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Harmed by a Data Breach: Consumers May Find It Easier to Prove Standing Under Seventh Circuit Decision

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Information is transmitted with increasing frequency in the United States. More than seventy-four percent of the people in the United States are capable of using the internet, allowing many people to share content over the web. However, as more and more information is shared, this widespread sharing is subject to certain risks and vulnerabilities. Technological advancements make the transmission of information easier for normal users while also making the theft of such information much easier as well. Data breaches have become a common occurrence in the United States, with an average of 100 successful cyber-attacks occurring each week. More and more companies have been affected by data breaches and the people whose data that were supposedly safeguarded by these companies have been consequently affected. Major companies including Target and Sony were subject to such breaches, making them spend millions of dollars in harm prevention. These incidents of data breach gave rise to multiple class action suits against major corporations. Although consumers sued the companies claiming damages and negligence, these claims were dismissed by the court due to the lack of standing. Article III, Section 2 of the Constitution limits federal jurisdiction to lawsuits that present an actual case or controversy. Furthermore, in Clapper v. Amnesty International, the Supreme Court held that plaintiffs had to prove they are at imminent risk of suffering from a concrete injury. Other circuits, like the Third, followed the holding and dismissed cases that were unable to prove imminent risk. The Seventh Circuit, however, held that class action plaintiffs have standing when they are able to prove an objectively reasonable likelihood that such harm will occur.

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