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ISRAEL PRACTICE NEWSLETTER

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INSIDE THIS ISSUE

United States Federal, State and Local Government Contracts – Not as Complex as Many Think

By David Robbins

Many Israeli companies believe that U.S. government contracting is "too complicated" and the compliance burden is too dramatic to enter the market. But an example from our recent trip to Israel demonstrates that is not necessarily the case and that Israeli companies should consider the U.S. government marketplace for their often groundbreaking solutions.

As part of Crowell & Moring's November trip to Israel, I was grateful to speak at an Association of Corporate Counsel (ACC) event concerning unlocking the U.S. government market for Israeli companies. There were four themes for my talk:

1) The U.S. government is focused on acquiring advanced technology solutions

2) Israeli companies are at the forefront of a number of areas of interest to the U.S. government (e.g., cyber, information technology, homeland security, water)

3) The U.S. government is investing grant money to develop advanced technology now, with some programs agnostic as to nation of origin; and,

4) There are methods of reducing the compliance burden, for example by selling commercial items and by serving as a subcontractor rather than a direct contractor.

Technology Acquisition and Market for Israeli Goods and Services

U.S. government officials have spoken openly in recent months and years about the need for the government and its suppliers to innovate faster, better, and less expensively. One avenue the government is pursuing to drive down costs is to bring more innovation to the U.S. government contracts market by making early stage investments in technology development projects that might otherwise go unfunded. The U.S. government has long maintained grant funding platforms for various

advanced research products agencies, but the Defense Innovation Unit Experimental (DIUx) takes these efforts farther.

DIUx is designed to be a startup marketplace outreach engine offering "promising technologies" cash grants and introductions across the U.S. defense marketplace. These finds are available without limitation on nationality and location. Indeed, the 2016 awards included a UK-based company among the $36 million in grant funding. The following technology areas received funding in 2016, which also provides insight into areas the U.S. Department of Defense believes will be important in the future:

- Cybersecurity dashboards/network visibility
- High speed drones
- War game modeling
- Naval drones
- Micro drones for indoor operations
- Knowledge management
- Network defense/software management
- Social media algorithmic analysis
- Light, tactical, removable communications
- Neurostimulation for warfighter training

This trend is worth watching as Israeli technology in these areas may find funding opportunities from or future markets in the United States.

Managing the Compliance Burden

While the U.S. government contracting marketplace has substantial compliance burdens for prime contractors, subcontractors or commercial item providers selling through a distributor face far less of a burden. This dynamic opens up opportunities for Israeli companies to sell into the U.S. government marketplace as subcontractors or solutions providers through distributors relying on more familiar commercial contracts. Some terms and conditions must be "flowed down" to subcontractors, but that burden is far less significant than what is required of prime contractors and with appropriate counsel can be manageable for Israeli companies.

After our ACC event in November an Israeli company asked us to help them evaluate a distributor agreement to sell to the U.S. government. We quickly and painlessly explained the obligations and identified a couple of points worth negotiating. Our client was left with an unexpected impression – that doing business with the U.S. government is possible, and not nearly as complicated as they thought.

This is just one example of how we can help Israeli companies do business in the U.S. government contracts marketplace. We look forward to hearing from you.

***David Robbins** is a partner in Crowell & Moring's Government Contracts Group. He advises clients on matters involving procurement fraud, suspension and debarment, complex investigations, disclosures, and ethics and compliance counseling at the federal, state, and local levels. He presented on government contracts issues before the Association of Corporate Counsel Israel and at the annual Homeland Security and Cybersecurity conference in Tel Aviv in November.*

Fastest Five Minutes: U.S. Government Contracts Legal and Regulatory Developments

November 2016 Highlights

Subscribe to our biweekly update on iTunes, Google Play, or listen from our website. This article is an adapted transcript from the podcast.

