# BEFORE THE NEXT WAVE: HOT TOPICS IN STATE PRIVACY LAWS COMPLIANCE

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***PANELIST OPINIONS EXPRESSED ARE SOLELY THEIR OWN AND DO NOT REFLECT THE VIEWS OR OPINIONS OF THEIR EMPLOYERS.***

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# Agenda

- Intro to Panelists
- U.S. State Privacy Laws: Quick Recap on Where We Are
- Panelist Perspectives: Hot Topics, Trends & Predictions
  - Operationalizing compliance in an inconsistent & evolving legislative landscape
  - Governance & Education
  - Unique challenges in the world of AI
  - Interplay with recent wiretapping/CIPA claims
  - Balancing compliance obligations and litigation risk

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# Meet Our Panelists

**Arlene Mu**
Assistant General Counsel
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**Jon Knight**
Senior Corporate Counsel
Deltek

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Director of Privacy
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**Sulina Gabale**
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# U.S. STATE PRIVACY LAWS

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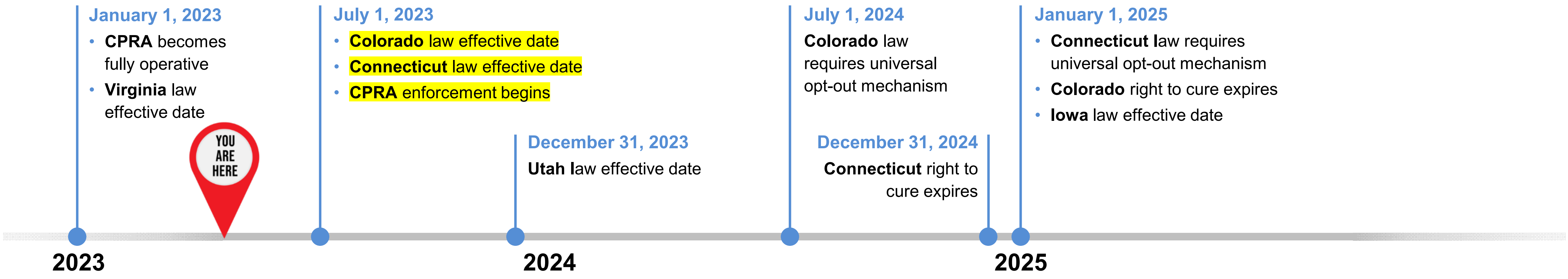
# Six New Comprehensive State Privacy Laws

- While federal privacy legislative efforts continue to stall, in the past two years, **five U.S. states have passed** comprehensive privacy laws:
  - **California** (eff. Jan. 1, 2023) – California Privacy Rights Act (amends CCPA);
  - **Virginia** (eff. Jan. 1, 2023) – Virginia Consumer Data Protection Act;
  - **Colorado** (eff. July 1, 2023) – Colorado Privacy Act;
  - **Connecticut** (eff. July 1, 2023) – Connecticut Data Privacy Act; and
  - **Utah** (eff. Dec. 31, 2023) – Utah Consumer Privacy Act.
- **Iowa**, the sixth state, passed its Consumer Data Protection Act (eff. Jan. 1, 2025) this past March.
- And there are likely many more to come…

# Common Themes

- While the laws vary in some ways, there are clear **similarities**:
  - Incorporation of the **Fair Information Practice Principles** (transparency, data minimization, etc.);
  - Tiers of protected information – (1) **personal data**; and (2) **sensitive personal data** (precise geolocation, biometric information, etc.);
  - **Individual privacy rights**;
  - Focus on certain types of data processing activities – *e.g.*, **data "sales" and targeted advertising, automated decision-making/profiling** and **sensitive personal data**; and
  - **Increased regulatory oversight** of companies' privacy compliance, including express statutory requirements to conduct privacy and security assessments (and even turn them over to regulators).

