

August 2010

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:

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Online Ad Network Sued Over Tracking Using Flash Cookies August 27, 2010

On August 18, 2010, a [complaint](#) was filed in the U.S. District Court for the Central District of California, alleging that Specific Media, Inc. violated the Computer Fraud and Abuse Act, as well as state privacy and computer security laws, by failing to provide adequate notice regarding its online tracking practices. The suit, brought by six web users, seeks class action status and over \$5 million in damages, and cites Specific Media's use of Flash cookies to re-create deleted browser cookies as one of the offending practices. [Continue Reading...](#)

New Illinois Law Restricts Employer Use of Credit History August 19, 2010

On August 10, 2010, Illinois Governor Pat Quinn signed the [Employee Credit Privacy Act](#), which prohibits most Illinois employers from inquiring about an applicant's or employee's credit history or using an individual's credit history as a basis for an employment decision. The definition of "employer" under the Act exempts banks, insurance companies, law enforcement agencies, debt collectors and state and local government agencies that require the use of credit history. [Continue Reading...](#)

Bankrupt Magazine Must Destroy Readers' Personal Information **August 17, 2010**

As we [recently reported](#), the FTC expressed its opposition to a move by creditors of bankrupt XY *Magazine* to acquire personal information about the magazine's subscribers, on the grounds that such a transfer would contravene the magazine's privacy promises and could violate the Federal Trade Commission Act. The magazine, which catered to a young gay audience, had a website privacy policy that asserted "[w]e never give your info to anybody" and "our privacy policy is simple: we never share your information with anybody." Readers who submitted online profile information were told that their information "will not be published. We keep it secret." The personal information at issue included the names, postal and email addresses, photographs and online profiles of more than 500,000 users. [Continue Reading...](#)

Hackers Identify Privacy Vulnerabilities in Photo Sharing Websites **August 12, 2010**

BBC News is reporting that privacy was a major topic at this year's [Hackers on Planet Earth \("HOPE"\) conference](#) that was held in New York in July. Participants spoke to the BBC about privacy vulnerabilities that they have discovered on various Internet sites. For example, one participant discussed how GPS data embedded in digital photos users post online, combined with other information available in the photos and on the Internet, may reveal the exact locations where the users work, live and travel, as well as users' real-time locations. Participants explained that their goal is to identify the privacy vulnerabilities and provide information to others on how to protect their privacy online. Hear the [full interview](#).

Three Bills Introduced to Repeal Section 929I of the Dodd-Frank Financial Reform Bill **August 6, 2010**

As reported in [BNA's Privacy Law Watch](#) on July 29, 2010, three bills were introduced by House Republicans to repeal Section 929I of the [Dodd-Frank Wall Street Reform and Consumer Protection Act](#) (the "Dodd-Frank Act"). Section 929I of the Dodd-Frank Act has been a source of controversy because it gives the SEC significant latitude to sidestep FOIA requests by providing that the SEC "shall not be compelled to disclose" certain information it obtains pursuant to the '34 Act when conducting surveillance, risk assessments or other regulatory and oversight activities. [Continue Reading...](#)

German Federal Network Agency Fines Two Companies €194,000 for Violating Cold Calling Ban **August 6, 2010**

On July 27, 2010, the German Federal Network Agency, the *Bundesnetzagentur* (or "BNetzA"), issued a [press release](#) stating that it had recently levied €194,000 in administrative fines in two cases against companies accused of violating a ban on cold calling. The cases involved consumer complaints implicating the companies in several illegal acts. The companies claimed they had obtained prior consent from the consumers they contacted. The BNetzA, which is the regulatory office for electricity, gas, telecommunications, post and railway markets in Germany, rejected the companies' argument on the grounds that the "consent" was based on the consumers' implicit acceptance of the terms of use associated with certain Internet games. The terms of use included a provision regarding a participant's consent to telemarketing by partners, sponsors and other companies. The BNetzA stated that, because these terms of use did not satisfy the legal requirements for consent, the company had not obtained valid consent to call the consumers. [Continue Reading...](#)