Welcome to the Fastest Five Minutes, presented by Crowell & Moring. We are your co-hosts, David Robbins and Peter Eyre, bringing you a biweekly summary of significant U.S. government contracts legal and regulatory developments that the leadership of any company contracting with or aspiring to contract with the U.S. government needs to know.

DoD Acquisition Technology and Logistics issued its 2016 Annual Report concerning the performance of the Defense Acquisition System. Generally, the report discusses many areas in which acquisition has improved or is doing better than perceived, but it also highlights areas where improvement is needed, such as competition rates, which fell in FY 2015, and utilization of small business subcontractors, which "has been declining since FY 2010".

The Office of Management and Budget (OMB) released a proposed plan to help modernize outdated federal information technology systems. This draft guidance builds on

President Obama's Cybersecurity National Action Plan, as well as the proposed $3.1 billion revolving IT Modernization Fund, which would be used for updates of agency systems.

In notable recent case law, the Court of Federal Claims rules that the **Army had wrongly shut out Palantir Technologies from a $206 million intelligence software procurement, in violation of a law requiring federal agencies to give preference to commercial items.** Palantir argued that the procurement process preemptively ruled out any commercially available solutions, including Palantir's proven, "state-of-the-art" system. The Army argued that only a single, custom-built system would meet its needs. As such, the RFP, for the six-year contract sought a single company to act as data architect, developer and integrator for the system. Ruling from the bench, Judge Horn found that the Army's procurement for the DCGS violated the Federal Acquisition Streamlining Act (FASA), which requires federal agencies to conduct market research and give preference to commercial platforms whenever practicable. Judge Horn issued an injunction, barring the Army from awarding the contract and ordered the Army to undertake a more complete analysis, including consideration of Palantir's platform.

And an article in National Defense Magazine highlighted in sobering terms the increase in industrial espionage attempts and cyber threats focused on the defense industrial base.

This has been the Fastest Five Minutes, brought to you by Crowell & Moring. See you again in 2 weeks.

Fastest Five Minutes: U.S. Government Contracts Legal and Regulatory Developments

December 2016 Highlights

In a proposed rule, the **Federal Acquisition Regulatory (FAR) Council permitted and encouraged agency acquisition personnel to engage in responsible and constructive exchanges with industry** as part of market research, as long as the exchanges are consistent with law, regulation and promote fair competition. This is part of an ongoing effort to memorialize into regulation a progressively stronger drum beat for more engagement between government and industry.

Continuing with **FAR Council news, shortly before Thanksgiving, the FAR Council created a new climate disclosure requirement** within the system for award management. It requires large vendors to make annual representations of whether they publicly disclose corporate greenhouse gas emissions, climate mitigation goals or other sustainability targets. This rule is optional for contractors receiving less than 7.5 million dollars in government contract awards during the prior Federal fiscal year. The Defense Innovation Unit Experimental or DIUX released a how-to guide book to assist other federal agencies in creating innovative contracting vehicles like DIUX's commercial solutions opening to bring technological innovations to practice use in less time and at lower cost.

Moving on to GAO, **GAO dismissed three protests** due to sunset of its jurisdiction over civilian agency task orders under 10 million dollars including a procurement for a military agency made under a civilian agency task order specifically GSA's Alliant IDIQ. We'll keep a lookout for a statutory path to address this jurisdiction hold. Legislation was presented to President Obama for his signature and will report to you when and if that goes through.

At the **Supreme Court, who again weighed in on the False Claims Act**, this time in State Farm v. ex rel. Rigsby. What they ruled is that a seal violation is not fatal to a pending False Claims Act case even whereas in this matter, the relator's attorney purposefully leaked information to the media in order to pressure the defendant to settle.

In board news, the **ASPCA declined the government's motion to dismiss an appeal by Kellogg Brown & Root Services Inc.** because the government wanted to wait until a pending FCA suit concluded. The board indicated that a previous three year stay for these purposes was sufficient and that a possibly indefinite stay might cause evidence to go stale. Therefore, the board retained jurisdiction over this case.

