

MARCH 2023

# YTP'S TECH TIMES

A PUBLICATION OF THE ILT YOUNG TECHNOLOGY PROFESSIONALS COMMITTEE

## CONTENTS

*The YTP's Tech Times, ILT's Young Technology Professionals newsletter, will contain substantive articles on trending legal issues, on emerging technology, IP, cybersecurity and data privacy, interviews, and professional development.*

MESSAGE FROM THE CHAIR OF THE  
YTP EXECUTIVE COMMITTEE

LEADERSHIP AND NEW MEMBERS

WHY DOES INTERNET PRIVACY  
MATTER

YOUNG TECHNOLOGY  
PROFESSIONALS' MEMBER  
HIGHLIGHT: **SPENSER SCHWABE OF  
HARNESS IP**

CIRCUIT COURT STRIKES DOWN  
LIQUIDATED-DAMAGES AGREEMENT  
IN TRADE SECRET CASE



## Chair

Miles Indest

## Committee Members

Summer Ayala, Kate Clark, Kellie L. Constantine, Matthew W. Cornelia, Leiza Dolghih, Ryan J. Frankel, Dylan D. Gilbert, Casey McNeil, Shannon Montgomery, Alex Shahrestani, Ashley E. Smith, Demetrius D. Sumner and Betty X. Yang

*Please note: The articles and information contained in this publication should not be construed as legal advice and do not reflect the views or opinions of the editing attorneys, their law firms, or the ILT.*

## Mark Your Calendars

April 11: Tech Competence from the Courthouse to Cyberspace (Webinar)

May 10 - YTP Houston Happy Hour (more details coming soon)

June 14 - Intellectual Property in Energy - IEL/ILT Joint Conference (South Texas College of Law)

## A Message from the Chair

We have a lot of important news for the Young Technology Professionals (YTP) group, so let's get right to it!

### Leadership and New Members

First, and most importantly, we have a **New Director** of the Institute for Law and Technology (ILT) and YTP: Vickie Adams. I have had the pleasure of working with Vickie through other CAIL organizations for several years, and we are certainly in great hands. Under Vickie's direction, ILT and YTP members can expect incredible things in 2023.

Second, we are continuing our growth with wonderful **new members** and **Vice Chairs**. Our Vice Chair Leadership now includes:

1. Newsletter Vice Chair: Shannon Montgomery, an attorney at Creedon PLLC, was appointed our Newsletter Vice Chair. She has already been on a roll continuing our publications and thought leadership. Please feel free to submit new articles or thought

leadership to her for future publications.

2. Social Vice Chair: Ryan Frankel, an attorney at McGuireWoods LLP, was appointed our Social Vice Chair. He will coordinate upcoming happy hours and events, including our upcoming Houston event in May 2023.
3. NEW Membership Vice Chair: Lee Mash, Sales Executive at Digital Hands, was appointed our Membership Vice Chair. Lee is passionate about connecting, welcoming, and integrating new YTP members.
4. NEW Programming Vice Chair: Kellie Constantine, a law student at Tulane University ('23), was appointed as Programming Vice Chair. Kellie will be coordinating CLEs, webinars, and related marketing for our group.

For those interested in joining YTP or our leadership, please reach out to [Vickie](#), a Vice Chair, or a member of our [Executive Committee](#). Importantly, ILT Sustaining and Supporting firms and corporations will be able to have additional advisory board members to allow them to include young professionals—without increasing their dues. If you have questions about ILT membership, please contact [Vickie](#).

### Our Mission

YTP is a committee of CAIL's Institute for Law and Technology (ILT). We founded the YTP as a community for attorneys, experts, and other professionals under the age of forty or with less than eight years of practice or work in their field. While supporting ILT, YTP's mission is to offer a diverse platform where emerging technology, IP, and cybersecurity professionals can connect, share expertise, host events to strengthen careers and the industry, and provide a forum for discussion of public policy issues.

### Concluding Remarks

Our "Message from the Chair" updates will come quarterly, but I would love to hear from you directly about your interest in YTP. You can reach me anytime at [mindest@mcguirewoods.com](mailto:mindest@mcguirewoods.com) or (713) 353-6681. We are incredibly excited about YTP, and your feedback, support, and leadership are vital to our technology community.

