

Florida Bar Business Law Section
Computer Law and Technology Committee
Hot Topics

September 1, 2018 Meeting
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1. Florida passes law lifting costs associated with credit freezes (Steve)
 - a. HB 953; Laws of Florida, Ch. 2018-62
 - b. Amends section 501.005 and .0051, Fla. Stat., to prohibit consumer reporting agencies from charging a fee to a consumer (or representative) for placing, removing, or temporarily lifting a security freeze on his or her consumer report.
 - c. Went into effect 7/1/18

2. California passes Consumer Protection Act (AB 375) (Steve)
 - a. The CaCPA is the first US state law to incorporate certain provisions already enacted in Europe under GDPR, which went into effect on May 25
 - b. The CaCPA grants “consumers,” defined as California residents, more power and control over their personal information held by businesses than ever before. Under the new law, California consumers will have the power to direct businesses to delete or refrain from selling their personal information under certain circumstances.
 - c. The CaCPA requires businesses must make available to consumers two or more designated methods for submitting requests for information, including a toll-free telephone number and website if the company maintains one. Businesses must also disclose and deliver the requested information to consumers free of charge within 45 calendar days.
 - d. Businesses will be prohibited from discriminating against consumers who exercise their privacy rights by denying them goods or services, providing a different level of quality of those goods or services, or charging different prices or rates. However, the law allows businesses to charge a different price, or offer a different quality of goods or services if the difference “is directly related to the value provided to the consumer by the consumer’s data.” The new law also authorizes businesses to offer financial incentives for the collection of personal information, including payments to consumers.
 - e. The International Association of Privacy Professionals estimates that the CaCPA will affect upwards of 500,000 U.S. businesses, including those that sell goods or services to California residents even if the business is not physically located in California. Further, while the CaCPA does not apply to conduct that takes place wholly outside of California, California is estimated to make up about 13% of the U.S. marketplace, which is more than any other individual U.S. state.
 - f. The CaCPA provides for damages in data breach cases to \$750 per consumer per incident.
 - g. The bill was passed swiftly in a last-minute effort to evade a ballot measure. The ballot initiative was the first attempt at this sweeping privacy law, albeit a stricter version, and would have been voted on in November. An initiative passed by the

people would be much more difficult to amend in the future than a law passed by the legislature.

- h. Goes into effect on January 1, 2020.
3. Vermont passes data broker law (HB 764) (Steve)
- a. First-in-the-nation law imposing disclosure and data security obligations on data brokers. Extends to data brokers requirements for information security programs similar to those mandated by the Gramm-Leach-Bliley Act and the Security Rule of the Health Insurance Portability and Accountability Act.
 - i. Florida data broker Exactis (Palm Coast) recently left exposed a database that contained close to 340 million individual records on a publicly accessible server. The server contained 2 terabytes of data that appeared to include personal information on hundreds of millions of American adults, as well as millions of businesses.
 - ii. The firm gathered consumer data on 218 million individuals and 110 million households; the archive did not include credit card information or Social Security numbers.
 - b. Will impose several specific requirements on data brokers, including:
 - i. Registration: Data brokers (defined as a business or business unit that collects and sells/licenses information to third parties about consumers with whom the business doesn't have a direct relationship) have to register annually with the Vermont Secretary of State.
 - ii. Disclosures: The annual registration calls for a variety of mandatory annual disclosures.
 - c. Data brokers have to develop, maintain, and implement a "comprehensive information security program" to protect "personally identifiable information" (using the same definition found in Vermont's data breach notification statute) with administrative, technical, and physical safeguards appropriate to the size and scope of the business.
 - d. The law also includes a very specific list of "computer system requirements" that must be implemented, to the extent technically feasible, including access controls, password requirements, and encryption ("or a protocol that provides a higher degree of security") of all personally identifiable information transmitted wirelessly or over a public network, as well as on any laptops or other portable devices.
4. Development of "deep fakes" -- fake videos that look frighteningly real (Josh)
- a. Machine-learning software can cheaply produce convincing audio or video of almost anyone saying or doing just about anything. These may be "digital avatars" built from generative adversarial networks (GANs), or they may rely on simpler face-swapping technology to create "deep fakes."
 - i. <https://www.youtube.com/watch?v=cQ54GDm1eL0&feature=youtu.be>
 - b. existing law has a limited ability to force online platforms to police such content
 - c. Victims of deep fakes may successfully bring "right of publicity" claims against online platforms, thereby forcing the platforms to systematically police such content

- d. The worst instances of victims being targeted by fake news □t comfortably within classic tort claims, such as defamation
 - e. The only effective target of a defamation suit for fake news would be the online platform, like Facebook or Twitter, but they are largely immune from suit under section 230 of the Comm’ns Decency Act
5. *Falkner v. General Motors Co.*, 2:18-cv-00549-SVW-JPR (CD Cal.) (Josh)
- a. re street artists suing to protect their graffiti from infringing photographs
 - b. Falkner—known in the art world as Smash137—did a mural covering two perpendicular walls of a public parking garage in downtown Detroit, Michigan. Alex Bernstein, an independent photographer, photographed a Cadillac while the vehicle was parked at the same Detroit public parking garage in which Falkner’s mural appears. Bernstein submitted the photograph of the Cadillac featuring part of Falkner’s mural to GM, which then used the photograph in an online marketing campaign.
 - c. Falkner brought two causes of action against GM: copyright infringement and a violation of the Digital Millennium Copyright Act for the falsification, removal, or alteration of copyright management information.
 - d. The Architectural Works Copyright Protection Act allows anyone to photograph protected architectural works—and any pictorial, graphic, or sculptural (“PSG”) elements incorporated into them—without liability for copyright infringement.
 - e. whether graffiti—which typically appears without input or consent from
 - f. the building’s architect—is equivalent to a design element that was made in connection with the building itself under the AWCPA remains uncertain.
 - g. The court will hear oral argument on GM’s motion for summary judgment on 8/27/18.