

Troutman Pepper State Attorneys General Monitor – May 2022

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REGULATORY OVERSIGHT PODCAST

THE ROLE OF OUTSIDE COUNSEL IN CRISIS COMMUNICATIONS

By [Stephen Piepgrass](#)

In this *Regulatory Oversight Podcast* episode, Cookerly PR Founder and President Carol Cookerly joins Troutman Pepper Partner Stephen Piepgrass to examine how outside regulatory counsel can work with crisis communication firms and in-house communications teams to help navigate the public relations aspects of bet-the-business investigations and litigation. During the episode Carol and Stephen discuss best practices and how to use communications in both reactive and proactive ways to protect a client's interest and communicate effectively to multiple audiences and stakeholders.

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A CONVERSATION WITH NAAG PRESIDENT AND IOWA ATTORNEY GENERAL TOM MILLER

By [Ashley L. Taylor, Jr.](#)

In Episode 1 of *Regulatory Oversight*, Troutman Pepper Partner Ashley Taylor sits down with National Association of Attorneys General (NAAG) President and Iowa Attorney General Tom Miller to discuss NAAG's goals and his priorities as NAAG president.

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REGULATORY OVERSIGHT BLOG

Make sure to visit Troutman Pepper's [Regulatory Oversight](#) blog to receive the most up-to-date information on

regulatory actions and [subscribe](#) to our mailing list to receive a monthly digest.

Regulatory Oversight will provide in-depth analysis into regulatory actions by various state and federal authorities, including state attorneys general and other state administrative agencies, the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC). Contributors to the blog will include attorneys with multiple specialties, including regulatory enforcement, litigation, and compliance.

UPDATES IN WEB SCRAPING

NINTH CIRCUIT PROVIDES GUIDANCE ON WEB SCRAPING

By [Stephen Piepgrass](#), [Ronald Raether](#), Peter Wakiyama, [Mary Zinsner](#), [Sadia Mirza](#), Abbey Thornhill, and [Edgar Vargas](#)

On April 18, the Ninth Circuit issued its opinion in [hiQ Labs, Inc. v. LinkedIn Corporation](#)^[1] in which the court clarified its position on an important topic: whether the common practice of data “web scraping” can create criminal liability under the Computer Fraud and Abuse Act (CFAA). To be clear, the Ninth Circuit was not afforded the opportunity to directly rule on the question of whether web scraping may violate the CFAA, but in reaffirming a district court’s grant of a preliminary injunction, the Ninth Circuit strongly indicated that it does not believe the commonly used method of fetching and extracting data from websites violates federal law — even if a website has stated in its terms of service or otherwise that such activity is prohibited. Importantly, the court did not address any other potential claims that might arise from web scraping, such as intellectual property infringement claims.

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BUY NOW, PAY LATER

STATE ATTORNEYS GENERAL URGE CFPB OVERSIGHT ON “BUY NOW, PAY LATER” COMPANIES

By [Ryan Strasser](#) and Rachel Miklaszewski

On March 25, the Illinois State Attorney General Kwame Raoul, along with 18 other state attorneys general (state AGs),^[1] provided comments to the Consumer Financial Protection Bureau (CFPB) related to the CFPB’s inquiry into companies that offer consumers the opportunity to divide the cost of their purchases into multiple installments, also referred to as “buy now, pay later” (BNPL) products. The 19 state AGs provide their support and offer seven recommendations in response to the CFPB’s inquiry in their comments.

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TOBACCO UPDATES

VERMONT CONTINUES ITS CRACKDOWN ON ONLINE ENDS SELLERS

By [Bryan Haynes](#), [Agustin Rodriguez](#), [Chris Carlson](#), and [Nick Ramos](#)

Last year we [reported](#) that Vermont Attorney General T.J. Donovan’s office settled with several online sellers over alleged violations of the state’s delivery sales ban of electronic nicotine delivery systems (ENDS) (the Delivery

Sale Ban) and that we expected Vermont's scrutiny to continue. As predicted, Attorney General Donovan's office recently [announced](#) two more settlements with online sellers, resulting in a total of 23 settlements with online ENDS sellers for a total of \$833,750 in civil penalties dating back to December 2020.

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RIGHT TO REPAIR MOVEMENT

MANUFACTURERS RESPOND TO THE RIGHT TO REPAIR

By [Bryan Haynes](#) and [Mary Grace Metcalfe](#)

The right to repair movement continues to gain traction internationally as local, state, federal, and supernational bodies further move to support broader consumer access to repairs with both carrot and stick. In Europe, the Data Act proposed by the European Commission on February 23 specifically characterizes the access to user-generated data required for repair or maintenance as reinforcing the “right to use and dispose of lawfully acquired possessions.”^[1] Meanwhile in the wake of a local program in which the city of Vienna directly subsidized the costs of repairing rather than replacing household items and furniture,^[2] a national repair subsidy specifically targeting electronic waste is expected to take effect in Austria this month.^[3] Stateside, a local repair subsidy following the Vienna model has recently been introduced in Portland, OR,^[4] while, as previously reported,^[5] more than half of states had pending legislation addressing the right to repair in 2021.

