

Beware of the Spy Pixel: Arizona Faces New Class Action Trend Under Privacy Law

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A new genre of class action privacy litigation has landed in Arizona. Several class action lawsuits were recently filed alleging email tracking using “spy pixel” trackers, allegedly in violation of the Arizona Telephone Privacy Protection Act, A.R.S. § 44-1376 et seq. (“ATPPA”). “Spy pixel” is a term used to describe trackers that can be embedded in an email to collect information about the email transfer, such as when the recipient opens the email, the recipient’s location, how long the recipient views the email, and whether the email is forwarded or printed, among other information.

The ATPPA forbids procuring any “communication service record” without authorization of the customer to whom the record pertains, or by fraudulent, deceptive, or false means. So far, these lawsuits follow a similar framework. The plaintiff alleges the company used “spy pixels” in marketing emails to collect sensitive information from the email recipient without plaintiff’s knowledge or consent, and that each email containing a “spy pixel” constitutes a separate violation of the ATPPA. Among other potential remedies, a plaintiff may recover economic damages of at least \$1,000. A.R.S. § 44-1376.04(A)(2). Thus, “spy pixel” class actions have the potential to be high exposure cases.

As the number of new “spy pixel” suits increase, it is important that companies ensure they are protected. Benesch continues to monitor these and other trends in the privacy space so our clients can be aware of risks.

For more information, contact a member of Benesch's Litigation Practice Group.

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