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Relevant Cases

1. TransUnion LLC v. Ramirez (2021)
    a. This Supreme Court decision clarified that when Congress has provided a cause of action in a federal law, the mere fact that the law has been violated will not, standing alone, provide a right to sue in federal court. Kavanaugh stated that "[o]nly those plaintiffs who have been concretely harmed by a defendant's statutory violation may sue that private defendant over that violation in federal court."
2. Spokeo, Inc. v. Robbins (2016)
    a. Supreme Court case emphasizing that not all violations of a statute are suffice to create an injury in fact, even if the statute provides a private right of action. The decision specifically states that "bare procedural violations" are not "legally cognizable."
    b. Explanatory analysis article: https://www.classdefenseblog.com/2016/05/3824/
3. Clapper v. Amnesty International USA (2013)
    a. This case states that plaintiffs have to argue that identity theft is a concrete injury and that the risk is sufficiently imminent to make it a "substantial risk," in the case that they lack a private right of action as well as a statutorily created interest.

Laws that Feature Private Rights of Action in Privacy Field

1. Biometric Information Privacy Act (Illinois)
2. California Consumer Privacy Act
    a. Cathy Cosgrove, CCPA Litigation: Shaping the Contours of the Private Right of Action, INT'L ASS'N OF PRIV. PROS. (June 8, 2020), https://iapp.org/news/a/ccpa-litigation-shaping-the-contours-of-the-private-right-of-action/[https://perma.cc/95WN-WSSB]
3. New Hampshire Information Protection Bill
    a. Illman, Erin Jane. "Data Privacy Laws Targeting Biometric and Geolocation Technologies." Business Lawyer, vol. 73, no. 1, 2017, p. 191+. Gale General

OneFile, link.gale.com/apps/doc/A530004997/ITOF?u=duke_perkins&sid=summon&xid=74881aef.

4. Alaska and Nevada genetic privacy laws
    a. Spector, Noah. "Envisioning the FTC as a Facilitator of Blockchain Technology Adoption in the Direct-to-Consumer Genetic Testing Industry." Vanderbilt Journal of Entertainment and Technology Law, vol. 23, no. 3, 2021, p. 678+. Gale General OneFile, link.gale.com/apps/doc/A665415453/ITOF?u=duke_perkins&sid=summon&xid=d011f778.

Articles Explaining Advantages of Private Right of Action

1. Urness, Devin. "The Standing of Article III Standing for Data Breach Litigants: Proposing a Judicial and a Legislative Solution." Vanderbilt Law Review, vol. 73, no. 5, 2020, p. 1517+. Gale Academic OneFile, link.gale.com/apps/doc/A643410897/AONE?u=duke_perkins&sid=summon&xid=13ccdadd.
    a. This article analyzes the legal avenues for data breach litigants to assume private rights of action. It analyzes the chain of reasoning that litigants must use to find standing under Spokeo, and argues that it creates wide uncertainty by relying too heavily on interpreting the statutory text, leading litigants to low rates of success to establish standing using private rights of action. The article examines how different circuits have responded to these arguments, specifically the Ninth Circuit's indecisiveness about whether FCRA creates a statutory right to information and the Third Circuit's decision in re Horizon that plaintiffs did have standing under FCRA. Both cases relied on identifying a link between the interest that Congress intended to protect and the common law privacy right. The article next analyzes the Third Circuit's opposing decision in amal v. J Crew Group (2019) that the injury in common law privacy torts requires the dissemination of personal information to a third party under FACTA. The author criticizes state data breach notification laws that require "actual damages" to enforce statutory violations through private rights of action, forcing plaintiffs to attempt to demonstrate substantial risk of future harm.
    b. The article concludes by arguing for a federal private right of action in privacy legislation. In the author's vision, this legislation must imply that even inadvertent data breaches must implicate an invasion of privacy based on a "close relationship" to a traditionally recognized harm, without requiring a perfect analog. He further suggests language to define the scope of a private right of action as to "protect against the unauthorized access and exfiltration, theft, or

disclosure of a consumer's nonencrypted and nonredacted personal information." He cautions that this language would still require the courts to make the connection between the common law privacy torts and the interest created by Congress.

