



# WARREN'S Washington Internet Daily

Covering Legislative, Regulatory and Judicial News Affecting Internet Business. From the Publishers of **Communications Daily**.

THURSDAY, JANUARY 2, 2014

VOL. 15, NO. 1

## Today's News

**DO-NOT-TRACK LAW** in California takes effect, as websites express confusion on statute's third-party privacy policy disclosure language, say lawyers, e-commerce advocates. (P. 1)

**NETFLIX TESTING \$9.99** three-screen streaming plan, \$6.99 one-screen plan, it says. (P. 3)

**CAPITOL HILL:** AT&T leads among industry campaign donors in 2014 election cycle so far. (P. 3)

**COURTS:** Nothing 'improper' about Apple antitrust monitoring process, government officials tell court... ACLU sues government for information on executive order 12333 surveillance. (P. 5)

**PRIVACY:** Medical billing company agrees to FTC settlement over data security complaint. (P. 5)

**TRENDS:** U.K. consumer spending on video entertainment flat due to continuing physical media decline, BVA reports. (P. 6)

## Websites Work to Comply with California's DNT Law

The California Do Not Track law that was scheduled to take effect Wednesday only requires a slight change to website and mobile app privacy policies, but it could be the opening salvo in a long debate over how online tracking is regulated, lawyers and industry advocates told us in interviews this week. The law, AB-370, mandates any website or mobile app that's accessible to California residents — essentially all U.S. websites — must state in its privacy policy whether it honors a user's DNT request. But it doesn't require websites to do so, just to state whether it will or won't, said Fox Rothschild privacy lawyer Mark McCreary, who has helped clients comply with the law.

"I consider this law somewhat of a narrow issue and it's very easy to comply with," McCreary said. Most of McCreary's clients have altered their privacy policies to say they're not going to honor DNT requests, he said. "It doesn't surprise me. You see that often from businesses when they don't really know what to make of the new laws and what it could mean in the future."


Ambiguities remain about the law's language on third-party data collection, said several lawyers. If a website has a third-party advertiser, the site is required to also disclose that third party's privacy policy. "We're finding more often than not that our clients will refer to those individual marketing network's privacy policies, which gets a little bit cumbersome to circle back and forth," McCreary said. "It gets confusing for the consumer, in my opinion." Jim Halpert, who co-chairs the global privacy practice at law firm DLA Piper, agreed: "This is not the clearest statute in the world; it was heavily negotiated."

Halpert helped draft the law, representing privacy and security coalitions that included 21 major tech and media companies, he said. "The reason why we accepted that language was that one can comply with it by saying that third parties may collect information from our website," Halpert

said. “That is a disclosure that is prudent to make today anyway, given the class action [lawsuit] activity over third-party tracking.” But companies still “need guidance as to how to comply with” AB 370, Halpert added.

Much of that guidance will fall to the California attorney general’s office, lawyers said. In early December, the office held meetings to discuss questions about third-party disclosures, said Vedder Price lawyer Bruce Radke, who chairs the firm’s Records Management, eDiscovery and Data Privacy Group. “We’ve been told some best practices are going to come out in January of [2014],” Radke said. Halpert confirmed the late January timeline. California has been at the forefront of Internet privacy legislation in several areas, lawyers said. The state’s data breach notification laws, in effect since 2003, also were to expand Wednesday to include more types of information under the definition of “personal information,” Radke said. And in August, the Legislature passed a bill — signed into law in September — that limits what types of advertisements can be shown to minors online and mandating an “eraser button” for children who post content online (WID Aug 15 p3). The law takes effect in 2015. To help provide guidance on these and other privacy laws, the office launched a Privacy Enforcement and Protection Unit in 2012 within its eCrime division (<http://oag.ca.gov/privacy>).

