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### ECHR: Taking a Photograph without Consent May Breach Privacy Rights

On January 15, 2009, the European Court of Human Rights (ECHR) unanimously held in *Reklos and Davourlis v. Greece* (Application no. 1234/05) that a hospital which had, as part of its services, taken a photograph of a newborn baby without obtaining the parents' prior consent had breached the right to privacy as guaranteed by Article 8 of the European Convention on Human Rights, even though the picture was never published. The full judgement is available (in French) [here](#).

### ECJ: Data Retention Directive Has Appropriate Legal Basis

On February 10, 2009, the Grand Chamber of the European Court of Justice (ECJ) ruled in *Ireland v. Parliament and Council* (Case C-301/06) that the Data Retention Directive (Directive 2006/24/EC) had been correctly adopted on the basis of the first pillar (European Community – EC Treaty), as it relates predominantly to the functioning of the internal market. Ireland sought annulment of the Directive on the ground that it should have been based on the EU's third pillar (relating to police and judicial co-operation in criminal matters) and was therefore not founded on the appropriate legal basis. The judgement is available [here](#).

### EU: Article 29 Working Party Issues Guidance on Pre-Trial Discovery for Cross-Border Civil Litigation

On February 11, 2009, the Article 29 Working Party released its long-awaited Working Document on reconciling US civil discovery requirements with European data protection law. The Working Document highlights the challenges that multinational companies face when trying to comply with competing legal obligations, and provides initial recommendations. It is available [here](#), and further analysis can be found [here](#).

### EU: Article 29 Working Party Updates FAQs on BCRs

On January 19, 2009, the Article 29 Working Party released a third version of its frequently asked questions (FAQs) relating to binding corporate rules (BCRs), as part of its effort to promote BCRs. The updated FAQs are intended to address and clarify particular requirements for applicants, with the aim of gaining the approval of data protection authorities. The FAQs are available [here](#).

### EU: Article 29 Working Party and EDPS Comment on Review of EU Telecommunications Framework and e-Privacy Directive

In recent months, the Article 29 Working Party and the European Data Protection Supervisor (EDPS) have issued several opinions on the review of the EU Telecommunications

Framework, in particular on the e-Privacy Directive (Directive 2002/58/EC).

On January 9, 2009, the EDPS issued its second Opinion on the review of the e-Privacy Directive, focusing on the issue of security breaches (the first Opinion is available [here](#), and the second [here](#)). One month later, on February 10, 2009, the Article 29 Working Party adopted its third Opinion, which also focuses on the proposal for an obligation to notify data breaches, and considers further amendments to the e-Privacy Directive, such as (a) the qualification of IP addresses as personal data, (b) the processing of traffic data for security purposes, and (c) the legal regime applicable to unsolicited communications. Finally, on February 16, 2009, the EDPS published comments on several issues relating to the review of the Universal Service Directive (Directive 2002/22/EC), in particular the 'three-strike' scheme; the text of the EDPS comments is available [here](#).

#### **Belgium: Belgian Privacy Commission Issues FAQs on Standard Contractual Clauses and BCRs**

In January 2009, the Belgian Privacy Commission (DPA) issued an update to its website section on [Cross-Border Transfers of Personal Data](#) and the related frequently asked questions (FAQs). The website section provides information on how to transfer personal data outside of Europe to countries which do not provide an adequate level of data protection. The FAQs are particularly useful since they describe the DPA's position on a range of recurring questions raised by companies, in particular regarding data transfer mechanisms such as the EU's standard contractual clauses

and binding corporate rules (BCRs). The FAQs are available [here](#).

#### **France: Supreme Court Rules on Data Protection and Online Copyright Infringement**

On January 13, 2009, the French Court of Cassation ruled in *SACEM v. Cyrille Saminadin* (Cour de Cassation, chambre criminelle, 13 janvier 2009) that a sworn agent (appointed by a representative body of authors, composers and music editors) who accesses manually, without using any automatic monitoring device, an individual's list of files that were illegally uploaded onto a 'peer-to-peer' network, does not require the prior authorization of the French Data Protection Authority (CNIL). According to the Court of Cassation, collecting an IP address for the purpose of obtaining an individual's identity through his or her Internet service provider falls within the powers of a sworn agent, and does not constitute personal data processing. The Court's decision is available (in French) [here](#), and further analysis can be found (in English) [here](#).

