

# Legal Technology

The newsletter of the Illinois State Bar Association's Standing Committee on Legal Technology

## The big two threats you need to be aware of today

NERINO J. PETRO, JR., HOLMSTROMKENNEDYPCC

When it comes to complying with our obligations to safeguard our data from disclosure, the number of cyber threats continues to grow at an alarming rate. However, the two that you should lose the most sleep over have been around for

awhile. And there are no signs of them disappearing as people continue to fall victim to them. These two threats are:

1. Phishing (aka Spear Phishing)
2. Ransomware

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## Some thoughts on embracing technology from a virtual practitioner

BY MICHAEL BRENNAN

Technology is evolving at a rate never before seen, and what that means for lawyers is that there are opportunities abound for improving the efficiency of their firms and quality of their representation. It doesn't matter whether you practice civil litigation, bankruptcy, or estate planning. There are hundreds of tools that can make your practice more efficient. That's ideal because increased efficiency leads to greater productivity and decreases costs.

Maximizing the use of efficient technologies in your business gives you the

ability to automate your operations. It takes your standard operating procedures and converts them into self-sufficient processes.

Embracing technology means being proactive and continually striving to make the practice of law more manageable and more responsive to client desires. You need to understand the current cultural climate and the way your clients live. For example, your clients may expect more transparency with what's going on with their cases when, in days past, they may have been satisfied

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## The big two threats you need to be aware of today

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### Phishing

According to Wikipedia:

Phishing is the attempt to obtain sensitive information such as usernames, passwords, and credit card details (and, indirectly, money), often for malicious reasons, by disguising as a trustworthy entity in an electronic communication.<sup>1</sup>

What is alarming about Phishing is that according to at least one article, "...91% of cyberattacks begin with a "spear phishing" email..." citing software security firm Trend Micro.<sup>2</sup> Phishing generally uses email or sometimes text messaging to bait its victim. Often times it will take the appearance of an email from a legitimate business or other site (such as Facebook®, CapitalOne® or Apple®) and ask you to follow a link where you are asked to provide your credentials or trick you into entering details such as your account information. The bad guys have even gotten smarter about spoofing the "From" address that they use so even upon examination it appears to be from the legitimate company, entity or site. One recent email claiming to be from CapitalOne® to me showed the Sender as being

**From:** Capital One

<capitalonebanking@cpbanking.com>

which at first glance appears to be legitimate but is not. CapitalOne® uses the domain of "capitalone.com" I also do not have an account with CapitalOne® which is another red flag.

So what can you do to prevent phishing attacks?

The best defense to prevent phishing attacks is end user education and training. There are numerous websites, articles, posts and videos about this specific topic, including:

- How to prevent phishing scams <<http://usat.ly/2le0UaQ>>.
- "Phishing" Fraud: How to Avoid Getting

Fried by Phony Phishermen <<http://bit.ly/2le6oSI>>.

- How to prevent phishing in 3 lessons <<http://bit.ly/2le5wO2>>.
- 5 Examples To Help You Spot A Fraud Or Fake Email <<http://bit.ly/2le16qA>>.
- Consumer Information website on Phishing (US FTC) <<http://bit.ly/2ldWOzu>>.
- Phishing.org website <<http://www.phishing.org/>>.
- Phishtank website by OpenDNS <<https://www.phishtank.com/>>.

There are also companies that provide education and training regarding these threats that include the ability to send out test phishing emails to see if you staff "take the bait." Examples of these companies are Wombat (<https://www.wombatsecurity.com/>), PhishMe (<https://phishme.com/>) and KnowBe4 ([www.knowbe4.com](http://www.knowbe4.com)). All of these companies provides differing free resources such as articles, whitepapers and even security tests on their respective websites. KnowBe4 ((based on actual use)<sup>3</sup> offers subscription services for training and education with tools that you can use to test your vulnerability and that of your staff. KnowBe4 employs Kevin Mitnick as its "Chief Hacking Officer."<sup>4</sup> For other potential providers, check out 10 companies that can help you fight phishing from CSO Onlie at <<http://bit.ly/2le3fm1>>.

Phishing will remain a serious threat as long as there are end users, so the best you can do is to educate and train them to look for and be mindful of the threat.

### Ransomware

Of all of the threats to lose sleep over, ransomware is the biggest.