2. Alec Wheatley, Do-It-Yourself Privacy: The Need For Comprehensive Federal Privacy Legislation with a Private Right of Action, 45 Golden Gate U. L. Rev. 265, 283-84 (2015) https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=2150&context=ggulrev.
    a. This article argues for the benefits of including a private right of action in new federal privacy legislation. Wheatley says tha giving consumers a private right of action without having to show damages would allow more privacy violations to be remedied in court, creating a new wave of judicial precedent. He additionally argues that it would result in improved transparency of corporate practices, would save plaintiffs from trying to force their arguments to fit outdated statutes, and would ideally provide for statutory damages, which would allow potential plaintiffs to recover for the aggravation suffered due to having their privacy violated. Finally, it argues that a new federal law providing a private right of action would strengthen consumers' confidence that their rights will be protected and encourage them to continue to participate in the developing digital economy, even as new technologies connect us more deeply.
3. Rivera, Michael A. "Face Off: An Examination of State Biometric Privacy Statutes & Data Harm Remedies." Fordham Intellectual Property, Media & Entertainment Law Journal, vol. 29, no. 2, Winter 2019, p. 571-610. HeinOnline. https://heinonline.org/HOL/P?h=hein.journals/frdipm29&i=589.
    a. This article compares biometric privacy laws across the states, including California, Louisiana, Massachusetts, Alaska, and Illinois. It analyzes the debate around high damage floors, saying that they are good even for small businesses which are most at risk of cyberattack. He also examines the debate over actual injury, looking at McCollough V. Smarte Carte, Inc., Monroe v. Shutterfly, Inc., and Rosenbach v. Six Flags. In its analysis of Rosenbach, the author specifically notes that the Illinois State Supreme Court's declaration that a per se violation of BIPA is harm sufficient to form a cause of action is exceptionally pro-consumer.
4. Soukup, Andrew, et al. "Fair Credit Reporting Act and Financial Privacy Update: 2018." Business Lawyer, vol. 74, no. 2, 2019, p. 495+. Gale General OneFile, link.gale.com/apps/doc/A604316113/ITOF?u=duke_perkins&sid=summon&xid=06cdbd67.
    a. This article explains how the California Attorney General must act as the primary enforcer of the law while it lacks a private right of actions for most statutory violations. The attorney general may seek civil penalties of up to $2, 500 for each violation or $7, 500 for each intentional violation. There is, however, a limited

private right of action for data breaches, but only if the consumer's unencrypted or non-redacted personal information is accessed and exfiltrated, disclosed without authorization, or stolen, and the breach resulted from the business failing to implement and maintain reasonable security procedures or practices appropriate to the nature of the information. The consumer is also required to give the business thirty days' written notice, and the business has the opportunity to cure the alleged violation.

5. Kerry, Cameron, and John B Morris, Jr. "In Privacy Legislation, a Private Right of Acton Is Not an All-or-Nothing Proposition." Lawfare, June24, 2020. https://www.lawfareblog.com/privacy-legislation-private-right-action-not-all-or-nothing-proposition.
    a. Morris and Kerry recommend a targeted remedy allowing individuals to sue for certain violations of baseline privacy legislation. They suggest that this remedy limits recovery to "actual damages." They believe that this remedy should require a "knowing or reckless" liability for most statutory provisions, a "willful or repeated" standard for more procedural provisions, and other procedural filters. To arrive at this suggestion, the other analyze reasons in favor of private lawsuits; namely, to allow redress for injuries related to their interest to privacy and to enable individuals to be force multipliers to the FTC and state attorney generals. They suggest three tiers for liability, tiers for damages, and procedural filters.
6. Bloom, M. (2018). Protecting Personal Data: A Model Data Security And Breach Notification Statute. *St. John's Law Review, 92*(4), 977-1000. Retrieved from https://login.proxy.lib.duke.edu/login?url=https://www-proquest-com.proxy.lib.duke.edu/scholarly-journals/protecting-personal-data-model-security-breach/docview/2228667417/se-2?accountid=10598.
    a. After analyzing how states are divided about the issue of whether a private right of action exists after a data breach, the author argues that a federal data security and breach notification statute must include a private right of action. It analyzes the Seventh Circuit's decision in Pisciotta v. Old National Bancorp and a similar case in the D.C. Circuit.
    b. The author examines the counterargument that preemption provisions do not preempt common law rights of action, but argues that it is still unclear if individuals even have common law remedies for pursuing individual litigation due to this standing issue. Additionally, the author debates the contention that a future risk of identity theft is not a cognizable injury and does not provide an individual the right to recover. However, the author argues that response ignores the reality consumers face and does nothing to help consumers who are exposed to greater financial risk because an entity failed to comply with notification requirements. He believes that it forces consumers to assume the costs of preemptive measures themselves or to wait until the risk of identity theft has been

