Insights: Alerts

Five Takeaways: Is Anything Private Anymore? Privacy Considerations for Social Media, Sweepstakes & More

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Barry M. Benjamin, partner in the New York office and chair of Kilpatrick Townsend's Advertising and Marketing group, was honored to present to the American Conference Institute's 5th Annual Summit on Digital Advertising Compliance: Social Media, Sweepstakes & Promotions. Mr. Benjamin's presentation was titled "Is Anything Private Anymore? Privacy Considerations for Social Media, Sweepstakes, and More," and discussed the historical basis for the current privacy regulatory regime in the digital world and recommended actions for attorneys counseling in this area. Takeaways from the presentation include:

- The historical basis for privacy regulation on the Internet and the new social media world is simply,disclosure. Government does not often dictate or restrict how personal information should be collected or shared. Rather, the regulatory structure requires telling consumers — in one clearly disclosed privacy policy — how the company collects, administers, and shares information, and then abiding by the terms of that stated privacy policy.

- New technologies that seem scary or creepy have always been, at first, scary or creepy, until consumers get used to them. In the late 1880s, the new technologies that were scary and creepy were the combination of the camera and newspaper — the fact that someone's picture taken one day could appear in the newspaper the next day, frightened people and pushed the legal community to attempt to provide legal space where private, personal information would not be indiscriminately, widely published.

- Today's new technologies that seem scary and creepy include "always on" devices and cross-device data collection techniques that, while providing amazingly personalized services, have the potential for recording the daily lives of those who use them. Those recordings may be subject to not only likely harmless data mining for advertising and other commercial purposes, but also potentially subject to hackers with other nefarious ideas. Companies that enter this data collection and personalized services area should take special care to educate consumers about the data collection activities of these devices, as well as ensure the security of the data in their computers.

- The collection of personal information on social media platforms, whether through sweepstakes or otherwise, must be carefully considered. Companies do not own or control the social media platforms. These platforms are constantly evolving their business practices, data collection, and sharing practices, so companies and their legal counsel must keep up.

- Counsel advising in the area of privacy and advertising should (a) dig into and understand the technologies their companies employ to collect, administer, and share personal information, (b) regularly meet with the company's chief marketing officer and chief technology or privacy officer to share information about the company's plans and practices, (c) review and potentially update the company's privacy policy every 6-12 months based on the evolution of the company's actual information practices, and (e) read and truly understand the company's contracts (data licenses, advertising agency agreements) as they apply to personal information collection and sharing.

The lifeblood of the open and free Internet is data sharing and advertising, yet loss of confidence in a company's data security and practices can have a tremendously negative impact on the company. The other side of the coin to the consumer is privacy, and as technology rapidly evolves, the laws and regulatory structure applicable to privacy rapidly evolve as well. Counsel must keep up with the rapid changes occurring in the world of privacy and social media, or get left behind like many other outdated technologies.