

Thomas J. Smedinghoff

Law Office of Thomas J. Smedinghoff

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EDUCATION

University of Michigan, J.D.
Knox College, B.A. Mathematics

ADMISSIONS

Illinois

PRIOR LAW FIRMS

- McBride Baker & Coles, 1978-1999
- Baker & McKenzie, 1999-2006
- Locke Lord (and predecessor firms), 2006-2021

PROFESSIONAL ASSOCIATIONS

American Bar Association (ABA)

- Member, ABA Cybersecurity Legal Task Force
- Chair, Identity Management Legal Task Force (Bus Law)
- Past Chair, Section of Science & Technology Law (1999-2000)
- Cyberspace Law Committee
- E-Privacy Law Committee
- Homeland Security Committee
- Information Security Committee
- Privacy & Computer Crime Committee

American Bar Foundation

- Fellow

International Association of Privacy Professionals (IAPP)

Adjunct Professor

- Brennan School of Business, Dominican University, 2003-2013
- The John Marshall Law School, 1985-1999

Editorial Advisor

- *BNA Electronic Commerce & Law Report*
- *BNA Privacy & Security Law Report*



PRACTICE AREAS

Cybersecurity
Electronic Transactions
Data Security
Identity Management
Information Law
PKI
Privacy
Technology

Thomas Smedinghoff focuses his practice on the new legal issues relating to the developing field of information law and electronic business activities. Named as one of the National Law Journal's "*Top 50 Intellectual Property Trailblazers & Pioneers*" in 2014, Tom is internationally recognized for his leadership in addressing emerging legal issues regarding electronic transactions, identity management, privacy, information security, PKI, and online authentication issues from both a transactional and public policy perspective. He has been retained to structure and implement first-of-their-kind e-commerce initiatives, electronic transactions, and identity management and information security legal infrastructures for the federal government and national and international businesses including banks, insurance companies, investment companies, and certification authorities. He has also been actively involved in developing legislation and public policy in the area of electronic business at the state, national, and international levels. Key experience includes:

- Chair of the *American Bar Association Identity Management Legal Task Force*, and working with private sector, federal government, and international organizations to develop identity management legal frameworks
- Worked extensively with clients in newly developing legal areas such as identity management and online authentication, electronic negotiable instruments, digital signatures, PKI, e-notarization, and other unique forms of electronic transactions and e-business activities;
- Assisted in development of a new identity management legal structure for PKI browser-based online entity identity (EV SSL). Resolved rights, responsibilities, and liabilities of participants in system to allow website users to verify the identity of the company they are dealing with in order to address the problem of phishing and promoting secure commerce.
- Helped to negotiate the *2005 United Nations Convention on the Use of Electronic Communications in International Contracts* as part of the U.S. Delegation to the United Nations Commission on International Trade Law. This is the first international treaty that addresses general cross-border e-commerce, and is expected to have a major impact on international business
- Chair of the *Illinois Commission on Electronic Commerce & Crime*, and in that capacity wrote the Illinois Electronic Commerce Security Act (enacted in 1998). This Act had a significant influence on global e-commerce legislation, including the Uniform Electronic Transactions Act in the U.S., the European Union Electronic Signature Directive, the United Nations UNCITRAL Model Law on Electronic Signatures, the Canadian Personal Information Protection and Electronic Transactions Act, and the Singapore Electronic Transactions Act

PROFESSIONAL APPOINTMENTS:

United Nations

- Advisor, U.S. Delegation to the United Nations Commission on International Trade Law (UNCITRAL), participating in the Working Group on Electronic Commerce, 1997–present

U.S. State Department

- Member, Department of State Advisory Committee on Private International Law, 2009 - present

Uniform Law Commission (National Conference of Commissioners on Uniform State Laws)

- ABA Advisor to Study Committee on Identity Management in Electronic Commerce, 2016 – 2018.
- ABA Advisor to Drafting Committee to Implement the UN E-Commerce Convention, 2008 - 2010
- ABA Advisor to Drafting Committee on Uniform Electronic Transactions Act (now adopted in 47 states), 1997–1999

State of Illinois

- Chair, Illinois Commission on Electronic Commerce and Crime, 1996–1998

American Bar Association

- Member (Co-Chair, 2019-2020), ABA Cybersecurity Legal Task Force, 2013 -present
- Chair, Identity Management Legal Task Force, Business Law Section, 2009-present
- Member (Co-Chair, 2011-2018) Cybersecurity Subcommittee, Business Law Section
- Chair, Section of Science & Technology Law, 1999–2000
- Chair, E-Commerce Division, Section of Science & Technology Law, 1995-1999; 2001-2003
- Chair, International Policy Committee, Section of Science & Technology Law, 2005-2011; 2016-2020
- Member, Editorial Board, *The SciTech Lawyer*, Section of Science & Technology Law, 2008-2014