Moving on to Federal District Court, on November 22nd, a district court judge in Texas issued a nationwide preliminary injunction **barring the Department of Labor from implementing new regulations increasing the minimum salary necessary for employees to qualify for many of the white collar overtime exemptions** permitted under the Fair Labor Standards Act. The rule had been scheduled to go file on December 1. The court reasoned that DOL lacked the authority under the FLSA to issue the new rule.

We will end with a somewhat whimsical item. Also around Thanksgiving time the Army kicked off a Hack the Army

event and offered bounties for detection of vulnerabilities of operational irrelevant websites affecting the Army's recruiting mission. This announcement occurred within days of DOD and GSA's announcement of vulnerability disclosure policy creating a safe harbor for certain good faith efforts to research the cyber resilience of certain agency websites. It's remarkable, the language that's used to get around the use of the word "hacking", right? Good faith efforts to research. Anyway, bottom line for any would-be researchers I guess in our audience: While this is interesting and newsworthy, you may want to get independent legal advice before giving it a try.

This has been the fastest five minutes brought to you by Crowell & Moring. See you again in two weeks.

***David Robbins** is a partner in Crowell & Moring's Government Contracts Group.*

***Peter J. Eyre** is a partner and co-chair of Crowell & Moring's Government Contracts Group.*

Health Care Update:
What is Happening with 21st Century Cures, the Trump Team & ACA Repeal/Replace?

The Trump team is trying to figure out how to best repeal and replace the Affordable Care Act (ACA) and what to do with the 20 million people who have recently obtained coverage through the law. The health care world is changing on a daily basis and we are following it every step of the way to keep you updated. Here is the latest:

21st Century Cures: Fred Upton's Last Stand

Congress is preparing to pass a 21st Century Cures bill that will affect policies of the FDA, NIH, and the Office of the National Coordinator for Health IT (ONC), to the great pleasure of the outgoing House Energy and Commerce (E&C) Committee Chairman Fred Upton (R-MI). House and Senate negotiators made significant progress prior to leaving town for the Thanksgiving recess and finally appeared ready to pass the legislation. Chairman Upton and Rep. Diana DeGette (D-CO) led bipartisan discussions of the 21st Century Cures bill at the beginning of the 114th Congress, and the full House approved it overwhelmingly in July 2015. The Senate followed with the "Innovations Act," consisting of 19 different bills, which each passed out of the Health, Education, Labor, and Pensions Committee (HELP) earlier this year. Now, both Senate Majority Leader McConnell (R-KY) and House Speaker Paul Ryan (R-WI) have made its passage a priority in the Lame Duck session, and it just might get done in the waning days of the 114th Congress.

But what will a reconciled bill include? We believe that a final reconciled bill will make changes in research, funding, and approvals of drugs and devices. Specifically it is expected to provide: (1) up to $5 billion in new funding for NIH, (2) money for drug researchers, (3) authority for faster FDA approval of new drugs and medical devices, (4) a new FDA antibiotics program, and (5) at least $1 billion for new opioid abuse prevention and treatment programs consistent with the recently passed Comprehensive Addition and Recovery Act (CARA). The bill will likewise promote more competition in the brand, generic, and specialty drug marketplace, in addition to focusing on health information technology (health IT). It attempts to promote interoperability of electronic health records, including changes in process for standards development and product certification, and will prohibit practices that interfere with the sharing of health information for patient care, so-called "information blocking." Finally, in a nod to the outgoing Obama Administration, the final legislation will likely include pieces of the Precision Medicine Initiative and a significant portion of the White House's Cancer Moonshot that was spearheaded by Vice President Joe Biden.

Keep your eye out for the 21st Century Cures Bill to become law before the holidays. If it does, it will be a noteworthy bipartisan accomplishment that could restore some faith in the ability of Congress to do health care legislation before the ACA fight of 2017. It will also lead to a flurry of activity at HHS, as they work to implement these sweeping legislative changes. It will be important to see who is appointed to lead HHS under the new administration and these key agencies.

