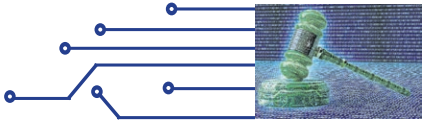


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TOP CYBER LAWYERS 2019



Ian C. Ballon

Greenberg Traurig LLP

East Palo Alto and Los Angeles

Practice: Intellectual property and internet law

Specialties: Data privacy defense, internet class action defense, security breach defense

Ballon is co-chair of Greenberg Traurig's global intellectual property and technology practice group.

He authored the 2008 cybersecurity reference, "The Complete State Data Security Breach Handbook," and he drafts annually an updated data security chapter for his "E-Commerce & Internet Law: Treatise with Forms" second edition. This year's chapter, to be published at the end of January, is more than 1,200 pages.

"Brevity is not my strong suit," he said, though he points out that the lengthy revision is largely the fault of ever-changing state breach notification statutes, which he examines in detail.

"Each year the legislatures in different states consider what other states are doing and change their laws to fit," he said. "California is often a driver of this. The modifications

and changes are excruciatingly painful to address. The entire cybersecurity part was quite a challenge for me, because I do have a day job."

In that job in 2018, he became one of the few lawyers to have been on the winning side in one federal circuit and on the losing side in another circuit in cases considering an identical data privacy question. Both cases, at the 9th U.S. Circuit Court of Appeals and at the 3rd Circuit, examined class actions that accused corporate defendants of sending text messages via autodialer, allegedly violating the Telephone Consumer Protection Act of 1991 or TCPA.

"The circuits disagreed," he said.

A 3rd Circuit panel handed Ballon and client Yahoo Inc. a win on summary judgment on the class claims June 28, holding that the plaintiffs—seeking damages in the eight figures—failed to show that Yahoo's



email SMS service had the present capacity to function as an autodialer. *Dominguez v. Yahoo Inc.*, 17-1243 (3rd Cir., filed April 10, 2013).

The 9th Circuit on Sept. 20 saw it the other way, vacating a district judge's grant of summary judgment to Ballon's fitness center client and finding that the business' automatic text messaging system fit the statutory definition of an autodialer. The panel explicitly rejected the 3rd Circuit's reasoning in *Dominguez*. *Marks v. Crunch San Diego LLC*, 14-56834 (9th Cir., filed Feb. 14, 2014).

Now Ballon is drafting a cer-

tiorari petition asking the U.S. Supreme Court to resolve the circuit split. If the justices take up the issue, it could influence an explosion in TCPA texting litigation, much of which has involved Ballon. He was one of the first to contest and notch defense wins, rather than to settle cases, on the topic by challenging the applicability of the TCPA to technology platforms.

"It is unusual to have been on both cases," Ballon noted. "Cert petitions are interesting, and we've got a lot to say."

— John Roemer