RECOGNIZED IN:

- *Best Lawyers in America 2003-2021* (Information Technology Law; Technology Law); also named Information Technology Law Lawyer of the Year in the 2018
- *Chambers USA 2003-2021: America's Leading Business Lawyers* (Privacy & Data Security, Technology & Outsourcing)
- *Chambers Global 2007-2019: The World's Leading Lawyers* (Privacy & Data Security)
- *International Who's Who Legal* (2001-2021):
 - *Internet and e-Commerce Lawyers 2001-2013*
 - *Information Technology Lawyers 2014, 2021*
 - *TMT Lawyers 2015-2018*
 - *Data Thought Leaders 2019-2020*
 - *Data Privacy & Protection 2021*
- *Legal Media Group: Guide to the World's Leading Technology, Media & Telecommunications Lawyers* (IT Law)
- *Leading Lawyers* (Computer & Technology Law; International & Business Trade Law)
- *National Law Journal* "Top 50 Intellectual Property Trailblazers & Pioneers" (2014)
- *SuperLawyers 2006-2023* (Illinois) (Information Technology; International, Intellectual Property)
- *Who's Who in American Law* 1996-2018, Marquis Who's Who
- *Who's Who in the Midwest* 1996-2015, Marquis Who's Who
- *Who's Who in America* 1997-2015, Marquis Who's Who
- *Who's Who in the World* 1995-2008, Marquis Who's Who

PUBLICATIONS:

Books

- GUIDE TO CYBERSECURITY DUE DILIGENCE IN M&A TRANSACTIONS (co-editor and contributing author) (American Bar Association, August 2017)
- INFORMATION SECURITY LAW: THE EMERGING STANDARD FOR CORPORATE COMPLIANCE, (IT Governance Publishing, Oct. 2008)
- ONLINE LAW: THE LEGAL GUIDE TO DOING BUSINESS ON THE INTERNET (editor and principal author); (Addison-Wesley, 1996, 6th printing 2000) (Japanese translation published by Shichiken Publishing Co., 1998)
- MULTIMEDIA LAW HANDBOOK (Wiley Law Publications 1995)
- THE LEGAL GUIDE TO DEVELOPING, PROTECTING AND MARKETING SOFTWARE (John Wiley & Sons, Inc. 1986)

Book Chapters

- “Lawyers’ Legal Obligations to Provide Data Security,” published as Chapter 4 in THE ABA CYBERSECURITY HANDBOOK - A RESOURCE FOR ATTORNEYS, LAW FIRMS & BUSINESS PROFESSIONALS, 3rd Edition (American Bar Association, 2022)
- “Data Security and Lawyers’ Legal and Ethical Obligations to Clients,” published as Chapter 3 in THE ABA CYBERSECURITY HANDBOOK - A RESOURCE FOR ATTORNEYS, LAW FIRMS & BUSINESS PROFESSIONALS (American Bar Association, 2013)
- “Ambiguities in State Security Breach Notification Statutes,” published as Chapter 6 in Thomson, Ed., DATA BREACH AND ENCRYPTION HANDBOOK (American Bar Association, 2011)
- “Legal and Regulatory Security Obligations,” published as Chapter 8 in Axelrod, Bayuk, and Schutzer. Ed, ENTERPRISE INFORMATION: SECURITY AND PRIVACY (Artech House, 2009);
- “Defining the Legal Standard for Information Security: What Does “Reasonable” Security Really Mean?,” published as Chapter 1 in Chander, Gelman and Radin, Ed., SECURING PRIVACY IN THE INTERNET AGE, (Stanford Univ. Press, 2008)
- “Analysis of Article 9 of the United Nations Convention on the Use of Electronic Communications in International Contracts,” and “Role of Information Security in the Electronic Communications Convention,” published as chapters in Boss and Kilian, Ed., THE UNITED NATIONS CONVENTION ON THE USE OF ELECTRONIC COMMUNICATIONS IN INTERNATIONAL CONTRACTS: AN IN-DEPTH GUIDE AND SOURCEBOOK (Kluwer Law International, 2008)
- “Structuring International E-Transactions,” published as Chapter 1 in INTERNATIONAL TRADE LEGAL STRATEGIES (Aspatore Books, Nov. 2007)
- “Developing a Legally Compliant Corporate Information Security Program,” published as chapter in THE IN-HOUSE COUNSEL’S ESSENTIAL TOOLKIT (American Bar Association, 2007)
- “E-Commerce Law” (co-author), published as Chapter 29 in 4-volume treatise titled UNITED STATES LAW OF TRADE AND INVESTMENT (William S. Wm. S. Hein & Co, 2001)
- “Creating Enforceable Electronic Transactions” published as chapter in book titled INTERNET LAW FOR THE BUSINESS LAWYER (American Bar Association, 2001).