As state officials and lawyers hash out the details, “the real concern is for those smaller websites not aware or unclear about the new requirements,” said Carl Szabo, policy counsel for e-commerce trade association NetChoice. He said the law leaves small businesses vulnerable to fines that they might not even be aware of. McCreary said even websites that are aware of the changes are concerned that it could hurt business. “From my clients' perspective, it is not very pro-business,” he said. “It’s very valuable to see where someone came from or if they didn’t have a sale, where they then went” on the Web. The law could have an effect on a company’s ability to gather that information, McCreary said. — **Cory Bennett** ([cbennett@warren-news.com](mailto:cbennett@warren-news.com))

	<p><b>EDITORIAL &amp; BUSINESS HEADQUARTERS</b> 2115 Ward Court, N.W., Washington, DC 20037</p>	<p><b>Business</b></p>
<p>(ISSN 1530-0501) <b>PUBLISHED BY WARREN COMMUNICATIONS NEWS, INC.</b></p>	<p>Albert Warren <i>Editor &amp; Publisher 1961-2006</i></p>	<p>Brig Easley . . . . . Exec. VP-Controller Deborah Jacobs . . . . . Information Systems Manager Gregory Jones . . . . . Database/Network Manager Annette Munroe . . . . . Dir., Marketing &amp; Circulation Katrina McCray. . . . . Sr. Sales &amp; Mktg. Support Specialist Loraine Taylor . . . . . Sales &amp; Marketing Support Assistant Rashida Garrett. . . . . Graphics &amp; Marketing Associate Tim Wysong. . . . . Billing &amp; Renewal Associate</p>
<p>Jonathan Make . . . . . Managing Editor</p>	<p>Paul Warren . . . . . Chairman and Publisher Daniel Warren . . . . . President and Editor Michael Feazel . . . . . Executive Editor Paul Gluckman . . . . . Executive Senior Editor Howard Buskirk . . . . . Executive Senior Editor Jonathan Make . . . . . Managing Editor Mark Seavy . . . . . Senior Editor Jeff Berman . . . . . Senior Editor Rebecca Day . . . . . Senior Editor Monty Tayloe. . . . . Associate Editor Kamala Lane . . . . . Assistant Editor Matthew Schwartz . . . . . Assistant Editor John Hendel. . . . . Assistant Editor Jimm Phillips. . . . . Assistant Editor Cory Bennett. . . . . Assistant Editor Joe McKnight. . . . . Assistant Editor</p>	<p><b>Television &amp; Cable Factbook</b></p>
<p>Warren Communications News, Inc. is publisher of Communications Daily, Warren’s Washington Internet Daily, Consumer Electronics Daily, State Telephone Regulation Report, Television &amp; Cable Factbook, Cable &amp; Station Coverage Atlas and other specialized publications.</p>	<p><b>International Trade Today</b></p>	<p>Michael Taliaferro . . . . . Managing Editor Gaye Nail . . . . . Assoc. Managing Editor Kari Danner . . . . . Sr. Editor &amp; Editorial Supervisor Colleen Crosby . . . . . Sr. Editor &amp; Editorial Supervisor Bob Dwyer . . . . . Senior Research Editor Marla Shepard . . . . . Senior Editor</p>
<p>Send news materials to: <a href="mailto:newsroom@warren-news.com">newsroom@warren-news.com</a></p>	<p>Tim Warren . . . . . Managing Editor Brian Feito. . . . . Associate Editor Brian Dabbs. . . . . Assistant Editor</p>	<p><b>Sales</b></p>
<p>Follow <i>Washington Internet Daily</i> on Twitter: <a href="https://twitter.com/Internet_Daily">https://twitter.com/Internet_Daily</a></p>	<p>William R. Benton . . . . . Sales Director Agnes Mannarelli . . . . . National Accounts Manager Jim Sharp . . . . . Account Manager Brooke Mowry . . . . . Account Manager Norlie Lin . . . . . Account Manager Kara Durante. . . . . Account Manager</p>	
<p>Follow Warren Communications News on Facebook: <a href="https://www.facebook.com/WarrenCommunicationsNews">https://www.facebook.com/WarrenCommunicationsNews</a></p>	<p>Copyright © 2014 by Warren Communications News, Inc. Reproduction in any form, without written permission, is prohibited.</p>	<p>Phone: 202-872-9200 Fax: 202-318-8984 <a href="http://www.warren-news.com">www.warren-news.com</a> Email: <a href="mailto:info@warren-news.com">info@warren-news.com</a></p>
<p>By using our email delivery service, you understand and agree that we may use tracking software to ensure accurate electronic delivery and copyright compliance. This software forwards to us certain technical data and newsletter usage information from any computer that opens this email. We do not share this information with anyone outside the company, nor do we use it for any commercial purpose. For more information about our data collection practices, please see our Privacy Policy at <a href="http://www.warren-news.com/privacypolicy.htm">www.warren-news.com/privacypolicy.htm</a>.</p>		