

**BUSINESS LAW SECTION OF THE FLORIDA BAR
COMPUTER AND TECHNOLOGY LAW COMMITTEE**

The Business Law Section Annual Labor Day Retreat

Ritz Carlton Naples

Friday, September 1, 2023

CLTC: Hot Topics

1. EU-US Data Privacy Framework - EU adopted its adequacy decision for the EU-US Data Privacy Framework on 7/10/23 <https://www.dataprivacyframework.gov/s/> - The EU-U.S. DPF, UK Extension to the EU-U.S. DPF, and Swiss-U.S. DPF were respectively developed by the U.S. Department of Commerce and the European Commission, UK Government, and Swiss Federal Administration to provide U.S. organizations with reliable mechanisms for personal data transfers to the United States from the European Union, United Kingdom, and Switzerland while ensuring data protection that is consistent with EU, UK, and Swiss law.
2. SEC Adopts New Cybersecurity Disclosure Requirements - The SEC's Cybersecurity Risk Management Strategy, Governance, and Incident Disclosure Rules were officially published in the Federal Register on August 4, 2023, effective September 5, 2023. The amendments call for public companies to disclose (1) real-time disclosure of cybersecurity incidents on Form 8-K or Form 6-K, as applicable, and (2) annual disclosure of an issuer's cybersecurity risk assessment processes and the respective roles of its board of directors and management in overseeing and managing cybersecurity threats.
<https://www.federalregister.gov/documents/2023/08/04/2023-16194/cybersecurity-risk-management-strategy-governance-and-incident-disclosure>
3. Court delays enforcement of California privacy regulations - In early July, the Superior Court for the County of Sacramento held that the regulations adopted by the California Privacy Protection Agency (the CPPA) on March 29, 2023, which implemented key provisions of the CCPA/CPRA, could not be enforced until March 2024.
 - The relief for companies may be short-lived as Ashkan Soltani, Executive Director of the CPPA, said after the ruling that "significant portions" of the privacy protections under the CCPA can be enforced as of July 1, stating, "there's no vacation here from enforcement," emphasizing three areas of focus: privacy notices and policies; consumers' right to delete personal information; and the handling and implementation of consumer requests.
 - On August 4, 2023, the California Privacy Protection Agency and California Attorney General Rob Bonta filed a petition with California's Third District Court of Appeal to overturn the recent trial court decision that imposed a 12-month

delay on the enforcement of the Agency's privacy regulations.
<https://cppa.ca.gov/announcements/2023/20230804.html>

4. California Privacy Protection Agency announces its first inquiry - On July 31, the California Privacy Protection Agency (CPPA) announced a review of the data privacy practices of “connected vehicle” manufacturers and related technologies. Executive Director of the CCPA Ashkan Soltani stated in the press release that the agency is “making inquiries into the connected vehicle space to understand how these companies are complying with California law when they collect and use consumers’ data.” The vehicles in question contain tracking technology that raised data concerns under the California Consumer Privacy Act. Notably, this is the first action from the agency’s enforcement division. <https://cppa.ca.gov/announcements/2023/20230731.html>
5. Personal Jurisdiction in the Internet Age - The Ninth Circuit recently held in [*Herbal Brands, Inc. v. Photoplaza, Inc., et al.*, 2023 U.S. App. LEXIS 16904 \(9th Cir. July 5, 2023\)](#) (“*Herbal Brands*”) that a non-resident defendant who sells a physical product via an interactive website to a particular forum may be subject to personal jurisdiction in that forum, even absent any additional contacts.
6. Oregon enacts Consumer Privacy Act – On July 18, 2023, Oregon Governor Tina Kotek signed into law the Oregon Consumer Privacy Act (OCPA), making Oregon the eleventh US state to enact consumer privacy legislation and the seventh in 2023 alone. The compliance deadline is July 1, 2024.
<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB619/Enrolled>
7. DOJ Files Proposed Order Against Experian for Inability to Opt-out of Marketing Emails – On August 14, 2023, the Federal Trade Commission (FTC) announced that the Department of Justice (DOJ) had filed a proposed order against ConsumerInfo.com, Inc., doing business as Experian Consumer Services, for violation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act) and the Federal Trade Commission Act (the FTC Act). The FTC alleged that Experian Consumer Services had failed to provide, within the emails sent to customers who created free accounts, a clear and conspicuous notice of the opportunity to opt out of receiving further commercial emails from Experian Consumer Services. The proposed order requires Experian to refrain from initiating a commercial email without a clear and conspicuous opt-out mechanism and a penalty of \$650,000. <https://www.ftc.gov/news-events/news/press-releases/2023/08/ftc-charges-experian-spamming-consumers-who-signed-company-accounts-marketing-emails-they-couldnt>
8. CFPB to Launch Rulemaking on Data Brokers Misusing Sensitive Data – On August 15, 2023, the Consumer Financial Protection Bureau (CFPB) made remarks at a roundtable held by the White House National Economic Council and the White House Office of Science and Technology Policy. This roundtable focused on the risks associated with AI, specifically how AI’s need for data points can incentivize data brokers to collect information without consent or sell/share without consent. This can include information

on a person's financial status and habits. The proposals offered at the roundtable include defining certain data brokers as consumer reporting agencies, bringing them under certain legal requirements when handling the data of individuals. Also, it includes bringing "credit header data" under the same scope as consumer reports, as it sometimes includes the same information. The CFPB will also publish the proposals and alternatives in September 2023 for small business to provide input. Their proposals will be up for public comment in 2024. <https://www.consumerfinance.gov/about-us/newsroom/remarks-of-cfpb-director-rohit-chopra-at-white-house-roundtable-on-protecting-americans-from-harmful-data-broker-practices/>

9. Zoom Received Backlash Over Muddy Terms of Service Language Surrounding AI – A post on Hacker News sent Zoom customers into a spiral as the unclear language of Zoom's Terms of Service (TOS) lead them to believe Zoom was utilizing all user data to train their AI model with no method of opting out. Zoom stated this was a drafting error and it was not its intent to use customer data in a broad manner. Zoom moved to make corrections immediately and posted a blog post with an explanation of how the TOS applies to AI features (<https://blog.zoom.us/zooms-term-service-ai/>). <https://apnews.com/article/fact-check-zoom-ai-privacy-terms-of-service-06ff47e47439c2173390a4ca1389f652>

10. Regulation of AI

- [NYC Local Law 144](#) and [adopted Final Rule](#)– Which took effect on July 4, 2023, requires employers to ensure proper disclosures and perform audits on automated employment decision tools (AEDT) that assist with employment decisions of employees that reside in NYC. Employers must ensure that a bias audit was performed on the AEDT within one year of using it. This is required even if the AEDT is not being used to make the final hiring decision.
- [EU AI Act](#) - The EU AI Act is a proposed regulatory framework for the development, marketing, and use of artificial intelligence. The framework aims to legally define artificial intelligence and impose requirements for data quality, transparency, human oversight and accountability. The framework also focuses on the specific utilization of AI systems and associated risks. The Act gives citizens the right to file complaints against providers of AI systems and establishes an EU AI Office and national supervisory authorities for AI. The EU AI Act is still under discussion and has not been adopted. The EU AI Act is still under discussion and has not yet been adopted. The European Parliament voted on its position in June 2023 and EU lawmakers are now starting negotiations to finalize the new legislation, with substantial amendments to the Commission's proposal including revising the definition of AI systems, broadening the list of prohibited AI systems, and imposing obligations on general-purpose AI and generative AI systems
- The United States National Institute of Standards and Technology's [AI Risk Management Framework](#)