

excerpts from  
Hottest Practice Area?

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Is there a bigger growth topic at DC law firms today than the unfolding regulatory battle over consumer privacy on cell phones and Internet?

So we've decided to make this a themed issue today. And it's a hugely timely topic. Just this month, hackers stole **millions** of email addresses from an online marketing company whose clients include **Citi**, **Capital One**, and **Chase**. Days ago, **iPhones** were revealed to track and store users' locations. **Is privacy possible** in these high-tech times?



Hunton & Williams' **Marty Abrams**, who's headed the firm's Centre for Information Policy Leadership since its inception 10 years ago, seeks to foster dialogue with government agencies, consumer groups, and Fortune 500 companies (AT&T, MasterCard, **Boeing** to name a few). He tells us the staggering amount of data being formed presents unprecedented challenges: Five exabytes of data are created worldwide in **two days**—a few years ago, that took an **entire year**. One of the most important issues is a **move** to an **accountability-based system** for privacy and data protection, he says, arguing that corporations should take more ownership for safeguarding data instead of depending on consumers.



Marty's always traveling: Here he is last October at the International Conference of Data Protection and Privacy Commissioners in **Jerusalem**. Last week, he was in **Redmond** to help Microsoft implement new accountability concepts; the week before, he advised HP, **Google**, and Oracle on the subject in **Brussels**. (Is the fact that we know all these things a privacy invasion? We promise he told them to us; we didn't just nab pics off Facebook.) Here's Marty's take on privacy policy 'round the world: In **Europe**, expect to see a **change in law** in the next **few years**; the old '95 EU Data Protection Directive is on its **way out**. In America, Marty tells us the **next Congress** will likely alter the law to help create global interoperability (currently, American data protection laws aren't "**adequate**" under the EU's privacy scheme, disallowing info transfer from the EU to the U.S.). **China** may put in regs this year driven by consumer concern about targeted ads. In **Latin America**, the issue of how to balance privacy is starting to come to the table.



It appears Marty turned to shadow puppets for a seminar in **Mexico City** about **privacy issues** several weeks ago. A few big trends: 1) Emergence of an "**observation age**," where web profitability

is based on tracking consumers. 2) Cloud computing making the linkage between data and geography impossible—the challenge is creating interoperability by disposing of **procedural hooks** (e.g., some countries requiring eight-digit passwords when others ask for five-digit), while keeping cultural hooks, like the age at which individuals can give consent online. 3) Technology enabling the **little guy** to mobilize and overpower organizations. 4) Governments worldwide hungering for **private-sector data** due to concerns about terror. Marty tells us these add up to a larger issue to consider: maintaining equilibrium between the values of the **1st** and **4th Amendments**.



Another top-ranked privacy attorney, Hunton's **Lisa Sotto**, displays a copy of Hunton's own privacy treatise (the **lock** shows just **how private** they are). Lisa attributes her practice's high Chambers recognition to a global group of **25** attorneys (US, London, Brussels, Beijing) who stick to only these topics: privacy, data security, and records management. She works with clients including **GE**, **Polo**, and **ExxonMobil** on identifying and managing privacy risks—or cleaning up security breaches once they occur. In fact, she's handled **hundreds of data breaches**, working on **3-4 per week**. She says it's not as bad as it sounds: breaches can qualify as anything from a malicious attack to a **lost laptop**. Rumor is, one of Lisa's clients even calls her the "Queen of Breach."



Lisa tells us these are main areas with burgeoning privacy issues: online **behavioral advertising** (there's that "observation age," again); **cloud computing** (Amazon's technical troubles last week have experts questioning how safe data is in clouds); and **smart grid**, the electric network concept using two-way digital communication to control appliances. (Concerns exist over **abuse** of data leverage, and government control over utilities. We assume the fear of our toasters becoming sentient and attacking us is so obvious that she didn't feel the need to mention it.) Lisa tells us the U.S. has a "**patchwork quilt**" of privacy legislation with **hundreds of state laws** and over a dozen federal. Over the next few years she expects omnibus federal legislation. She says it should focus on consumer data and **ensuring businesses' transparency** so consumers understand how their data's being used and the options available.

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