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# Recent Enforcement Actions & Litigation: The Risk Landscape

# Key Enforcement Actions & Trends

- Federal Trade Commission
  - Focus on children's privacy
  - Monetary outcomes (fines sky rocketing)
  - Holding executives and control people personally liable
  - Increased obligations under consent orders
  
- Increased State AG Scrutiny and Parallel Activity

# FTC Enforcement Actions



- 2014 and 2016 major data breaches revealed failure to protect rider and driver data (names, licenses, bank accounts and social security numbers)
- Failed to disclose second breach
- Consent agreement covering both breaches requiring:
  - a comprehensive privacy program
  - audits over 20 year period provided to FTC
  - disclosure of breaches to local, state and federal authorities



- Smart TVs include Automated Content Recognition (**ACR**) software which logs which programs and ads are watched, paired to IP Address only
- FTC staff read a blog post about the feature and opened an investigation
- FTC defined a new category of “sensitive data” (what you watch), and required the company to disgorge \$2.2m revenues from licensing the data



musical.ly

- Failure to seek parental consent before collecting data from users under 13
- Failure to delete personal data at parents request
- Breach of COPPA
- \$5.7m settlement (Feb 2019)



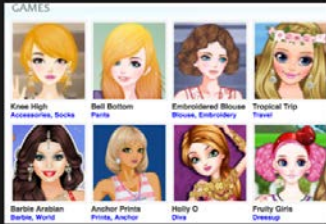
- Violation of COPPA – collecting personal information (cookies) from viewers of child-directed channels without parental consent
- \$170 million settlement – 30 x larger than previous record (Music.ly)

# State AG Actions and Trends

## *i-Dressup Shuts Down in Wake of Privacy Breach and COPPA Violatio*



By CARU Staff · August 08, 2018



i-Dressup, a fashion-themed s  
down as part of a settlement v



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## Attorney General Becerra Announces Settlement Against Equifax Providing \$600 Million in Consumer Restitution and State Penalties

Press Release / Attorney General Becerra Announces Settlement Against Equifax...



Monday, July 22, 2019

Contact: (916) 210-6000, [agpressoffice@doj.ca.gov](mailto:agpressoffice@doj.ca.gov)

Settlement Requires Increased Consumer Assistance and Ten Years of Free Credit Monitoring

**SACRAMENTO** – California Attorney General Xavier Becerra today announced a nationwide settlement against Equifax resolving allegations that the credit reporting agency improperly exposed the personal information of 147 million consumers, including 15 million Californians, after a massive data breach in 2017. The breach occurred after Equifax failed to apply a critical software fix and implement security measures that would have protected and encrypted consumers' data. Data exposed by the breach included names, Social Security numbers, birth dates, addresses, and in some instances, driver's license numbers. Equifax did not disclose the breach, which lasted from mid-May through July 2017, until September 2017. The settlement requires Equifax to pay up to \$425 million into a restitution fund for affected consumers, pay another \$175 million to states in penalties, and offer additional benefits like credit monitoring and consumer assistance for eligible consumers. In addition to other robust injunctive terms, Equifax must implement and maintain critical data security enhancements.

## Oath Agrees to \$5 Million Settlement Over Children's Privacy Online



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**Attorney General Pam Bondi News Release**

september 26, 2018  
contact: Whitney Ray  
phone: (850) 245-0150

[Print Version](#) [Twitter](#)

**\$148 Million Settlement Reached with Uber for Data Breach**

ALLAHASSEE, Fla.—Attorney General Pam Bondi, along with the 49 other attorneys general and the District of Columbia, today reached a settlement with Uber Technologies, Inc. for allegedly failing to comply with the Florida Information Protection Act and other related laws. In November 2016, Uber learned that hackers gained access to nine personal information the company maintains about its drivers, including drivers' license information. Uber subsequently tracked down the hackers and obtained assurances that the hackers deleted and never distributed the information. While reportedly no sensitive information was disseminated, the breach triggered Florida's law requiring Uber to notify affected Florida residents. Uber waited a year, until November 2017, before reporting the data breach.

**QUICK LINKS**

- File a Complaint
- Open Government
- Biennial Rule Review
- Service
- Consumer Protection
- AG Opinions
- Employment

**NEWS RELEASES**

- \$148 Million Settlement Reached with Uber
- EBT Fraud and Identity Theft Violator Co
- AG Bondi Urges Congress to Reauthorize
- Heroin Trafficker Sentenced

## Company pays \$200K after Virtua med records end up on Google

Carly Q. Romalino | Cherry Hill Courier-Post  
Published 5:41 PM EDT Nov 2, 2018

35. However, as shown below, Google retained cached indexes of the crawled files:

Oct 9, 2015 - I am writing this letter to introduce you to [REDACTED] who is a 74-year-old lady who was recently discharged from the hospital at Virtua ...  
[DOC]12162013 [REDACTED] Ltr.doc - Tojo-Vikas International  
[http://tojovikas.com/virtua.../12162013%20\[REDACTED\]%20\[REDACTED\].doc](http://tojovikas.com/virtua.../12162013%20[REDACTED]%20[REDACTED].doc)  
o Cached  
She remains under the care of Dr. Barrucco of the Virtua Cardiology Group. In general, she has no symptoms related to her oncologic condition. She denies ...  
[DOC] [REDACTED] 09222015-Ltr.doc - Tojo-Vikas International  
[http://tojovikas.com/virtua.../Dr...\[REDACTED\] 09222015-Ltr.doc](http://tojovikas.com/virtua.../Dr...[REDACTED] 09222015-Ltr.doc)  
o Cached  
PHYSICIAN: Kavita Patel, MSN FAX: Virtua Family Medicine. PATIENT: [REDACTED] DATE: 09/22/2015. DATE OF BIRTH: [REDACTED] DEAR Ms. Patel, Ms.  
[DOC]072911 [REDACTED].doc - Tojo-Vikas International  
[http://tojovikas.com/virtua/Dr.../July-2011/.../072911 \[REDACTED\].doc](http://tojovikas.com/virtua/Dr.../July-2011/.../072911 [REDACTED].doc)

Private medical information for hundreds of Virtua Medical Group patients was inadvertently made public online. Indexed information was still available through a Google search for a couple weeks after the problem was first discovered by a contractor. Provided

# Private Litigation – effectively a private “enforcement” device

- Barriers to private party access to Federal Court are eroding:
  - Article III of US Constitution requires plaintiffs to plead/prove “*injury*”
  - Data events often do not cause injury or harm in a legally cognizable way
  - Some laws—ECPA, TCPA, CCPA and Illinois biometric—provide for statutory damages which generally satisfies the standing requirement
- In the post-data crisis onslaught, a strategic plan with litigation in mind is required:
  - “Single source of truth” fact investigation and project management discipline
  - Working with technical experts on underlying data “story”
  - Managing documents and communications within attorney client privilege and attorney work product doctrine
- Discovery
- Resolution—mediation, summary judgment, trial, settlement etc.

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