




US privacy litigation surges, though not because of California privacy law, expert says

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By [Mike Swift](#)

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Josef Ansoerge, special counsel at law firm Cooley, said at a privacy conference* at the University of California-Berkeley that his analysis of litigation trends shows a significant upward movement in the amount of litigation. That surge came despite a slowing in the number of suits filed alleging violations of the California Consumer Privacy Act (CCPA), the landmark state privacy law that took effect in 2020.

The number of federal court suits filed in US federal courts surged to 1,799 in 2023, up from 745 in 2018, Ansoerge said (see [here](#)) in analysis based on Westlaw Litigation Analytics data.

Every year over the past year has seen an increase in federal privacy suits filed, which topped 1,000 for the first time in 2021. Between 2022 and 2023, the number of suits jumped by 43 percent, from 1,259 to 1,799, the analysis by Ansoerge found.

Very, very few of those cases — in the single digits — ever make it to trial and reach a verdict, Ansoerge found. About a third ended in a settlement, and 40 percent ended through an uncontested dismissal, while 6 percent ended through a court's dispositive order.

Of those dispositive orders, more than three-quarters were the result of a defendant's motion-to-dismiss early in the case, with 13 percent coming in a default judgment and 9 percent coming in an order on summary judgment, Ansoerge found.

Plaintiffs have continued to allege violations of multiple laws, but wiretap allegations were a major driver in 2023, particularly suits that sought to impose liability on website operators and service providers. Ansoerge said more than 120 lawsuits across nine jurisdictions were filed, with California and Pennsylvania being the "focal point" for those suits.

Suits have also alleged violations of the California Invasion of Privacy Act (CIPA), the state's wiretapping law.

Plaintiffs have become "extraordinarily creative" in the violations they are alleging," Ansoerge said. "It's almost like a creative writing exercise at this point with a lot of the complaints," he said.

California's privacy law, the CCPA, includes a limited private right of action. Before the law took effect there were fears by tech companies that it would spark a surge of costly litigation (see [here](#)). But by mid-2021, a year and a half after the CCPA took effect, it was clear that the wave of suits was not

materializing (see [here](#)). And Asorge found that in 2022, there was a decrease in the number of cases.

“CCPA is not that lucrative for the plaintiffs’ bar in terms of data breach cases,” he said. Elements of the law that require giving a company a right to cure a violation before a suit is filed have “led it not to develop in ways that people expected it to,” Ansorge said.

Danielle Pierre, a litigation counsel with Google, said there has been one impact of all the litigation: more awareness of privacy risks.

“The plus side is that everybody in the company is really concerned about privacy and that’s a good thing,” Pierre said. “I think it’s great to encourage and have those frank discussions, because user privacy is something that’s top of mind for tech companies, including Google.”

Paul Schwartz, a Berkley law professor, noted at today’s conference the absence of two major institutions from the shaping of privacy litigation – the US Supreme Court and Congress. The key federal wiretapping act, he noted, is nearly 40 years old.

“A lot of this speaks to Congressional gridlock,” Schwartz said. “We have major statutes in this area dating back to 1986. The Congress at that time had no notion of how the Internet was going to develop – how could you? – so [current laws] are quite antiquated in terms of being applied to technology that nobody could dream of at the time.”

The Illinois Supreme Court has been active in shaping interpretation of that state’s most prominent privacy law, the Biometric Information Privacy Act, Schwartz said.

But compare that with the US Supreme Court, “which has been largely absent, for better or worse, from the privacy landscape,” he said.

“12th Annual Berkeley Center for Law & Technology Privacy Law Forum,” Berkeley, California. March 6, 14-15, 2024.

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