ACA Repeal and Replace

The repeal – or at least substantial modification – of the Affordable Care Act (ACA) is now a virtual certainty. Congressional Republicans have promised to scrap the law since its passage in 2010 and attempted to make good on that promise in January 2016, passing a repeal measure that

President Obama promptly vetoed. Now, they appear to have a partner in President Trump and are moving quickly to repeal the law. Trump has named multiple former Bush Administration officials to lead its health reform efforts, reassuring some observers that the transition team roster includes professionals who understand health policy and government process. The devil is in the details, however, and actually repealing and replacing will require significant negotiation to avoid a Democratic filibuster.

The Trump Administration is likely to announce an ACA Repeal bill with provisions that they expect House and Senate Parliamentarians to allow into a budget reconciliation bill within a week or two of taking office. Another option would be to announce an ACA Repeal and Replace bill modeled after Speaker Ryan's "Better Way" and decide to argue provision by provision with the Parliamentarians to get as much as possible into the budget reconciliation bill. Because a reconciliation bill requires only a simple majority to pass each chamber – a particularly important point in the Senate where it could avoid the promised Democratic filibuster – it is likely the Republicans' only option to pass the long-promised repeal, though the replacement portion would need to be done through the regular process and would only pass with the support of at least eight Democrats, assuming that all fifty-two Senate Republicans support it.

The Congressional Budget Act of 1974 created the modern process known as "reconciliation." Under this process, Congress passes a "Budget Resolution" each spring which directs Congressional committees as to how to prepare a federal budget and "reconciliation" provisions direct Congress to pass certain laws pertaining to spending, expenses or revenues. A "budget reconciliation bill" is exempt from the sixty vote Senate filibuster rule, meaning that it can pass the Senate with a simple fifty-one vote majority. Another key component to a "budget reconciliation bill" is that the scope of amendments is limited, thus making it harder for opponents to attempt last-minute changes on the Senate floor. The Senate Republican majority, therefore, can draft the budget reconciliation bill in committee, get Parliamentary clearance, and send it to the floor for fifty-one votes to pass with limited amendments and no ability for the Democrats to filibuster. President Reagan famously persuaded Congress to use reconciliation to pass major spending cuts during his presidency, welfare reform was passed using it in 1996, and it was ironically used by Democrats to pass significant portions of the ACA in 2010. While the rules typically prevent passing a provision in a budget reconciliation bill that will cost money, the majority party can override it as we would expect them to do with ACA repeal provisions.

The ACA repeal provisions likely to survive the Parliamentarians and end up in a Reconciliation bill include repeal of the three big ACA taxes – the Medical Device Tax, the Health Insurance Provider Fee, and the Cadillac tax. However, as long as the more substantive provisions of the law remain in place, repealing the taxes could bankrupt the ACA before the market is ready to offer alternatives or Americans with ACA plans can get tax credits for replacement plan premiums, likely creating the market chaos that Republicans have pledged to avoid.

Therefore, it is much more likely that "Repeal and Replace" will be a multi-year process during which the three main ACA taxes would be phased out and gradually replaced with an alternative approach that is expected to be built around the framework already proposed by House Republicans. That "replacement" would likely include providing Americans with more incentives to utilize health savings accounts (HSAs), refundable tax credits to pay premiums for new plans, permitting the purchase of insurance across state lines, the re-establishment of high-risk pools, FDA reforms similar to those included in 21st Century Cures, and possibly new provisions to modernize Medicare. A new ACA might also jeopardize Medicaid expansion, in favor of state innovation grants that reward state-led efforts to reduce premiums and the rate of uninsured. The Republican plan will be rooted in the belief that the marketplace will adapt and create new plan models to accommodate the approximately 20 million individuals currently covered by ACA plans.

