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A SPECIAL CLIENT ALERT¹

Privacy in the New World Order

Part III: The Age of Turmoil

April 21, 2020

Continuing our collaboration with Thomson Reuters, we are pleased to announce Part III of our “*Privacy in the New World Order*,”² series: “*The Age of Turmoil*.” This program³ discusses privacy developments, both in the U.S. and abroad, following world wide disruptions to global trade, health, and investment. These developments will affect every attorney involved with U.S., U.K., and European Union (“EU”) privacy protections, whether in compliance or in transactional matters. The discussion is about privacy laws, here and abroad, and how they function (or should) in the wake of rapidly unfolding, uncharted global disruptions: “Brexit” (British exit from the EU), newly expanded U.S. regulations under the Committee for Foreign Investment in the U.S. (“CFIUS”), and – most importantly - the privacy implications of exchanging health related information in response to COVID-19 (“Corona virus”).

Here is a brief synopsis of the program.

¹ THIS SPECIAL CLIENT ALERT IS PROVIDED COMPLIMENTARY TO CLIENTS AND FRIENDS OF SAPRONOV & ASSOCIATES, P.C. FOR TUTORIAL PURPOSES ONLY AND IS NOT TO BE CONSTRUED AS A LEGAL OPINION OR LEGAL ADVICE. PLEASE CONTACT US AT (770) 399-9100, OR AT INFO@WSTELECOMLAW.COM IF YOU HAVE SPECIFIC QUESTIONS ABOUT THIS ALERT – OR IF YOU WISH TO BE REMOVED FROM OUR MAILING LIST.

² Parts I (“Compliance”) and II (“Globalization”) of this series are available upon request at info@wstelecomlaw.com.

³ http://westlegaledcenter.com/program_guide/course_detail.jsf?videoCourseId=100278512&ADMIN_PREVIEW=true.

I. Privacy and the Pandemic

As the Corona virus envelops the world and authorities scramble to contain it, privacy is the least of its victims' worries. The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and other privacy laws surely were not enacted to create life-threatening treatment compliance delays. Viewed in that context, Corona virus privacy protection would seem oxymoronic.

Or maybe not. Even as governments muster resources to identify Corona's reach with the help of Google and the like, location data and other private health information amassed by the Internet giants will remain in their possession long after the virus is gone. A few alarms have already been raised, especially about "Big Tech" control over Corona related personal data.⁴ Sen. Edward Markey (D. MA), a long-time telecom policy veteran, has expressed concern in writing to the Office of Science and Technology Policy over the use of geolocation data by U.S. government "partnerships" (an Orwellian thought) with Google and the like. Consent to use this information (as required for hospital patients by HIPAA) or the right to demand one forgets it (as required by the GDPR) is probably not a foremost concern of such patients while the virus spreads; someday soon it might be.

This session will focus on a series of important issues about the virus and the health care system that are arising as we speak. These issues will be discussed, including a series of new developments related to the U.S. government's activities to enforce the HIPAA rules, as well as some of the international implications in this area.

II. Privacy Developments Around the Globe

A. General Data Protection Regulation ("GDPR") and the EU

The GDPR is nearly at the two-year mark and the sentiment among EU regulators is that (with its grace period now expired) it is ripe for more stringent enforcement action. While many companies have made significant strides in GDPR compliance, hiring necessary resources and reinforcing internal privacy governance, there remain plenty of outliers, including among big tech. We take a look at some enforcement priorities for EU regulators, review a sampling of enforcement actions (indicative of things to come) and spend time on EU class actions for privacy violations – still stuck at the starting block. Finally, we conclude with a look at a few trends and difficulties that companies face as they strive for GDPR compliance. Is the GDPR already outdated?

B. Privacy in the U.K. after Brexit

The U.K. left the EU on January 31, 2020 and is now engaged in a complex negotiation of its future trading relationship with the EU for a transition period, which will last until the end of 2020. This session will focus on how Brexit affects the U.K.'s privacy laws, the application

⁴ See <https://www.politico.com/news/2020/03/18/big-tech-coronavirus-134523>.

of the GDPR in the U.K., and how to manage data flows between the EU and the U.K., and the U.K. and the rest of the world.

III. Privacy and Foreign Investment in the U.S.

Global turmoil is not limited to Corona. Geo-political tensions are as high as ever – especially between the U.S. and China (accused by some of creating the virus). As a consequence of that fraught relationship, the U.S. has expanded its CFIUS regulations, commonly known as the Foreign Investment Risk Review Modernization Act of 2018, or “FIRMA,”⁵ and the government’s most stringent tool for scrutinizing foreign investments, most recently to those that touch on privacy. While not specifically aimed at China, the new regulations focus on investments in a wide range of businesses from health care to hotels to banks - almost any enterprise that gathers, uses or maintains the “sensitive” personal health or financial information of US citizens.

Our in-depth discussion can be found at http://westlegaledcenter.com/program_guide/course_detail.jsf?videoCourseId=100278512&ADMIN_PREVIEW=true. Our panel includes: Kirk Nahra of Wilmer Hale, discussing privacy implications in the face of Covid-19; Joseph Srouji, Of Counsel to Saprnov & Associates, P.C., discussing the GDPR; Kim Roberts of King & Spalding, discussing Brexit and the impact on EU data privacy laws in the UK; James Wholey of Phillips Lytle, discussing U.S. restrictions on foreign investment. Walt Saprnov will serve as moderator. We hope to see you there. Be SAFE during these difficult times – and MAY GOD BLESS US ALL.

⁵ For a detailed presentation on CFIUS and FIRMA expansion, see our webinar for Thomson Reuters, “Negotiable Hostilities: Doing Telecom Deals with Russia in the Sanctions Era,” (available at https://westlegaledcenter.com/program_guide/course_detail.jsf?videoCourseId=100267557&ADMIN_PREVIEW=true).