actualized to bring suit and suffer enduring and sometimes catastrophic consequences.

7. Aubuchon, Alyssa L. "Getting Into Court When The Data Has Gotten Out: A Two-part Framework." Washington University Law Review, vol. 98, no. 4, 2021, p. 1289+. Gale General OneFile, link.gale.com/apps/doc/A662343555/ITOF?u=duke_perkins&sid=bookmark-ITOF&xid=1f05e3b7.
    a. This article argues that FCRA is ineffective in protecting consumer privacy without a private right of action. However, it also argues that the creation of a PRA in FCRA would raise issues about standing. The author argues that, given the current state of the standing doctrine as it pertains to intangible harms post-Spokeo, it is unlikely that the federal courts would actually reach the merits of many data privacy cases even if these cases were brought by the consumers themselves. The author goes on to argue that the Supreme Court should recognize that the harms caused by data breaches are sufficiently "particularized" and "concrete." Then, the article argues that, given the inconsistencies of federal court standing jurisprudence, there should be discussion of a uniform state law that gives consumers a private right of action.
8. "Enforcing Digital Privacy." Harvard Journal of Law & Technology, vol. 33, no. 1, 2019, p. 311+. Gale General OneFile, link.gale.com/apps/doc/A620471959/ITOF?u=duke_perkins&sid=summon&xid=21cb0156.
    a. This article argues in favor of a reduced private right of action. Its reasoning examines industry's antagonism towards the private right, the need to deter and compensate for privacy harms, and the ability for businesses to predict their data breach liability. The article also argues that a narrowed private right of action minimally minimizes consumer rights. The author responds as follows:
        i. "But this objection presupposes that private data breach litigation actually remedies privacy harms, compensates victims, and validates consumer autonomy. Currently, circuit splits and uncertain outcomes hinder the industry from calculating costs and therefore investing in data security. And as Eric Goldman notes, class action suits often enrich the plaintiffs' bar and class representatives, but deprive the remaining plaintiffs of compensation. This compensatory failing aside, Goldman argues, privacy class action suits fail to validate plaintiffs' autonomy. The control and choice of how a suit proceeds often lies overwhelmingly with the lawyers. Despite autonomy dominating privacy theory, privacy class actions may not actually enhance consumer autonomy. Although the Note's regime also deprives data breach victims of direct control, it at least empowers the FTC--ostensibly an agency democratically accountable to victims--to

obtain meaningful compensation for victims and vindicate their rights. And by associating specific costs with unlawfully disclosing data, the proposed regime should induce cost-effective data security measures commensurate with the expected value of a breach's penalties. Consumers may therefore accept a nominal autonomy loss for a real improvement in outcomes.

9. Justin H. Dion & Nicholas M. Smith, Consumer Protection--Exploring Private Causes of Action for Victims of Data Breaches, 41 W. NEW ENG. L. REV. 253, 267--72 (2019)
    a. This article suggests that private rights of action for data breach victims would resolve disputes about standing across circuits.
10. Michael Hopkins, Comment, Your Personal Information Was Stolen: That's an Injury: Article III Standing in the Context of Data Breaches, 50 U. PAC. L. REV. 427 (2019)
    a. This article proposes language for a private right of action based on California's data breach notification law as it stood in 2015.
11. Timothy J. Van Hal, "Taming the Golden Goose: Private Companies, Consumer Geolocation Data, and the Need for A Class Action Regime for Privacy Protection," 15 Vand. J. Ent. & Tech. L. 713, 716 (2013) [hereinafter "Taming the Golden Goose"].
    a. Can't access but would like to be able to!

