

Privacy Group Of The Year: Cooley

By **Sindhu Sundar**



Law360, New York (February 03, 2015, 10:58 PM ET) -- Cooley LLP successfully defended Facebook Inc. in a class action accusing the social networking giant of violating users' privacy rights and helped Google Inc. beat large class claims over the scanning of Gmail messages involving more than 400 million Gmail accounts, landing the firm among Law360's Privacy Groups of the Year.

Cooley's privacy practice, which evolved from its work in information technology matters in the 1990s, has about 40 attorneys who focus on the area, and has geared itself over the past eight years toward consumer protection and data breach litigation involving modern Internet technology companies including Facebook, Google and LinkedIn.

In May, the Ninth Circuit upheld a lower court's decision to dismiss proposed class action claims against Facebook, which involved alleged violations of the Wiretap Act and the Stored Communications Act. The plaintiffs, who had brought their suit in 2010, had alleged that Facebook violated their privacy by sending personal information including their photos to third-party advertisers without their consent when they clicked on third-party ads on the site. The appeals court found that the plaintiffs hadn't stated a claim because they had not claimed that Facebook divulged the contents of communications.

Cooley, which has represented Facebook since 2008 in some of its earliest privacy battles, had only a handful of attorneys in the practice area at the time. But it has since grown to add dozens of attorneys to the group, many of them in San Francisco, spurred by its victories in privacy litigation as well as the financial success of many of its clients, the firm's attorneys say.

"Our growth is also a reflection of the maturity of the businesses we've been working with for a long time," said Michael Rhodes, chair of Cooley's privacy practice. "With Facebook for example, we're now talking about a multibillion-dollar enterprise. It was a much smaller organize in 2008 trying to figure out how to monetize its service."

Cooley was also behind the Ninth Circuit's decision in May when it declined to review the denial of class certification to consumers accusing Google Inc. of illegally scanning Gmail messages, a potentially multibillion-dollar litigation in which the search giant was accused of capturing data from Gmail messages without users' knowledge.

The appeals court panel rejected the plaintiffs' bid to appeal California federal Judge Lucy Koh's order in

March denying class certification, preserving her finding that that users differed substantially in their understanding of the surveillance.

Judge Koh found that publicly available information about Google's interception of communications, including in regulatory filings and Google's own Gmail interface and official blog posts, meant that each user likely had a different degree of understanding or awareness of those disclosures.

The Gmail case involved billions of emails and some 400 million Gmail accounts, according to the firm.

"We had made many arguments about why there were too many differences among individual class members, and whether those people consented to having those emails processed," Rhodes said. "We argued many different things but ultimately, we put together immense evidence to show there was a lot of public knowledge about the service and that Google had been very upfront about it, and that there were too many individualized issues among proposed class members."

Beyond privacy class action litigation, Cooley's attorneys also work on privacy and data security issues involved in due diligence in mergers and acquisitions matters, practice leaders said.

"That's a significant shift in the nature of the practice," said Matthew Brown, co-chair for the firm's privacy and data protection practice. "It's not just with compliance counseling but we're also called on to evaluate other companies or assets involved in M&A transactions."

The firm's attorneys say the practice is "expanding organically," as it is being called on to counsel clients on newer issues including mobile advertising, the movement of information from platforms like android to app developers, drone technology and ephemeral media like disappearing messages on the communications service Snapchats.

"The privacy practice looked really new and novel when we got in the front lines of it six or seven years ago," Rhodes said. "There was a point when there was just a few of us, advising Web companies on their terms of service, or what a contract with users should say. Now most of us are using some form of social media almost daily, and there are fault lines in our country over where's the proper line of demarcation over the use of users' information."

--Additional reporting by Andrew Scurria. Editing by Chris Yates.