The highlights of the January 2016 repeal measure provide a glimpse into where the 2017 repeal discussions will likely begin:

- Individual and employer mandates eliminated by removing financial penalties for failure to obtain or offer coverage.
- No further Medicaid expansion and gradual reversal of previously-approved expansion.
- Federal exchange would be shuttered.
- Elimination of reinsurance, risk adjustment, and risk corridor programs.
- Repeal of Medical Device and so-called Cadillac taxes.

Accomplishing this, however, is not without political risk; many toss-up states that supported Republicans also expanded Medicaid, for example, and may push for more moderate reforms. At the same time, some Republicans may be reticent to pass a partisan bill that causes some individuals to lose insurance coverage gained under the ACA without a viable alternative in place.

While Congress develops and enacts amendments or alternatives to the ACA, the President-elect may use executive discretion through his appointees to modify ACA regulations or simply choose not to enforce certain provisions—such as the individual and employer mandates and other tax penalties. And the new Administration may put the brakes on any reinsurance payments to health plans until the Treasury Department has been paid. Health plans participating in the 2017 marketplaces may be in for a bumpy ride.

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If you have questions or would like additional information related to the content provided in this newsletter, please contact the authors or Sam Feigin, Chair of Crowell & Moring's Israel Practice.

https://www.crowell.com/Practices/Israel-Practice

U.S. Patent Law Update:

Recent Supreme Court Decision on Design Patents Located in the U.S.

In an important ruling for those holding or aspiring to hold design patent rights, the Supreme Court, in a unanimous opinion delivered by Justice Sonia Sotomayor, held that "[i]n the case of a multicomponent product, the relevant 'article of manufacture' for arriving at a Section 289 damages award need not be the end product sold to the consumer but may be only a component of that product."

The Supreme Court's decision may impact the value of design patents and create new issues affecting both prosecution and litigation in the design patent arena. In particular, the Court's decision may reduce the value of design patents where those patents are deemed to protect only a portion or portions of a commercial product rather than an entire product. Going forward, design patent applicants and patentees will likely need to be more attentive to efforts to protect an entire commercial product, rather than merely a portion thereof.

Section 289 provides an "[a]dditional remedy for infringement of design patent." Historically, this "additional remedy" has offered a powerful tool for patentees in design patent infringement actions, specifically allowing for disgorgement of an infringer's total profits. As commercial products have become increasingly complex, the question of "what is the article of manufacture?" has also become more complex. In fact, commercial products made today frequently incorporate a multitude of components, where such components may even be produced by different manufacturers.

The decision by the Supreme Court instructed a two-part analysis for evaluating Section 289 damages. First, the relevant "article of manufacture" should be identified. Then, the infringer's total profit derived from that article should be calculated. Relying on the plain meaning of "article of manufacture" to connote "simply a thing made by hand or machine," the Supreme Court appears to have wielded a deft hand in balancing the intent of Section 289 with the complexities of modern manufacturing.

The Court declined to opine as to what constitutes the article of manufacture in the present case, and it remains for the Federal Circuit to consider this issue on remand.

Next Steps for Applicants and Litigants:

- Applicants may wish to draft applications to increase the likelihood that claimed subject matter is interpreted as protecting a unitary commercial product, rather than a subsidiary article of manufacture. For example, Applicants may wish to draft a single claim to include multiple design features or perhaps to include more than one design feature from varying – even disconnected – locations within the same product.
- Interested parties should recognize that the interpretation of "article of manufacture" reflected in a design patent will be a critical factor in assigning valuation.
- In litigation, the parties will need to consider ways in which a design patent illustrates, or fails to illustrate, a unitary commercial product.

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***Teresa "Terry" Stanek Rea** is a partner in the firm's Intellectual Property Group and a director with C&M International (CMI), the international trade and investment consulting firm affiliated with Crowell & Moring. Terry is the former acting and deputy director of the United States Patent and Trademark Office (USPTO), as well as acting and deputy under secretary of commerce for intellectual property.*

Software is Patentable in U.S. Again!