Articles Explaining Disadvantages of Private Right of Action

1. Brennan-Marquez, Kiel. "Beware Of Giant Tech Companies Bearing Jurisprudential Gifts." Harvard Law Review, vol. 134, no. 8, 2021, p. F434+. Gale Academic OneFile Select, link.gale.com/apps/doc/A666333821/EAIM?u=duke_perkins&sid=summon&xid=61d1a6fe.
    a. The Supreme Court has, of course, long been hostile to class actions (46)--an especially important vehicle in the privacy context, where injuries are typically small and diffuse. (47) But that is only the beginning. In recent years, the Court has expressed doubt about Article III standing for privacy claims, even in settings where Congress has sought to create private rights of action, (48) and at least one member of the Court has signaled that cy pres remedies--another important tool in privacy litigation--may soon be on the chopping block. (49) Put all this together, and it is not hard to see the appeal of having giant tech companies litigating on behalf of their users.
2. Alpert, David. "Beyond Request-and-respond: Why Data Access Will Be Insufficient To Tame Big Tech." Columbia Law Review, vol. 120, no. 5, 2020, pp. 1215–1254. JSTOR, www.jstor.org/stable/26921064. (this seems like it might be about private right to data access, not private right of action)
    a. This article compares the CCPA's remedies to those provided by FOIA. It uses lessons from FOIA to identify likely shortcomings in a request-and-respond data

access regime (like that potentially created by CCPA). It claims that it will create an overreliance on individuals.

   b. It calls the private right of action in CCPA a “seismic shift” from sector-specific regulation to a “comprehensive data privacy regime.” It notes how FOIA requests can be individually litigated all the way up to the Supreme Court,80 while the CCPA offers no private right of action for an unanswered request or unresponsive reply.81 Many of FOIA’s key burdens, such as the long delays in receiving a response and the need to threaten litigation,82 seem inapt when applied to the CCPA, where auto- mated responses can be provided in days or even hours. As the CCPA only applies to an individual’s records, it also largely avoids FOIA’s catch-22 prerequisite knowledge problem, where a requester must know (and spec- ify) enough about the government program they are requesting records about to get a response, but may not yet possess sufficient knowledge with- out initially accessing those record

3. Epstein, Richard A. "Property Rights: Long and Skinny." International Journal of the Commons, vol. 14, no. 1, 2020, p. 567+. Gale Academic OneFile, link.gale.com/apps/doc/A637798429/AONE?u=duke_perkins&sid=summon&xid=c5b89f7a.
   a. This paper explores the relationship between private and common property. It spends some time analyzing the National Environmental Policy Act of 1970 (NEPA), which has revolutionized the permitting process. The implicit premise of NEPA is that information should be collected before any administrative decision is made to allow for the completion of any major project. Initially, the legislation allowed for private parties to present their views on proposed projects, but it made no provision for any private right of action to challenge an administrative decision after it had been made. The effect of that approach would have been to give greatest weight to those parties whose views lay in the middle of the distribution, so that a few intense voices in opposition, e.g., Earthjustice, could not have delayed the completion of the project, even if they might have influenced the conditions on which these permits were granted.
4. Andrus, Mark T. "Not without my consent: preserving individual liberty, in light of the comprehensive collection and consolidation of personally, identifiable information." Journal of Internet Law, vol. 20, no. 9, 2017, p. 1+. Gale General OneFile, link.gale.com/apps/doc/A487001947/ITOF?u=duke_perkins&sid=summon&xid=5e30ed2d.
   a. This article argues that deterrence, and therefore industry standards, presumably are ineffective. The article acknowledges that private causes of action must exist to allow affected individuals sufficient recourse in deregulated environments. However, it also says that private causes of action, including class actions, currently are weak and unlikely to allow the prevention and consolidation of such

individualized registries. Thus, public policy is essential to preserving societal-wide liberties in preventing the creation of such registries. Therefore, the people need Congress to act by enacting comprehensive privacy laws.

