E-PRIVACY REGULATION UPDATE
GTC Law Group Conference – April 6, 2017 (Boston)

The GDPR is not the only new EU regulation that warrants close attention. Directive 2002/58/EC (the “e-Privacy Directive,” or the “cookie law”) is also being updated. The new draft e-Privacy Regulation was published on January 10, 2017. If the e-Privacy Regulation is adopted, the e-Privacy Regulation and the GDPR will form the basic legal framework for electronic communications in the EU. Both are regulations, not directives, and therefore apply directly to persons doing business in the EU. The European Commission’s goal is to have the e-Privacy Regulation in force on May 25, 2018 when the GDPR takes effect.

SUMMARY

- **Material scope.** Applies to providers of all electronic communications services, including internet voice calls, email, instant messaging and Internet of Things (“IoT”) devices, and to information related to the terminal equipment of end users (desktops, laptops, mobile devices etc).

- **Territorial scope.** Covers non-EU organizations that provide publicly available electronic communications services to end-users located in the EU.

- **E-Marketing.** Prior consent (opt-in) required for all commercial communications except in the context of an existing business relationship, where opt-out is required.

- **Cookies.** Simplified: consent via browser settings is permitted.

- **Electronic communications data.** Stricter rules for content than for metadata.

- **Fines and enforcement.** €10-20 million or 2-4% of total worldwide annual turnover depending on the offence. Member State DPAs will handle enforcement.

RECOMMENDATION

Get a head start by reviewing and revising your information collection practices and cookie policies, and by alerting your sales, marketing and public relations teams to the upcoming requirements.

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