 27, 2012

On January 12, 2012, Hunton & Williams hosted an hour-long webinar on the current enforcement environment in the U.S. and EU. The webinar, [Current Trends in Global Privacy Enforcement](#), covered issues ranging from the Federal Trade Commission's tougher approach to investigations to increased monitoring of corporate privacy practices by European data protection authorities. Hunton & Williams speakers included [Lisa J. Sotto](#), partner and head of the Global Privacy and Data Security practice,

London partner [Bridget Treacy](#), London senior attorney [Rosemary Jay](#) and Brussels associate [Dr. Jörg Hladjk](#).

[Listen to the webinar now.](#)

UK ICO Outlines the Year Ahead January 26, 2012

On December 28, 2011, UK Information Commissioner Christopher Graham outlined the ICO's agenda for 2012 in a post on the [ICO blog](#), highlighting the [European Commission's proposals](#) for reviewing the EU data protection framework, the post-legislative scrutiny process with respect to the UK Freedom of Information Act ("FOIA") and the [ICO's Information Rights Strategy](#). The Commissioner cautioned against allowing data protection compliance to fall by the wayside in the current, tough economic climate, especially given the inevitable reputational damage caused by big data breaches and the ICO's power to impose fines. [Continue reading...](#)

EU and U.S. Formulating a Privacy Framework Agreement January 25, 2012

As reported in [BNA's Privacy Law Watch](#), EU Member States are working on an overarching privacy framework agreement with the United States. The framework agreement, which may be used as a starting point for future negotiations, aims to reduce the amount of time and resources required to prepare new agreements between the European Union and the United States. [Continue reading...](#)

European Commission Publishes Data Protection Law Reform Package January 25, 2012

On January 25, 2012, the European Commission published its long-awaited [legislative package to reform EU data protection rules](#). The package includes a regulation that covers data processing in the private sector and by public authorities and a directive covering data processing for criminal justice purposes, as well as a communication, a report on the protection of personal data processed in the framework of police and judicial cooperation, and an impact assessment with a summary. [Continue reading...](#)

Minnesota AG Sues Debt Collection Agency for Health Privacy Violations January 24, 2012

On January 19, 2012, Minnesota Attorney General Lori Swanson [announced](#) a lawsuit against Accretive Health, Inc., ("Accretive") for violations of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations, the Minnesota Health Records Act, Minnesota's debt collection statutes and Minnesota's consumer protection laws. The suit, which was filed in Federal District Court in Minnesota, alleges that Accretive failed to adequately safeguard patients' protected health information ("PHI"). This failure contributed to a July 2011 information security breach when an Accretive employee left an unencrypted laptop containing information of approximately 23,500 patients in a rental car. The laptop was stolen and has not yet been recovered. [Continue reading...](#)

Concerns over Independence of Hungary's DPA Prompt Infringement Proceedings January 24, 2012

On January 17, 2012, the European Commission initiated expedited infringement proceedings against Hungary over recent changes to its Constitution which are considered incompatible with EU law. The proceedings follow a number of changes made to the Hungarian Constitution that came into effect on

January 1, 2012. Of particular concern to the Commission are amendments affecting the independence of the national data protection authority. The Hungarian government has one month to comply, or face enforcement proceedings in the European Court of Justice. [Continue reading...](#)

Supreme Court Finds Warrantless GPS Tracking Unconstitutional **January 23, 2012**

On January 23, 2012, the U.S. Supreme Court [issued its ruling](#) in the landmark [United States v. Jones](#) case, holding 9-0 that attaching a GPS device to a suspect's car to monitor the vehicle's movements constitutes a Fourth Amendment search that requires a warrant. Writing for the Court, Justice Scalia found that it was not necessary to determine whether Jones had a "reasonable expectation of privacy" in the underbody of his Jeep parked on a public street because the search violated the Court's traditional common-law trespass test. Scalia stated:

"It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted." We [reported on](#) *U.S. v. Jones* in November of last year, when the Supreme Court heard [oral arguments](#) in the case.

Third Circuit Holds Data Breach Plaintiffs Lack Standing **January 20, 2012**

On December 12, 2011, the United States Court of Appeals for the Third Circuit [affirmed a decision](#) that employees of [Ceridian Corporation's](#) ("Ceridian's") customers did not have standing to sue Ceridian after the payroll processing firm suffered a data breach.