Israeli Supervisor of Banks Issues Letter on Social Networking August 4, 2010

Reporting from Israel, legal consultant [Dr. Omer Tene](#) writes:

On July 28, 2010, the Israeli Supervisor of Banks, Rony Hizkiyahu, issued a [letter](#) to the CEOs of all local banks expressing concern over the banks' and their employees' use of online social networks, including both proprietary Web 2.0 tools and networking sites such as Facebook, Twitter, LinkedIn, MySpace and YouTube, all of which are explicitly referred to in the letter. The Supervisor of Banks, Israel's banking regulator, requires banks to take steps to ensure data protection and information security, including having outside experts perform risk assessments, creating and enforcing policies for use of social networking tools as well as guidelines and procedures for implementation and audit, and devising a data security strategy to address increased risks to employee and customer data. These instructions are in addition to the [Supervisor of Banks Proper Conduct of Banking Business Regulation No. 357](#), Information Technology Management, as well as applicable data protection law and regulations.

View the [Supervisor of Banks' letter](#) (in Hebrew).

European Commission Postpones Revision of the General Data Protection Directive August 3, 2010

In a statement released on August 2, 2010, the French Data Protection Authority (the "CNIL") [announced](#) that the European Commission has adopted a new time frame for the revision of the EU Data Protection Directive 95/46/EC (the "Directive"). Following a [public consultation on the EU Data Protection Framework](#) late last year, Commissioner Viviane Reding, who is in charge of Justice, Fundamental Rights and Citizenship, had announced that a proposal for the revision of the Directive would be presented in November 2010. However, several European data protection authorities urged the European Commission not to rush through the revisions, and requested additional time in order to address the impact of this revision and challenges to personal data protection. Accordingly, the European Commission has decided to postpone the release of a proposal, noting that it will instead issue a statement in November 2010, and will present proposed revisions in the latter half of 2011.

More information is available (in French) on the [CNIL's website](#).

Rite Aid Pharmacy Pays \$1 Million; Settles FTC and HHS Charges Regarding Data Practices July 28, 2010

Rite Aid has agreed to pay \$1 million and implement remedial measures to resolve Department of Health and Human Services ("HHS") and Federal Trade Commission allegations that it failed to protect customers' sensitive health information. The FTC began its investigation following news reports about Rite Aid pharmacies using open dumpsters to discard trash that contained consumers' personal information such as pharmacy labels and job applications. The FTC took issue with this practice in light of the pharmacy's alleged claims that "Rite Aid takes its responsibility for maintaining your protected health information in confidence very seriously . . . Although you have the right not to disclose your medical history, Rite Aid would like to assure you that we respect and protect your privacy." At the same time, HHS began investigating the pharmacies' disposal of health information protected by the Health Insurance Portability and Accountability Act.

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Kerry Signals Senate Support for Online Privacy Legislation July 28, 2010

On July 27, 2010, Senator John Kerry (D-Mass.) [announced his intention to introduce an online privacy bill](#) to regulate the collection and use of consumer data. “Our counterparts in the House have introduced legislation and I intend to work with Senator Pryor and others to do the same on this side with the goal of passing legislation early in the next Congress,” Kerry said in a prepared statement. Senator Kerry is the Chairman of the Commerce Subcommittee on Communications, Technology, and the Internet. He indicated that his bill would go beyond the regulation of targeted advertising. “Protecting the privacy of consumers online involves much more than the targeted advertising to which they are subjected,” Senator Kerry said. “Such advertising is just one result of the information that is routinely collected about us online.”

As we reported last week, Representative Bobby Rush (D-Ill.) [introduced a bill](#) regarding online data collection practices, which itself followed [a similar bill proposed in May](#) by Congressmen Boucher (D-VA) and Stearns (R-FL). Also on Tuesday, FTC Chairman Jon Leibowitz [testified before the U.S. Senate](#) about FTC efforts to protect consumer privacy.



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