Imagine coming into your office and trying to open a file. When you do, all you get is gibberish. This happens on every file you try to open. Does not matter if it is a Word or Excel file or even the file that stores your accounting data. All of them are the exact same—nothing appears and you cannot figure out what happened. Then you try to open a file and a message opens

## Legal Technology

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informing you that your files have been encrypted for your own protection and that if you pay a significant sum to the party that encrypted your files, they will provide you with a decryption key. It's bad enough that they claim to be doing this to protect you, but if you fail to pay the ransom in time, the price goes up.

Ransomware is installed covertly and may be attached as an attachment to an email that installs its payload when clicked, from following a link in a phishing email or it could be from what is known as a "drive-by-download." The critical item is that you have no idea it has been installed and most anti-virus software does not catch let alone prevent it from infecting your computers.

What is important to know is that not only does it affect your files, it can spread to your server and other drives that are mapped on your network as well (such as a backup drive attached to a computer using a drive letter such as "E"). Initially, ransomware encrypted files, there are now 2 variants: 1) file encrypting ransomware and 2) locker ransomware. The first encrypts the files on your system while the second locks you out of the operating system and its applications. It also targets the Shadow copies of files on your computer that allows you to recover files that have problems if that service is running.

So if you get hit with ransomware, what are your options? Realistically, there are only 2:

- A. Pay the ransom; or
- B. Restore from a backup

While some of the ransomware variants have been broken, the vast majority have not. The level of encryption and its sophistication means that you truly do not have any other options. And do not look for this threat to disappear anytime soon: this threat continues to grow and prosper as it is extremely lucrative for the bad guys.

How lucrative? According to an article from U.S. News citing Cisco Systems, "... ransomware [is] the most profitable type of malware attack in history..." Attackers are even adding translators and customer support assets to insure that their victims can pay them.<sup>5</sup> In the case of ransomware,

you need to take a multi-layered approach which includes taking steps to prevent infection and having a way to restore your data that cannot be reached by the bad guys. For a better understanding of what you need to do and tools that you can use, check out these online resources:


- Ransomware Protection & Removal: How Businesses Can Best Defend Against Ransomware Attacks <<http://bit.ly/2le69Y1>>.
- 22 Ransomware Prevention Tips <<http://bit.ly/2lebf6q>>.
- This Free App Can Protect You From Ransomware <<http://bit.ly/2le8vpS>>.
- Top 5 Best Free Anti-Ransomware & Anti-Exploit Software to Avoid Ransomware Attacks <<http://bit.ly/2ldZjrX>>.
- Bleeping Computer thread <<http://bit.ly/2lebnD6>>.
- Nomoreransom.org <<https://www.nomoreransom.org/>>.
- The best free anti-ransomware tools 2017 <<http://bit.ly/2mkzaq9>>.
- Third Tier Ransomware Prevention Kit (for IT Pros) <<http://www.thirdtier.net/>>.

[ransomware-prevention-kit/](#)>.

You also need to have, ideally, a daily backup, that is removed from the system each day. These backups need to be tested on a regular basis to make sure they have valid data on them that you can use to restore your data (this means actually doing test restoration of data from the backup, not just using the verification tool in the backup software itself).

**AT THE END OF THE DAY, THE MOST IMPORTANT PROTECTION YOU HAVE AGAINST RANSOMWARE IS A RECENT AND VALID BACKUP! ■**

1. <<https://en.wikipedia.org/wiki/Phishing>>
2. See <<http://bit.ly/2le5WUV>>
3. In full and complete disclosure, I used KnowBe4 at HolsmtromKennedyPC in Rockford and my consulting company resells the service.
4. Kevin Mitnick refers to himself as the "World's Most Famous hacker" and after being arrested in 1995 now has his own security company, Mitnick Security, <<http://bit.ly/2le0tgM>>.
5. See A helping hand with a dirty trick: Ransomware now offers helpdesk to victims <<http://bit.ly/2lecFxxK>>; Ransomware developers open helpdesk to help with decryption and payment issues <<http://bit.ly/2legTp9>>.




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## Some thoughts on embracing technology from a virtual practitioner

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to leave things entirely in the hands of the lawyer until a final product—like a settlement offer or a completed will—was available.

Technology enables practitioners to involve clients in each step of the process no matter what it may be. Current practice management systems give attorneys the option of including access for their clients so they have full visibility into what's happening and when it's happening. Automated processes ensure that deadlines get calendared and internal firm operating procedures get followed.

