



Katten Privacy, Data and Cybersecurity *Quick Bytes*

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Illinois' Highest Court Holds That BIPA Claims Are Subject to a Five-Year Statute of Limitations, Not One Year

By Janet Widmaier, Geoffrey Young and Charles DeVore

In a significant shift in law, the Illinois Supreme Court recently held that all claims under the Biometric Information Privacy Act (BIPA) are subject to a five-year statute of limitations. This reverses prior case law that required certain BIPA claims to be asserted within one year of the alleged violations. This change in law substantially increases potential liability for employers and businesses operating in Illinois.

On February 2, 2023, in [*Tims v. Black Horse Carriers, Inc.*](#), the Illinois Supreme Court rejected the intermediate appellate court's ruling that a one-year statute of limitations applies to claims brought under some sections of BIPA, whereas a five-year statute of limitations applies to claims brought under other sections. The court held that the five-year period applies to all BIPA claims.

BIPA does not have its own statute of limitations. As a result, in *Tims*, the defendant Black Horse contended that the one-year statute of limitations set forth at 735 ILCS 5/13-201 was the proper limitations period because it applies to "[a]ctions for slander, libel or for publication of a matter violating the right to privacy." In contrast, the plaintiffs contended that the five-year catch-all statute of limitations set forth at 735 ILCS 5/13-205 applied. The appellate court, in a Solomonian ruling that left neither side happy, held that both limitations periods applied: the one-year limitations period applied to claims under those sections of BIPA that involved "publication" of biometric data (BIPA sections 15(c) and 15(d)), and the five-year limitations period applied to claims under the remaining sections of BIPA that did not involve publication (BIPA sections 15(a), 15(d) and 15(e)). [Read Katten's full post.](#)

EU-US Transborder Data Flows to Be Reviewed by the European Data Protection Board

By Trisha Sircar

On December 13, 2022, the European Commission [published](#) its draft adequacy decision recognizing the essential equivalence of US data protection standards, laying the foundations for finalization of the European Union (EU)-US Data Privacy Framework and unhampered cross-border data flows between the European Union and the United States.

By way of background, on January 16, 2020, the European Union's highest court, the Court of Justice of the European Union (CJEU), rendered its decision in the *Schrems II* case (Case C-

311/18), declaring that the [EU-US Privacy Shield](#) is invalid because it does not provide an adequate level of protection for the transfer of personal data from the European Union to the United States. The CJEU did, however, uphold the validity of standard contractual clauses (SCCs) with certain caveats. In response to this decision, former [US Secretary of Commerce Wilbur Ross said](#) that the US Department of Commerce was “disappointed” and had been corresponding with the European Commission and European Data Protection Board on this matter. Subsequently, the White House issued an [executive order](#) committing to balance US foreign intelligence agencies’ access to personal data against the privacy of EU citizens.

On January 17, 2023, the European Data Protection Board [reported](#) that it would use its next plenary meeting to discuss the proposed EU-US Data Privacy Framework. This is an important next step in cementing the proposed EU-US Data Privacy Framework and maintaining the \$7.1 trillion transatlantic economic relationship.

Five Tips for Reducing Identity Theft Risk

By Trisha Sircar and Jose Basabe

Identity theft and cybercrime are now a multi-billion dollar industry causing severe harm to the individuals affected and the institutions we trust. In recognition of this unfortunate truth and [Identity Theft Awareness Week](#), California Attorney General Rob Bonta suggested a series of tips to reduce your identity theft risk:

- Protect your Social Security number.
- Recognize “phishing” attempts and don’t take the bait.
- Protect your online information and accounts with strong passwords.
- Check your credit card bills and bank statements often.
- Take advantage of free annual credit reports.

Bonta advises that victims of identity theft contact their local police department or sheriff’s office right away. Individuals can also report identity theft and generate a recovery plan using the Federal Trade Commission’s website at [identitytheft.gov](#). [Read California Attorney General Rob Bonta’s press release](#).

REMINDER: New CLE Requirements for New York Attorneys Effective July 1, 2023

By Trisha Sircar

Effective July 1, 2023, New York attorneys must complete 1 CLE credit hour in the new [Cybersecurity, Privacy and Data Protection category](#) of credit as part of their CLE requirement. The total number of CLE credits that must be completed in your reporting cycle does not increase. For more information, visit the [CLE website](#) and review the Cybersecurity FAQs found at [this link](#).

28th Annual Conference of the Forum on Communications Law

Speaking Engagement

Trisha Sircar, Privacy, Data and Cybersecurity partner and co-privacy officer, and Entertainment and Media partner Scott Cutrow were featured speakers at the American Bar Association’s 28th Annual Conference of the Forum on Communications Law in February. Trisha presented during the “Hot Issues in Data Privacy” workshop, which covered current issues in the realm of data privacy and the impact of recent US Supreme Court decisions, the midterm elections and global developments. Scott spoke during a session titled “The Streaming Deal: End to End,” which discussed a wide variety of topics related to how streaming shows and movies make it from idea to the digital screen. [Learn more about the 28th Annual Conference of the Forum on Communications Law](#).

CONTACTS

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