# Key Dates to Remember



**January 1, 2023**

- **CPRA** becomes fully operative
- **Virginia** law effective date

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**July 1, 2023**

- **Colorado** law effective date
- **Connecticut** law effective date
- **CPRA** enforcement begins

**December 31, 2023**

**Utah l**aw effective date

**July 1, 2024**

**Colorado** law requires universal opt-out mechanism

**December 31, 2024**

**Connecticut** right to cure expires

**January 1, 2025**

- **Connecticut l**aw requires universal opt-out mechanism
- **Colorado** right to cure expires
- **Iowa** law effective date

**2023**

**2024**

**2025**

***In the pipeline… (to be signed):***

- Montana’s Consumer Data Privacy Act (S.B. 384), eff. October 1, 2024
- Tennessee’s Information Protection Act (H.B. 1181), eff. July 1, 2025
- Indiana's S.B. 5, eff. Jan. 1, 2026

# "OPERATIONALIZING" COMPLIANCE

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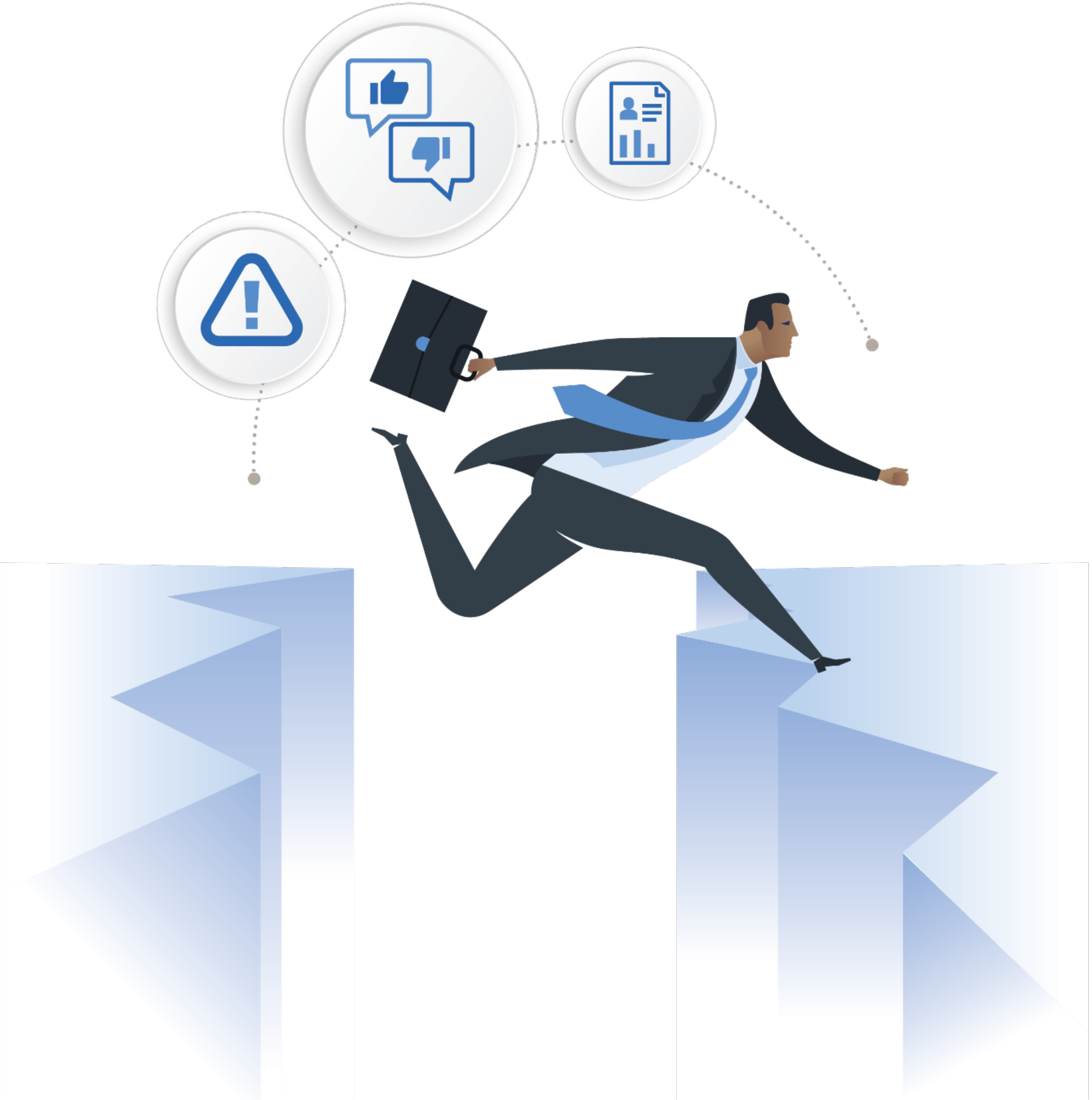
# It's Been a Bumpy Road…

