

# PRIVACY & INFORMATION SECURITY LAW BLOG

Global Privacy and Cybersecurity Law Updates and Analysis



## May 2016

This Client Alert is a monthly update on privacy and cybersecurity 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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## European Data Protection Supervisor Publishes 2015 Annual Report

May 27, 2016

On May 24, 2016, the European Data Protection Supervisor ("EDPS") presented its [Annual Report for 2015](#). The annual report provides an overview of the EDPS' primary activities in 2015 and sets forth key [priorities](#) and challenges for 2016. [Continue Reading...](#)

## European Parliament Calls on European Commission to Renegotiate Privacy Shield

May 26, 2016

On May 26, 2016, the European Parliament approved a resolution calling for the European Commission to reopen negotiations with U.S. authorities on the EU-U.S. Privacy Shield ("Privacy Shield"), and to implement the recommendations of the Article 29 Working Party ("Working Party") on the draft Privacy Shield adequacy decision.

The Working Party had previously [published](#) its recommendations in an Opinion regarding the draft decision issued by the European Commission on adequacy of the protection provided by the Privacy Shield. In the Opinion, the Working Party highlighted a number of key issues concerning access to European personal data by law enforcement and government agencies, and also recommended a number of changes to ensure that European citizens' data are adequately protected. [Continue Reading...](#)

## **Will Spokeo Undermine CAFA?** **May 26, 2016**

As we [previously reported](#), the Supreme Court's [decision](#) in *Spokeo v. Robins* has been nearly universally lauded by defense counsel as a new bulwark against class actions alleging technical violations of federal statutes. It may be that. But *Spokeo* also poses a significant threat to defendants by defeating their ability to remove exactly the types of cases that defendants most want in federal court. The decision circumscribes the federal jurisdiction, with all its advantages, that defendants have enjoyed under Class Action Fairness Act ("CAFA") for the past decade. [Continue Reading...](#)

## **Irish DPA Expected to Question EU Standard Contractual Clauses before Irish Courts** **May 25, 2016**

On May 25, 2016, Max Schrems stated that the Irish Data Protection Commissioner (the "DPC") is expected to bring legal proceedings before the Irish courts concerning international data transfers under EU Standard Contractual Clauses.

In an unofficial statement to the Irish press, a representative of the DPC confirmed the DPC's intention to seek declaratory relief in the Irish High Court and to recommend that the case be referred to the Court of Justice of the European Union ("CJEU") for a preliminary ruling.

[Read](#) our previous entry on the *Schrems* ruling of the CJEU.

Hunton & Williams will continue monitoring this matter on the blog.

## **UK ICO Issues Priorities for GDPR Preparation** **May 25, 2016**

On May 24, 2016, the UK Information Commissioner's Office ("ICO") [published](#) priorities for preparing for the EU General Data Protection Regulation ("GDPR").

The ICO's priorities for issuing guidance to assist organizations with GDPR preparation are split into three phases. [Continue Reading...](#)

## **EU Member States to European Commission: Remove Barriers to Data Flows** **May 23, 2016**

On May 23, 2016, half of the EU Member States sent a letter to the European Commission and the Netherlands (which holds the rotating presidency), seeking the removal of barriers to the free flow of data both within and outside the EU to benefit the EU from new data-driven technologies, according to [Reuters](#) and [EurActive.com](#). [Continue Reading...](#)

## **Pharmaceutical Company to Plead Guilty and Settle Drug Marketing Charges** **May 19, 2016**

Recently, Aegerion Pharmaceuticals [announced](#) that it will enter into several settlements and plead guilty to two misdemeanors in connection with alleged violations of HIPAA, drug marketing regulations and securities laws. The criminal charges stem from the company's marketing of a cholesterol drug called Juxtapid. Aegerion allegedly failed to comply with risk evaluation and management strategies and marketed Juxtapid (which is labeled with a warning about liver toxicity) without proper directions for use. [Continue Reading...](#)

## **EU Council Adopts the Network and Information Security Directive May 18, 2016**

On May 17, 2016, the European Council [adopted](#) its position at first reading of the Network and Information Security Directive (the “NIS Directive”). The NIS Directive was [proposed](#) by the European Commission on February 7, 2013, as part of its cybersecurity strategy for the European Union, and is [designed](#) to increase cooperation between EU Member States on cybersecurity issues.