Embracing technology may mean something different for you depending on the way you set up your practice. For example, I have a friend that runs his civil litigation practice out of a brick-and-mortar office. He meets with clients in the office and still files hardcopy motions and briefs with the court just as it has been done for decades. But, that doesn't mean he doesn't realize that technology can make his practice more efficient and more responsive to his clients. While between hearings, he can use his tablet to look up statutes or case law on the spot. He can use cloud-based programs to track his witness lists and notes. The availability of cloud storage enables him to condense his case file and avoid dragging heaps of papers into court with him.

His practice is a far cry from the way I operate my firm. I practice virtually, choosing to interact with clients online through video conferencing and web chat. I use cloud based storage so that I can access case information whether I'm in my office at home or a coffee shop on vacation. All of my billing and time tracking is done in the cloud as well. I use a web based phone system that permits me to receive client calls in the office or on my cell without a client having to dial multiple numbers to try to reach me. Even something as simple as syncing email over your devices increases your ability to respond to client needs promptly. In turn, that enhances the customer experience. My goal is to make every task one that can be done from anywhere, and even if that's not yours, it's

important for you to think about how you can use technology to your advantage.

While very different in form, both my practice and my friend's practice use technology to improve the client experience. My friend's clients appreciate his ability to access any part of the case file quickly with a few swipes of the finger. My clients appreciate the convenience and accessibility of being able to work with me remotely without having to take time out of their busy lives to make room for working with an attorney.

Whether it's using cloud-based accounting and reporting software or using a virtual secretarial service available 24 hours a day, technology is going to make your business run smoother from an operations standpoint. Not only is that going to increase the clients' overall experiences while working with you, but it's going to free up your time so you can focus on their cases.

A law firm doesn't need much more than the lawyer himself to operate. However, to be successful, it's necessary to incorporate tools that increase productively and improve the level of service. Never before in history has there been a time where technology has been so cheap (many times even free) and so prevalent. Embrace that reality.

When you make a commitment to maximize the use of efficient technologies in your business you make a commitment to yourself that you'll continually strive to do better, and you make a commitment to your clients that your firm will do whatever it takes to improve their experience and maximize the outcome it delivers. ■

Michael F. Brennan is an attorney at the Virtual Attorney™ a virtual law office helping clients in Illinois, Wisconsin, and Minnesota with estate planning and small business legal needs. He can be reached at [michael.brennan@mfblegal.com](mailto:michael.brennan@mfblegal.com) with questions or comments.



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*Please consider making a donation to the IBF to improve statewide access to justice.*

# The new European General Data Protection Regulation

BY ADAM NELSON

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**In April of last year**, the European Parliament passed an all-encompassing change to their data protection laws and enacted the new General Data Protection Regulation (GDPR).<sup>1</sup> While this may not be an issue for our firms, it could be a significant issue for any of our clients who do business the European Union (EU) and/or process protected data on EU citizens.<sup>2</sup> This new regulation fundamentally changes the way organizations must manage the protected data of both European citizens as well as citizens of other countries whose data is collected while they are in the EU.

## Purpose of the GDPR

The purpose of the GDPR is three fold:

First, it will create a unified data protection law. Unlike the prior 1995 EU Data Protection Directive, the Regulation does not require any further enabling legislation to be passed by specific country governments. It will be “automatic” law in 28 EU Member States and those countries following EU law voluntarily. It is also intended to simplify the regulatory environment for international business.

Second, it will enhance the level of data protection for EU data subjects. EU data subjects will have more control over their personal data. Citizens of other countries are also protected if their information is collected while they are in Europe.

Third, it will modernize the law so that it is in line with existing and emerging technologies. The existing Directive is over 20 years old and does not truly contemplate, for example, cloud computing, data subject profiling and data controller/processor interaction.

## Key Aspects of GDPR

The Regulation has been formally adopted and will take effect as of May, 2018. That means that your clients still

have some time to complete their GDPR activities, but you should recommend that their journey begin now as it takes time to implement any changes. One key point to keep in mind is that, although it has been adopted, the GDPR still a “work in progress” as formal guidance surrounding implementation of the Regulation has yet to be finalized. This guidance has been slow in coming from the EU Data Protection Authorities including the Article 29 Working Party.<sup>3</sup>

The Regulation also has international reach, applying to controllers and processors, both inside and outside the EU, whose processing activities relate to the offering of goods or services to EU data subjects.

One significant change from the Data Protection Directive is that the EU Data Protection Authorities have the power to impose significant fines on organizations for non-compliance with the rules, scalable to €20 million or 4% of the organization’s global annual turnover per incident, whichever is greater.

