

2010: THE YEAR OF COPIER CONCERNS

On September 15, the Federal Deposit Insurance Corporation (FDIC) issued Guidance on Mitigating Risk Posed by Information Stored on Photocopiers, Fax Machines and Printers (<http://www.cbsnews.com/stories/2010/04/19/eveningnews/main6412439.shtml>). Through the guidance, the FDIC directs financial institutions to identify digital devices that might contain sensitive information and develop written policies to mitigate the risks that the information will be inadvertently disclosed when those devices are retired from service. While the FDIC is directing this guidance to financial institutions, *all* businesses should develop reasonable policies to protect data unintentionally stored on digital devices and then take the extra step to ensure that all relevant contracts and leases comply with those policies. (The Data Protection Advisor (<http://oppenheimer.com/News/Default.aspx?id=1656>) also discussed security concerns with digital copiers earlier this year.)

MAINE SUPREME COURT CONFIRMS NO CLAIM FOR DAMAGES BASED ON EFFORTS TO AVOID POTENTIAL HARM

On September 21, 2010 the Main Supreme Judicial Court agreed with a federal circuit court (http://www.courts.state.me.us/court_info/opinions/2010%20documents/10me93ha.pdf) that victims of a data breach may not claim damages for time and effort spent avoiding the possibility of harm under either a claim of negligence or for breach of an implied contract. In its analysis, the court discussed how such efforts are part of the ordinary inconveniences of every day life and are thus not compensable. While this decision affords some degree of comfort to those businesses who may have suffered a data breach, they may still be liable for both uncompensated financial losses actually incurred by the victims and statutory damages.

GERMANY MAY ACT IF COMPANIES DON'T

Thomas de Maisiere, Germany's Interior Minister, told (<http://www.out-law.com/page-11388>) reporters on September 20, 2010 that the German government is calling for Internet companies to develop a set of voluntary data privacy protection standards by December 7, 2010, or face stricter regulations in Germany. The announcement follows efforts by Google to develop a program to allow German citizens to opt-out (http://www.pcworld.com/businesscenter/article/205742/germans_flood_google_with_street_view_optout_requests.html) of Google's street view feature, which means that views of their homes would not be included in Google's online mapping features. Germany already has some of the strictest privacy laws in the world (http://www.theregister.co.uk/2010/07/08/facebook_german_privacy_probe/), but this move could mean even stricter laws if industry leaders do not voluntarily implement acceptable privacy standards. Germany's evident concern in this area is yet another signal that companies should be careful about decisions to only meet the bare legal minimum requirements, because such actions might result in more onerous regulations.