5. Tarr, Madelyn. "Accountability Is The Best (Privacy) Policy: Improving Remedies For Data Breach Victims Through Recognition Of Privacy Policies As Enforceable Agreements." The Georgetown Law Technology Review, vol. 3, no. 1, 2018, p. 162+. Gale Academic OneFile, link.gale.com/apps/doc/A572943416/AONE?u=duke_perkins&sid=summon&xid=8e19155f.
    a. This article briefly argues that the overturned rules regulating ISPs are the ideal starting point for federal regulation with parallels to the disclosure regime, opt-in provisions, and requirements on data protection. It contrasts these to private rights of action with damages limited to mitigation expenses and attorney fees.

Articles from Other Areas of Law

1. Smith, Bruce, "Private Remedies for Violation of Environmental Laws." Morris, Manning, and Martin LLP, https://www.mmmlaw.com/media/private-remedies-for-violation-of-environmental-laws/
    a. This article explains the privacy remedies available under environmental laws. Under two principal federal statutes, private parties may bring lawsuits against responsible parties for clean-up costs provided the EPA or GEPD are not already pursuing clean-up remedies. The Resource Conservation and Recovery Act of 1976 ("RCRA") regulates all persons and businesses which generate, transport, treat or dispose of hazardous substances. The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") governs the clean-up of hazardous substances released at abandoned sites. Both statutes authorize private suits against persons or entities responsible for releasing hazardous substances.
2. Diller, Paul A. "The city and the private right of action." Stanford Law Review, vol. 64, no. 5, 2012, p. 1109+. Gale General OneFile, link.gale.com/apps/doc/A294505853/ITOF?u=duke_perkins&sid=summon&xid=53e3f118.
    a. This article argues that the prohibition of cities to create ordinances that create private rights of action limits the effectiveness and social impact of local policy. It argues that private enforcement would increase deterrence and enable retribution and personal dignity. It furthermore argues that locally created private rights of action would allow an individual to vindicate a locality's interest in declaring certain conduct wrongful. The article next analyzes some locally created private

rights of action: New York City's right for victims of gender-motivated violence, Cincinnati's clean air ordinance, Cleveland's consumer protection ordinance, LA's ordinance for harassed cyclists, and Miami-Dade County's ordinance on behalf of cable companies against landlords, among others. Diller then makes arguments that private rights of action increase rule compliance more effectively than public enforcement alone and increase regulatory compliance because of the creation of a finer line between conduct and punishment.

3. Todd, Jeff. "A Fighting Stance In Environmental Justice Litigation." Environmental Law, vol. 50, no. 3, 2020, p. 557+. Gale General OneFile, link.gale.com/apps/doc/A638650937/ITOF?u=duke_perkins&sid=summon&xid=75f4b634.
    a. This article explains the Supreme Court's ruling in Alexander v. Choate that Title VI of the Civil Rights Act does not include an implied private right of action to enforce Section 602 regulations, nor does Section 602 create a private remedy.
    b. Also explained in Ahlers, Christopher D. "Race, ethnicity, and air pollution: new directions in environmental justice." Environmental Law, vol. 46, no. 4, 2016, p. 713+. Gale General OneFile, link.gale.com/apps/doc/A486712368/ITOF?u=duke_perkins&sid=summon&xid=7a1d1f3e. (Writing for the 5-4 majority, Justice Scalia reasoned that the text of Title VI does not expressly or impliedly create a private right of action for discrimination based on disparate impact.)
4. Ostermann, S. L. (2019). Regulatory pragmatism, legal knowledge and compliance with law in areas of state weakness. Law & Society Review, 53(4), 1-35. Retrieved from https://login.proxy.lib.duke.edu/login?url=https://www-proquest-com.proxy.lib.duke.edu/scholarly-journals/regulatory-pragmatism-legal-knowledge-compliance/docview/2319456827/se-2?accountid=10598
    a. This article argues that, using private rights of action, lawyers become agents of the state whose interests are aligned with bureaucrats. Private rights of action thus offer solutions to principal-agent problems between the state and its bureaucrats. For instance, in the United States, the "private rights of action"-discussed at length in "The Litigation State" (Farhang 2006)-are a paradigmatic example. In conservation, the environment cannot advocate for itself or hire a lawyer and a bureaucracy might not fill that role as effectively (or cheaply) as other actors. A "private right of action" in this context gives lawyers an incentive to act as environmental advocates; if they win, they are paid for time spent.
5. (2019) No. 18–251 In The Supreme Court of the United States, Journal of Legal Medicine,39:3, 299-334, DOI: 10.1080/01947648.2019.1653715
    a. This note analyzes the implications of HIPAA's lack of a private right of action. It explains that HIPAA violations often result in civil fines or criminal prosecution in the Department of Justice because HIPAA does not have a private right of

