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FTC issues mobile privacy staff report

The FTC issued a staff report on 1 February providing recommendations for companies to improve mobile privacy disclosures. "The report represents a culmination of efforts initiated by the FTC and other regulators during the past few years," said Gonzalo Mon, Partner at Kelley Drye. "The FTC's perspective is that the report is necessary to achieve stronger enforcement of disclosure standards for apps," adds John Feldman, Partner at Reed Smith.

"The report contains four recommendations," said Mark Brennan, Associate at Hogan Lovells, "(1) have a privacy policy and make it available prior to download; (2) provide 'just-in-time' disclosures and obtain affirmative express consent when collecting sensitive information outside the API; (3) improve coordination with advertising networks and third parties; and (4) consider self-regulatory programs."

The report accompanied the FTC's settlement against the Path social networking app, which allegedly collected PI from users without their knowledge or consent. "App developers should say what they do," concludes Mon, "and do what they say."

French report proposes to tax online data collection

The French government released on 18 January a report proposing changes to international tax rules to better account for value creation by digital firms, recommending an online tax based on data collection.

"With respect to international taxation, e-commerce companies are advantaged compared to other industries needing a local presence to carry out their business activity," said Julien Monsenego and Rui Cabrita of Olswang. "However, the rationale behind the report relies on the idea that in e-commerce user data is a key resource. The authors seem to present user data as a cause of profitability not a consequence. One can argue that the profitability of these companies is derived from their ability to meet the needs of their audience."

The report authored by Colin and Collin was commissioned in July 2012 by the French government. "According to the report, companies which carry out 'regular and systematic monitoring of data' provided for free by their users would be subject to taxation," said Guilhem Calzas, Associate at Bignon Lebray. "Companies would have to declare the amount of data they collect and the rate adjusted depending on whether the company abides by data protection regulations."

"The report seeks to justify the tax on the basis that users are, in effect, working for free in providing the information," said Vanessa Barnett, Partner at Charles Russell. "The application of the tax will depend on the number of users located in France whose data is used," adds Nathalie Dreyfus, Founder of Dreyfus & Associés. "The material and territorial scope suggested for the tax would cover all companies regardless of their State of establishment."

The report acknowledges that such a tax depends on international support for its success. "Achieving a change in the definition of the permanent establishment concept leads to a renegotiation of existing tax treaties," said Philippe Lorentz, Partner at August & Debouzy Avocats. "A review of the transfer pricing criteria has also been proposed to better allocate taxable income between the States. In the meantime and due to the fact that such proposals take time, it is proposed to apply a specific tax based on the exploitation of user data."

"OECD is currently involved in the Base Erosion and Profit Shifting project aimed at assessing if the current rules allow the allocation of profits in a place different to where the business activity is carried out," adds Monsenego. "The next G20 summit could be the occasion for guidelines on the issue."

FFIEC issues rules for financial institutions on social media

The Federal Financial Institutions Examination Council (FFIEC) proposed on 22 January guidelines for financial institutions interacting on social media, to ensure banks comply with regulations and protect consumers.

"Institutions are becoming increasingly active on social media, but there are many unknowns," said Nicole Muryn, Director of Legislative and Regulatory Affairs at BITS. "For example, how does a Facebook 'like' compare with an endorsement? The guidelines will help institutions understand how regulators view these issues."

The FFIEC highlights the need to comply with regulations regarding marketing on social media. "The informality and real-time nature of many social media types are in tension with the careful vetting generally needed for communications to the public governed by financial services laws and regulations," said Andrew Lorentz, Partner at Davis Wright Tremaine.

The FFIEC recommends institutions implement an oversight system to monitor the content posted on social media, though Lorentz believes this would likely only "create another box to check off" and explains "Social media calls for rigorous management, but that is the 'business as usual' expectation for financial institutions."

Mark Johnson, Founder of the Risk Management Group, believes that to be "truly effective," policies must "address the wider issues related to employee behaviour in the personal social media space. The proposals are a welcome starting point, but cannot be the whole story."

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