- Challenges in "operationalizing" compliance in a new and evolving landscape
  - How to handle "grey areas" (employee data, ADM/profiling, etc.), inconsistencies among laws & new legislation
  - ERM and "risk ratings"
  - Memorializing approach to compliance and risks
  - Industry standards – a helpful metric?
  - Building a scalable, flexible & sustainable compliance program



# GOVERNANCE & EDUCATION

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# Governance & Education

- "Educating" on the new laws
  - Internally (legal/compliance, marketing, engineering, product, IT, C-suite)
  - Externally (vendors, customers, the public)
- Impactful communications
- Innovative approaches to training
- Building governance frameworks to scale

# UNIQUE CHALLENGES WITH AI

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The use of AI is *predicted* to **grow by *more than 25%* each year** for the next five years and could contribute ***over $15 trillion* to the global economy by 2030**.

Source: PWC, *Global Artificial Intelligence Study: Exploiting the AI Revolution, available here.*

# AI and Privacy/Security Challenges

- Impacts on state privacy laws compliance:
  - "Responsible" AI
  - Overlapping principles: fairness, security and accountability
  - Levering privacy programs (*e.g.*, impact assessments)
- How are we defining & using AI?
- Approach to assessing & using disruptive AI technologies (*e.g.*, ChatGPT)
- Accountability – AI "task force"
- Security and leveraging the NIST framework

# INTERPLAY WITH WIRETAPPING RISKS

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# Session Replay and Chatbot Technologies

*Wiretapping & VPPA Risks*

- ***Session Replay***. A session replay code enables website operators to record and replay user interactions with their websites, including clicks, scrolls, hovers, web pages visited and data submissions. This information is often used for marketing purposes.
- ***Chatbots***. Websites use chatbots to respond to user questions about companies and their services, and the chatbots may retain transcripts of the communications. Individuals are suing companies that use this technology, alleging that it is a violation of wiretapping laws.
- ***Pixel/Tracking***. Websites' placement of advertising and social media pixels may collect sensitive data or "intercept" communications or share data on video content viewed. For example, since June 2022, 50+ class actions have been filed nationally against hospitals and healthcare companies for their use of tracking technologies that capture health-related data.
  - Use of embedded video – may trigger claims under Video Privacy Protection Act ("VPPA")

# Approach to Mitigating Risk

- Internal audits for new technologies subject to wiretapping/VPPA claims
- Minimizing impact – *e.g.*, restricting to certain jurisdictions
- Cookie banners – state privacy laws/dark patterns v. risks under wiretapping laws
- M&A implications

# BALANCING COMPLIANCE WITH LITIGATION RISK

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# Balancing Act: Compliance & Litigation

- Balancing compliance (*e.g.*, transparency) with litigation risk
- Value in communication & knowledge sharing between teams
- Approach to addressing recent enforcement
- External benchmarking
- Lessons learned (CCPA enforcement, wiretapping, VPPA, BIPA, etc.)

# Questions?

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