



Legislative and Regulatory Update on Privacy and Data Security

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POWERING TRUST IN THE DATA ECONOMY

Agenda

- Intro
- Legislative Activities
- Regulatory Enforcement

Intro



Ray Everett, Principal Consultant & Dir. Product

- JD, CIPP/US
- First corporate Chief Privacy Officer (1999); founding board member of IAPP
- Previously: Ad & Search Privacy at Yahoo; GM Privacy Services at Keynote Systems
- Consultant for ~20 years with clients like: Adobe, AOL, Assurant, Brightcove, Cabela's, Comcast, ExxonMobil, HSBC, Intuit, Kimberly-Clark, Medtronic, Merck, Microsoft, Napster, Pfizer...

Legislative Activity and Notable Laws

- Federal
- State
 - California
 - Virginia
 - Delaware
 - New York
 - Massachusetts

Privacy Enforcement in the US

- FTC
- State Attorneys General
- Private Litigation & Class Actions

Challenging the FTC

Companies contesting FTC's authority to regulate Data Security under Section 5 of the FTC Act



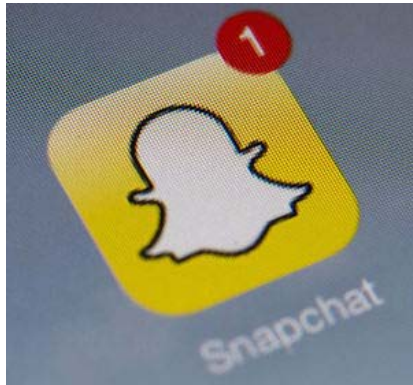
- Wyndham
 - Alleges FTC lacks authority to regulate data security practices, seeing to hold companies responsible for acts of hackers
 - On appeal to 3rd Circuit
- LabMD
 - Alleges FTC lacks authority to regulate companies covered by HIPAA, conflict or impermissibly augment
 - Can appeal once FTC action is finalized

LabMD

Geolocation



- Goldenshores
 - First FTC case focusing on geolocation
 - First detailed instructions in settlement around “just-in-time” notification



- Snapchat
 - Transmitting geolocation in violation of statement in privacy statement
 - Didn't charge any 3rd Party liability (while pointing to ways to circumvent privacy using those 3rd party apps)

Indirect Liability

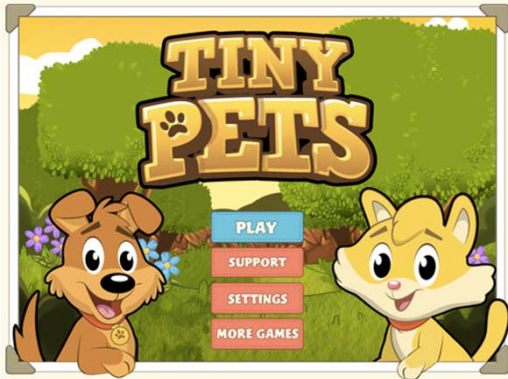


- Credit Karma
 - Mobile app developer failed to implement required encryption protections but company failed to review app before launch



- GMR Transcription
 - Relied on service providers and independent typists to process medical records
- Take-aways:
 - Exercise due diligence before hiring 3rd party data service providers
 - Have appropriate contractual protections
 - Take steps to verify adherence to policies/requirements

Children's Privacy



- Tiny Co.
 - Site directed toward children; compliance required for every user



- Yelp
 - Age gate = actual knowledge of under-13
- Take-aways:
 - Strict liability

US-EU Safe Harbor



- Safe Harbor under scrutiny
- 14 Safe Harbor enforcement actions by FTC

Other Areas of Interest

- Internet of Things
- Revenge Porn
- More vigorous enforcement coming...

Quick Look at Canada

- PIPEDA
- CASL
- Enforcement and Scrutiny (“naming and shaming”)
 - Privacy Policy Review (2013)
 - App Review (2014)
 - Online Behavioral Advertising (2015)
- Google and Microsoft actions
- CRTC Investigations and Enforcement

Questions & Discussion

- Questions?



Thank you!

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