

GC Cheat Sheet: The Hottest Corporate News Of The Week

By **Michele Gorman**

Law360 (July 6, 2018, 2:29 PM EDT) -- A new study showed that more than a half million U.S. businesses could be influenced by a new privacy law in California, New York pushed banks to work with medical marijuana companies and the Internal Revenue Service approved five new compliance campaigns, including a focus on virtual currencies.

These are some of the stories in corporate legal news you may have missed in the past week.

Calif. Privacy Law Could Affect More Than 500K Cos.

More than 500,000 U.S. companies could be hit by California's new privacy law, many of them small- to medium-sized businesses, according to a report by the International Association of Privacy Professionals.

The IAPP study analyzed the California Consumer Privacy Act of 2018 alongside U.S. Census data and focused on companies in industries it says are most likely to use consumer data — those in the financial services, retail, professional services or information industries — and therefore most likely to be affected by the new regulations.

The analysis estimates that the law could encompass companies with 250 or more employees. Using a widely accepted business-reporting ratio — that a company grosses about \$100,000 per employee per year — these companies would average at least \$25 million in annual revenue, and therefore fall under the new law's jurisdiction, the report said.

Companies that either hit this annual revenue threshold, possess the personal data of 50,000 consumers, households, or devices or bring in half their annual revenue by selling consumers' data will be affected by the new regulations, according to the report.

Artificial Intelligence Policy Requires Public Comments, Gov't Told

The Electronic Privacy Information Center and several leading scientific organizations and scholars are urging the White House to solicit public input on the development of the nation's first artificial intelligence policy, arguing that the closed policymaking process has ignored critical privacy, accountability and fairness issues.

The coalition's petition to the White House's Office of Science and Technology Policy comes in the wake of the Trump administration holding a closed summit on Artificial Intelligence for American Industry on May 10. According to a summary report released by OSTP, the summit brought together more than 100 senior government officials, technical experts from top academic institutions, heads of industrial research labs and U.S. business leaders in the agriculture, energy and manufacturing, financial services, health care and transportation sectors to discuss the policies that will be needed to harness the promise of AI-powered technologies.

But EPIC and the nearly 100 other scientific organizations and experts behind the latest petition, which was sent to OSTP on Wednesday, argued that this nonpublic summit and the announcement the same day of the formation of a new Select Committee on Artificial Intelligence made up of senior government officials were not enough to get at the important accountability, transparency, ethics, or fairness issues that need to be addressed.

"The reach of AI is so vast, so important, and encompasses so many issues, it is imperative that the administration provide the American public the opportunity to comment on proposed policy initiatives impacting the American public," the coalition wrote in its petition, which calls on the OSTP to exercise its power to undertake a request for information in order to solicit public comments on the development of policies governing federal AI activities, including those related to autonomous systems, biometric identification, computer vision, human-computer interactions, machine learning, natural language processing, and robotics.

The Biggest Employment Decisions of the Year

The U.S. Supreme Court's blockbuster decisions in Epic Systems and Janus, which cleared the way for businesses to use class action waivers in arbitration pacts with workers and stripped public-sector unions of the ability to collect "fair share" fees from workers, respectively, were among the highlights of 2018 for employment law observers.

Here, Law360 looks at four seminal court decisions in the first six months of the year.

Lawmakers in California Arrive at Deal on Net Neutrality Bill

California lawmakers announced Thursday that they have reached a deal to impose at the state level so-called net neutrality consumer protections that were revoked by the Federal Communications Commission in December.

Two weeks after state Sen. Scott Wiener of San Francisco slammed a state Assembly committee's "gutted" version of a net neutrality bill he authored, he stood beside Assemblyman Miguel Santiago, who presides over the committee, at a press conference to announce they have agreed with other Democratic lawmakers on language for a bill that they say will result in the strongest net neutrality law in the country, with prohibitions against throttling web data, charging consumer access fees and so-called zero rating arrangements, under which providers exempt preferred content from customer usage charges.

State Sen. Kevin de León of Los Angeles, whose bill requiring companies that do business with the state abide by net neutrality principles will be combined with Wiener's legislation under the deal, said the combined bill will ensure Californians enjoy equal access to information online, and will preserve the internet as a tool to empower the underprivileged.

"We're fighting to preserve net neutrality because we believe a free and open internet is vital to our democracy and our way of life," de León said. "No company should have the power to slow down your connection. No company should be able to hold your ideas hostage or demand a ransom to access your favorite streaming services or website."

NY Asks Banks to Provide Services to Med. Marijuana Cos.

New York's banking regulator is urging its state-chartered banks and credit unions to offer banking services to the state's legal medical marijuana-related businesses, issuing guidance Tuesday that the agency said is intended to clear up the regulatory landscape in light of the drug's continued prohibition under federal law.

The New York State Department of Financial Services' guidance, which was issued at the direction of Gov. Andrew Cuomo, encourages state-chartered financial institutions to consider working with medical marijuana and industrial hemp companies that are in compliance with all relevant state laws and regulations.

The guidance also provides that DFS won't take action against any bank under its oversight for deciding to provide services to one of these companies, as long as the bank follows certain federal guidance on the subject and manages the associated business risks properly.

"New York's financial institutions should provide banking services to these legal businesses in accordance with established principles and procedures, including customer due diligence and transaction monitoring," Maria T. Vullo, the New York superintendent of financial services, said in a statement. "In this way, New York's businesses can operate more effectively under the law to serve New Yorkers."

