

**Robinson+Cole**

## Data Privacy + Security Insider

Leveraging Knowledge to Manage Your Data Risks



### CYBERSECURITY

#### [FBI Warns Health Care Industry about Vulnerability of FTP Servers](#)

The FBI issued a Private Industry Alert on March 22, 2017, to health and dental providers entitled "Cyber Criminals Targeting FTP Servers to Compromise Protected Health Information," specifically warning health and dental providers about the security of FTP (file-transfer-protocol) servers. [Read more](#)

#### [Treasury Inspector General Slams IRS for Lack of Strategy Following 2015 Data Breach](#)

In a scathing report published on March 27, 2017, the Treasury's inspector general for Tax Administration blasted the Internal Revenue Service (IRS) following its analysis of the IRS's steps following a data breach in 2015 that resulted in the theft of over 330,000 documents used in the filing of fraudulent tax returns. [Read more](#)

#### [Smartphone Malware Up 400 Percent in 2016](#)

According to a recent report by Nokia, malware infections against mobile devices were at an all-time high in 2016. Infections on smartphones rose almost 400 percent and represented 85 percent of all mobile device infections. The report notes, "[F]rom these trends, it is clear that cybercrime is moving to the mobile space and that smart phones are becoming the target of choice." [Read more](#)

### ENFORCEMENT + LITIGATION

#### [Judge Finds Standing Based on Spokeo in TCPA Class Action](#)

On March 22, 2017, U.S. District Judge Marcia G. Cooke, a Florida federal judge, determined that Ray Mohamed had standing in his proposed class action against Off Lease Only Inc. (Off Lease) for

March 30, 2017

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alleged violations of the Telephone Consumer Protection Act (TCPA) under the U.S. Supreme Court's *Spokeo* decision. Judge Cooke concluded that Mr. Mohamed had alleged a particularized and concrete harm that was enough to meet the *Spokeo* test. [Read more](#)

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### [Arby's Whacked with More Data Breach Class Action Lawsuits](#)

As we previously reported [view posts [here](#) and [here](#)], Arby's was hit with malware that infected over 1,000 of its fast food locations throughout the U.S. between October 25, 2016, and January 19, 2017, and was hit with multiple class action suits over the data breach. [Read more](#)

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### [NY AG Announces Settlements with Three Mobile Health App Developers over Privacy, Marketing Concerns](#)

On March 23, 2017, New York State Attorney General Eric T. Schneiderman [announced](#) settlements with three mobile health application (app) development companies aimed at curbing deceptive marketing practices and inadequate privacy disclosures to consumers. The settlements—reached with [Cardiio, Inc.](#), [Matis Ltd.](#), and [Runtastic GmbH](#) respectively—target health measurement apps that “purport to measure vital signs or other indicators of health using only a smartphone’s camera and sensors, without any need for an external device.” [Read more](#)

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## DATA BREACH

### [NY AG Report Shows Number of Data Breaches Soared in 2016](#)

Unfortunately, it was a record-breaking year in the State of New York for data breaches. The New York Attorney General (AG) released his annual data breach report, which announced that the AG's Office received 1,282 data breach notices in 2016, affecting 1.6 million New York residents. [Read more](#)

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## DRONES

### [Lawsuit Against the "Drone Slaver" Tossed by Federal Judge](#)

Last week, a Kentucky federal judge, U.S. District Judge Thomas B. Russell, threw out the lawsuit against William H. Merideth, also known as the "Drone Slayer," a drone pilot who was sued for the downing of an unmanned aircraft (that is, drone) using his shotgun. Judge

Russell found that the drone owner, John David Boggs, cannot claim federal jurisdiction in this dispute on the grounds that his drone was in Federal Aviation Administration-controlled airspace when Merideth shot it down, and that the issue of whether the drone was in protected airspace only arises on the presumption that Merideth would claim that he was defending his property. Judge Russell therefore granted Merideth's motion to dismiss. [Read more](#)

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### **[FAA Releases New Forecast on Hobbyist and Commercial Drone Operations](#)**

The Federal Aviation Administration (FAA) released [a new report](#) predicting tremendous growth over the next five years in "nearly every aspect of air transportation," including unmanned aircraft systems (UAS). Specifically, the FAA predicts that the model hobbyist drone fleet will triple from 1.1 million in 2016 to 3.55 million by 2021. For commercial drones, the FAA says that the growth will depend on the "regulatory environment." Ironically, since the FAA itself is the agency deciding just how much the commercial drone industry can advance. However, the FAA predicts that the 216,000 commercial drones that were active at the end of 2016 could rise to 442,000 by 2021. This is a growth rate of 58.6 percent. [Read more](#)

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## **INFORMATION GOVERNANCE**

### **[Data Classification and Information Security Are Intertwined](#)**

A recent report entitled "*Information Strategy 2017*," published by the Information Coalition, finds that information security remains a top priority for over 90 percent of organizations. Given that data breach activity continues to rise, these finds are not very surprising. What is surprising, however, is that many organizations continue to increase their spending on security-related software without improving information architecture. [Read more](#)

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## **PRIVACY TIP #80**

### **[Continued Controversy over Mobile Device Searches by CBP](#)**

Many people were shocked and outraged over the story I relayed about a U.S. citizen, in fact a NASA scientist, who, after returning from racing solar cars abroad, was required by Custom and Border Patrol (CBP) agents to hand over his NASA-issued mobile phone and password. The story raises all sorts of privacy issues for the individual and for employers.

Yes, folks, there are laws that govern what the CBP may require. For more information about how to address this issue if it happens to you,

click [here](#).

In response to this and many other stories about questionable searches and seizures of mobile devices by CBP, the Knight First Amendment Institute of Columbia University (Knight) filed a lawsuit this week against the U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement requesting that they produce the number of electronic devices they have searched or confiscated at the border, and identify the policy reasons for doing so.

Knight had previously requested the statistics and policy records through a Freedom of Information Act request, which has been ignored. Knight calls the search of U.S. citizens' electronic devices "indiscriminate," which raises constitutional questions under the First and Fourth Amendments. It further alleges that border agents are targeting U.S. citizens who are Muslims in the searches and seizures. It is alleged that they are also targeting photojournalists.

We will be watching this case closely and will keep you posted on developments.

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