

# Data Brokers and Others Under Scrutiny

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# Moderator and Presenters



## **Jim Koenig**

Partner and Co-Chair  
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Jim has 25+ years privacy experience, including building and globally leading the privacy practice and co-leading the security response and data management practices at PwC and Booz Allen. For the past ten years, he has represented global clients in the financial services, energy, retail, pharmaceutical/health care, cable, telecommunications, car rental, airline, social media, technology, and manufacturing industries, including 35% of Fortune 100-listed companies.



## **Angelo A. Stio III**

Partner  
Princeton/New York

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Angelo is an experienced litigator who has tried and arbitrated numerous matters to verdict/award in jurisdictions throughout the United States. Angelo's practice focuses on technology and privacy and security issues. Most recently, he has defended clients in individual and class matters involving data breaches, the use tracking technologies, the use of track and trace tools and misappropriation of trade secrets. Angelo also has handled a number of business to business disputes involving indemnification and contractual claims arising from unauthorized access to consumer information.



## **Tambry Lynette Bradford**

Partner  
Los Angeles

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Tambry is a trial attorney who defends public and private companies in privacy, cybersecurity, and complex commercial matters throughout the U.S. She focuses her practice on disputes brought under federal and state privacy, security, and data use laws. Tambry is accredited by the International Association of Privacy Professionals as a Certified Privacy Professional/United States (CIPP/US) and is the managing partner of the Los Angeles office.

## Data Broker Scrutiny

**March 2023.** CFPB launches an inquiry focused on companies that track and collect information on people's personal lives.

**August 2023.** CFPB announces it is developing rules aimed at companies and entities that collect and sell consumer data to the Fair Credit Reporting Act ("FCRA").

The rules will have far-reaching implications.

- Redefining data brokers as consumer reporting agencies would subject the vast majority of companies with a digital presence and a data collection operation to a host of new regulations under the FCRA.
- Any company that harvests and sells or discloses consumer data would soon be required to adhere to the same legal regime to which the major credit agencies are subject—even if the company has nothing to do with consumer credit or consumer credit reporting.

## Data Broker Scrutiny

Four goals of the CFPB's proposed rules:

- ensure that the public is protected from modern-day data brokers
- provide that a data broker or other company in the surveillance industry can be covered under the FCRA in a variety of ways, including if they sell certain types of consumer data
- clarify the extent to which “credit header data” constitutes a consumer report
- generally make it unlawful to sell sensitive personal information for a reason other than a “permissible purpose.”

## CFPB Concern

- Role of Artificial Intelligence and predictive decision making.
- Rules would bring “much-needed accountability” to data brokers who, purportedly, power artificial intelligence and other automated decisioning about consumers’ lives.
- CFPB proposal coincides with efforts, at the state and local levels, to enhance privacy laws to more closely regulate automated decision-making.



## Biden Executive Order

**February 2024 - Biden Executive Order aimed at protecting sensitive personal data.**

DOJ to issue regulations that establish protections for American's sensitive personal data from access and exploitation of countries of concern.

DOJ and DOHS to establish security standards to prevent access by countries of concern to data through commercial means (investment, vendor, employment relationships).

Encourages CFPB take steps, consistent with CFPB's existing legal authorities, to protect Americans from data brokers that are illegally assembling and selling extremely sensitive data, including that of U.S. military personnel.

A close-up photograph of a classical stone column capital, showing the detailed fluting and tiered structure of the top of the column. The stone is light-colored and shows signs of weathering. The background is blurred, showing other similar columns in a row.

## Biden Executive Order

### CFPB Director Chopra's Speech at White House

- Today's executive order is a reminder of the urgent need to protect the personal data of Americans.
- Corporate data brokers are assembling and selling extremely sensitive data on all of us, including U.S. military personnel, to foreign purchasers.
- The Executive Order calls on the CFPB to utilize its legal authorities to provide greater protections. This year, we will be proposing new rules to rein in these abuses that will safeguard families and our national security.

