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Claims Conversation

with **Roger Howson**, Claims Dispute Resolution, PSAA Newsletter Editor & Education Chair, TCAA Past President

Hopefully, you're reading this month's Claims Conversation BEFORE the March 15th, 2019 PSAA Claims Carnival and Vendor Festival, because that means you've still got time to register and attend this annual educational event. There's no charge for adjusters who are members of PSAA*, so cost shouldn't be a consideration.

If you're reading this PSAA newsletter it's a safe assumption that you're working on insurance claims in some capacity, and if you're working on insurance claims it's also a safe assumption that you don't have time to be attending an educational seminar.

Conventional wisdom says that time is money, so even if you're not charged for attending this symposium the time away from work is still going to cost you. We get that.

We used to charge adjusters as much as \$250.00 to attend this annual gathering of claims professionals, and attendees would tell us afterwards that the information, camaraderie, and food (continental breakfast, lunch, and afternoon snacks) is worth twice that amount. But over the years fewer and fewer claims representatives were able to expense this event, so PSAA decided to absorb the expense of the venue and food in order to ensure that every adjuster who wants to attend won't be deterred by the cost.

No charge for a \$250.00 Claims Symposium is a screaming deal, right?

Now, let's address the "time is money" conundrum.

Admittedly, if you attend the March 15th Claims Carnival and Vendor Festival you will NOT be at your office or out inspecting a loss or loss site. You will probably not be working on closing your claims while you're sitting in on any (preferably ALL) of the day's claims education sessions. However, by choosing to stay at the office or go out in the field instead of attending the Friday, March 15th, 2019 PSAA Claims Carnival and Vendor Festival you will be missing out on HUGE opportunity costs.



**2018-19
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Legal Update Presenter:
Aaron Young, Brown Bonn & Friedman, LLP

PSAA Next Luncheon Mtg

Next Meeting: May 17, 2019

Time: 11:30am to 1:30pm

Location: Renaissance Seattle Hotel

515 Madison Street
Seattle, WA
206/583-0300 www.marriott.com/Seattle

Cost: Claims Personnel—Active Member Status
No charge for lunch or parking

Vendors & Non-Members
\$35 if paid in advance (\$50 @ door)
Parking \$12

Presentations: Past President's Day and Vendor
Appreciation

Sponsors: To sponsor a meeting contact Keely Abbas.



To RSVP or to stay in touch with PSAA use our social media tools listed below!

- www.pugetsoundadjusters.org/calendar
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- www.linkedin.com www.twitter.com

Additional Meeting Information

Please keep in mind that we'd like to start and end promptly during our monthly meetings. Here is the timeline for each meeting:

- 11:30 a.m. Registration
- 11:45 a.m. Buffet
- 12:00 p.m. Meeting Called to Order
- 1:30 p.m. End of Meeting

Please arrive on time and have your cash or check (payable to PSAA) ready, or provide your online payment receipt. We appreciate your cooperation and assistance.



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To submit an article to this publication contact
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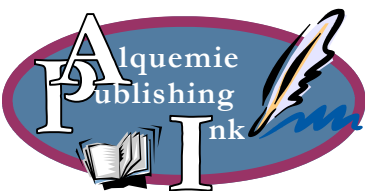
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Insurance claims is a dynamic profession with a steep learning curve that never stops. If you stay in your bubble (insert name of your employer insurance company or independent adjusting firm here) instead of getting your butt (the rest of you will follow, guaranteed) over to the Seattle Renaissance Hotel you will miss out on hearing about new developments in the insurance industry, claims profession, new laws and pending litigation, technology, forensics, repair protocols, etc. (Okay, we may not cover ALL those topics in one day, but you'll be surprised by how much you'll learn just interacting with your fellow attendees.)

Just in case you missed it in a dozen other mentions throughout this month's newsletter, here's a preview of the agenda for Friday, March 15th, 2019... we'll also feed you, and the Vendor Festival is an especially fun reason to skip out from work. We look forward to seeing you there.

2019 PSAA SPRING SYMPOSIUM

"Claims Carnival"

7:30 Registration

8:15 PSAA Welcome and Orientation

8:30 - 10:00 AUTO INTELLIGENCE

New advancements in automotive technology: EDRs, Infotainment Systems, and Autonomous Driving make driving safer and our driving habits more transparent, but the unintended consequences are that vehicle claims have become much more complicated, costly, and bitterly contested. We will learn the legal, logistical, and technological challenges of auto claims adjusting and dispute resolution in 2019.