Warmly,

Miles Indest



## Why Does Internet Privacy Matter

Alex Shahrestani, Promise Legal ATX, Founder of the Journal of Law and Technology at Texas

Cue up some Kenny Loggins and some teenage angst, and remember back to practicing dance moves in the mirror. You probably tried some moves you saw on MTV, some moves your best friend showed you, and tried some stuff you came up with on your own.

You probably did a lot of that behind closed doors, but why bother if you have nothing to hide?

Would it have been a big deal if your brother walked in on you and caught it on video? In the grand scheme of things no, it wouldn't have been. It's not like your [social security number or other sensitive personal information](#) is being [posted to Instagram](#). But let's imagine things were slightly different. Instead of there being just a slight chance of someone walking in on you, it was a certainty. You may have ultimately decided that you don't care, you are going to dance in front of the mirror anyway but you can still see how someone always watching could be a deterrent for others.

That's why the fundamental right to privacy matters. Not just because you need to be able to test out your new moves before breaking them out on the dance floor, but for all of those little things you test out over the course of your life which ultimately add up to your identity. The right to privacy is the protection of an individual's right to decide who they are.

You should be free to read a self-help book without family, friends, and strangers reading over your shoulder. You should have the space to figure out how to be a better father, how to be more outgoing, how to be more mindful. The less privacy you have (the more personal information others have access to), the less space to make those changes happen.

If you think about it, some of the greatest social changes have come about, at least partially, thanks to privacy. Without privacy, the American Revolution may not have happened. Without privacy, supporting the underground railroad would have been even more dangerous. [Without privacy, there is less space for new ideas to breathe and gain support.](#)

### How to Protect Your Privacy as an Individual

So you've been convinced either thanks to, or in spite of, this article that privacy is an important right, and you probably want to know what steps you can take to keep your data privacy as intact as possible. There are a number of steps that you can take as an individual to protect your online privacy.

#### Use a VPN

When you're at home, the use of a VPN is less likely to be useful. Where it's going to be most effective for data protection is when you're out and about connecting to public Wi-Fi networks. A VPN protects the contents of your traffic from

people who would otherwise be able to snoop on that traffic, whether it's a criminal, a government, or a corporation.

My favorite way to illustrate what a VPN does is the neighbor next door. If you and your neighbor stick your heads out the window and yell out to each other your plans for the weekend, anyone in the neighborhood who cares to listen can find out what those plans are. However, if you and your neighbor instead talk through cans attached by string, then people in the neighborhood might be able to see that you're talking but won't be able to see what you're talking about. The VPN is the can and the string for data security: it lets people know that you're talking to someone, but that's all.

### Be Judicious About Installing Apps and Software

What you install matters. Permissions you grant to various vendors aren't always in your best interest. When you grant access to the files on your device, that access exists whether relevant to the software or not. While many apps and softwares will treat your devices with some dignity, many others will not prioritize data privacy.

Do some research before clicking on install. Have a [trusted source you can look to for guidance](#) on whether a particular piece of software or app is useful and trustworthy.

### Use Trusted Browser Privacy Tools

Here's a good chance for you to ask your trusted source for help. Get good ad and cookie blockers to bolster your online privacy protection. A cookie is a tiny file that your browser saves as a way to remind websites who you are. Most websites can't work without cookies. A cookie lets you log in to your accounts and see your personal information. Without the cookie, the website wouldn't know which computer to show your information to.

However, cookies can also be less useful to you, and more useful to other people. Some cookies collect information about every website you visit. Some cookies are there to give you personalized ads. And some cookies are collecting your data to sell it to others. Cookies are often served to your computer alongside ads, so a good cookie blocker can go a long way. Always get a recommendation from a source you trust, but an example solution would be [Privacy Badger, by the Electronic Frontier Foundation](#).

Another type of privacy tool you can install is forced HTTPS browsing. HTTPS browsing is the more secure version of HTTP. It kind of works like a VPN does, but on a slightly weaker level. In the VPN analogy, using the cans connected with strings would only let people see that your house is communicating with another house. With HTTPS, while an eavesdropper would not be able to understand the content of your conversation, they would be able to tell which people in the houses were talking. While a VPN might seem like a catch-all, having an HTTPS tool can supplement the security of the VPN. There are several ways to accomplish forced HTTPS, but one example

solution is [HTTPS Everywhere, also by the Electronic Frontier Foundation](#).

