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IAPP Panelists Discuss Achieving Mobile Privacy Compliance Goals

By Paul Shukovsky

Oct. 7 – Mobile device companies should focus on the user and embrace consumer expectations to safely meet privacy obligations, attorneys said at the International Association of Privacy Professionals Privacy Academy in Bellevue, Wash.

Attorneys from Facebook Inc., Google Inc. and Verizon Inc. discussed how to navigate privacy challenges and an uptick in litigation in the face of a surfeit of regulatory guidance on mobile privacy, during an Oct. 2 panel session.

Karen Zacharia, vice president and chief privacy officer of Verizon, said companies should consider several factors when analyzing privacy issues related to mobile applications. "What types of information is this app going to collect; what are we going to do with that information; who are we going to share it with; why do we need it; how long are we going to retain it."

Persistent Identifiers

Google Director of Legal Ted Lazarus said that if a persistent identifier is employed, a legal analysis should focus on whether it is "a permanent device ID" or "resettable by the user." The central point is: "Would the user have control of that identifier?"

Moving away from persistent, permanent identifiers and using resettable identifiers would be consistent with guidance from the California Office of the Attorney General, Lazarus said.

Associating each device with an identifier that could be reset is advisable or at "the very least" a company should hide "the permanent ID and associate it with a resettable nonpermanent identifier," he said. "This would afford users more choice."

Panel moderator Dominique R. Shelton, a partner at Alston & Bird, in Los Angeles, added that such an approach is "very synergistic" with Federal Trade Commission guidance in a privacy report issued in March 2012 (66 PRA, 4/6/12) that focused on minimizing "data that might be reasonably linkable to individuals," she said.

In February, the FTC released a staff report that said mobile device apps platforms and developers should improve their disclosures to ensure that users understand how their personal data will be collected and used (23 PRA, 2/4/13).

Facebook Manager of Privacy & Public Policy Rob Sherman said companies should address whether they need particular information and consider how long they need to retain data.

"What are all the pieces of data we actually receive? Are we going to store them, or are we going to throw them away once we get them. And how long are we going to keep them. Do we need to keep it indefinitely? It might be that we do, but more likely there is information that we are getting that we just don't need to keep for any meaningful amount of time or that we can get rid of pretty quickly," he said.

Responsibility for Notice

Shelton said the question of "who ought to be giving notice" of the personal data collection and use is important. "Does the responsibility reside with the platform or the app developer?" she asked.

Google's Lazarus said, "Ultimately, it is certainly the app developer's responsibility because it's only the app developer that knows exactly what it is going to be doing with the data and what data it's collecting. Obviously, the platform is relying on being informed by the app developer about what it intends to do.

"Given the various guidelines issued by the FTC, the California attorney general and the European Union, the mobile industry has been attempting to sort of figure out what's the appropriate role for each of the players within the ecosystem," Lazarus said.

"And I think that part of what's so exciting about being in this space right now as we are all trying to figure this out," he said. "How do we ensure that consumers are afforded meaningful notice and the opportunity to exercise control over what data is collected while at the same time maintaining the ability to innovate and make the Web economically viable?"

Facebook's Sherman said, "We're sitting at this point in history where technology that nobody could have envisioned five years ago is really a day-to-day part of all of our lives and the businesses that many of us represent. It is also the case that nobody has figured out how to solve this problem."

Shelton said the FTC guidance delineates some "clear roles" in terms of short-form notice content. "That responsibility seems to be focused on the app platforms," she said. "Obviously, the FTC is assuming that the app platforms are putting pressure on the app developers to provide that content."

The California attorney general guidance focuses "on the app developer" being "responsible for providing the notice," Shelton said.

"I think from a risk-avoidance standpoint, the app developer has every interest in making sure that the right just-in-time or short-form notices are provided," she said.

"Substantial compliance," Shelton said, "goes a long way to making companies less attractive for litigation purposes."