In December 2009, a hacker may have gained access to personal and financial information of Ceridian's customers, including names, addresses, Social Security numbers, dates of birth and bank account information. Although it is not known if the hacker read, copied or understood the data, Ceridian sent notification letters to affected individuals informing them of the breach and offering to provide one year of complimentary credit monitoring and identity theft protection. [Continue reading...](#)

French Court of Cassation Excludes Application of Data Protection Act to Competition Authority's Investigation **January 20, 2012**

On November 30, 2011, the French Court of Cassation upheld a [decision](#) that excluded the application of the French Data Protection Act (*Loi relative à l'informatique, aux fichiers et aux libertés*) to an investigation conducted by the French Competition Authority (*Autorité de la Concurrence*) on the grounds that the search and seizure was authorized by an "freedoms and custody judge" (*juge des libertés et de la détention*). [Continue reading...](#)

Massachusetts Court Dismisses ZIP Code Suit for Failure to Allege a Cognizable Injury **January 12, 2012**

On January 6, 2012, the United States District Court for the District of Massachusetts [granted](#) Michaels Stores, Inc.'s ("Michaels") a motion to dismiss against a customer-plaintiff who alleged that Michaels' in-store information collection practices violated Massachusetts law. Although the court ruled in Michaels' favor, it found that customer ZIP codes do constitute personal information under Massachusetts state law when collected in the context of a credit card transaction. The plaintiff's class action complaint alleged

that “Michaels illegally requested customers’ ZIP codes when processing their credit card transactions in violation of” Massachusetts General Laws Chapter 93, Section 105(a) (“Section 105(a)”). Specifically, Section 105(a) states that “[n]o person, firm, partnership, corporation or other business entity that accepts a credit card for a business transaction shall write, cause to be written or require that a credit card holder write personal identification information, not required by the credit card issuer, on the credit card transaction form.” [Continue reading...](#)

EU Commission Postpones Publication of Proposal for Revised Data Protection Directive January 12, 2012

According to a spokesperson at the European Commission, the publication of the proposal for the review of the EU Data Protection Directive (95/46/EC) has been postponed until late February or March 2012. The draft proposal was scheduled to be officially released in late January after it was [leaked in December 2011](#). According to various sources, the proposal received negative responses from several Directorates-General over the course of the “inter-service consultation,” some of whom have voiced their concern that the proposed new framework would be stricter than the current legal framework and thus may have a negative impact on businesses. For example, parts of the proposal, such as the right to be forgotten, are viewed by some as potentially too burdensome for companies. [Continue reading...](#)

FTC Settles with Alleged Stealth Behavioral Advertising Targeter January 9, 2012

On January 5, 2012, the Federal Trade Commission [announced](#) a [proposed settlement](#) with [Upromise, Inc.](#), a membership reward service that gives cash rebates for college savings accounts to members who purchase products and services from its partner merchants. The FTC alleged that the “Personalized Offers” feature on the Upromise TurboSaver Toolbar (1) collected far more information about users’ browsing behavior than was disclosed at the time of installation, and (2) contrary to representations in the company’s privacy notice, transmitted that information, which included data such as Social Security numbers and financial account numbers, in clear text. [Continue reading...](#)

European Commission to Host Safe Harbor Conference on March 19 in Washington January 4, 2012

The U.S. Department of Commerce has confirmed that the European Commission will host this year’s Safe Harbor Conference in Washington, D.C., on March 19, 2012. The venue marks a change from the tradition of previous sessions which have taken place in the host authority’s capital city (Washington, D.C. or Brussels). The Conference will follow the release of the European Commission’s draft revisions to the EU Data Protection Directive 95/46, which are expected on or around January 25, 2012. The [widely leaked draft](#) of the proposal does not contain language pertaining to the current Safe Harbor program that exists between the United States and Europe. The European Commission and the U.S. Department of Commerce will negotiate the Safe Harbor Conference agenda over the next few weeks.

FTC Seeks Public Comments on Facial Recognition Technology January 1, 2012

On December 23, 2011, the Federal Trade Commission [announced](#) that it is seeking public comments on the privacy and security implications raised by the use of facial recognition technology. The FTC recently held a [public workshop](#) entitled “Face Facts: A Forum on Facial Recognition Technology,” that discussed the current and future commercial applications of facial recognition technologies and the associated privacy and security concerns. [Continue reading...](#)



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