### Don't Take Quizzes that Require a Facebook Login

You might see a fun quiz floating around your social media feed to find out which Game of Thrones character you are, or what dog breed is most like you. If they ask you to [log in using a social media profile](#) before you can take the quiz or see your answers, there's a good chance that the quiz exists solely to get personal information about you and they have little concern for the privacy of your personal data. Not only are you giving the company basic personal information from your profile, but you are also answering a lot of questions which can give data brokers insight into you as a person. While those insights are often used for presenting relevant advertisements, those insights can also be used to provoke emotional responses and take advantage of vulnerable populations.

### Scrub Your Devices and Accounts from Time to Time

Every once in a while, look through all of the apps on your phone or computer, and remove any software that you haven't used in a while. That app that you installed to set up your Austin City Limits schedule is not necessary the other 362 days of the year – delete it for now. Leaving unused apps and software installed on your device provides an insight into your life for companies who are not currently offering you any benefit. You'll also get the bonus of keeping your device uncluttered and performing at a better clip.

If you often log in to websites or apps using Google, Facebook or some other social profile, then go to your relevant account settings and remove authorization for apps and services that are no longer relevant to you. Here are some links where you can review and remove logins for some of the standard social profiles:

- [Facebook](#)
- [Google](#)
- [Twitter](#)

Phew! Wow, okay, you're a few steps closer to ensuring your personal privacy! Yay! Now, how do you go about ensuring your company is protective of the personal privacy of its clients, customers, users, or employees?

### How to be Protective of Privacy as a Business

When you run a business, you control what privacy options are available to people who interact with it. There are some contexts in which you must share data on people, whether it's necessary to perform some function, part of the sale of a business, or some other reason, there are plenty of legitimate, consumer-friendly ways to share people's data. Here are some things you can do to ensure people's data is treated with respect and simultaneously improve your privacy practices and risk management.

### Offer a Lot of Options

There are several reasons why customers, users, or employees might share different kinds of personal data with you, and there are a number of reasons why they might change their mind. When building out your processes and services try to integrate personal choice into the mix. For example, give people a privacy settings dashboard where they can delete, change, or add information about themselves give them those options for each individual piece of information. You can also give them choices in your privacy settings about what happens with their data. If you offer marketing emails, give them a way to easily opt out of those emails. Try to think of ways to allow people to easily pop in and out of your system in a variety of circumstances to give them control over their personal information.

### Be Privacy-Minded when Using Third-Party Services or Bringing on Partners

Think of all of the services which make your company possible: you probably have an internet service provider, an email server, a database provider, a CRM tool, and more. When you [take on a partner to help run your business](#), you are trusting your data with those partners. Make sure that the partners you choose provide at least as much [respect of personal data](#) as your own company does. Make sure that they are using appropriate security measures to prevent unauthorized disclosures of people's data. Look into whether they have had any security breaches or big privacy scandals in recent years. It's all fairly straightforward stuff, it just needs to be on your radar.

### Take Only What You Need

There are pieces of information that are necessary for providing services to people, such as an email address. But there's a lot of information that just isn't necessary to run your brand effectively. You might be tempted to gather more information than you need just in case, or you might be gathering data that used to be integral and no longer has a purpose. Every once in a while, have a team meeting and ask yourselves, [what data do we actually need?](#) Practice good risk management – toss the stuff that isn't necessary for business or legal reasons. You can't accidentally mishandle it if you don't have it in the first place.

### Stay Informed

The tech landscape is changing every day. New tools, new methods, and new laws to deal with privacy are always arising, so what worked last year may not be enough this year. Keep up to date with what's going on in the world of privacy by following [updates to the legal system](#), podcasts, and blogs (like this one). If keeping up to speed on privacy is outside of your wheelhouse, find someone to help. Privacy rights are identity rights, and data should be treated with dignity.



