LEGAL Q&A

Q Does my website or app need a privacy policy?

A If your website or app is used by just one California resident, you need to comply with the California Online Privacy Protection Act (the "Act"). The Act requires that if you operate an online service that collects any identifiable information, the operator must conspicuously post the entity's privacy policy. The fine for not complying is $2,500.00 per violation (i.e. each download, use of a website by a California resident, etc.).

The California Attorney General recently lost their first significant case with regard to the Act. The Attorney General had claimed that Delta Airlines failed to include a privacy policy in their mobile app. If found guilty of violating the Act, Delta would have been fined $2,500.00 for each download of its app. Assuming the Delta app has been downloaded 1.5 million times, Delta could have been on the hook for $37,500,000.00 in fines alone. Delta was able to overcome the Attorney General's claim and have the suit dismissed by relying on the Airline Deregulation Act.

While California has lost its initial case because of the existing federal law, it is unclear if other entities will be so lucky. Privacy policies are not terribly burdensome to prepare and well worth the effort given the potential liability.

Melissa V. Skrocki is a senior associate at Giordano, Halleran & Ciesla, P.C. in the firm's Intellectual Property & Technology and Corporate & Business Law Practice Areas. She can be reached at (732) 741-3900 or at mskrocki@ghclaw.com.