-Adam Cyr and Brendan Morse with ARCCA, Ulises Castelion with Fire Cause Analysis, and introducing PSAA Past President John Walker Jr. of Frontier Adjusters

10:30- 12:00 THE KEODALAH BLUES

Now that adjusters, attorneys, and anyone else working on an insurance claim can be personally sued for bad faith, the Washington's Supreme Court has been asked to reverse the Superior Court ruling. We will hear from the two attorneys who wrote the amicus briefs on behalf of the insurance industry, and they will tell us what the Supreme Court ruling means for all claims professionals moving forward.

-Dan Thenell with the Thenell Law Group, and Paul Rosner with Soha and Lang

12:00- 1:00 LUNCHTIME

Lunchtime is our opportunity to network with our fellow PSAA members, take time to get to all of the

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exhibitors at the Vendor Fair, and follow-up with any questions we might have for the presenters.

1:00- 2:00 FIT (Fraud Indicators and Technology)
BITS

Learn many of the new and innovative ways that bleeding edge technology is being used to defraud insurance companies, and what technological (and procedural) advances the insurance industry is developing to beat these criminals at their own game. Find out about the many symptoms and solutions currently in use for fighting back against the increasing proliferation of fraudulent insurance claims.

-Rick Wathen and Rory Leid with Cole, Wathen, Leid, & Hall Law, and Alex Boras with Geico's SIU

2:30- 3:30 THE ABC's of ADR

Some claims just won't settle, and that's why alternative dispute resolution was invented. But we still need to know why, when, and how to litigate, mediate, arbitrate, and/or demand appraisal because different claims (and different claimants) may require different ADR remedies. These two ADR veterans will coach us through many settlement strategies, preparation, execution, resolution, and follow-up.

-Tom Lether of Lether & Associates, and Gary Halpin with Arbitration Mediation and Conciliation Center

2:30- 3:30 RAFFLES, VENDOR APPRECIATION

Submit an RSVP online at:

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Case Study

Plaintiff Must Attempt Service at ALL Known Addresses of Defendant — Whether in WA or Elsewhere — Before Substitute Service on Secretary of State is Proper



From the desk of **Katie D. Buxman**:

Washington law permits a plaintiff injured in a car accident to serve the secretary of state with the summons and complaint—instead of the defendant—in certain circumstances. The statute, RCW 46.64.040, imposes strict conditions that an attorney must follow in order to properly divert service from the defendant to the secretary of state. This method of service is utilized when a non-resident is involved in a car accident and the resident plaintiff cannot, with due diligence, find the non-resident. What if a plaintiff attempting substitute service knows the out-of-state address of the defendant but fails to attempt service there? Can the plaintiff still comply with the statute and effectuate service by serving the secretary of state? Read on to find out.

Case Pointer: In this appeal from a grant of summary judgment, the Washington Court of Appeals interpreted RCW 46.64.040 to determine whether a plaintiff complied with the statute when her attorney failed to personally serve a non-resident defendant. Identifying that a plaintiff is required to strictly comply with the statute in order to properly attain substitute service, the court interpreted the statute to require a plaintiff to attempt service at all known addresses before submitting the summons and complaint to the secretary of state. The plaintiff's attorney had failed to attempt service at a known, out-of-state address before serving the secretary of state. Accordingly, the plaintiff failed to strictly comply with the statute. This case explores the requirements imposed on a Washington plaintiff attempting to serve a non-resident defendant for a motor vehicle collision in Washington.

Davis v. Blumenstein, Wash. Ct. App. No. 76918-9-1 (Jan. 14, 2019)

RCW 46.64.040 allows plaintiffs to serve Washington's secretary of state with the summons and complaint against a defendant involved in an automobile collision. Because this statute is a departure from com-



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mon law, strict adherence to its mandates is required. First, the statute provides for substitute service (i.e., service on the secretary of state) on non-residents for residents who “cannot, after a due and diligent search, be found in [Washington]” within three years of the collision. In order to qualify for this substitute service, however, the resident plaintiff must make reasonable efforts to comply with notice requirements. Compliance can be achieved by: (1) sending the summons and complaint to the secretary of state along with an affidavit stating that the attorney tried to serve the defendant at all known addresses; (2) showing that the defendant received the summons via mail; or (3) personally serving the defendant. Only by strict compliance with one of these three methods can a resident plaintiff comply with Washington’s substitute service statute.

