



Recent Trends and Developments in Cyber and Data Breach Litigation

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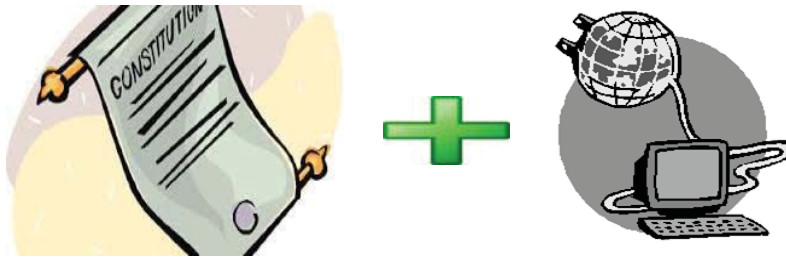
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Recent Trends and Developments in Cyber & Data Breach Litigation

- 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 page has a blue header with the Spokeo logo and a search bar containing 'Donald Houser'. Below the header, there's a map of the United States with orange location pins. To the right of the map, it says '319 Results found' and 'Donald Houser'. Below this, there are three tabs: 'Persons', 'Locations', and 'Relatives'. The 'Persons' tab is selected, showing three results: 'Donald S Houser, age 48', 'Donald M Houser, age 51', and 'Donald L Houser, age 73'. Each result has a 'Don Houser' link below it. To the right of each person result, there are sections for 'Locations' and 'Relatives'. The 'Locations' section lists various cities and states. The 'Relatives' section lists names like 'Sarah Houser', 'Christy Houser', 'Griffin Houser', and 'Donald Houser'. At the bottom of each result, there's a green button that says 'SEE RESULTS'. On the left side of the page, there's a 'Browse locations' section with a list of states and the number of results for each: Alabama (4), Alaska (1), Arizona (7), Arkansas (4), California (37), and Colorado (7).

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First appeared as part of the conference materials for the
2017 Essential Cybersecurity Law session
"Civil Litigation Update"