



Recent Trends and Developments in Cyber and Data Breach Litigation

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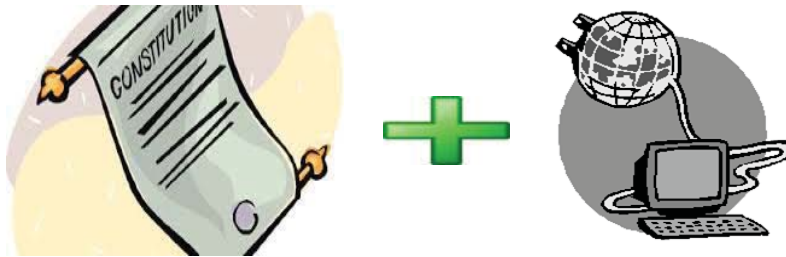
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Recent Trends and Developments in Cyber & Data Breach Litigation

- Article III: Where do we stand?
 - *Spokeo*
 - *Clapper*
- Financial Institution Plaintiffs' Bar
- Developments in Negligence Claims
- The Economic Loss Rule
- ECPA and TCPA
- Privileged Investigations
- Offers of Judgment Post-*Gomez* & Settlements
- Looking Beyond the U.S.: Cybersecurity and Privacy Risks in the E.U.

Article III: Where do we stand?

Constitutional “case or controversy”
requirement + new technology = Article III
Renaissance?



Article III: Where do we stand?

- Three Requirements
 - Injury in fact;
 - That is fairly traceable to the challenged conduct of a defendant; and
 - That is likely to be redressed by a favorable judicial decision



Article III: Where do we stand?/ Spokeo

- Background
 - Spokeo is a search engine operator
 - Allegedly published inaccurate information about plaintiff
 - Plaintiff filed FCRA class action lawsuit, seeking maximum statutory damages
 - Theory of harm: Speculated that information would affect employment, ability to obtain insurance



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Article III: Where do we stand?/ Spokeo

A screenshot of the Spokeo website's search results page. The search term 'Donald Houser' is entered in the top search bar. The page shows '319 Results found' and lists three individuals: Donald S Houser, age 48; Donald M Houser, age 51; and Donald L Houser, age 73. Each entry includes a 'Person' section with a name and age, a 'Locations' section with a list of cities and states, and a 'Relatives' section with a list of names. There are also 'Includes' icons for each entry. On the left side, there is a 'Browse locations' section with a map of the United States and a list of states with the number of results for each: Alabama (4), Alaska (1), Arizona (7), Arkansas (4), California (37), and Colorado (7). The Spokeo logo is in the top left corner, and the Alston & Bird logo is in the bottom right corner.

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2017 Essential Cybersecurity Law session
"Civil Litigation Update"