

Tech Litigation Trends: AI, VPPA, and What's Next

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2026 = old statutes meeting
new technology

What We Will Cover

- Technology litigation trends in 2026
 - AI and VPPA litigation
 - What are plaintiffs targeting?
 - What are the risks?
 - How can you mitigate risk?

What's Next for Technology Litigation in 2026

- Plaintiffs continue to repurpose legacy privacy statutes for modern technology
- AI litigation increasing
 - Wiretapping and Eavesdropping
 - AI Agents
- VPPA at a crossroads
 - SCOTUS to determine who is a “consumer”
- Impact of statutory damages regimes and patchwork of state/federal laws
 - Class actions and mass arbitrations



AI Litigation: Plaintiffs Targeting AI Transcription

- AI transcription / “conversation intelligence” / scribe tools
 - Healthcare/clinical use (*Washington v. Sutter Health et al.*, Case No. 4:26-cv-03012)
 - AI notetakers/transcription tools (Otter.ai litigation related to Otter Notetaker)
 - AI and biometrics issues

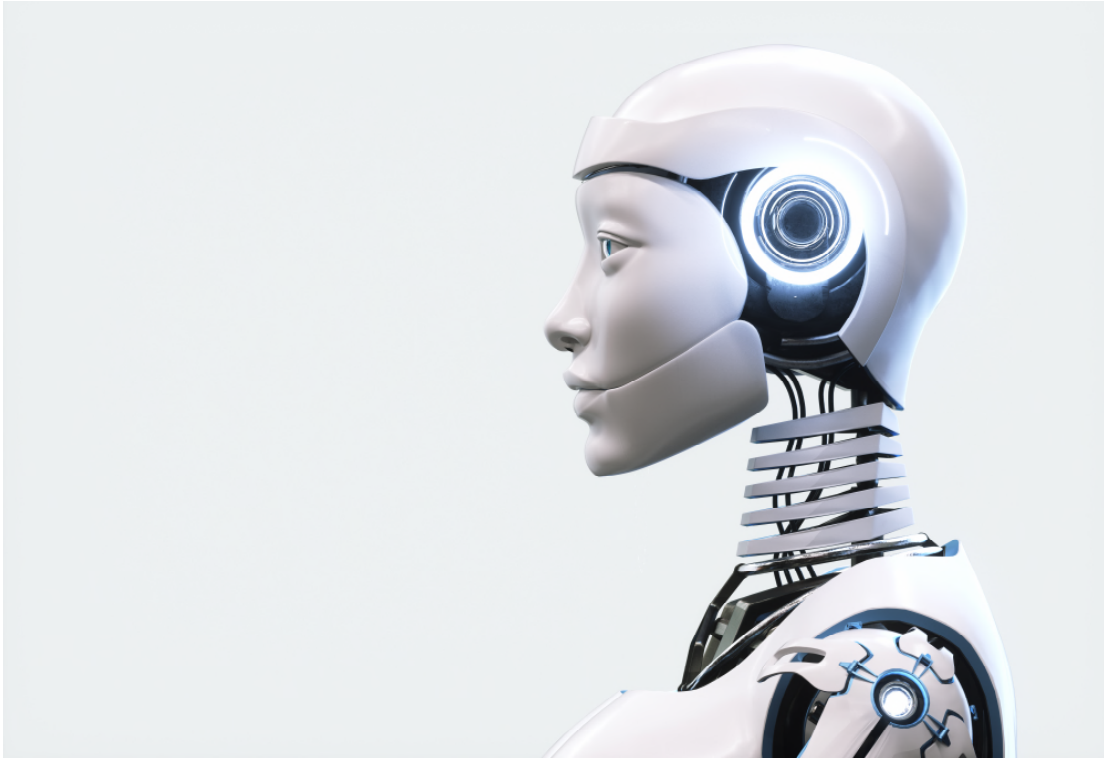
Plaintiffs Targeting AI Customer Service Products

- AI customer service products (chat + voice)
 - Customer service phone calls/call centers
 - *Taylor v. ConverseNow Technologies, Inc.*
- AI chat bots

AI Litigation in 2026: Risks/Exposure

- Plaintiffs pursuing companies that make AI products, and companies that use/deploy AI products
- Wiretapping statutes contain statutory damages
 - CIPA: \$5,000 per violation
 - ECPA: \$100 per day of violation or \$10,000 (whichever is greater)
- Leverage for settlements and mass arbitrations
- Legal uncertainty = legal risk
 - What constitutes a third party?
 - Is real-time processing “interception”?

AI Agents



- Agentic AI is the next frontier
- Who is liable for the actions of an AI agent?
 - Likely the companies that deploy

VPPA Litigation: Plaintiffs Targeting Video Content

- Statute enacted in 1988, and allows “consumers” to sue “video tape service providers” to sharing their PII without consent
- Who is at risk: companies that offer email newsletters or any video content on their websites and utilize tracking technologies
 - Not just media/entertainment companies
- Plaintiffs allege that website are sharing video viewing information with third parties

VPPA Risk/Exposure

- Statutory damages + attorneys fees = exposure
 - \$2,500 per violation
- Potentially large classes in class actions/mass arbitrations
- Legal uncertainty
 - Multiple circuit splits
 - SCOTUS to determine who is a “consumer” (*Salazar v. Paramount Global*)

What Can You Do?

Update Terms of Use & Privacy Policy

- Privacy Policy should accurately reflect website's use of tracking technologies
- Revisit dispute resolution provision
- Make sure Terms and Privacy Policy are enforceable



Mitigating Risk – AI

- Map AI data flows (what data is captured, where it goes, whether it is used for training AI models)
- Know your website!
- Scrutinize vendor relationships and agreements
- Minimize unnecessary data collection
 - Less data = less litigation exposure
- Align legal, marketing, and engineering teams

Mitigating Risk – VPPA

- Audit any pages/emails with video content
 - Control pixel behavior
 - Limit data collected/shared
- Does your data collection reflect what your policy states?

What's Next

- Deceptive Email Litigation
 - Washington Commercial Electronic Mail Act (CEMA), RCW 19.190.020
 - Maryland's Anti-Spam Law, Md. Code Commercial Law § 14-3002
 - California's Anti-Spam Law, Cal. Bus. & Prof. Code § 17529.5
- California's "Yelp Law"
- Biometrics

QUESTIONS?

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