

Accelerated privacy and data protection reform and enforcement

Whether in the European Union, the United States or Canada, the pace of privacy and data protection reform and enforcement action is expected to accelerate, particularly during the second half of the year.

Focus on Europe

The proposal to adopt a Data Protection Regulation (DPR) to replace the current Data Protection Directive and patchwork of national laws will continue to be studied and negotiated. Currently, the draft DPR would provide data protection authorities (DPAs) with the power to levy fines of 2% to 5% of annual worldwide turnover for breaches, expand the scope to govern third party processors outside of the EU who process EU data, and establish a lead authority framework in which an organization would be subject to a primary national data protection authority. Although it is unlikely that the DPR will be finalized in 2014, it is expected that the pace of negotiations will increase following the May 2014 EU Parliamentary elections.

Focus on the US

California's Do-Not-Track legislation is in force requiring companies to indicate in their privacy policies how they respond to Do Not Track signals from web browsers. In addition, the new Children's Online Privacy Protection Act Rules provide new guidelines for obtaining verifiable parental consent to the collection of personal information. Organizations may see significant enforcement action with respect to both of these developments in 2014.

Beyond enforcement, it is expected that there may be a continued push to address national and international concerns regarding oversight of the collection and use of personal information by US intelligence. The appointment of a Chief Privacy Officer for the National Security Agency is one step in that direction, but it is unlikely to satisfy the EU, which continues to negotiate a framework agreement with the US that, if the EU is successful, could include redress provisions for EU citizens.

Focus on Canada

The Supreme Court of Canada struck down the Alberta Personal Information Protection Act late in 2013 but stayed its own decision to give the Alberta Legislature twelve months to revise it. The issue in the Alberta case was a conflict between privacy rights and freedom of expression for unions engaged in a strike. The union had collected photos of individuals crossing a picket line. The British Columbia Personal Information Protection Act is structured the same way as the Alberta legislation and so the decision has implications for that province as well. Legislative revisions may be proposed later this year to recalibrate the balance between data privacy and freedom of expression.

Federally, a new Privacy Commissioner is expected to be appointed. In addition, the Office of the Privacy Commissioner is expected to continue to explore opportunities for joint enforcement action with other oversight bodies, following its joint investigation of WhatsApp, Inc. in 2013 with the Dutch DPA. And, with the Federal Court recently awarding an individual damages of CAD \$20,000 (inclusive of \$10,000 in exemplary damages) in a case where Bell TV was found to have failed to obtain valid consent for a credit bureau check, we expect to see the pace of individual actions for damages from privacy breaches to increase.