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THE CLASH OF TWO MOVEMENTS

By [Stephen Piepgrass](#) and Abbey Thornhill

Stephen Piepgrass and Abbey Thornhill of Troutman Pepper Hamilton Sanders LLP examine the growing movement to give consumers the “right to repair” vehicles themselves alongside the automotive industry's emerging market for subscription-based features.

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CRYPTO UPDATES

WORLD'S LARGEST CRYPTOCURRENCY EXCHANGE WINS DISMISSAL OF CLASS-ACTION LAWSUIT

By [Keith J. Barnett](#), [Jay Dubow](#), [Kalama Lui-Kwan](#), [Ethan G. Ostroff](#), [Ghillaine Reid](#), [Carlin McCrory](#), Addison Morgan, and [Elizabeth Waldbeser](#)

On March 31, a New York federal court [dismissed](#) a proposed securities class-action lawsuit filed against Binance, the world's largest cryptocurrency exchange. The lawsuit, one of a host of similar actions brought against cryptocurrency exchanges in 2020, was filed by token buyers who purchased cryptocurrency on Binance's platform.

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US TREASURY SECRETARY JANET YELLEN DISCUSSES DIGITIZATION OF THE AMERICAN ECONOMY; STATES DIGITAL ASSET REGULATION SHOULD BE “TECH NEUTRAL”

By [Keith Barnett](#), [Kalama Lui-Kwan](#), [Ethan Ostroff](#), [Carlin McCrory](#), and Addison Morgan

On April 7, in front of American University’s Kogod School of Business Center for Innovation, Secretary of the Treasury Janet Yellen [addressed](#) the Biden administration’s forthcoming legislative approach to digital assets, as we discussed [here](#), as well as the digitization of the American economy, which Yellen assessed through the lens of five lessons she suggests are often implicated by emerging technologies generally: (1) responsible innovation; (2) appropriate guardrails; (3) monetary sovereignty; (4) technological neutrality; and (5) interagency and international collaboration.

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SENATE BANKING COMMITTEE RANKING MEMBER DRAFTS STABLECOIN REGULATORY FRAMEWORK EXEMPTING STABLECOINS FROM SEC REGULATION

By [Keith Barnett](#), [Kalama Lui-Kwan](#), [Ethan Ostroff](#), [Carlin McCrory](#), and Addison Morgan

On April 6, Senator Pat Toomey (R-PA) released a draft of his proposed stablecoin legislation titled, Stablecoin Transparency of Reserves and Uniform Safe Transactions Act, or the Stablecoin TRUST Act. Toomey, the ranking member of the Senate Banking Committee, has been a vocal proponent of blockchain innovation, and his recent bill calls for a deft regulatory touch on stablecoins:

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CYBER FRAUD

On February 28, the U.S. Department of Justice (DOJ) agreed to a \$930,000 [settlement](#) with Comprehensive Health Services (CHS) to resolve False Claims Act allegations. The resolution represents the department’s first settlement under the False Claims Act since instituting its Civil Cyber Fraud Initiative in October 2021.^[1] This is a watershed moment in the department’s approach to cybersecurity that highlights its renewed focus and commitment to holding vendors that do business with the federal government accountable for meeting federal cybersecurity requirements.

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FREEDOM OF INFORMATION ACT IMPLEMENTATION

HOUSE OVERSIGHT AND SENATE JUDICIARY COMMITTEES SCRUTINIZE AGENCIES’ FOIA IMPLEMENTATION, RESULTING IN DOJ GUIDELINES AND TESTIMONY

By Robert Claiborne, Matt Fay, and [Stephen Piepgrass](#)

With the House Committee on Oversight and Reform and the Senate Committee on the Judiciary raising concerns over agencies' FOIA compliance, the U.S. Department of Justice has responded with FOIA guidelines and related testimony before the Senate Committee on the Judiciary.

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ANTITRUST UPDATES

ANTITRUST BILLS SEEK TO BREAK UP BIG TECH

By Ketan Bhirud and [Namrata Kang](#)

On March 16, Senator Elizabeth Warren and Representative Mondaire Jones introduced the [Prohibiting Anticompetitive Mergers Act](#) in the Senate and the House. The bill provides the Federal Trade Commission (FTC) and Department of Justice (DOJ) with the authority to reject what they refer to as the most “anticompetitive” mergers without requiring a court order, aligning the agencies with their international counterparts in Europe that already retain the power to block mergers without external assistance.

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HIPPA SAFE HARBOR ACT

HHS/OCR SEEKS COMMENT ON SCOPE AND IMPLEMENTATION OF “RECOGNIZED SECURITY PRACTICES”

By [John West](#) and [Bonnie Gill](#)

On April 6, the U.S. Department of Health and Human Services, Office of Civil Rights (HHS) [called for public comment](#) on an existing statutory provision that provides a safe harbor for entities that have voluntarily implemented “recognized security practices” as part of their compliance with the Health Insurance Portability and Accountability Act (HIPAA). The scope of the safe harbor has practical and legal consequences for HIPAA-regulated entities subject to enforcement actions, audits, and fines from HHS.

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