In the case at hand, Arthur Davis (“Plaintiff”) and Laura Blumenstein (“Defendant”) were involved in a motor vehicle collision in Washington in November of 2013. Three years later, just before the statute of limitation for Washington personal injury claims expired, Plaintiff filed a lawsuit. Plaintiff’s attorney hired a process server to attempt personal service at the address listed on the police report. However, Defendant’s father answered the door and told the process server that Defendant no longer resided at that address. He provided the process server with Defendant’s new address and sent him away.

Plaintiff’s attorney was advised that Defendant no longer lived at the address listed on the police report. The process server asked Plaintiff’s attorney whether they should attempt service of Defendant at her new Oregon address or if he should instead mail the summons and complaint to the Washington secretary of state. Plaintiff’s attorney chose the latter. Soon after, Defendant’s attorney filed a notice of appearance.

Defendant maintained that she never received the summons and complaint and that service was improper. Arguing insufficient service of process, Defendant moved for summary judgment. The trial court granted Defendant’s motion for summary judgment and dismissed Plaintiff’s claim, finding that Plaintiff did not attempt service of Defendant at all known addresses before attempting substitute service.

Plaintiff appealed, arguing that he had complied with Washington’s substitute service statute by attempting personal service at all known addresses in Washington. Specifically, Plaintiff argued that RCW 46.64.040 does not require the attorney to attempt service of a known address when that address is out-of-state. Rather, he argued that the statute’s


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plain language required only that he attempt service at all known addresses in Washington before seeking substitute service. Defendant countered with the same argument she had advanced below, that Plaintiff knew of her Oregon address and had failed to attempt service there. The court agreed with Defendant. It held that the statute requires an attorney to attempt to serve a defendant at “all addresses known to him or her” without limitation. Accordingly, because Plaintiff knew of Defendant’s out-of-state address before attempting substitute service, he did not strictly adhere to the requirements of the statute. Because he did not strictly adhere to the requirements of the statute, service was insufficient, and the trial court was correct in dismissing Plaintiff’s lawsuit.

Although Washington allows substitute service in certain circumstances, resident plaintiffs are still required to provide sufficient notice to a defendant. When your non-Washington insured is involved in a Washington lawsuit, be sure that service is proper before waiving the pertinent defenses. ❖

— View full opinion at:
<https://www.courts.wa.gov/opinions/pdf/769189.pdf>

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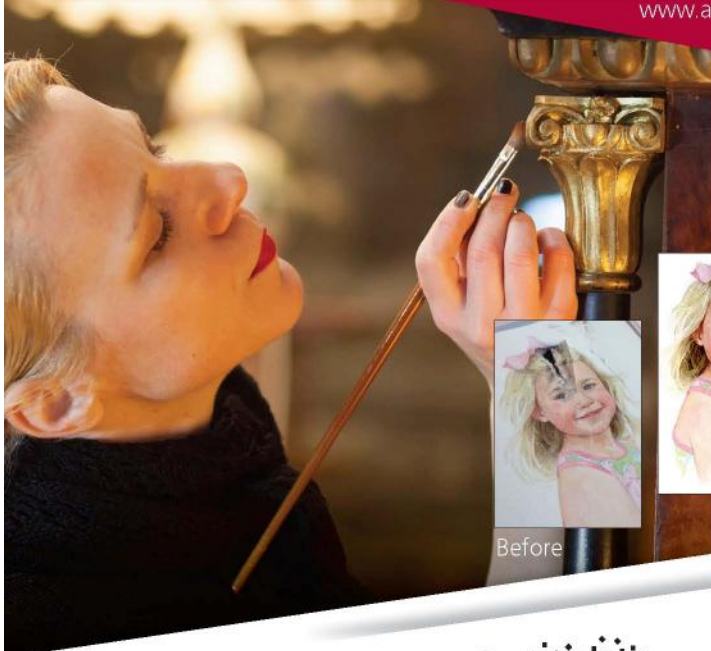


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Technology Helping Adjusters More Quickly Identify Legitimate Claims

By Jim Sams

Reprinted from www.insurancejournal.com

The physician couldn't tell what was causing the smudge on a CT scan of his wife's lungs, so he referred her to a pulmonologist. That would likely have meant a two-week delay.

Instead of waiting, Corey Chernett, chief executive officer of Authentic4D, took his wife to a "sub-specialty" radiologist the next day. During a presentation at the Combined Claims Conference on Tuesday, Chernett showed the result on screen: A three-dimensional image that clearly showed a pear-shaped mass in his wife's lung.

