

PRIVACY AND INFORMATION SECURITY LAW BLOG

GLOBAL PRIVACY AND CYBERSECURITY LAW UPDATES AND ANALYSIS

April 2013

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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FTC Issues Updated FAQs Addressing COPPA Compliance Requirements April 26, 2013

On April 25, 2013, the Federal Trade Commission [released](#) an updated version of its frequently asked questions regarding the Children's Online Privacy Protection Act of 1998 ("COPPA"). The revised FAQs, entitled [Complying with COPPA: Frequently Asked Questions \(A Guide for Business and Parents and Small Entity Compliance Guide\)](#), provide general information on COPPA's requirements and also include new guidance on the recent [amendments to the Children's Online Privacy Protection Rule](#) ("COPPA Rule"). [Continue reading...](#)

FBI Senior Cybersecurity Adviser Paul Tiao Joins Hunton & Williams' Renowned Global Privacy and Data Security Practice April 26, 2013

The FBI Director's Senior Cybersecurity Adviser Paul M. Tiao has [joined](#) Hunton & Williams LLP as a partner in the [Privacy and Data Security](#) practice group. Tiao served as Senior Counselor to FBI Director Robert S. Mueller III on cybersecurity, electronic surveillance, intellectual property crimes, digital forensics, and other national security and criminal issues. He formulated cybersecurity policy positions, drafted legislative language, coordinated strategy on these issues; and represented the FBI in discussions within the Executive Branch, with Congress, and with industry leaders. Tiao will be based in the firm's Washington office. [Continue reading...](#)

German Court Rejects DPA's Appeal, Finds Irish Law Applicable to Facebook in Germany April 24, 2013

On April 22, 2013, the higher administrative court of Schleswig issued two [decisions](#) rejecting an appeal by the data protection authority of Schleswig-Holstein ("Schleswig DPA") that sought to challenge a lower court's [earlier rulings](#) in Facebook's favor. [Continue reading...](#)

Chinese Ministry of Industry and Information Technology Enacts Draft Rules on Personal Information April 24, 2013

On April 10, 2013, the Ministry of Industry and Information Technology of the People's Republic of China (the "MIIT") enacted two draft rules ("Provisions on the Protection of Personal Information of Telecommunications and Internet Users" and "Provisions on the Registration of Real Identity Information of Telephone Users") to solicit public comments. The comment period is open until May 15, 2013. Both Drafts include proposals for substantial provisions on the protection of personal information and were enacted according to the [Resolution of the Standing Committee of the National People's Congress Relating to Strengthening the Protection of Information on the Internet](#) (issued by the Standing Committee in December 2012) and some other telecommunications rules. [Continue reading...](#)

FTC Seeks Input on The Internet of Things April 19, 2013

On April 17, 2013, the Federal Trade Commission issued a [press release](#) seeking public input on "The Internet of Things" – the ability of numerous "everyday devices to communicate with each other and with people." The FTC will accept comments through June 1, 2013, in advance of a public workshop to be held in Washington, D.C. on November 21, 2013. [Continue reading...](#)

Obama Administration Threatens to Veto CISPA April 17, 2013

On April 16, 2013, the Office of the President issued a [Statement of Administration Policy](#) that includes a threat to veto the U.S. House of Representatives' [Cyber Intelligence Sharing and Protection Act](#) ("CISPA" or H.R. 624) if further changes are not made to the bill's privacy protections. Specifically, the Obama Administration recommends that the bill require private

entities to remove personal information when sharing cybersecurity information with the government or other private entities. [Continue reading...](#)

Department of Commerce Provides Clarification Regarding the Safe Harbor Framework and Cloud Computing **April 17, 2013**

On April 12, 2013, the Department of Commerce's International Trade Administration ("ITA") issued a [guidance document](#) to clarify how the U.S.-European Union Safe Harbor Framework facilitates the transfer of personal data from the European Union to the United States in the cloud computing context. The document underscores that the U.S.- European Union Safe Harbor Framework is an officially recognized means of complying with the adequacy requirement of EU Data Protection Directive 95/46/EC. ITA has received a number of inquiries from Safe Harbor participants indicating that they (and their EU clients, customers and partners) have heard conflicting information and are unsure about how the Safe Harbor Framework may enable data transfers to cloud service providers in the United States. [Continue reading...](#)

Court of Appeals Rules that HIPAA Preempts Florida Law **April 12, 2013**

On April 9, 2013, the United States Court of Appeals for the Eleventh Circuit [held](#) that the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") preempted a Florida law regarding the disclosure of patient records by nursing homes. The law required nursing homes in Florida to provide the medical records of a deceased nursing home resident to the "spouse, guardian, surrogate, proxy, or attorney in fact," including "medical and psychiatric records and any records concerning the care and treatment of the resident performed by the facility, except progress notes and consultation report sections of a psychiatric nature." [Continue reading...](#)

