

Robinson+Cole

Data Privacy + Security Insider

Leveraging Knowledge to Manage Your Data Risks



ENFORCEMENT + LITIGATION

[Shareholders' Derivative Suit against Home Depot Dismissed](#)

On November 30, 2016, The Home Depot, Inc. (Home Depot) got a victory in the shareholders' derivative suit filed against it for its alleged failure to institute necessary controls to secure its data relating to its 2014 customer data breach. U.S. District Judge Thomas W. Thrash Jr. dismissed all claims against Home Depot: breach of duties of care and loyalty, wasted corporate assets, violations of the Security Exchange Act, and failure to fulfill security standards such as maintaining a firewall, protections against malware, updates to its antivirus software, and regulatory testing its data security systems.

The data breach compromised financial information of over 56 million Home Depot customers, which led to nearly \$10 billion in exposure for Home Depot as a result of this breach. Despite this financial setback, Judge Thrash ruled that the shareholders, Mary Lou Bennek and Cora Frohman, cannot pursue their suit against current and former Home Depot officers because they could not show beyond a reasonable doubt that the board was actually liable by "consciously fail[ing] to act in the face of a known duty to act." [Read more](#)

[Class Certification Denied in TCPA Action against Dick's Sporting Goods](#)

Last week, a California federal judge, U.S. District Judge Cormac J. Carney, denied a request for class certification in the Telephone Consumer Protection Act (TCPA) class action against Dick's Sporting Goods Inc. (Dick's) because the court determined that the named plaintiff, Phillip Nghiem, was not an adequate class representative. Dick's presented evidence to the court showing that Nghiem did sign up for multiple mobile alert programs (and also signed up for Dick's program during the time when his law firm had already alerted the retailer of possible TCPA violations), as well as evidence of the simple fact that Nghiem is a plaintiffs' attorney specializing in consumer disputes. Judge Carney found that this evidence made Nghiem an inadequate class representative and that his claims were untypical from the rest of the consumers. [Read more](#)

December 8, 2016

FEATURED AUTHORS:

[Richard M. Borden](#)
[Kathleen E. Dion](#)
[Conor O. Duffy](#)
[James Merrifield](#)
[Kathleen M. Porter](#)
[Kathryn M. Rattigan](#)

FEATURED TOPICS:

[Cybersecurity](#)
[Children's Privacy](#)
[Data Privacy](#)
[Drones](#)
[Enforcement + Litigation](#)
[Information Governance](#)
[International Privacy Laws](#)
[Privacy Tip](#)

VISIT + SHARE:

[Insider Blog](#)
[R+C website](#)
[Twitter](#)
[Facebook](#)
[LinkedIn](#)

[Tanning Salon to Pay \\$1.5 Million for Violations of Illinois Biometric Law](#)

L.A. Tan, a tanning salon chain, will pay \$1.5 million to settle violations of the Illinois Biometric Information Privacy Act (BIPA) by obtaining customer fingerprints without their consent and failing to properly inform them of how the data would be stored. [Read more](#)

[21st Century Cures Act Includes Prohibition on Information Blocking and Mandates for Additional HIPAA Guidance](#)

On November 30, 2016, the U.S. House of Representatives voted strongly in favor of the 21st Century Cures Act (Act), an expansive health bill that addresses the discovery and development of new medical therapies as well the delivery of health care treatment by providers.

In 2015, the House had previously approved an earlier version of the Act that included notable changes to the HIPAA Privacy Rule relating to the use of protected health information for research activities (see analysis of that bill here). The version of the Act approved by the House last week no longer contains those controversial changes, but the Act nonetheless includes a number of important health care privacy provisions. [Read more](#)

INTERNATIONAL PRIVACY LAWS

[Update on the Privacy Shield](#)

Last July, the United States and the European Union agreed on a [new framework](#) to allow for the transfer of Europeans' personal data to the United States. This new framework, known as Privacy Shield, replaced the Safe Harbor Principles, which the European Court of Justice struck down over concerns about the U.S. government's online data surveillance activities. The architects of Privacy Shield sought to address the Court's concerns by including mechanisms allowing Europeans to raise claims about U.S. spying, including through a new ombudsman at the U.S. State Department. However, European advocacy groups have challenged the adequacy of these mechanisms. [Read more](#)

DRONES

[2017: New President, New Transportation Secretary—Where Do Drones Fit?](#)