Turns out, the mass was a non-malignant abscess. But the speed at which the radiologist was able to produce a usable image allowed a speedy biopsy that finally put an end to his wife's nagging cough.

Chernett, his chief medical officer at Authentic4D and a claims manager for GEICO, pitched the use of 3-D imaging instead of hiring independent medical examiners to hasten the resolution of injury

claims. Specifically, Chernett said using highly specialized radiologists who have an extra year or two of training in specific fields, such as the musculoskeletal system or neurology, will allow claims adjusters to more quickly and accurately identify claims that are legitimate and should be settled and claims that should be defended.

Chernett said 3-D imaging is especially useful for identifying claimants who are exaggerating injuries. He said 70 percent of people are visual learners. Three-dimensional images allow people, perhaps jurors, to see disorders that otherwise would likely only be described in an IME's narrative report.

Typically, an Authentic4D radiologist will couple a video of 3-D image with a narrative and an affidavit that can be introduced as medical evidence for a cost of about \$1,500, he said. For an extra charge, that report can include a voiceover by the radiologist.

"Three-D images reinforce the strength of your position," Chernett said. "This is the signal that you want to show the other side, that you are prepared to take the case the distance."

Dr. James A. Shirley, Authentic4D's chief medical officer, said a New York study that included 153 pa-

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tients who had received imaging showed that radiologists disagreed on what those images showed in 40 percent of cases. Shirley said often radiologists can be influenced simply by suggesting a certain injury exists, which is why Authentic4D insists on keeping its radiologists “blind” to whatever disorder is being asserted by claimants.

“It’s very important that the doctor is unaware of the details of the case,” he said.

Candid Cameras

The importance of images to claims professionals isn’t limited to injury claims. Later at the same conference, a security expert, an attorney and a city manager extolled the virtues of video surveillance as a means of managing risk.

Seymour Everett, a partner with the Everett Dorey law firm in Irvine, California, said attorneys should ask if a video is available in every case. He said he encourages his clients to invest in robust surveillance systems.

“What we tell our clients is you have to implement a public surveillance system because everybody else is doing it,” he said. He explained that most people have the capability to take videos on their cell phones. More and more law enforcement agencies are equipping officers with body cameras. Some cities even mount cameras in heavily trafficked public areas.

In fact, Chicago has an aggressive public surveillance system, Everett said. Actor Jussie Smollet was arrested and accused of setting up a hoax attack on himself after Chicago police reviewed video taken from nearby surveillance cameras.

Everett said there are a couple of legal issues to keep in mind when deciding whether to install public surveillance. Cameras should not be used in areas where people have an expectation of privacy, such as within homes. Also, one should consider whether video surveillance would create a chilling effect on speech or conduct, he said.

For claims handlers, finding out whether video exists is the important question.

Often, videos can show up in unexpected places. For example, a plaintiff may remove any videos from social media that don’t help his position, said Joe Dalu, president of Premier Group International and a former police officer. But similar footage might be found if by checking the social media accounts of the plaintiff’s friends and family.

Jim Vanderpool, city manager for Buena Park, California, said his municipality has installed video cameras in the entertainment district and also equips its police officers with body cameras. He said the cameras on the streets make the public feel safer and the officers’ body cams have reduced personnel complaints.

“When we get these complaints, we tell them we are happy to sit down with them and review the video with them,” he said. ❖

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Employers May Have to Begin Reporting Gender Pay Data This Spring

By Rebecca Greenfield, Jeff Green and Paige Smith
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Companies with more than 100 employees will have to report to the U.S. government data about how much workers are paid broken down by sex, race and ethnicity, possibly as soon as this spring, according to a new court ruling.

The pay disclosures were finalized by the Equal Employment Opportunity Commission in the summer of 2016, but the Office of Management and Budget froze the expanded requirements after President Trump took office.

The National Women's Law Center and other groups sued, and on March 4, Judge Tanya Chutkan ruled in their favor, saying that the government didn't properly justify its decision. The OMB could appeal, and it's not clear whether companies will have to comply by the original deadline of May 31.

Still, the decision comes amid a rising global push to get companies to show that their pay practices are fair. Under shareholder pressure, most of the big U.S. banks last year released modified information on the gender pay gaps in their workforce. The U.K.'s new gender pay gap reporting requirements are entering their second year.

"This is part of a real cultural shift we're seeing around transparency in pay," said Emily Martin, vice president for education and workplace justice for the National Women's Law Center, one of the groups that sued to get the wage information included. "In order to have equal and fair pay, employees need more information about their employers' pay policies. So this is one step, but it's not the last step."