SEC and CFTC Adopt Rules on Red Flags and Identity Theft **April 11, 2013**

On April 10, 2013, the [Securities and Exchange Commission](#) ("SEC") and the Commodity Futures Trading Commission ("CFTC") jointly [adopted](#) rules that require broker-dealers, mutual funds, investment advisers and certain other regulated entities to adopt programs designed to detect "red flags" and prevent identity theft. These rules implement provisions of the [Dodd-Frank Wall Street Reform and Consumer Protection Act](#), that amended the Fair Credit Reporting Act ("FCRA") to direct the SEC and the CFTC to adopt rules requiring regulated entities to address risks of identity theft. The 2003 amendments to the FCRA required other regulatory authorities to issue identity theft red flags rules, but did not authorize or require the SEC or the CFTC to issue their own rules. [Continue reading...](#)

Insurance Coverage for Security Breach Lawsuits **April 11, 2013**

As the number of security breach incidents and privacy violations continues to increase, so too has the volume of lawsuits—particularly class action lawsuits—seeking damages for actual and

future harms resulting from unauthorized disclosures of personal information. Affected companies have looked to their traditional insurance coverage to defray costs associated with responding to these incidents and lawsuits, but standardized commercial general liability policies may not provide adequate coverage. [Continue reading](#)...

Colombia to Implement Data Protection Law on April 18 April 9, 2013

On April 5, 2013, during the [Centre for Information Policy Leadership's First Friday call](#), Centre President [Marty Abrams](#) interviewed José Alejandro Bermúdez Durana, Deputy Superintendent for Data Protection for Colombia's [Superintendency of Industry and Commerce](#), and asked about the progress of Colombia's new data protection law. [Enacted in October 2012](#), the law provided a six month grace period for companies to prepare to comply with new requirements, which are expected to be implemented on April 18, 2013. The final regulation will be published thereafter. The Deputy Superintendent discussed industry cooperation and said that the regulation's language on consent will be flexible. [Continue reading](#)...

Article 29 Working Party Clarifies Purpose Limitation Principle; Opines on Big and Open Data April 9, 2013

On April 2, 2013, the Article 29 Working Party (the "Working Party") adopted an [Opinion](#) (the "Opinion") that elaborates on the purpose limitation principle set out in Article 6(1)(b) of the current [EU Data Protection Directive 95/46/EC](#) (the "Data Protection Directive"). The Opinion analyzes the scope of this principle under the Data Protection Directive, clarifies its limits and makes recommendations to strengthen it in the proposed [General Data Protection Regulation](#) (the "Proposed Regulation"). It also focuses on how to apply this principle in the context of big data and open data. [Continue reading](#)...

SEC Clarifies Use of Social Media Under Regulation FD April 8, 2013

On April 2, 2013, the Securities and Exchange Commission [issued a report](#) regarding the investigation of a prominent public company and its CEO over disclosures made on the CEO's personal social media page. The Commission did not bring enforcement charges in this case, but the report set forth the Commission's view that, under certain circumstances, issuer-sponsored social media can be a permissible channel of dissemination of information under Regulation FD.

Adopted in 2000, Regulation FD generally prohibits public companies and personnel acting on their behalf from selectively disclosing material, nonpublic information to certain groups, such as brokers, investment advisers, analysts and shareholders who are likely to trade on information, without concurrently making widespread public disclosure.

[Read our full client alert.](#)

FTC Sends FCRA Warning Letters to Tenant Rental History Websites April 4, 2013

On April 3, 2013, the Federal Trade Commission issued a [press release](#) announcing that it had sent [warning letters](#) to operators of six websites that provide rental history reports to landlords for tenant screening purposes. The letters informed the website operators that they may be considered consumer reporting agencies (“CRAs”) subject to the requirements of the Fair Credit Reporting Act (“FCRA”). [Continue reading...](#)

Business Associate Compliance with the New HIPAA Rules April 3, 2013

On January 17, 2013, the U.S. Department of Health and Human Services [issued a final omnibus rule](#) modifying prior regulations enacted pursuant to the Health Insurance Portability and Accountability Act of 1996. Among the key changes that will come into effect this September is the addition of a provision that dramatically increases the number of organizations directly subject to the HIPAA Privacy, Security, Breach Notification and Enforcement Rules. In an [article](#) published in the March/April issue of *[Storage & Destruction Business Magazine](#)*, [Lisa J. Sotto](#), partner and head of the Global [Privacy and Data Security](#) practice at Hunton & Williams LLP, and [Ryan P. Logan](#) and [Melinda L. McLellan](#), senior associates on the firm’s Privacy and Data Security team, discuss how the newly-adopted HIPAA Rules will impact business associates and outline steps that records and information management companies should take to prepare for the upcoming changes.

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