Up until recently, those applying for software patents in the U.S. came to dread the word "Alice." *Alice v. CLS Bank*, 573 U.S. __, 134 S. Ct. 2347 (2014) is a Supreme Court case that set a new, narrow standard for patent eligibility on software patents. As a result, huge numbers of already issued patents were struck down, and many undergoing prosecution came to a screeching halt. No more.

Recently, the Federal Circuit has issued two decisions that breath life into the patentability of software. The first, *Enfish v. Microsoft*, reversed a decision invalidating two patents directed to a "self-referential" computer database because those patents were not directed to an abstract idea and are therefore patent-eligible under Section 101. The second, *McRO v. Bandai Namco Games America*, allowed as patent-eligible software for automatically animating lip synchronization and facial expressions of a computer-generated character. Including its recent ruling in *Enfish v. Microsoft*, the Federal Circuit has now found two different instances in which a software-based invention is patentable under Section 101 within a span of about four short months. These rulings now establish a directive that courts must put more emphasis on determining whether claims are actually directed to an abstract idea without oversimplifying the claims. In fact, the USPTO issued new guidelines on the patentability of software after the *Enfish* decision.

The more structured test to determine whether patent claims are directed to an abstract idea: do the patent claims focus on (i) a specific unconventional means or method that improves the relevant technology or (ii) are the claims instead directed to a result or effect that itself is an abstract idea merely invoking generic processes and machinery? If the answer is yes to the first question, the claims are not directed to an abstract idea and qualify as patent eligible subject matter under Section 101. If, however, the answer is yes to the second question, the inquiry continues to step two of the Alice test as the claims may be directed to an abstract idea.

Therefore, claims should not be oversimplified or watered-down to an abstract concept without considering the specific requirements of the claims. Those drafting claims, especially claims directed to software, are guided to write claims with more specificity, focusing on the "specific means or method that improves the relevant technology."

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Critical Developments for Automotive Technology Innovators: NHTSA Proposes Cybersecurity Best Practices for Automakers

As the growing hub for automotive technology, it is critical for stakeholders in Israeli automotive technology companies to know that on October 24, the National Highway Traffic Safety Administration (NHTSA) proposed a set of voluntary cybersecurity best practices for manufacturers and designers of vehicle systems and software. Consistent with its July 2015 discussion of vehicle cybersecurity, NHTSA's proposals focus on hardening system architecture to reduce the overall risk of attacks and designing safeguards to permit safe and appropriate vehicle action should attacks succeed. Utilizing a deliberately flexible approach to address "cybersecurity vulnerabilities [that] could impact safety of life," NHTSA calls for vehicle stakeholders to make cybersecurity "an organizational priority" and to develop a "risk-based approach" to confront dynamic cybersecurity threats.

Key Recommendations

By and large, NHTSA's proposed best practices build on pre-existing standards. Central is the National Institute of Standards and Technology (NIST) Cybersecurity Framework, which has already been widely accepted by public and private sector entities, including the Federal Trade Commission (FTC). The Framework employs an iterative and flexible approach to cybersecurity, focusing on the core principles of Identify, Protect, Detect, Respond, and Recover. NHTSA recommends that industry also adopt other widely accepted cybersecurity standards and practices, such as the ISO 27000 series, the Center for Internet Security (CIS) Critical Security Controls, security-by-design principles, and information-sharing through the Auto ISAC.

Among NHTSA's more specific recommendations, it urges that vehicle stakeholders:

- Tightly control software developers' post-sale access to onboard technology.
- Protect cryptographic and password keys used to access or diagnose vehicle electronic systems by enabling them each to access a single vehicle, not multiple vehicles.
- Limit internal and external ability to access diagnostic tools, or access and modify firmware, including by restricting the functionality that can be affected.
- Minimize and safeguard communications to back-end servers, communications between vehicle systems, and the vehicle's connection to wireless networks, including through use of message authentication and encryption when appropriate.
- Isolate and segment processors, networks, and external connectors, and minimize unnecessary network services.
- Maintain an "immutable log of events" to support threat assessment and to permit reconstruction of events and analysis of flaws if a breach occurs.
- Enact self-auditing programs that include periodic risk assessments, rigorous cybersecurity testing, and regular self-review.
- Anticipate and address cybersecurity issues associated with aftermarket devices and components.
- Protect serviceability and consumer choice by avoiding cybersecurity protections that "unduly restrict access by authorized alternative third-party repair services."

