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Weekly Data Privacy Alert
27 June 2016

EU

EU and US Sign Umbrella Agreement

On 2 June, the US and the EU signed an umbrella agreement which will implement a framework of data protection cooperation for criminal law enforcement. The agreement, which is not yet in force, will cover the exchange of all personal data between police and criminal justice agencies in all EU member states and in the US, providing that it is used in the process of preventing, investigating, detecting and prosecuting criminal offences. Certain safeguards are implemented in the agreement to ensure the lawfulness of data transfers. These include limitation of data use and an obligation to obtain prior consent before forwarding the data in question. Additional procedural steps are necessary before the Umbrella Agreement can be finalised. The European Council will need to obtain consent from the European Parliament before adopting a decision on the agreement itself.

Press release

France

France Launches New Do-Not-Call List

On 1 June, a new do-not-call list (BLOCTEL list) launched throughout France. Any French resident who no longer wishes to receive marketing telephone calls can now register their landline and mobile telephone number at www.bloctel.gouv.fr. The BLOCTEL list was created by French Consumer law No. 2014-344. The law has the two-fold objective of prohibiting companies from making marketing calls to consumers on the list (with the exception of a consumer who is an existing customer of the company), and from selling the information of any consumer on the list. Companies who fail to comply with these requirements may now face a fine of up to €75,000. They also have the additional obligations of informing consumers of the existence of the BLOCTEL list and because in practice they will not have direct access to the list, they will need to request access on a monthly basis to ensure compliance with French law.

BLOCTEL List (in French)

French Supreme Court Rules on Privacy Rules

The French Supreme Court has ruled against the rights of two individuals to have their names removed from an article, or alternatively to limit access to the article found on the archived webpage of an online newspaper. The Court found that in relation to the article, which mentions a court decision sanctioning the two individuals, the "the deletion of the full names would deprive the relevant article of all interest and restricting access exceeds the restrictions that may be made to the freedom of the press."

Press release (in French)

Germany

Thüringen Data Protection Commissioner: Private Video Recordings Require Notification

According to the Data Protection Commissioner of Thüringen, Lutz Hasse, companies and private individuals making video recordings in public spaces must notify the competent state Data Protection Commissioner of their practice if they do not have an in-house data protection officer. The context of this opinion is a recent ruling by the administrative court of Saarland, according to which the pastime of wildlife watching was deemed to trigger the notification requirement under the German Data Protection Act. According to Hasse, this ruling affects the private use of all video cameras that are monitoring publicly accessible spaces. Consequently, dashboard cameras, helmet cameras, and mobile phone cameras would trigger the same obligation to notify.

Press release (in German)

Hamburg Data Protection Officer Has Fined Companies for Illicit Data Transfers to the US

In a press statement, Hamburg's Data Protection Officer announced fines against three companies guilty of illicit data transfers to the US. After the removal of Safe Harbor by the European Court of Justice, Hamburg's data protection officer began an assessment of the data transfer practices of 35 international companies based in Hamburg. The assessment has resulted in the discovery of several companies who have failed to implement a legal framework for the transfer of data to the US. The three companies concerned have since adopted standard contractual clauses and the amount of fines due to be levied against them have now been subsequently reduced. However, Hamburg's data protection officer announced that he would apply stricter criteria to similar matters in the future. He also approved of the view adopted by the Article 29 Working Party according to which the EU and the US need to improve the terms contained in the current "Privacy Shield" framework.

Press release (in German)

US

Amendment to Illinois Biometric Information Privacy Act Placed on Hold

A proposal by Illinois State Senator Terry Link that would have placed substantial limits on the Illinois Biometric Information Privacy Act was put on hold after the proposed amendment faced significant backlash from the public and the Illinois Attorney General. Illinois is one of few states with a biometric privacy law, it is also currently the forum for several lawsuits brought under the Act against websites such as Google and Snapchat for allegedly using facial recognition software without explicit consent. While the Illinois law does not forbid companies from making facial scans, it does require that companies obtain explicit consent for biometric data collection.

Proposed Amendment

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