Legal Tech Cos. on the Rise as GCs Adapt to Changing Landscape

Legal technology companies are reaping big benefits as corporate law departments look to free up attorneys to devote more time to complex tasks, and as the role of custom technology and automated processes gain momentum in the legal profession.

Service providers are expanding their products by developments or acquisitions to assist attorneys, and new vendors are emerging in the market.

"Every GC has to be looking at how can they leverage technology to make what they do more relevant to the company," said Joe FitzGerald, vice president and general counsel at enterprise data storage company Pure Storage Inc.

A 2018 report from artificial intelligence contract review platform LawGeex says that each month, dozens of companies burst onto the scene promising to transform daily legal tasks. In 2017, legal tech saw \$233 million in investments in businesses across 61 deals, edging ahead of 2016 with \$224 million in investments across 79 deals, according to the most recent edition of LawGeex's In-House Counsel's Legal Tech Buyer's Guide.

Covington, Microsoft Attys Say AI Trust Crucial to Use in Law

A Covington & Burling LLP partner and a Microsoft in-house attorney speaking at a recent conference about artificial intelligence warned that as the technology is applied to legal problems, AI systems have faced questions about baked-in biases and a lack of transparency as to how they reach decisions.

The dialogue was part of the day-long US-China AI Tech Summit, co-hosted by The AI Alliance of Silicon Valley, China's AI Industry Alliance, and The Future Society, a think tank incubated at the Harvard Kennedy School of Government.

The panel on "AI in the Law" included U.S. attorneys from Microsoft, Paul Hastings LLP and Covington & Burling LLP; an executive from Silicon Valley tech company ClearAccess IP; a legal researcher at Beijing-based HuaYuYuanDian Law Research Institute; and an intellectual property associate law professor at Renmin University in Beijing. Future Society director Nicolas Economou moderated the discussion. Economou is also the CEO of H5, an information retrieval and electronic discovery company.

Asked by Economou about the "attendant risks" of AI, Covington AI Initiative Co-Chair Lee Tiedrich said there's a recognition that the new technology brings new legal challenges.

Virtual Currency Compliance Part of New LB&I Campaigns

The Internal Revenue Service's Large Business and International Division approved five new compliance campaigns on July 2, including a new focus on virtual currencies, but the agency said it is not considering a voluntary disclosure program for that area in the future.

Virtual currency, S corporation distributions and a section of the Internal Revenue Code that requires paying a transition tax on untaxed foreign earnings were some of the topics LB&I picked in its most recent round of compliance campaigns, the division said in a news release.

"These five additional campaigns were identified through LB&I data analysis and suggestions from IRS employees," the agency said. "LB&I's goal is to improve return selection, identify issues representing a risk of noncompliance and make the greatest use of limited resources."

The IRS urged taxpayers who have unreported virtual currency transactions to "correct their returns as soon as practical," but said it is not considering creating a voluntary disclosure program that would tackle tax noncompliance in this area.

Cell Data Privacy Ruling May Generate Suit Avalanche

The Supreme Court's recent decision limiting law enforcement's ability to subpoena cellphone location data is likely to spark a flurry of litigation, as a once-bright line rule regarding privacy rights for personal information held by third parties has been significantly blurred, the American Civil Liberties Union attorney who argued the case before the high court said in Washington, D.C., on July 2.

Echoing language in Justice Samuel Alito's dissent in *Carpenter v. United States*, the ACLU's Nathan Wessler said he expects a "blizzard of litigation" following the Supreme Court's finding that law enforcement must get a warrant to seek broad-reaching location data collected by mobile providers, rather than simply subpoenaing the carrier.

But unlike Justice Alito, Wessler said he believes a surge in challenges to third-party data requests will be a positive development, as courts will be forced to consider how much privacy Americans sacrifice by participating in activities that, by their nature, create a trail of digital bread crumbs.

"I think that's a good thing. Let that litigation come," said Wessler, speaking at an event held at Georgetown Law School.

Ways the Apple-Samsung Case Molded Patent Law

Apple Inc. and Samsung Electronics Co. Ltd. have reached a settlement in their epic smartphone patent feud, but several rulings during the seven-year dispute will have a lasting legacy.

Here's a look back at some key decisions in the case and their influence on patent law.

Q&A: 15 Minutes With Qurate Retail Group's General Counsel

Larry Hayes was only the third full-time lawyer when he started working as associate counsel at QVC Inc. in 1992. More than 25 years later, he manages the government affairs and legal, ethics and compliance functions as the general counsel of what is now Qurate Retail Group.

Earlier this year, QVC's parent company rebranded to form Qurate Retail Group, comprising the shopping channel and seven other retailers — HSN, Zulily, Ballard Designs, Frontgate, Garnet Hill, Grandin Road, and Improvements — dedicated to providing a so-called third way to shop beyond traditional brick-and-mortar stores or transactional e-commerce. Aside from associate counsel, Hayes has also held positions as senior counsel, vice president of legal, and senior vice president at QVC.

"I was a jack-of-all-trades when I first started, doing a little bit of everything. As the company grew and the department grew, I started specializing in various aspects," he told Law360 in a recent interview.

Here, Hayes, who outside of Qurate Retail Group is a college football referee, shares the skills vital for a successful general counsel, the challenges his business faces in 2018 and the worry that keeps him up at night.

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