Selected Recent Articles

- “Trust Frameworks for Identity Systems,” Open Identity Exchange White Paper, October 2017
- “The Importance of Cybersecurity Due Diligence in M&A Transactions,” Business Law Today, (September 2017) (co-author)
- “[An Overview of Data Security Legal Requirements for All Business Sectors](#),” SSRN, (October, 2015)
- “[Identity Management: The Key to Cyber Security and Online Commerce](#),” New York Law Journal (March 2, 2015)
- “Developing Federated Identity Management to Build Trust,” E-Finance & Payments Law & Policy (January 2015)
- “[Keys to Ensuring a Federated Identity Future](#),” SecureID News, December 2014
- “The Vocabulary of Identity Systems Liability,” Open Identity Exchange White Paper, June 2013
- “Building a Legal Framework for Online Identity,” *M/E Insights*, January, 2013
- “Solving the Legal Challenges of Trustworthy Online Identity,” 28 *Computer Law & Security Review* (2012) at pp 532-541
- “Solving the Legal Challenges in Verifying Online Identity,” The SciTech Lawyer, Fall 2011

- “Building an Online Identity Legal Framework: The Proposed National Strategy,” BNA, Privacy & Security Law Report, 9 PVLR 28 (July 12, 2010); Reprinted in Data Protection Law & Policy, Vol. 7, No. 11 (Nov. 2010)
- “Developing a Comprehensive Written Information Security Program,” published in PLI 11th Annual Institute on Privacy & Data Security Law (May 2010); Reprinted in The Computer & Internet Lawyer, Vol. 27, No. 11 (Nov. 2010)
- “[The Legal Thicket of Federated Identity Management](#),” E-Commerce Times, January 12, 2010
- “[Federated Identity Management: Balancing Privacy Rights, Liability Risks, and the Duty to Authenticate](#)” (SSRN, August 21, 2009)
- “New Data Security Regulations Create Compliance Challenges for Businesses,” *Secure Times*, Winter 2009 (co-author)
- “New State Regulations Signal Significant Expansion of Corporate Data Security Obligations,” *BNA Privacy & Security Law Report*, October 20, 2008;
- “[The Legal Challenges to Implementing Electronic Transactions](#),” 41 *UCC Law Journal* (Oct 2008);
- “[Addressing the Legal Challenges of Federated Identity Management](#),” *Privacy & Security Law Report*, (March 3, 2008)
- “[The State of Information Security Law: A Focus on the Key Legal Trends](#),” EDPACS, The EDP Audit, Control, and Security Newsletter (January – February 2008 Vol. XXXVII, Nos. 1–2);
- “[It’s All About Trust: The Expanding Scope of Security Obligations in Global Privacy and E-Transactions Law](#),” 16 *Michigan State Journal of International Law*, December 2007
- “Director Responsibilities For Data Security: Questions the Board should Be Asking,” *Director’s Monthly*, April 2007;
- “Where We’re Headed – New Developments and Trends in the Law of Information Security,” *Privacy & Data Security Law Journal*, January 2007
- “Online Access to Corporate Data: New Legal Rules for Authentication,” *World Data Protection Report*, September 2006
- “E-Transactions: The Key Rules for Ensuring Enforceability,” *Electronic Banking Law & Commerce Report*, June 2006
- “The Legal Requirements for Creating Secure and Enforceable Electronic Transactions,” *Current Developments in Monetary and Financial Law*, Vol. 3 (International Monetary Fund, April 2005).
- “The Developing U.S. Legal Standard for Cybersecurity,” *The Sedona Conference Journal* (June, 2003)
- “Moving With Change: Electronic Signature Legislation as a Vehicle for Advancing E-Commerce” (co-author) *The John Marshall Journal of Computer & Information Law* (Vol. XVII, No. 3, Spring 1999 at 723);

SELECTED RECENT PRESENTATIONS:

