

Daily Privacy & Consumer Regulatory Alert

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FEDERAL DEVELOPMENTS

FTC Enforcement

On July 9th, the FTC [announced](#) a settlement with a defendant who operated a business coaching operation that promised consumers substantial income online. According to the FTC complaint, Digital Altitude falsely claimed that consumers could earn money online by participating in a business coaching program. However, the individualized coaching was just salespeople attempting to sell higher level memberships. Under the settlement, the defendants are:

- Prohibited from credit card laundering and making misrepresentations about any product or service;
- Prohibited from profiting from consumers' personal information collected as part of the operation; and
- Required to pay a \$54 million judgment.

House Committee Members Send Letter to Apple and Google

On July 9th, Republicans from the House Energy and Commerce Committee sent a letter to [Apple](#) and [Google](#) regarding their data collection practices. Specifically, the members want to obtain more information regarding the companies' collection and use of consumers' data and the functionality of microphones following recent reports that users may be unaware of how their data is being used. These reports claimed smartphones collect users' personal data from cellular towers even when certain services are disabled; collect audio data from users' conversations in order to hear "trigger" phrases; and allow third parties to access certain data without users' knowledge or consent. The letters ask a number of questions regarding the companies' data collection practices relating to their smartphone devices.

STATE DEVELOPMENTS

Illinois Supreme Court Privacy Case

A coalition of privacy rights organizations recently filed an [amicus brief](#) with the Illinois Supreme Court regarding a case addressing whether an individual must suffer harm in order to file a lawsuit under the Illinois Biometric Information Privacy Act (BIPA). The brief argues that an individual is "aggrieved" under BIPA and may sue when their biometric information is collected without notice and informed consent because allowing "private lawsuits is a necessary means to ensure effective enforcement of privacy laws," among other reasons. In addition, the brief "identifies the proliferation of biometric technology for commercial purposes as a threat to privacy." In the original complaint, the plaintiff alleged that Six Flags scanned his thumbprint for security purposes without providing a written disclosure with the park's data collection practices or obtaining his consent.

COURT CASES

FCRA Lawsuit

On June 27th, the U.S. Court of Appeals for the Eleventh Circuit [ruled](#) in favor of a mortgage servicer finding that reporting the consumer as delinquent to credit reporting agencies (CRAs) during a forbearance plan is neither inaccurate nor materially misleading under the Fair Credit Reporting Act. According to the complaint, plaintiff Christina Felts enrolled in a forbearance plan with her servicer, which allowed for a monthly forbearance plan payment of \$25, while the remaining balance accrued interest and became due at the end of the plan. The mortgage servicer informed Felts that the monthly payments would still be considered late because she was not paying the actual contractual payment under the note and reported Felts as past due for the duration of the plan. The court affirmed the lower court's decision holding that Felts' payments, even though paid on time, were not the ones she was contractually bound to make. Furthermore, the court concluded that the plaintiff failed to establish that the forbearance plan legally modified the original note; as a result, the information reported to the CRAs was not inaccurate or materially misleading.

The case is Felts v. Wells Fargo, Case No. 16-16314, in the U.S. Court of Appeals for the Eleventh Circuit.

Gmail Privacy Class Action

On July 5th, Google was hit with a class-action [lawsuit](#) in the U.S. District Court for the Northern District of California regarding its sharing of users' personal information. Plaintiff James Coyne claimed that Google allowed third-party developers to scan the inboxes of users who signed up for certain email-based services, including trip planners and price comparisons. The developers scanned and read emails to obtain data for marketing and other purposes without users' knowledge or consent. According to Coyne, Google's practices contradicted its promise to "keep privacy and security paramount."

The case is Coyne et al. v. Google, Case No. 5:18-cv-04042, in the U.S. District Court for the Northern District of California.

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