## More Protection for Covered Citizens

Per the GDPR, the definition of “Personal Data” now explicitly includes online identifiers, location data and biometric/genetic data. The GDPR also provides for much higher standards for privacy notices and for obtaining consent from data subjects. One of the requirements is that covered entities provide easier access to personal data by a data subject. For example, does your client allow all the data subjects’ access to the data that they are holding on that citizen? GDPR also includes enhanced rights to request the erasure of personal data. Can your client comply with data erasure requests in a timely manner? Another key

change is the right to transfer personal data to another organization (portability). Does your client have the ability to collect the data from not only their system, but the system of the data processors and provide that information if requested? There is also a key change to the data environment in that GDPR allows data subjects to explicitly object to profiling. This is significant for our clients in the financial and marketing industries.

## So what should your client be doing now?

There are a variety of activities that your clients should be addressing now. The timing and priority will be dependent upon their GDPR sophistication and budgetary priorities.

- Understand the obligations - Become familiar with the proposed GDPR requirements and monitor the development of implementation guidance
- Create a cross-functional GDPR team – Ensure that all aspects of the business that are impacted are part of the development and implementation of any changes
- Know what data is stored and where it is located - Conduct a data inventory and mapping initiative to assist in understanding and evaluating the operational and technological changes required for compliance
- Appoint a Data Protection Officer - Create a structured privacy office and appoint, if required, a data protection officer (DPO) who has expert knowledge on data protection law
- Review all privacy statements and policies - Confirm all privacy statements are presented in clear and plain language, are transparent, and are easily accessible to data subjects

- Review customer consent and choice mechanisms - Ensure that the appropriate consent and choice mechanisms are in place and/or are updated to meet the new consent requirements and to easily facilitate customer choice
- Review processes addressing data subjects' access, correction and erasure requests - Confirm that the operational and technical measures are in place to support these requests
- Review data retention schedules – Confirm data is only held for as long as there is a legitimate business need or as may otherwise be required by law
- Review all cross border transfers of personal data - Confirm there is a legitimate basis for transferring data to jurisdictions outside the EU that do not have “adequate” data protection regimes
- Implement a Privacy (and Security) By Design approach to new systems and services - Create a Privacy By Design framework to ensure that privacy requirements are embedded, by default and design, from the very outset of the development of new products, systems and services
- Document privacy compliance activities - Adequately document all processing operations involving personal data through the use of Data Protection Impact Assessments (DPIAs)
- Implement and document appropriate security measures - Provide technical, physical and administrative security measures ‘appropriate’ to the processing risks
- Create breach response and notification protocols - Implement data breach investigation, containment and response processes and procedures, and be sure to be able to test their effectiveness
- Develop audit capabilities and processes - Establish a robust audit plan and process to monitor ongoing compliance and to mitigate risk, both internally and for processors
- Train employees – Ensure employees are educated, at least annually, on the requirements and their obligations with

respect to data protection

The GDPR has 99 articles and is the most significant change in data protection right in a generation. It is important that all our clients are aware of these changes and make the appropriate operational modifications so that they enable the new rights of the covered citizens as well as protect themselves from any enforcement action. ■

Adam Nelson Esq., CIPT/CIPP US, Fellow of Information Privacy, Global Privacy Lead, IBM Security.

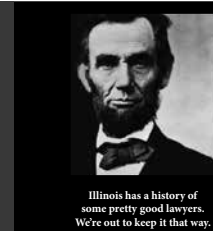
1. Regulation (EU) 2016/679.
2. Protected data is any information relating to an individual, whether it relates to his or her private, professional or public life. It can be anything from a name, an address, national identification number, an email address, bank details, sexual preference, medical information, or a computer's IP address.
3. The Article 29 Working Party (This will become the European Data Protection Board at or around May 2018) is a collection of the data protection officers from all 28 European Countries. This number may change due to the forthcoming Brexit changes in Great Britain.

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## Guide to Illinois STATUTES of LIMITATIONS and REPOSE 2017 EDITION

The new Guide to Illinois Statutes of Limitations and Repose is here! It contains Illinois civil statutes of limitations and repose (with amendments) enacted through September 14, 2016. The Guide concisely brings together provisions otherwise scattered throughout the Code of Civil Procedure and other chapters of the Illinois Compiled Statutes. It also includes summaries of cases interpreting the statutes that were decided and released on or before September 14, 2016. Designed as a quick reference guide for practicing attorneys, it provides comprehensive coverage of the deadlines you can't afford to miss. The Guide includes a handy index organized by act, code, and subject, and also includes a complete table of cases. Written by Hon. Gordon L. Lustfeldt (ret.).