- “The Legal Rules Governing Identity: Current Law and Coming Legislation,” Identiverse Conference (June 25-28, 2019, Washington DC)
- “Cybersecurity Readiness: Addressing Compliance Risk,” PLI Twentieth Annual Institute on Privacy & Data Security Law (May 6-7, San Francisco, and June 3-4, 2019, Chicago), also Conference Co-Chair
- “Security Strategy and Breach Response,” KNOW Identity Conference (March 24-27, 2019, Las Vegas)
- “The Internet of Things: Everything Will Be Connected,” ABA (January, 14 2019, webinar)
- “Cybersecurity Wake-Up Call: The Business You Save May Be Your Own,” ABA Annual Meeting (August 4, 2018, Chicago)
- “The Legal Rules that Regulate Identity Systems, and Their Role in Facilitating Trust and Interoperability,” Identiverse Conference (June 26, 2018, Boston)
- “The Challenges of Operating in a Digital Environment: The Law Governing Electronic Transactions, Privacy, and Cybersecurity,” Hawaiian Association of Public Accountants (June 13-16, 2018, Maui)
- “Cybersecurity Readiness: Understanding the Landscape of Legal Requirements for Proactive Compliance,” PLI Nineteenth Annual Institute on Privacy & Data Security Law (May 7-8, San Francisco, and June 11-12, 2018, Chicago), also Conference Co-Chair
- “Authentication and Credential Theft: Key Concepts,” Georgetown Law Cybersecurity Law Institute (May 23-24, 2018, Washington DC)

- “Addressing Law and Governance in Trust Frameworks, Smart Contracts & Blockchain,” Stanford University Law School Conference (May 9, 2018, Palo Alto, CA)
- “Protecting Your Board and Senior Executives From Fiduciary Liability for Data Breaches,” Retail Law Conference (October 10-12, 2017 Chicago)
- “Averting the Next Yahoo!/Verizon: Cybersecurity Due Diligence in M&A Transactions,” ABA Business Law Section Annual Meeting (September 14, 2017, Chicago)
- “Trust Frameworks: Their Critical Role in Governing Identity Systems and Allocating Liability,” Cloud Identity Summit (June 22, 2017, Washington DC)
- “Cybersecurity: Managing the Risk & Cyber Attack Simulation,” PLI Eighteenth Annual Institute on Privacy & Data Security Law (May 8-9, San Francisco, and June 12-13, 2017, Chicago), also Conference Co-Chair
- “Cyber Security Governance—Addressing Emerging Expectations,” University of Texas School of Law’s 30th Annual Technology Law Conference (May 25-26, 2017, Austin, Texas)
- “Trust Frameworks: Their Critical Role in Governing Identity Systems and Allocating Liability,” KNOW Identity Conference (May 15-17, 2017, Washington DC)
- “The Challenges of Identity and Trust in the Black Box World of IoT,” ABA Internet of Things National Institute (May 10-11, 2017, Washington DC)
- “Hot Topics in Cyber Law 2017,” RSA Security Conference (February 13 - 17, 2017, San Francisco)
- “Data Security Law: Foundations, Privacy + Security Forum” (October 24-26, 2016, Washington DC)
- “Legal Issues of Online Identity Management: The New Challenge for e-Commerce and Cybersecurity,” PLI Webinar (August 12, 2016)
- “Right to Be Forgotten,” American Association of Law Librarian’s Annual Conference (July 16-19, 2016, Chicago)
- “The Expanding Duty to Provide Security: Trends in Cybersecurity Law,” PLI Seventeenth Annual Institute on Privacy & Data Security Law (May 16-17, San Francisco, and July 11-12, 2016, Chicago), also Conference Co-Chair
- “Identity Management Law Regarding Liability and Participant Obligations,” UNCITRAL Colloquium on Legal Issues related to Identity Management and Trust Services, (April 21-22, 2016, Vienna Austria)
- “Cybersecurity Law,” Society of Corporate Compliance & Ethics (SCCE) Regional Meeting (April 8, 2016, Chicago)
- “Smart Devices, Not-So-Smart Legal Problems: Addressing and Mitigating IOT Legal Risk,” ABA Internet of Things National Institute (March 30-31, 2016, Washington DC)
- “Identity Management Law and Legislative Developments”, eSignRecords2015 Conference, Electronic Signature and Records Association (November 17-18, 2015, New York)
- “E-Identity: Privacy Issues and Interoperability,” eID Conference (September 28-29, 2015, Washington DC)
- “Developing a Legal Framework for the Use of Digital Identity in E-Commerce,” International Conference on Digital Identity, (August 5-7, 2015, Lima, Peru)
- “Digital Identity Law,” EU Conference on Electronic Commerce (June 10, 2015, Bologna, Italy)
- “Cybersecurity Issues in Mergers and Acquisitions,” Georgetown Cybersecurity Law Institute (May 20, 2015, Washington DC)
- “Federal Regulatory, Legislative, Enforcement and Investigation Landscape: Changes on the Horizon,” ACI Cyber & Data Risk Insurance Conference (March 23-24, 2015, Chicago)
- “What Business Lawyers and Commercial Litigators Must Know about E-Signatures,” American Law Institute (February 20, 2015, Webinar)
- “Digital Identity and Identity Management Law: The U.S. Perspective,” Conference on Identità ed eredità digitali: Stato dell’arte e possibili soluzioni al servizio del cittadino (Digital identity and inheritance: State of the art and possible solutions to the service of the citizen), BAFFI Center on International Markets, Money and Regulation, in collaboration with Consiglio Nazionale del Notariato (Italian Notarial Society) (December 4, 2014, Milan, Italy)