The Drone Manufacturers Alliance (DMA) has voiced approval of President-elect Donald Trump's nomination of Elaine Chao as the next U.S. Secretary of Transportation in its November 9 [letter to Trump](#) and the Trump-Pence Transition Team. But with that approval comes a request for Trump to "pursue a balanced legal and regulatory framework for unmanned aircraft systems (UAS)." [Read more](#)

CHILDREN'S PRIVACY

[FTC Complaint Made Against Genesis Toys and Nuance Communications](#)

On December 6, 2016, the Electronic Privacy Information Center, the Campaign for a Commercial Free Childhood, the Center for Digital Democracy, and the Consumers Union filed a Complaint and Request for Investigation, Injunction and Other Relief (Complaint) with the Federal Trade Commission (FTC) against Genesis Toys (Genesis) and Nuance Communications (Nuance) regarding alleged violations of the Children's Online Privacy Act (COPPA) and unlawful unfair and deceptive practices within the meaning of Section 5 of the FTC Act. Genesis sells the My Friend Cayla (Cayla) and the i-Que Intelligent Robot (i-Que) toys. Cayla and i-Que are interconnected toys that talk and interact with children through capturing, storing, and analyzing spoken communications utilizing Nuance's systems and technology. [Read more](#)

CYBERSECURITY

[Phishing as a Service](#)

A recent report from Imperva, Inc., has identified a Phishing as a Service (PhaaS) being offered on a Russian website. Phishing emails are crafted to appear as if they have been sent from a legitimate organization or known individual. According to a report in June 2016, by PhishMe, 93 percent of phishing emails contain ransomware. Ransomware has crippled hospitals, school districts, and police agencies, among others. The Imperva report states that for approximately \$4,200 per month, users can buy a managed service that will set up a complete phishing scheme, from emails to web pages to back-end storage. [Read more](#)

INFORMATION GOVERNANCE

[Box, OneDrive, a Combination—What's Your Flavor?](#)

The cloud-based file-sharing and collaboration business continues to grow, inspiring competition between two heavy weights: Microsoft and Box. Last week, Box announced over \$100 million in third quarter revenue growth despite competing with Microsoft's OneDrive file share for SharePoint. Aaron Levie, Box CEO and co-founder, believes that "the need for Box is clear; today, business content is spread across separate legacy systems, on-premises storage, disparate collaboration and workflow tools, and sync and share solutions." Recently, Box created new integrations with Office 365, including the ability to create, access, and edit Box content (like Excel files) in Office for Android. [Read more](#)

DATA PRIVACY

[Blippar App: Introducing Facial-Recognition Software for your Smartphone](#)

Blippar, an augmented reality app, recently released its facial-recognition software, which allows users to scan faces with their smartphones. The Blippar app makes it possible for people to scan faces (from print, TV, or in real life) and learn the person's name and other information. [Read more](#)

[Who Owns a Noise—Should Data Collected in a Public Space by a Private Company be Generally Accessible to the Public?](#)

While people in law enforcement have access to new technology owned by third parties that assist them with protecting the public, questions arise as to who should own the data gathered by that technology. Sometimes the technology provider itself blocks public access to the data. For example, many police departments have contracted with ShotSpotter, Inc., for its gunshot detection technology. This tool permits police to learn of gun discharges that are detected using proprietary equipment and software owned by ShotSpotter. [Read more](#)

PRIVACY TIP #64

[Online Training for those Drone Hobbyists Out There](#)

If you are considering purchasing a drone this holiday season, make sure to check out the newly launched online training course created by the Unmanned Safety Institute (USI) designed specifically for drone hobbyists. This new course, called SAFEGUARD, is about one hour long and covers safety topics such as understanding airspace, identifying and avoiding hazards, weather effects on drones, planning safe flights, and current Federal Aviation Administration (FAA)

regulations. SAFEGUARD is for all skill levels and can be accessed and purchased via www.FlySafeguard.com (or even through Amazon, Sporty's Pilot Shop, and other retailers, too).

And if you decide to take your drone-flying hobby to the next level and start using drones for commercial purposes (of course, be sure to follow FAA regulations), SAFEGUARD provides each user with a record of completion that is redeemable through some of USI's insurance partners for a discount on insurance.



© 2016 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson+Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson+Cole or any other individual attorney of Robinson+Cole. The contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.