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## June

**Thursday, 06-01-17 – Webinar—**  
Introduction to Legal Research on  
Fastcase. Presented by the Illinois State  
Bar Association – Complimentary to ISBA  
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**Friday, 06-02-2016—NIU Conference  
Center, Naperville—**Solo & Small Firm  
Practice Institute Series: A Balancing  
Act: Maximize Your Technology with  
Minimized Expense. ALL DAY.

**Thursday, 06-08-17 – Chicago  
Regional Office—**Commercial Loans/  
Documenting For Success and Preparing  
For Failure. Presented by Commercial  
Banking, Collections & Bankruptcy. 9:00  
a.m. – 4:30 p.m.

**Thursday, 06-08-17 – LIVE Webcast—**  
Commercial Loans/Documenting For  
Success and Preparing For Failure.  
Presented by Commercial Banking,  
Collections & Bankruptcy. 9:00 a.m. – 4:30  
p.m.

**Thursday, 6-08-17 – Webinar—**  
Advanced Tips for Enhanced Legal  
Research on Fastcase. Presented by  
the Illinois State Bar Association –  
Complimentary to ISBA Members Only.  
12:00 – 1:00.

**Friday, 06-09-17 – Chicago Regional  
Office—**Estate Administrative Issues:  
Are You Prepared to Handle Some of  
the Difficult Issues Facing Your Client?  
Presented by Trust and Estates. 9:00 a.m. –  
4:15 p.m.

**Friday, 06-09-17 – LIVE Webcast—**  
Estate Administrative Issues: Are You  
Prepared to Handle Some of the Difficult  
Issues Facing Your Client? Presented by  
Trust and Estates. 9:00 a.m. – 4:15 p.m.

**Tuesday, 06-13-17- Webinar—**Excel

Power Hour. Practice Toolbox Series. 12:00  
-1:00 p.m.

**Wednesday, 06-14-17 – Live Webcast—**  
Implicit Bias: How it Impacts the Legal  
Workplace and Courtroom Dynamics.  
Presented by the ISBA Committee on  
Racial and Ethnic Minorities and the Law.  
12:00 -2:00 pm.

**Friday, 06-16-17 – The Abbey Resort  
in Fontana, Wisconsin—**Moneyball for  
Lawyers: Using Data to Build a Major-  
League Practice. Time TBD.

**Friday, 06-16-17 – The Abbey Resort  
in Fontana, Wisconsin—**Effectively and  
Ethically Handling Referrals for Personal  
Injury Clients. Presented by Law Office  
Management and Economics. Time TBD.

**Friday, 06-16-17 – The Abbey Resort in  
Fontana, Wisconsin—**E-Filing in Illinois.  
Presented by the ISBA Standing Committee  
on Legal Technology. 8:45 – 10:15 am.

**Wednesday, 06-21-2017—Chicago,  
ISBA Regional Office—**Title TBD- Marty  
Latz Negotiations. Master Series Presented  
by the ISBA. Time TBD.

**Wednesday, 06-21-2017—Live  
Webcast—**Title TBD- Marty Latz  
Negotiations. Master Series Presented by  
the ISBA. Time TBD.

**Tuesday, 06-27-17- Webinar—**Google  
Apps Power Hour. Practice Toolbox Series.  
12:00 -1:00 p.m.

**Tuesday, 06-27-2017 Live Webcast—**  
The Inappropriate Use of Non-Competition  
Agreements: A Conversation on National  
and Local Trends. Presented by Racial and  
Ethnic Minorities and the Law. 2:00 p.m.-  
3:00 p.m.

**Thursday, 06-29-17, Chicago, ISBA**

**Regional Office—**How to Handle a  
Construction Case Mediation. Presented  
by the Construction Law Section, co-  
sponsored by the Alternative Dispute  
Resolution Section (tentative). 8:30 am –  
5:00 pm.

**Thursday, 06-29-17 – Live Webcast—**  
How to Handle a Construction Case  
Mediation. Presented by the Construction  
Law Section, co-sponsored by the  
Alternative Dispute Resolution Section  
(tentative). 8:30 am – 5:00 pm. ■

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Did the drafters of our ethics code believe that lawyers are superheroes? It seems so. In this unique program, Stuart Teicher weaves together talk of superpowers, superheroes, and other fun stuff to explain important ethics rules and explore both the breadth and limitations on a lawyers' power. Topics include:

- Rule 1.2 – Allocating the decision-making authority between lawyer and client;
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