## Young Technology Professional Highlight with Spenser Schwabe of Harness IP

Interview by Kellie L. Constantine, J.D. Candidate, Tulane Law School



**KC: What is your background? (It can be technical and/or your interests growing up (anything that gives us an idea of who you are!).**

SS: Growing up, I participated in competitive cheerleading and cheered on my school teams as well. My dream was always to cheer at a D1 university. However, my education was important to me as well. Fortunately, I was able to accomplish my academic goals as well as achieve my dream of cheering at the collegiate level at Clemson University. I graduated from Clemson with a degree in Industrial Engineering and cheered all four years while I was there.

**KC: What made you want to pursue a career in law, or patent law specifically?**

SS: Honestly, I never even knew about patent law until my freshman year at Clemson University. We had a guest speaker in one of my engineering classes who discussed her career as a patent attorney. I loved the idea of being able to take my engineering degree a step forward and use it in the legal profession. It wasn't long after that I decided to go to law school and pursue a career in intellectual property law. Before I knew it, I was taking the LSAT and applying to and visiting law schools. I fell in love with SMU Dedman School of Law and the city of Dallas when I visited. This held true during my three years at SMU while earning my JD.

**KC: How do you define success in handling a patent application?**

SS: Ultimately, it comes down to getting the broadest possible patent protection for a client as efficiently as possible.

**KC: Who is your typical client? Do you represent small and large businesses? Do you work with start-ups? Do you work with individual inventors?**

SS: The majority of the work I do is for large businesses and corporations. However, I occasionally work on patents for smaller businesses and universities as well. I love interacting with the clients and inventors. It's fun to learn about new things inventors are developing and work with them throughout the patent drafting process.

**KC: What is a professional challenge or fear that keeps you up at night, and how do you silence it?**

SS: The biggest fear I have is not living up to my potential and not meeting expectations set by others. Effort is everything, so

I just have to remind myself to continue doing my best to learn and improve every day.

**KC: What is your biggest accomplishment in your career thus far?**

SS: I see myself continuing to practice patent law and honing my skills so that I will have established strong knowledge of various aspects of patent law. I will have gained experience in many facets of patent law in order to advise clients on how best to obtain the patent protection they desire.

**KC: What do you enjoy doing in your free time?**

SS: I enjoy simple things to relax during the week after work, such as reading and watching tv shows or movies. My husband and I consider ourselves foodies, so we like trying new restaurants in the Dallas area. I also really enjoy cooking—I like making fun, new meals for my husband and pairing our meals with our favorite wines. We have a dog named Rhodey—he keeps us active with hikes and walks on the weekends. I'm also a big fan of Disney, so if we have the time, we love to make a trip to Disney World—Epcot and Hollywood Studios are our favorite!

**KC: How did you decide to join the ILT-YTP, and what do you hope to accomplish as a member?**

SS: I learned about the YTP group prior to attending the ILT's Annual IP Conference. I thought it would be a valuable resource as a young professional to connect with my fellow peers working in similar fields.



Do you know a young professional or full-time student who could benefit from being part of the ILT community? Let them know about the new membership categories and encourage them to join:

**Young Technology Professional Membership - \$50 Annual Dues**

**Full-time Students Membership (College, University, or Law Students) - \$15 Annual Dues**

## Circuit Court Strikes Down Liquidated-Damages Agreement in Trade Secret Case

Yasser A. Madriz, Miles O. Indest, Maricris Prendingue, McGuireWoods LLP

The 11th U.S. Circuit Court of Appeals recently made two rulings that may impact companies using liquidated-damages clauses in their confidentiality agreements to protect their trade secrets.

- *First*, a liquidated-damages provision “based entirely on the breaching party’s profits, and not on the injury suffered by the non-breaching party,” was unenforceable because it did not reasonably estimate the non-breaching party’s losses.
- *Second*, the district court’s award of \$85,000 in nominal damages was upheld because there was no evidence that the jury arrived at the amount due to prejudice, bias or mistake.