Legal Significance

The just-released NHTSA guidance is non-binding. It does, however, suggest that NHTSA may eventually utilize its safety mandate "to cover vehicle cybersecurity," even though no binding safety standards yet exist. Recent enforcement actions in other contexts demonstrate that best practices can become enforceable – for example, by the FTC with regard to the NIST Cybersecurity Framework, or by the California Attorney General with regard to the CIS Critical Security Controls. NHTSA's principles may also foreshadow regulatory or legislative action to come.

Still, few of the cybersecurity principles announced by NHTSA's proposed guidance are novel. Many are contained within existing best practices documents like the Auto Alliance's Cybersecurity Best Practices and the Society of Automotive Engineers' Cybersecurity Guidebook. NHTSA's guidance in essence encourages the continued development and implementation of these self-governing standards.

Broader Context

NHTSA's guidance comes in the midst of the agency's regulatory push in the cybersecurity arena. Just weeks ago, the agency issued its Federal A.V. Policy, which contained extensive cybersecurity directives tailored to highly automated vehicles. NHTSA urged Congress in January 2016 to enact heightened safety standards for motor vehicles equipped with onboard electronic systems. And in the summer of 2015, the agency ordered the recall of more than 1.4 million vehicles after two researchers wirelessly hacked into a dashboard connectivity system.

The guidance also comes after cyber hacking has gained momentum in the legal world with recent hackability suits across many industries. In the same vein, the National Conference of State Legislatures has noted that at least 26 states have considered cybersecurity legislation so far in 2016.

Conclusion

This NHTSA guidance represents the agency's latest foray into the regulation of cybersecurity standards for the auto industry. It pushes principles that for many are already best practices and continues the trend toward harmonizing federal agency interpretations of reasonable cybersecurity practices around well-established principles. While non-binding, future regulatory, legislative, or enforcement actions may transform NHTSA's proposed best practices into requirements.

Our team welcomes the opportunity to discuss NHTSA's guidance in further detail.

***Scott L. Winkelman** chairs the firm's Product Liability & Torts Group and founded and practices in the firm's Advertising & Product Risk Management Group.*

***Peter Miller** is a senior counsel in Crowell & Moring's Advertising & Product Risk Management and Privacy & Cybersecurity group. He is one of the foremost privacy experts, having served as the chief privacy officer at the FTC before joining Crowell & Moring.*

Crowell & Moring Speaks: Recent Events

Evan D. Wolff

Israel Trip

November, 2016

A cross-practice Crowell & Moring team traveled to Israel and gave two presentations on navigating privacy/cybersecurity and government contracting environments in the United States and hosted the cybersecurity leadership dinner. The first event was co-hosted by the Israel chapter of the Association of Corporate Counsel. The second event was held in conjunction with the Israel Homeland Security & Cyber Conference.

Maximizing Business Opportunities in the U.S. Market:

Understanding Trends and Best Practices in the Privacy/Cybersecurity and Government Contracting Environments

The seminar provided strategic and practical insight into how to position Israeli businesses for success in the areas of cybersecurity, data breach response, capturing government contracts (federal and state) in the U.S. Additionally, the seminar delved into how businesses can prepare for investments and mergers and acquisitions in these sectors. The program included Crowell & Moring Corporate group partners **Sam Feigin**, **Mark Kass**, Government Contracts group partner **David Robbins** and Privacy & Cybersecurity group partner **Evan Wolff**.

Navigating the Changing Privacy/Cybersecurity, Corporate and Government Contracting Environments in the U.S.

