

Privacy & CP Group Of The Year: Wilson Sonsini

By **Christopher Norton**

Law360, Washington (January 09, 2012, 8:24 PM ET) -- When Google Inc. found itself on the receiving end of two major multidistrict litigations challenging its Street View photography program and Android mobile operating software, it turned to the groundbreaking practice of Wilson Sonsini Goodrich & Rosati PC for the deep bench and tech-sector expertise that make the firm one of Law360's Privacy and Consumer Protection Groups of 2011.

Wilson Sonsini boasts more than 20 professionals like partner Michael Rubin, a leader in both of the Google MDLs, who won the outright dismissal of all but one count in the Street View case.

The Street View Electronic Communications litigation, comprising more than a dozen class action suits filed across the country, challenges the acquisition of publicly broadcast Wi-Fi data by Google's Street View vehicles from open and unencrypted wireless networks. The lawsuit alleges that Google violated the federal Wiretap Act and various other federal and state laws. Rubin's team won dismissal of all counts except the Wiretap Act count.

"The district court dismissed plaintiffs' state law claims, but it disagreed that Wi-Fi is a 'radio communication' under the Wiretap Act, so the court allowed plaintiffs' federal Wiretap Act claim to proceed as alleged," Rubin said. "We were successful in getting that question of first impression certified for interlocutory appeal, and it's being briefed now."

The case is currently stayed pending the resolution of the interlocutory appeal to the Ninth Circuit, regarding the threshold question of the proper interpretation of the undefined term "radio communications" in the Wiretap Act.

In what may be a sign of things to come for the pending Street View case, Wilson Sonsini in December 2010 brokered a consent judgment between Google and a Pennsylvania couple, through which Google concluded protracted litigation by agreeing to have a \$1 judgment entered against the company.

The plaintiffs had sued Google in 2008 for invasion of privacy and other claims, alleging that a Google Street View driver had traveled down a private road to photograph their house, and that Google included images of their house in Street View without their consent.

"That was kind of a fun case, but it was also an issue of first impression in terms of the Street View service," Wilson Sonsini partner Tonia Klausner said.

The Android Consumer Privacy litigation, meanwhile, involves nine class action lawsuits against Google alleging that devices running Google's Android mobile operating system or apps downloaded to Android devices have mishandled user information, including information about users' locations. The cases have been combined into a single MDL, which remains pending, and they all seek similar relief, including claims arising under the Computer Fraud and Abuse Act, as well as other federal and state laws.

"Although the case is still taking shape, we're confident in our position," Rubin said.

Partner Rod Strickland led the practice group to victory once again in May in *Simonoff v. Expedia*, a Fair and Accurate Credit Transactions Act case that led to only the second-ever federal appeals decision interpreting the law.

The plaintiff had alleged that Expedia Inc. had willfully violated FACTA by emailing receipts to consumers that contained the expiration dates of the consumers' credit cards. The district court agreed with Wilson Sonsini Goodrich & Rosati's argument that FACTA does not apply to receipts that are provided to consumers via email, finding that FACTA's plain language, its statutory scheme and its legislative history all required dismissal.

"When you are able to achieve an early decision in a new area of law, it sets precedents that deter more lawsuits," Rubin said of Wilson Sonsini's successful defense of Expedia before the Ninth Circuit. "When you're able to make new law in one circuit, it throws water on the fire generally."

The practice group had just as much success, if not more, on the regulatory front in 2011, according to partner Lydia Parnes, the former director of the Bureau of Consumer Protection at the Federal Trade Commission.

While the firm is loath to name names, it obtained favorable resolutions before the FTC last year for a prominent social media company, an online consumer data aggregator and many others, Parnes, a 27-year veteran of the commission, said.

"We have been extremely successful in representing companies before the FTC in privacy and consumer protection work," she said. "Our most successful work hasn't seen the light of day."

The firm also represented a mobile device manufacturer in connection with an FTC investigation of its collection of location information, which was closed without any action taken, and a company facing a national advertising inquiry involving health claims for its products, Parnes said.

"We understand the agency," she said. "We understand what it takes to explain to them what's going on and to get them what they need to reach a favorable conclusion."

Wilson Sonsini understands that companies that experience data breaches are victims of crimes just as much as consumers, and require special expertise. The practice group has been working over the past year with a very large service provider in the U.S. who experienced a major public data breach event. The firm worked to help the company control and manage the incident despite inquiries from state and federal law enforcers as well as from Congress, according to Parnes.

"We understand the business needs, we understand the legal requirements and we understand the environment a company is working in, and so we're really able to help them across the board," Parnes said.

Rubin said the group looks forward to continuing to work on the cutting edge of the privacy field, noting that major steps forward in case law in the area have been made in just the past few years.

“It's been a significant year in the standing area for privacy cases and the plaintiffs' ability to actually specify harm, which is preventing a lot of plaintiffs from getting past the pleading stage,” he said of 2011. “We expect that trend to continue.”

Methodology: In November, Law360 solicited submissions from over 500 law firms for its practice group of the year series. The more than 550 submissions received were reviewed by a committee of Law360 editors. Winners were selected based on the significance of the litigation wins or deals worked on; the size and complexity of the litigation wins or deals worked on; and the number of significant, large or complex deals the firms worked on or lawsuits the firm had wins in. Only accomplishments from Dec. 1, 2010, to Dec. 1, 2011, were considered.

--Editing by Kat Laskowski.

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