Employers already submit demographic data to the EEOC annually. The new disclosures would call for more granular analysis, requiring them to report the racial and gender makeup of employees in each job category (executive level, professionals, sales workers, etc.) within 12 pay ranges, for each of a company's physical locations. The current form fits on one page. The expanded form could need 10.



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“It’s kind of in the weeds, really technical detailed stuff,” said Michael Eastman, senior vice president with the Center for Workplace Compliance. “That’s where the burden comes in.”

The U.S. Chamber of Commerce, which strongly opposed the expanded reporting, says it would cost businesses more than \$400 million annually. The EEOC says it’s more like \$53 million. In a 2017 letter to OMB director Mick Mulvaney, the Chamber urged the agency to reconsider the approved collection, saying the EEOC “materially underestimated the burden that the revised form would impose.”

Under rules adopted in 2015, the U.S. Securities and Exchange Commission requires public companies to compare their workers’ median pay with their CEO’s total compensation, including salary, bonus and equity awards. After companies registered similar concerns about the burden of reporting based on their entire payroll, the SEC allowed them to use statistical sampling. The first results were posted last year.

“This is not some radical new calculation that they are being asked to do,” said Martin, pointing out that companies provide a wide range of pay information to a range of entities and can draw the rest of the data from employee tax forms. “They are being asked to submit the data they already collect.”

The demographic data provided to the EEOC is confidential, and the pay data would be too. Even so, research suggests the act of measuring and reporting can have an effect. A study from several business schools, including INSEAD, Columbia University and the University of Copenhagen, found that in Denmark, which requires companies with over 35 employees to report pay data by gender, the gender pay gap shrunk by 7 percent. And once the data exists, it becomes a target for activists and investors. New York City pension funds helped pressure Goldman Sachs and MetLife to disclose diversity data in 2012, according to the New York Times.

Natasha Lamb, a managing partner at Arjuna Capital, is for similar transparency around pay: Late last year, she filed shareholder proposals with 11 banks and tech companies asking them to publicly report their median gender pay gaps. So far, only Citigroup has done so.

“Even if there’s a regulatory mandate from the EEOC, that might help narrow those gaps, but it won’t make the data transparent to investors,” Lamb said. “We want to be able to measure apples to apples on how companies are doing on narrowing those gaps.” ❖

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Pedestrian Fatalities Continue to Rise

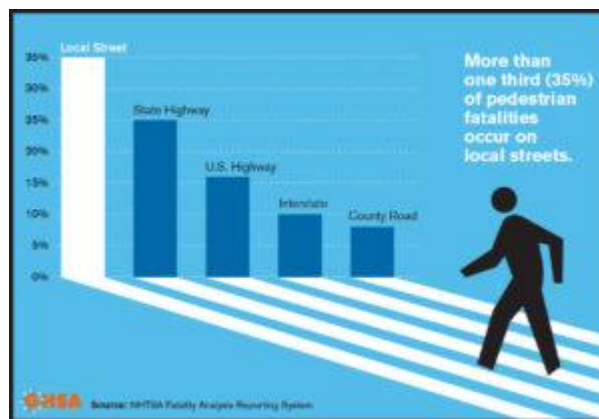
Reprinted from www.insurancejournal.com

A new report projects that 6,227 pedestrian fatalities occurred in 2018, the highest number in nearly three decades. Pedestrians will account for 16 percent of all traffic deaths in 2018, compared to 12 percent in 2008.

While advancements in motor vehicle safety and technology have increased survivability for vehicle occupants involved in crashes, pedestrians remain just as susceptible to sustaining serious or fatal injuries when struck by a motor vehicle, according to the report from the Governors Highway Safety Association (GHSA).

GHSA projects the four percent increase in the number of pedestrians killed based on reports from states of pedestrian fatalities for the first six months of 2018.

Despite the overall rise, 23 states saw declines in pedestrian fatalities for the first half of 2018 compared to 2017, with six states reporting double-digit declines and three reporting consecutive years of declines. Additionally, sharp decreases in pedestrian fatalities in some cities suggest that state-level data may obscure local success stories, according to the report.



An increase in walking appears to have increased exposure. One survey cited in the report estimated that the number of Americans walking to work has increased about four percent between 2007 and 2016.

Most pedestrian fatalities take place on local roads, at night, away from intersections. Nighttime crashes account for more than 90 percent of the total increase in pedestrian deaths.

