

PRIVACY &amp; DATA PROTECTION | June 27, 2016

## The Week's Developments in Privacy and Technology Law

The intersection of privacy, technology and national security continued to be at the forefront on Capitol Hill last week as legislators voted on certain privacy legislation ahead of their coming summer recess. The Federal Aviation Authority also released last week its long-anticipated final rule governing the commercial usage and operation of drones.

### Senate Votes on Expansion of FBI's National Security Letter Authority

The debate between national security and privacy continues in the wake of the most recent US mass shooting in Orlando, Florida. On June 22, 2016, the Senate voted on a Republican proposal to expand the types of personal information and records that the FBI may request, absent a court order, from broadband internet services and other telecommunications providers. The proposal, which required 60 votes to pass, only received votes from 58 senators.

#### Key Takeaways:

- The "National Security Letter" amendments could be up for reconsideration soon, as Senate Republican leader Mitch McConnell changed his vote to no, permitting the senator to bring a motion to reconsider.
- If adopted, the scope of the FBI's surveillance authority under the National Security Letters will continue to fuel the ongoing debate on the extent to which such measures enhance national security when balanced with individual privacy concerns, and telecommunications providers will be required to provide responsive information to FBI requests for certain user information.

### House Rules Committee Sends Telecom Amendments to Floor for House Vote

The House Rules Committee voted on June 21, 2016 to send three amendments to the Financial Services and General Government appropriations bill for a full House vote. The amendments would (i) remove the bill's net neutrality rider (which rider prevents the Federal Communications Commission (FCC) from enforcing its open internet rules until court cases challenging such rules are resolved), (ii) prevent the FCC from receiving any funds to finalize its proposed privacy rule establishing privacy guidelines for broadband internet service providers, and (iii) support the FCC's political ad disclosure authority by prohibiting making funds available for use in contravention of laws requiring disclosures in respect of paid radio station broadcasts. While a vote on the bill was originally scheduled to take place last week, the House's early adjournment for recess through July 5th pushed a vote on the bill into July at the earliest.

#### Key Takeaway:

- Internet service providers and other telecommunications carriers should monitor the status of the Financial Services and General Government appropriations bill as it pertains to the FCC, as funding for FCC initiatives that

impact telecom carriers will be vital to the fate of rulemaking and enforcement actions taken by the FCC in this space.

## FAA Releases Final Rule for Commercial Operation of Drones

On June 21, 2016, the Federal Aviation Administration (FAA) released its final rule governing the operation of small unmanned aircraft systems (UAS), otherwise known as drones. Prior to the FAA's new regulations, any for-profit drone operator had to have a pilot's license. The FAA's rule has now removed that requirement and would offer a new application process specific to individuals operating small unmanned aircraft drones weighing less than 55 pounds. The rules would require drone operators to either hold a remote pilot airman certificate with a small UAS rating or operate under the supervision of a person who holds such a certificate and operations must remain during daylight and within the visual line-of-sight of the operator(s).

### Key Takeaway:

- In light of the increasing presence and availability of drones, the FAA's rules mark the first comprehensive set of rules regarding commercial drone operation. The rules facilitate an increase in the number of permissible drone operators by no longer requiring a pilot's license, but stay tuned for increased regulation in this space as regulators refine and enforce the rules (which have a 60-day comment period), including privacy guidelines.

## CONTACTS

**Richard C. Hsu**  
Menlo Park  
+1.650.838.3774  
[richard.hsu@shearman.com](mailto:richard.hsu@shearman.com)

**Jeewon Kim Serrato**  
Washington, DC  
+1.202.508.8032  
[jeewon.serrato@shearman.com](mailto:jeewon.serrato@shearman.com)

**Sylvia Favretto**  
Washington, DC  
+1.202.508.8176  
[sylvia.favretto@shearman.com](mailto:sylvia.favretto@shearman.com)

**Christopher L. LaVigne**  
New York  
+1.212.848.4432  
[christopher.lavigne@shearman.com](mailto:christopher.lavigne@shearman.com)

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