The NIS Directive will impose security obligations on “operators of essential services” in critical sectors and “digital service providers.” These operators will be required to take measures to manage cyber risks and report major security incidents. [Continue Reading...](#)

## **Advocate General Advises EU’s Highest Court that IP Addresses are Personal Data May 12, 2016**

On May 12, 2016, the Advocate General (“AG”) of the Court of Justice of the European Union (“CJEU”) issued an [opinion](#) stating that Internet Protocol (“IP”) addresses are personal data and data protection law should apply to IP addresses. Specifically, the AG urged the CJEU to rule that a dynamic IP address is personal data to the extent that an Internet access provider has additional data that in combination with the IP address would allow for the re-identification of the user. [Continue reading...](#)

## **FTC Orders Mobile Device Manufacturers to Provide Information about Security Updates for Study May 10, 2016**

On May 9, 2016, the Federal Trade Commission [announced](#) it had issued [Orders to File a Special Report](#) (“Orders”) to eight mobile device manufacturers requiring them to, for purposes of the FTC’s ongoing study of the mobile ecosystem, provide the FTC with “information about how [the companies] issue security updates to address vulnerabilities in smartphones, tablets, and other mobile devices.” The FTC’s authority to issue such Orders comes from Section 6(b) of the FTC Act. [Continue reading...](#)

## **CIPL Releases Outcomes Report of First GDPR Implementation Project Workshop in Amsterdam May 9, 2016**

On March 16, 2016, the Centre for Information Policy Leadership (“CIPL”) at Hunton & Williams LLP co-hosted a one-day [workshop](#) in Amsterdam, Netherlands, together with the Dutch Ministry of Security and Justice, to kick off CIPL’s new [long-term project](#) on the implementation of the EU General Data Protection Regulation (“GDPR”). [Continue Reading...](#)

## **Looking Beyond the Small Drone Rule? The FAA Announces a Drone Advisory Committee May 6, 2016**

On May 3, 2016, the Federal Aviation Administration (“FAA”) [announced](#) the establishment of a Drone Advisory Committee (“DAC”) intended to increase transparency and collaboration between the FAA and key stakeholders in the ongoing effort to develop and implement an overall integration strategy for Unmanned Aircraft Systems (“UAS”). [Continue Reading...](#)

## **FTC Announces First APEC Cross-Border Privacy Rules Enforcement Action May 5, 2016**

On May 4, 2016, the Federal Trade Commission issued a [press release](#) announcing its recent settlement with the hand-held vaporizers manufacturer, Very Incognito Technologies, Inc. (“Vipvape”). The FTC had charged Vipvape with falsely claiming that it was a certified company under the Asia-Pacific Economic Cooperation (“APEC”) [Cross-Border Privacy Rules](#) (“CBPR”) framework. The settlement prohibits Vipvape from misleading consumers about its participation in any privacy and security certification program, including the APEC CBPR framework. This is the first CBPR-related case taken up by the FTC. [Continue Reading...](#)

## **EU General Data Protection Regulation Published in the EU Official Journal May 4, 2016**

On May 4, 2016, the EU General Data Protection Regulation (“GDPR”) was [published](#) in the Official Journal of the European Union.

Following the European Parliament’s vote to [adopt](#) the GDPR on April 14, 2016, and the signing of the final draft on April 27, 2016, the GDPR will enter into force 20 days following its publication in the Official Journal of the European Union. Its provisions will be directly applicable in all EU Member States two years after this date, on May 25, 2018.

After four years of drafting and negotiations, the GDPR finally replaces and harmonizes the existing EU data protection legal framework.

## **Korean Privacy Law Updated May 3, 2016**

On April 26, 2016, Korean law firm Bae, Kim & Lee LLC [released](#) a Privacy News Alert outlining amendments to Korea’s Personal Information Protection Act (“PIPA”) and the Act on the Promotion of IT Network Use and Information Protection (“IT Network Act”). According to Tae Uk Kang, partner at Bae, Kim & Lee and author of the alert, these amendments to PIPA and the IT Network Act “reflect the general trend concerning the Korean data privacy policy, which is intended to achieve more stringent regulation (and sanctions) of processing personal information.” [Continue Reading...](#)

## **CII Issues Investor-Engagement Guide on Cyber Risk May 2, 2016**

Recently, the Council of Institutional Investors (“CII”) [issued](#) a guide to shareholder engagement on cyber risk. The guide is intended to enable shareholders to ask appropriate questions of boards to gauge whether companies are taking proper steps to mitigate cyber risk. The guide poses the following five questions:

- How are the company’s cyber risks communicated to the board, by whom and with what frequency?
- Has the board evaluated and approved the company’s cybersecurity strategy?
- How does the board ensure that the company is organized appropriately to address cybersecurity risks? Does management have the skill sets it needs?
- How does the board evaluate the effectiveness of the company’s cybersecurity efforts?
- When did the board last discuss whether the company’s disclosure of cyber risk and cyber incident is consistent with SEC guidance?

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