Events

*****Reminder*****

Title: Where Are We With Location Privacy? Reactions to the Supreme Court’s Oral Argument in Carpenter v. United States: Panel Discussion on Cell Phone Tracking Case at SCOTUS

Time: November 30, 2017 @ 4:00 PM to 6:00 PM with reception to follow

Location: John Marshall Room, 5th Floor, American Bar Association, 1050 Connecticut Avenue, NW

Webcast registration: https://register.gotowebinar.com/register/3113530343354825986

Description: In Carpenter v. United States the Supreme Court will decide whether the Fourth Amendment bars the warrantless collection of cell phone location records. The Court previously ruled in Riley v. California that officers cannot search a cell phone incident to a lawful arrest without a warrant, and earlier held in United States v. Jones that the warrantless attachment and use of a GPS tracking device to monitor the movements of a person’s car over time violated the Fourth Amendment. Now the Court is poised to consider the degree of Fourth Amendment protection given to the location data that is generated by our cell phones. How will the Court view this issue in light of its recent digital privacy cases? Will the Court take up the call by Justice Sotomayor and others to reconsider the application of Smith v. Maryland and the Fourth Amendment rules concerning records held by third parties? Join us to discuss the case following the oral argument on November 29th.

News

Civil rights groups slam Facebook: Nineteen Civil Rights organizations including the Human Rights Campaign, League of United Latin American Citizens, Muslim Advocates, NAACP, and the Southern Poverty Law Center wrote a letter to Facebook voicing “deep concern” over allowing “hateful content” being “used to divide the country.” The group, citing several instances of ads, pages containing anti-Black, anti-immigrant, anti-LGBTQ, and anti-Muslim
content, urged the social media corporation do more to prevent the platform from being used to promote bigotry and discrimination. The group, to address these concerns, laid out a five-part proposal calling for transparency, auditing, and training and education to prevent the social media platform from being an incubator of these types of activities.

**CareFirst petitions the Supreme Court to hear its data breach case, highlighting questions over harm:** CareFirst BlueCross BlueShield filed a petition with the U.S. Supreme Court asking for a review of a case that resulted from a data breach in 2014 where about 1.1 million records were exposed. The petition followed after a ruling by the U.S. Circuit Court of Appeals for the District of Columbia, that a class-action lawsuit against the insurer could proceed. The decision overturned the ruling by District Court for the District of Columbia that the plaintiffs had not suffered actual harm. The appellate panel notes that there was a substantial risk of harm due to the hack itself and the type of data that was allegedly taken. CareFirst argues that the appeals court's ruling was in error as it was not determined if the "plaintiff's future injuries were ‘certainly impending. The Electronic Privacy Information Center stated to Fiercehealthcare.com that “that if the Supreme Court grants CareFirst’s petition ‘it would be one of the most important cybersecurity cases ever heard in the Court.’”

**House lawmakers admit to being 'held hostage' over surveillance reforms:** House Judiciary Committee member voted to pass a surveillance reform bill, last week. An amendment to the bill that aimed at curtailing spying on American citizens was dropped at the last minute. The amendment written by pro-privacy lawmakers Ted Poe and Zoe Lofgren would have closed the so-called "backdoor search" loophole preventing the government from spying on U.S. citizens without a search warrant. The bi-partisan amendment that had strong support from privacy and civil rights groups failed by a 12-21 vote with five Republicans voting against party lines.

**Michigan Roadside Drug Testing Pilot Begins Nov. 8 in Five Counties:** Last week, Michigan State Police (MSP), in trying to reduce the dangers of “drugged driving,” started a road-side drug testing pilot in Berrien, Delta, Kent, St. Clair and Washtenaw counties. The pilot counties were picked due to the number of drug-related vehicle crashes and arrests. The road-side drug test is performed by a Drug Recognition Expert using a swab to collect a person’s oral fluids for the drug analysis.

**HHS investigating Cook County Health and Hospital System data breach:** The Department of Health and Human Services is investigating a data breach where over 700 patient records were sent to other healthcare facilities. The breach occurred last March when Experian mistakenly sent the records out during, and a computer system upgrade. Although names, medical record numbers, and birthdays were released, Social Security numbers and clinical information were not.

**Missouri AG investigating Google for consumer protection violations:** Missouri Attorney General Josh Hawley announced that opened an investigation of Google’s use of consumer data to determine whether the technology giant has violated state antitrust and consumer protection
laws. Citing concerns about Google’s collection, use, and disclosure its user’s data, possible misappropriation of competitor's content, and manipulation of user's search results sending users to Google-owned sites, Hawley stated that “[t]here is strong reason to believe that Google has not been acting with the best interest of Missourians in mind[.]”

There have been previous complaints about Google’s business practices. Last June the European Union fined Google $2.7 billion for antitrust violations. And in July, the Electronic Privacy Information Center filed a complaint with the FTC to investigate Google’s in-store purchase tracking.

Digital Pill Raises Concerns: The Food and Drug Administration on Monday approved an antipsychotic medication in pill format with an embedded sensor—a digital pill. The sensor, activated by gastric juices would transmit data to a patch worn by the patient. The patch would collect the data (date, time and other health information) which then can be transferred to a mobile device via the Bluetooth wireless protocol. The patient can consent to the doctor and up to four other people to receive the data. However, the patient can revoke access at any time. The goal of this system is to have better patient outcomes by helping the patient to "stick with taking their medications correctly. The drug Alilify MyCite will be used to treat schizophrenia.

Homeland Security nominee says no need for full U.S.-Mexico border wall: Kristjen Nielsen the nominee to head the Department of Homeland Security told a U.S. Senate Committee that she preferred to use technology as opposed to a wall to secure the U.S.-Mexico border. Nielsen who is a cybersecurity expert said that she would work with “state and local actors on the ground” to develop the best security solutions which would the use of unmanned aerial vehicles (drones) and other technologies. Nielsen’s comments run counter to the President Trump’s campaign pledge to build a wall on the Mexican border.