In this seminar, the Crowell & Moring team gave a presentation aimed to help in-house counsel from some of Israel's largest and most sophisticated companies better understand the legal landscape and challenges related to privacy/cybersecurity and government contracting at the federal and state levels, and how these affect deal making, investment and M&A in the private and government arenas. Topics include:

- Market trends in capturing government contracts – U.S., state and local levels
- Selling IT, homeland and defense type products into the U.S. commercial market
- Teaming and subcontracting in the government contracts space
- The compliance landscape – strategies to minimize compliance burden
- Changing information security and cyber requirements of doing business with U.S. corporations and the government
- Preparing for investments and M&A: Increasing roles of cybersecurity and privacy

The Cybersecurity Leadership Dinner

While in Israel, the Crowell & Moring team hosted a dinner with CEOs of leading Israel cybersecurity companies featuring senior members of the cybersecurity team from Booz Allen Hamilton, a leading US-headquartered global management and technology consulting firm.

Maryland/Israel Development Center Marquis Annual Event

Silver Spring, Maryland

On December 1, **Sam Feigin** chaired the organization's major annual event and served as the interviewer for a fireside chat with headline speaker, Zur Feldman, a long-time leader of the US-Israel tech/communications sector. The event was held at the Silver Spring Civic Center, just outside Washington, D.C., and attended by more than 250 corporate executives, investors and government officials. It included a showcase of approximately 30 Israeli companies with presences in Maryland and major Maryland players doing business with Israeli companies.

David Robbins presenting at the ACC Israel program in Tel Aviv

Ron Belkine, President of ACC Israel and General Counsel, Tech Mahindra Israel

*Sam Feigin & keynote speaker Zur Feldman at the Maryland/Israel Development Center Annual Event**

*Sam Feigin at the Maryland/Israel Development Center Annual Event**

*Sam Feigin at the Maryland/Israel Development Center Marquis Annual Event**

*Rami Efrati, President of Firmitas Cyber Solutions &
David Robbins at The Cybersecurity Leadership Dinner in Tel Aviv*

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About Crowell & Moring's Israel Practice

Our Israel Practice provides one-stop strategic and legal advice to Israeli companies doing business in the U.S. and multinationals partnering with Israeli companies. We handle the complete array of issues that Israel-related businesses tend to experience, from intellectual property advice on the first idea, to corporate and employment representation in the establishment and financing of the entity, to securities work on the public offering, through M&A representation in conjunction with the sale of the company.

We understand the fast-paced, cutting-edge needs of Israeli companies, investors, executives and entrepreneurs. We anticipate issues and opportunities and operate proactively, quickly, and creatively. We are deeply ensconced in the most relevant sectors including:

- High Tech
- Technology, Media & Telecommunications
- Internet
- Cybersecurity
- Aerospace & Defense
- Pharmaceuticals & Life Sciences
- Energy/Clean Tech
- Retail & Consumer Products

We handle virtually every type of legal work needed by Israeli companies doing business in the U.S. and around the world. Areas of focus include:

- Mergers & Acquisitions
- Intellectual Property
- Formation of U.S. Entities & Tax Planning
- Financing, including venture capital and debt financings
- Public Offerings
- Government Contracts
- International Litigation & Dispute Resolution
- Labor & Employment
- Advertising & Product Risk Management
- International Trade and Customs
- Joint Ventures and Franchising
- Licensing and Strategic Collaborations

We facilitate business opportunities for our clients by early identification of market openings, private and government RFPs, technology trends, investor desires, compelling technology and the like, and by making introductions to potential business partners. Our extensive relationships with Fortune 500 companies, category killers, private equity leaders, and venture capital funds enable us to introduce Israeli emerging companies to the most sought after investors and strategic partners. And our vast network in the Israeli business community allows us to introduce our industry-leading multinational clients to compelling Israeli technologies and products, and those who create them.

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If you have questions or would like additional information related to the content provided in this newsletter, please contact the authors or Sam Feigin, Chair of Crowell & Moring's Israel Practice.

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