Regulatory Pitfalls under State Comprehensive Privacy Law

Privacy + Security Forum

October 24, 2024



© Alston & Bird LLP 2024 www.alston.com

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
- Al 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 | Avast: Alleged misrepresentation about monetizing consumer data. |
| | Sensitive Data | 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 | lifornia AG Data Sale | DoorDash: Alleged failure to disclose data "sale" or honoring the right to opt out. |
| | Sensitive Data | 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 | College Board: Alleged unlawful monetization of student data. |
| Texas AG | Data Sale | General Motors: Alleged misrepresentation about monetizing detailed driving data. |
| | Sensitive Data | 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

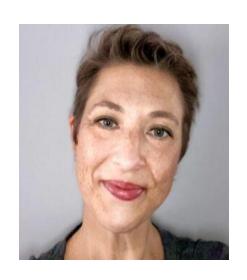


- CPPA Priorities:
 - Privacy disclosures
 - Right to delete
 - Method of deletion has been uneven among many businesses
 - Privacy request fulfillment mechanics (e.g., what data do businesses require to submit a request)
 - Dark patterns
- CPPA Enforcement Advisories
 - Dark Patterns
 - Data Minimization

Panel Discussion



Nicholas Godlove Yum! Brands



Liz Hein *Foursquare*



David Keating

Alston & Bird



Heather Kuhn *Genuine Parts*

© Alston & Bird LLP 2024

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/

© Alston & Bird LLP 2024