



Privacy Trends to Watch in 2022

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MIAMI/CHICAGO (January 19, 2022) Hiring and retention, expansion and product development – all are strategic business interests companies need to consider when planning for 2022. But whether you are a *Fortune 500* or family-owned business, all companies should also consider adding privacy and data security risk mitigation to their prudent planning. From incident response preparation to compliance, businesses need to remain proactive in their diligence to navigate data breaches and regulatory penalties. Increased litigation risks are among the hot privacy areas for 2022, according to Al Saikali, who leads Shook, Hardy & Bacon’s Privacy and Data Security Practice, which was recently selected by *Law360* among its “Practice Groups of the Year” as a national leader in data privacy compliance and litigation defense.

“Every company is now a technology company. The threat landscape and risks associated with a data breach will only heat up as technology advances,” said Saikali. “If you’re not preparing, you’re not ready, which is not a place you want to be.”

Three hot privacy issues to watch in 2022 include the following areas:

- State legislation that creates or expands private rights of action with statutory damages;
- Increased use of the Biometric Information Privacy Act (BIPA) to file lawsuits; and
- Increasingly sophisticated business email compromises and ransomware attacks that disrupt businesses.

Law360 reported on the five most important biometric privacy litigation cases in 2020 – three of the top five cases were Shook wins for clients, including two Seventh Circuit appeals – which are shaping BIPA case law in Illinois.

“We are very pleased that three of the top five BIPA decisions cited by *Law360* are Shook wins for our BIPA clients,” said Shook Partner and Director of Shook’s Biometric Privacy Defense Team Melissa Siebert. “In each case, our BIPA appellate strategy and how we have implemented it has significantly impacted BIPA litigation, providing one of the few clear paths to victory for BIPA defendants.”

The firm has represented more than 130 companies in biometric privacy class action lawsuits, which is more than any other law firm in the United States, according to court records. Not only has Shook represented those companies, the firm obtained favorable results and victories in a type of litigation that is typically unfriendly to defendants.

In addition to Shook's biometric privacy litigation success, the firm is a national leader in state wiretap (aka "session replay") litigation. Shook obtained the first Florida federal court decisions on the application of Florida's wiretap law to the use of session replay technology. Following these key decisions, voluntary dismissals were entered in most Florida session replay cases. The decisions have also affected the law in other jurisdictions where similar litigation exists.

Shook's thought leadership has helped to shape Florida law and earlier last year was influential in ending proposed legislation that would have been the most onerous privacy law in the country. The bill, HB 969, would have created private rights of action with statutory damages for most data breaches and violations of the privacy provisions of the bill, which resembled California's Consumer Privacy Act. Shook's testimony to the Florida Senate and meetings with key political decision makers helped demonstrate the risk to Florida businesses. Ultimately, HB 969 did *not* become law.

To speak to an attorney on privacy trends to watch in 2022, contact Laura Markey, lmарkey@shb.com or 816.668.2206.

About Shook, Hardy & Bacon

Founded in 1889, Shook, Hardy & Bacon L.L.P. has 17 offices in the United States and London, with attorneys and professional staff serving clients in the health, science and technology sectors in areas ranging from product liability defense and commercial litigation to intellectual property prosecution and litigation, environmental and toxic tort, privacy and data security, and regulatory counseling.