action. A majority of courts that have considered how state law negligence claims cannot be based on a violation of HIPAA because HIPAA does not provide a private cause of action. The comment goes on to argue that Congressional intent in passing HIPAA and, later, the Health Information Technology for Economic and Clinical Health (HITECH), indicates that HIPAA was not meant to create a private cause of action because though Congress added regulatory and enforcement mechanisms, it still resisted creating a private right of action.

6. Levy, Joshua A. "Lessons from the private enforcement of health care fraud." *American Criminal Law Review*, vol. 53, no. 1, 2016, p. 117+. *Gale OneFile: LegalTrac*, link.gale.com/apps/doc/A443887855/LT?u=duke_law&sid=summon&xid=84a8a5dd.
    a. The author argues that, given the possibility of private rights of action increasing the number of SEC enforcement actions against FCPA defendants, lawmakers should examine the impact of health care fraud qui tam actions on criminal investigations of health care fraud.
    b. 'Under the status quo, FCPA criminal and civil investigations work hand-in-hand to benefit each other, within the limitations of the law and ethics. The government thus already benefits from the interworking of parallel criminal and civil proceedings in FCPA cases, even without a private right of action under the FCPA. Also under the status quo, whistleblowers can bring evidence of FCPA violations to the attention of the government through the Dodd-Frank Act's whistleblower provisions (and to a lesser extent, albeit indirectly, through other lawsuits). At present, the SEC and the Department of Justice can and do control which cases go forward and which cases do not. A private right of action could substantially erode, if not destroy that control. The monetary incentive that would accompany a private right of action could create a cottage industry of such litigation, whereas Congress and the press are currently limited in terms of focus and, for the moment, sources that lack a financial incentive to come forward with claims."
7. Calvaruso, A. L., & Marciano, T. J. (2021). New year brings expanded protections for publicity and privacy rights under new york law. Intellectual Property & Technology Law Journal, 33(2), 12-13. Retrieved from https://login.proxy.lib.duke.edu/login?url=https://www-proquest-com.proxy.lib.duke.edu/scholarly-journals/new-year-brings-expanded-protections-publicity/docview/2525720577/se-2?accountid=10598.
    a. This article examines an amendment to the New York Civil Rights Law that created a private right of action for the unlawful dissemination or publication of a sexually explicit depiction of any individual who, as a result of digitization, appears to be engaging in sexual conduct in which the person did not in fact participate. The author argues that this amendment is significant given

increasingly problematic use of "deep fakes" that superimpose a person's face on a sex worker's body.