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- “Cybersecurity in the US and Around the Globe,” 11th Annual Stanford E-Commerce Best Practices Conference (June 16, 2014, Stanford, California)
 - “The Latest Developments in Cybersecurity,” PLI Fifteenth Annual Institute on Privacy and Data Security Law (May 19-20, San Francisco, and July 14-15, 2014, Chicago) Conference Co-Chair
 - “E-Commerce: The Laws Governing Electronic Transactions, Privacy and Data Security,” Association of Public Accountants (May 5, 2014, Las Vegas)
 - “Identity Management: Why It Matters for Privacy Professionals and Their Clients,” IAPP KnowledgeNet (April 30, 2014, Chicago)
 - “Identifying the Corporate Cybersecurity Risk Portfolio,” 7th Annual White Collar Crime + Corporate Governance Conference (April 17, 2014, Chicago)
 - “Emerging Cybersecurity Regulatory and Enforcement Activities: The Growing Authority of the State AG Offices,” ACI Cyber & Data Risk Insurance Conference (March 24-25, 2014, Chicago)
 - “Deciphering the Legal Framework that Governs Online Identity Systems,” RSA Security Conference (February 24 - 28, 2014, San Francisco)
 - “Identity Trust Framework Legal/Policy Considerations,” 2013 Transglobal Secure Collaboration Symposium (Nov. 14-15, 2013, Washington DC)
 - “Cybersecurity Law 101: The Legal Obligations of Every Business to Provide Data Security,” ABA Webinar (November 5, 2013)
 - “Operationalizing Identity Trust Frameworks and Scheme Rules,” UK Cabinet Office O5 Internet Summit (October 10, 2013, London)
 - “Information Security: Complying with the Latest Legal Requirements,” PLI Fourteenth Annual Institute on Privacy and Data Security Law (May 20-21, San Francisco, and July 15-16, 2013, Chicago) Conference Co-Chair
 - “Data Breach Law Update – Global Trends, Legal Complexities,” RSA Security Conference (February 25 -- March 1, 2013, San Francisco)
 - “Identity Trust Frameworks: Alternative Approaches to Achieve the Panacea,” RSA Security Conference (February 25 -- March 1, 2013, San Francisco)
 - “Privacy Law in 2012: Where We Are and Where We Are Going,” American Bar Association (ABA) Annual Meeting (August 3, 2012, Chicago)
 - “Legislative and Regulatory Trends in U.S. Privacy and Security Law,” PLI Thirteenth Annual Institute on Privacy and Data Security Law (July 16-17, 2012, Chicago) Conference Co-Chair
 - “Tackling the Identity Management Liability Problem,” RSA Security Conference (Feb 27 - Mar 2, 2012, San Francisco)
 - “Enabling Trust in Cyberspace: Building an Online Trust Framework,” Interdisciplinary Centre for Law and ICT (ICRI) (November 14-15, 2011, Leuven Belgium)
 - “Building the Legal Framework for Identity Federation,” Aerospace & Defense Industry Transglobal Secure Collaboration Program (October 13, 2011, The Hague, Netherlands)
 - “State & Federal Law Privacy Update,” PLI Twelfth Annual Institute on Privacy & Data Security Law (July 18-19, 2011, Chicago and May 23, 2011, San Francisco) Conference Co-Chair
 - “Secure Government in Cyberspace?,” 12th International Digital Government Research Conference (June 12-15, 2011, Washington DC)
 - “Online Trust: A National Imperative,” National Association of State CIOs (NASCIO) (May 5, 2011, Washington DC)