### Background: Contractor Bidding Wars

This case, *SIS LLC v. Stoneridge Software Inc., et al.*, No. 21-13567, 2023 WL 164067 (11th Cir. Jan. 12, 2023), concerns SIS LLC’s bid for APi’s project, requiring certain Microsoft software packages. To prepare its bid, SIS sought to hire Stoneridge Holdings Inc. as a subcontractor. SIS and Stoneridge executed a confidentiality agreement, prohibiting any party who receives confidential information from “accessing, reproducing, disclosing, or using that information for purposes unrelated to the business relationship between the parties.” The agreement included a liquidated-damages provision penalizing a breaching party by requiring “an accounting and payment [to the non-breaching party] of all forms of compensation or benefits [that the breaching party] directly or indirectly realizes as a result of the breach.”

SIS ultimately won the bid for APi’s project, but Stoneridge did not become a subcontractor. When APi encountered issues with SIS’s execution of the project, APi terminated its contract with SIS and sought to replace SIS with Stoneridge. As Stoneridge prepared its proposal for APi, it appeared to use SIS’s proposed prices and SIS’s organizational chart for project implementation. APi hired Stoneridge.

SIS sued Stoneridge for breach of contract and misappropriation of trade secrets, among other claims. The district court held that Stoneridge did not misappropriate SIS’s trade secrets, but it was liable for breach of the confidentiality agreement. Despite the breach, the district court refused to enforce the liquidated-damages provision and instead awarded \$85,000 in nominal damages to SIS. SIS appealed, and Stoneridge cross-appealed the award of nominal damages.

### 11th Circuit Issues Key Rulings

Concerning the liquidated-damages provision, the 11th Circuit held that the provision was unenforceable because it was “not a reasonable pre estimate of the probable loss.” The court reasoned that the parties failed to employ a reasonable method of approximation because the formula they used was “based entirely on the breaching party’s profits, and not on the injury suffered by the non-breaching party.”

Relying on *Crown Series, LLC v. Holiday Hospitality Franchising, LLC*, 851 S.E.2d 150, 156 (Ga. Ct. App. 2020), and *Ramada Franchise Systems, Inc. v. Motor Inn Investment Corp.*, 755 F. Supp. 1570, 1577–79 (S.D. Ga. 1991), SIS argued that a breaching party’s profit is an appropriate measure of probable loss. The 11th Circuit disagreed. It held that neither *Crown Series* nor *Ramada Franchise* supports the contention that a breaching party’s profit is an appropriate measure of probable loss.

Unlike the liquidated-damages clause in this case, the clauses in *Crown Series* and *Ramada Franchise* stated specific benchmarks to pre-estimate probable losses. Dissimilar to the instant clause’s broad language covering “all forms of compensation or benefits” that the breaching party realizes, the clauses in *Crown Series* and *Ramada Franchise* stated (1) a temporal benchmark, limiting the computable loss to a fixed period of time; (2) a revenue benchmark, computing the pre-estimate by identifying specific profits that the non-breaching party would not be able to realize if the contract is breached; and (3) a focus on what the non-breaching party would have been paid, instead of contemplating what the breaching party may earn.

Regarding nominal damages, the 11th Circuit held that, in Georgia, the award of nominal damages would not be set aside absent evidence of prejudice or bias at trial, or mistake by the jury. Since there was no such showing, the 11th Circuit affirmed the district court’s award.

### Practice Pointers and Takeaways

This case emphasizes the role of confidentiality agreements to protect valuable information when companies prepare bids or engage with contractors. When litigation is inevitable, these agreements can supplement complex trade secret claims with breach-of-contract claims.

However, this case also flags the importance of basing a formula for liquidated damages on the injury suffered by the non-breaching party, rather than the amounts earned by the breaching party. Companies should review their confidentiality and nondisclosure agreements for liquidated-damages provisions to ensure they will survive judicial scrutiny.

Finally, this case reminds companies of the multiple claims and remedies involved in trade secret litigation. Even when all else fails, a court may still award nominal damages if the facts clearly establish a breach by a contracting party.



**YTP's Tech Times**  
Institute for Law and Technology  
The Center for American and International Law  
5201 Democracy Drive  
Plano, TX USA 75024



*ILT is an Institute of*  
**THE CENTER FOR AMERICAN  
AND INTERNATIONAL LAW**

---

# MARCH 2023

# YTP'S TECH TIMES

---

A PUBLICATION OF THE ILT YOUNG TECHNOLOGY PROFESSIONALS COMMITTEE