8. Bental, A. K. (2020). Judge, Jury, And Executioner: Why Private Parties Have Standing To Challenge An Executive Order That Prohibits Icts Transactions With Foreign Adversaries. American University Law Review, 69(6), 1883-1943. Retrieved from https://login.proxy.lib.duke.edu/login?url=https://www-proquest-com.proxy.lib.duke.edu/scholarly-journals/judge-jury-executioner-why-private-parties-have/docview/2437908283/se-2?accountid=10598
    a. Some courts have found that the administrative recourse stipulated in a given executive order is the exclusive enforcement method and, thus, executive orders provide no private right of action in Article III courts.
    b. "To challenge the enforcement of an executive order under the APA in court, a plaintiff must show "(1) that the challenged governmental conduct constitutes 'agency action' within the meaning of the APA[;] (2) that the action is final and that there is no other adequate court remedy . . . [;] (3) that the plaintiff has standing to obtain judicial relief"; (4) that the executive order has a "delegation of authority from Congress," indicating that the executive order has the "force and effect of law"; and (5) that the "terms and purpose" of the executive order suggest the President's intent to create a private right of action.64"
9. Wolf LE, Hammack CM, Brown EF, Brelsford KM, Beskow LM. Protecting Participants in Genomic Research: Understanding the "Web of Protections" Afforded by Federal and State Law. The Journal of Law, Medicine & Ethics. 2020;48(1):126-141. doi:10.1177/1073110520917000
    a. A further limit on the Privacy Rule's protections is that it does not offer a private right of action to individuals whose information is disclosed without authorization.[54] Aggrieved individuals' only recourse under HIPAA is to file a complaint with the Office for Civil Rights to conduct an investigation. Although this may result in corrective action or administrative penalties against the covered entity or business associate, it will not compensate the individual.
10. In The Absence Of Constitutional Protections, A Comprehensive And Enforceable Federal Or State Regulatory Scheme, Or Industry Regulations Affording Redressability, The Acquisition And Consolidation Of Pii Is At The Mercy Of Laissez-faire Oversight. "The Video Privacy Protection Act As A Model Intellectual Privacy Statute." Harvard Law Review, vol. 131, no. 6, 2018, p. 1766+. Gale General OneFile, link.gale.com/apps/doc/A572716408/ITOF?u=duke_perkins&sid=summon&xid=82089329.
    a. The author argues that the data retention provision of the VPPA where standing doctrine as articulated in Spokeo creates a problem. Courts have held that the Act's data retention provision does not create a private right of action. While these opinions have depended on typical statutory interpretation arguments, not a

restrictive theory of injury in fact, Spokeo suggests that even a well-drafted VPPA might not authorize data retention suits. Like the consumer notification provision of the FCRA analyzed in Spokeo, the data retention provision is likely to be deemed a procedural requirement that cannot, without a more detailed showing of harm, support standing for suit.

b. The author further shows how Justice Thomas's concurrence distinguished between suits alleging the violation of private rights and suits alleging the violation of public rights. For suits alleging violations of private rights, a plaintiff need only allege that his legal rights were invaded to have standing to sue--but if a plaintiff sues to enforce "general compliance with regulatory law," a showing of concrete and particularized harm stemming from the violation is necessary. The data retention provision of the VPPA is unconnected to an individual's (private) intellectual privacy rights, and as such would likely be considered "a series of regulatory duties ... owe[d] to the public collectively." A plaintiff could perhaps allege concrete and particularized harm by pointing to the enacting Congress's purpose in including the retention provision: "to reduce the chances that an individual's privacy will be invaded, by requiring the destruction of information in an expeditious fashion." But courts thus far have not appeared amenable to this argument. Furthermore, even if a court accepted that the violation of the retention provision increased the plaintiff's risk of a privacy violation, the plaintiff would struggle to claim that retention beyond the statutory limits produces an imminent risk of harm--and thus would lack standing.

c. Cites Rodriguez v. Sony Comput. Entm't Am., LLC, 801 F.3d 1045, 1052 (9th Cir. 2015). The Ninth Circuit agreed with the Sixth and Seventh Circuits that Congress declined to provide a private right of action to challenge unlawful retention of data beyond the statutory time limit.

11. Bock, Meredith E. "Biometrics and Banking: Assessing the Adequacy of the Gramm-Leach-Bliley Act." North Carolina Banking Institute, vol. 24, 2020, p. 309+. Gale OneFile: LegalTrac, link.gale.com/apps/doc/A619741652/LT?u=duke_law&sid=summon&xid=f24d495d.

    a. This author argues that the GBLA needs a private right of action to ensure compliance given the highly sensitive nature of biometric information.