

Privacy and Data Management Law: Major Updates from the Busiest Year to Date

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AGENDA



- (1) United States: New privacy statutes and regulations abound
- (2) AI Rules are coming
- (3) The EU starts regulating non-personal data
- (4) Europe: First fines for “normal” companies, transfers are the emerging risk front for US companies
- (5) China: A new, GDPR-style privacy law with teeth

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United States:

New privacy statutes and regulations abound

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New State Privacy Statutes



- California has passed the California Privacy Rights Act (CPRA)
- Colorado passed the Colorado Privacy Act (CPA)
- Virginia passed the Virginia Consumer Data Protection Act (VCDPA)
- Utah passed the Consumer Privacy Act (UCPA)
- Connecticut close to passing “Personal Data Privacy & Online Monitoring Act”

These statutes enter into force throughout 2023

- 13 or so additional state legislatures may consider privacy legislation in 2022
 - AK, MA, NY, NC, OH, OK, SC, VT – introduced bills in 2021 that carry over
 - AZ, FL, MI, MN, WA – reported to be introducing bills in 2022
 - IL – introduced bill in 2021, unclear if it will carry over

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Common Themes of Statutes (Part 1)



- Privacy notice requirements, tied to collection & use limitations
- “Sensitive data” concepts and consent requirements – new internal diligence, consent interfaces
- Consumer rights to access, delete, & correct personal data – plus a new “appeal” right
- “Data controller” / “data processor” concepts plus mandatory contractual terms – another round of customer/vendor agreement updates coming
- “Data sale” concept – sometimes clear, sometimes not
- First-ever general statutory obligations for limited data retention

Common Themes of Statutes (Part 2)



- New & expanded rights to opt-out of digital advertising
- New rules for high-impact algorithmic/AI decisions
- Internal governance – privacy assessments & cybersecurity audits
- Carve-outs for (a) employee data and (b) B2B data
- Carve-outs for data subject to federal privacy statutes (GLBA, FCRA, or HIPAA)
- Still no carve-outs for (a) telecom privacy laws, (b) state insurance privacy laws

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