

Regulatory Pitfalls under State Comprehensive Privacy Law

Privacy + Security Forum

October 24, 2024



Current State of Play

- 19 State Comprehensive Privacy Laws
- Regulations in California and Colorado
- Pre-Rulemaking in California
- Active Enforcement
- Regulatory Guidance



Current State of Play

- Sectoral Privacy Laws
- Regulation of Sensitive Data and Sensitive Activities
 - Biometric Data
 - Children
 - Automated Decisionmaking
- AI Regulation



We Live in a World of Scarce Resources

- A focus on public-facing indicia of compliance has shifted to a focus on areas of highest risk

Third party SDKs	Privacy technologies – do they function correctly? (e.g., cookie banner configurations, GPC functionality, etc.)
Automated Decisionmaking Technologies	DPIAs / DPAs: Is the effectiveness of privacy by design measures such as data protection assessments a growing risk area?
Privacy request mechanics	Storage limitation
Children’s data	Digital advertising and analytics
Dark patterns	Opt out preference signals

- “Grey areas” are an inherent feature of data privacy regulation

Recent Enforcement Activities

Regulator	Category	Key Issue
FTC	Data Sale	<ul style="list-style-type: none">• Avast: Alleged misrepresentation about monetizing consumer data.
	Sensitive Data	<ul style="list-style-type: none">• TikTok; NGL Labs: Alleged failure to obtain verifiable parental consent for processing children’s data and honoring parental rights.• Kochava; InMarket; X-Model: Alleged failure to obtain opt-in consent for processing sensitive location data.• Cerebral; Monument: Alleged misrepresentation about disclosing sensitive health data.
California AG	Data Sale	<ul style="list-style-type: none">• DoorDash: Alleged failure to disclose data “sale” or honoring the right to opt out.
	Sensitive Data	<ul style="list-style-type: none">• Google: Alleged misrepresentation on consumers’ control over location data processing.• Tilting Point Media: Alleged failure to obtain verifiable parental consent or opt-in consent for processing children’s data.
New York AG	Sensitive Data	<ul style="list-style-type: none">• College Board: Alleged unlawful monetization of student data.
Texas AG	Data Sale	<ul style="list-style-type: none">• General Motors: Alleged misrepresentation about monetizing detailed driving data.
	Sensitive Data	<ul style="list-style-type: none">• Meta: Alleged failure to obtain opt-in consent for processing biometrics.

Enforcement

- CPPA has actively been investigating consumer complaints. Focus areas include:
 - Right to delete
 - Digital analytics and tracking and opt out preference signals
- California AG settlements:
 - DoorDash
 - Tilting Point Media
 - Blackbaud



Enforcement



- CPPA Priorities:
 - Privacy disclosures
 - Right to delete
 - Method of deletion has been uneven among many businesses
 - Privacy request fulfillment mechanics (e.g., what data do businesses require to submit a request)
 - Dark patterns
- CPPA Enforcement Advisories
 - Dark Patterns
 - Data Minimization

Panel Discussion



Nicholas Godlove
Yum! Brands



Liz Hein
Foursquare



David Keating
Alston & Bird



Heather Kuhn
Genuine Parts

Select State Privacy Updates:

- <https://www.alstonprivacy.com/california-joins-the-neural-data-bandwagon/>
- <https://www.alstonprivacy.com/california-passes-generative-ai-training-transparency-bill/>
- <https://www.alstonprivacy.com/new-york-attorney-general-investigates-companies-for-website-tags-publishes-guidelines-on-online-tracking-technologies/>
- <https://www.alstonprivacy.com/new-york-ag-seeks-comments-on-rulemaking-for-minors-online-protection-laws/>
- <https://www.alstonprivacy.com/cppa-holds-preliminary-stakeholder-session-on-accessible-deletion-mechanism-under-delete-act/>
- <https://www.alstonprivacy.com/california-ag-announces-500000-settlement-with-mobile-game-app-company-for-unlawful-collection-and-sharing-of-childrens-data/>