#### **Germany: Consumer Telephone Surveys Violate Unfair Competition Act**

On December 12, 2008, the Higher Regional Court of Cologne ruled (Az. 6 U 41/08) that telephone surveys conducted by consumer survey institutes on behalf of their clients may constitute unfair telephone advertisement under the German Federal Unfair Competition Act, if conducted without prior consent. Failure by a consumer to respond before a prescribed deadline to a letter announcing the survey does not constitute consent. However, telephone surveys conducted by a neutral institution for non-profit purposes are not considered to be unfair telephone

advertising. A copy of the judgement can be requested from the Court [here](#).

#### **Italy: Italian DPA Releases Guidelines for IT Administrators**

On January 14, 2009, the Italian DPA (Garante) issued guidelines imposing requirements on IT administrators. Recognizing the importance of IT administrators in the lawful and secure processing of data, the guidelines establish greater transparency and prevent abuses. The guidelines require companies and public entities to (a) assess the qualifications of IT administrators, (b) delimit their powers when appointing them, (c) maintain a list of IT administrators to be included in the company's security policy document, (d) review IT administrators' activities annually, and (e) maintain a log file of their activities and access to documents. Further information is available [here](#).

#### **Spain: AEPD Issues Guidance on Video-Surveillance**

On January 28, 2009, the Spanish Data Protection Agency (AEPD) issued a 'Video-Surveillance Guide' addressing questions that are being raised in the public and private sectors. The Guide contains recommendations and practical steps regarding (a) the most appropriate law enforcement mechanisms to tackle the increased use of these devices, (b) the rights of citizens, and (c) frequently asked questions. The AEPD's recommendations are available (in Spanish) [here](#), and the full text of the Guide (in Spanish) is available [here](#).

#### **Switzerland: US-Swiss Safe Harbor Framework in Force**

On February 16, 2009, the US-Swiss Safe Harbor Framework, which is comparable to the EU-US Safe Harbor Framework, was adopted. The

US-Swiss framework is intended to simplify the transfer of personal data by Swiss companies to American companies that are self-certified with the US Department of Commerce (DOC). Self-certified US companies are bound by the principles contained in the framework. They will automatically be considered as providing an adequate level of data protection under Swiss law. Further information is available [here](#), and the full framework is available [here](#).

#### **UK: ICO Urges Senior Executives to Sign 'Personal Information Promise'**

In response to recent data losses, the Information Commissioner's Office (ICO) is urging senior executives to sign a 'Personal Information Promise' to demonstrate their organization's commitment to data protection. The objectives are to improve internal commitment to data protection and to help restore public trust and confidence in those who are entrusted with personal information. The promise

lists ten key commitments to protect personal information. More than 40 senior executives from public and private sector organizations have signed the promise, although no central governmental departments have signed to date. The Personal Information Promise may be accessed [here](#).

#### **UK: BSI Invites Public Comments on New Draft Standard**

On January 8, 2009, the British Standards Institute (BSI) invited the public to submit comments on a new draft standard designed to help organizations comply with the Data Protection Act 1998. The standard is expected to be published in June this year, and once in place will help organizations implement a framework to better manage personal information in compliance with the Data Protection Act. The closing date for comments is March 31, 2009. A copy of the draft standard is available [here](#).

#### **UK: Consumers' Explicit Consent Required before Disclosure of Personal Data**

The UK Advertising Standards Authority (ASA) upheld a complaint under the UK Committee of Advertising Practice Code (CAP Code), which requires UK marketers to gain the explicit consent of consumers before disclosing their personal details to third parties for direct marketing purposes (the 'Kaleidoscope Decision'). Kaleidoscope Ltd published a national advertisement for goods, which included a clause in small print stating that by responding to the promotion, consumers were explicitly consenting to the advertiser sharing their information with other organizations. The ASA ruled that the advertisement breached the CAP Code (rules 43.4c and 43.5), as consumers did not explicitly consent to the clause simply by responding to the promotional advert. The ASA's adjudication is available [here](#).

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