“While we have made progress reducing fatalities among many other road users in the past decade, pedestrian deaths have risen 35 percent,” noted GHSA Executive Director Jonathan Adkins. “The



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alarm bells continue to sound on this issue; it's clear we need to fortify our collective efforts to protect pedestrians and reverse the trend."

Report author Richard Retting said there are infrastructure, engineering and behavioral strategies that reduce pedestrian deaths. "Critical improvements to road and vehicle design are being made, but take significant time and resources to implement," he noted. ❖

Internet-Connected Toys May See More Regulation
 The information these toys collect and the laws that govern the space.

By Dan Clark
 Reprinted from www.propertycasualty360.com

As household items become increasingly connected to the internet, children's toys are no exception. Scott Pink, special counsel at O'Melveny & Myers in the Silicon Valley office, was formerly the general counsel of Prima Games and sees the data and privacy concerns elevating among families with more toys being hooked to the internet.

Pink spoke to our sister-publication Corporate Counsel about internet-connected toys, the information these toys collect and the laws that govern the space. This conversation has been edited for length and clarity.

What are some of the regulations companies who manufacture and sell internet-connected toys need to be aware of?

Pink: The primary regulation is a federal law called the Children's Online Privacy Protection Act, which regulates the collection of personal data from a child under 13 years old. That would be the primary federal law that governs children's privacy. In addition to that, there are sort of general privacy laws that would apply to the collection of data in general such as California's Online Privacy Protection Act; there is the new privacy law that is coming into effect in 2020. There are elements of those kinds of state laws that could also apply if you're collecting data from someone between 13 and 19.

What kind of data is being collected from these internet-connected toys?

Pink: The definition of personal data was expanded in 2013 to the COPPA rule by the [Federal Trade Commission]. It's pretty broad. There are some obvious things like first and last name or contact information. It could also include things like if it's an app or a toy that might require you to enter a username or a screen name. It includes specific identifiers. There are also things like photographs and video or



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audio files that contain a child's image or voice. The toys sometimes collect geolocation information.

Would the best advice for these manufacturers be to not retain that information? Or is there a way to retain this information and still be in compliance with these data privacy laws that govern children's personal information?

Pink: There a couple of considerations. First of all you need to determine what type of information you need to make the device. If there is information you need to make the device usable, that's information you need to collect and perhaps retain for as long as the person uses the device. Typically my advice would be to collect what you need, and if you determine that the device is targeted at children, you need to provide notice to get their consent to the data collection. I wouldn't say not to collect any data. I would say that if you do have to collect data and if you do want to collect data for something like marketing, then you need to make sure you follow the COPPA rules, which are to provide notice and get parental consent.

Are companies, in your opinion, paying attention to the COPPA rules and making sure notices are going out with the internet-connected toys?

Pink: I think the more sophisticated and mature toy companies are very well aware of COPPA. In particular because there are a number of consumer watchdogs that are very focused on children's privacy. I think the more responsible companies understand the requirements of COPPA and try to make sure that they're getting consent. But there are companies that have not done that, and it could be inadvertent or intentional, but in either case you can end up on the wrong side of a regulatory action by the FTC. I think the responsible companies are aware of this and try to make sure that they're following the rules.



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Does COPPA include any specifications over how a company should be handling its cybersecurity?

Pink: COPPA does not have any security standard. I think California has a law that's coming into effect in 2020, which requires any kind of "internet of things" device has to have reasonable security. That law would theoretically apply to these kinds of toys. I would say the general principal that has evolved based on regulatory action from the FTC and the evolution of the California law is that your security is supposed to be designed in a way to protect information in accordance to sensitivity. For example, children's information might be deserving of greater protection than perhaps email addresses in general of adults. This kind of information would warrant a more rigorous type of security just because of the risks to the individual.

California is sort of leading the trend toward more robust data security requirements, so I would suggest that anybody operating in the field of the internet of things or internet-connected toys keep an eye on what's going on in California and whether other states might follow their lead. ❖



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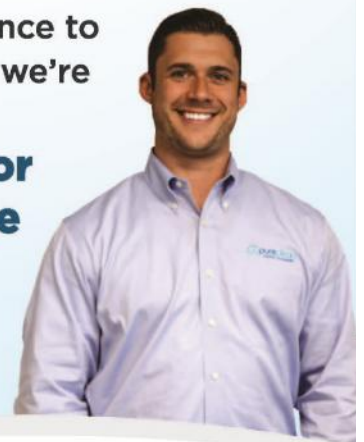
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