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PART 1

Send it.
My Password is Strong!

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Sending Bob-O's Secret Recipe



- Bob-O makes the best pizza dough anywhere, and Bomino's wants to buy the secret recipe. Bob'O's attorney, Gary Gluten, tells Bob-O, "Just send it to me in an email, because I need it today for the closing."
- Bob-O says, "Will the email be safe? I don't want to lose the recipe to hacking."
- Gary replies, "I use a commercial grade ISP, and I have never been hacked. Plus I use a strong password."
- Bob-O wants your opinion of his chances to sue Gary if the recipe is disclosed by an email error or hack.

What is the standard of care for transmitting sensitive information over the internet?



- a. Gary does not need to consider special safeguards to receive information over the internet.
- b. Gary should never send highly confidential information over the internet unless his system is encrypted and requires dual authentication.
- c. Gary can accept the highly confidential information by having Bob-O sign a waiver of damages.
- d. Gary has a duty to discuss the safeguards and alternatives whenever highly sensitive info is transmitted.

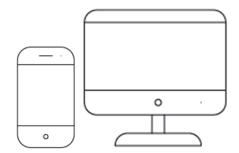
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Best" Answer: D



On May 22, 2017, the ABA Ethics Committee issued <u>Formal Opinion 477R</u> discussing a lawyer's ethical obligations to protect confidential client information when transmitting information relating to the representation over the internet.

Opinion 477R updates Formal Opinion 99-413, Protecting the Confidentiality of Unencrypted E-Mail (1999), and takes a fresh look at advances in technology and ever-increasing cybersecurity threats, and provides guidance as to when enhanced security measures are appropriate.





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Title search: Ethics Jeopardy: Keeping a Proper Ethical "Lookout"

Also available as part of the eCourse 2019 Advanced Patent Law (Austin) eConference

First appeared as part of the conference materials for the $24^{\rm th}$ Annual Advanced Patent Law Institute session "Ethics Jeopardy"