**CFPB's View  
Buying and  
selling consumer  
data is a national  
security issue.**



# Data Broker Scrutiny – State Regulation

California

Vermont

Oregon

Texas

# Daniel's Law



# Daniel's Law – Timeline

## January 19, 2016

N.J.S.A. 56:8-166:1 became effective. Prohibits the disclosure of the home address or unpublished home telephone number over the Internet of an active or retired law enforcement officer “under circumstances in which a reasonable person would believe that providing that information would expose another to harassment or risk of harm to life or property.”

2016

Provides for a private right of action in which the Court may award:

- (1) Actual damages, but not less than liquidated damages computed at the rate of \$1,000 for each violation;
- (2) Punitive damages upon proof of willful or reckless disregard of the law;
- (3) Reasonable attorney’s fees and other litigation costs reasonably incurred; and
- (4) Any other preliminary and equitable relief as the court determines to be appropriate.

2020

## July 2020

Tragic death of Daniel Anderl, the son of federal Judge Esther Salas and attorney Mark Anderl. Daniel was shot by a lawyer posing as a deliveryman. Mark Anderl was also wounded during the encounter.

## November 20, 2020

Statute amended and renamed “Daniel’s Law.”

Amended to broaden protections to “any active, formerly active, or retired judicial officer . . . prosecutor, or law enforcement officer[.]”

Expand prohibition to “disclosure on the Internet, or redisclose[ure] or otherwise mak[ing] available” covered information.

Expand private right of action to not just the aggrieved individual, but anyone residing at their home address.

# Daniel's Law – Timeline

## January 12, 2022

Statute amended to remove “harassment or risk of harm” requirement and to introduce a notification procedure that requires a covered person to register with the Office of Information Privacy (“OIP”).

Ten (10) business day compliance period added.

(Retroactive to December 10, 2021)

2022

2023

## July 20, 2023

Statute amended to add “child protective investigators” to the definition of a covered person.

Expand definition of prohibited disclosures to include “making available or viewable within a searchable list or database, regardless of whether a search of such list or database is actually performed.”

Remove OIP registration requirement meaning companies receiving takedown requests have no way to verify request pertains to a covered person.

Permit assignment of claims. “Assignee” is defined as “a person or entity to whom or which an authorized person has assigned, in writing, a covered person’s right to bring a civil action for violation” of the statute.

Replace “may” with “shall” in connection private right of action.

# Daniel's Law Litigation

## December 2023

Atlas Data Privacy Corporation coordinates the sending of thousands of emails to different companies requesting the takedown of covered information by purported covered persons.

- The requests all originate from an @atlasmail.com email address.

2023

2024

## February 2024

In February, Atlas files over 100 cases alleging non-compliance under Daniel's Law.

## Defendants

The defendants are diverse in geography, industry, and response to Atlas' requests.

## Named Plaintiffs

More than 140 lawsuits are now pending in federal and state court brought by Atlas (on behalf of thousands of unnamed covered persons) and the same individuals.



# Other Daniel's Laws

## Federal Daniel's Law

On December 16, 2022, Congress passes the Daniel Anderl Judicial Security and Privacy Act. The law requires government agencies and other businesses to remove personal information within 72 hours. There is no private right of action.

## Indiana (Ind. Code Ann. § 36-1-8.5 *et seq.*)

In 2013, Indiana enacted a law that restricts the disclosure of “a covered persons address by means of a public property data base Internet web site.”

Allows for civil liability if the failure to timely restrict disclosure constitutes gross negligence or willful or wanton misconduct.

## Oklahoma (Okla. Stat. tit. 20, § 3011 *et seq.*)

In June 2023, Oklahoma enacted the Oklahoma Judicial Security and Privacy Act of 2023. Protects at-risk individuals (active or retired members of the State Judiciary, including municipal, county, tribal, and federal judges) and their immediate family members. Prohibits public posting or display of covered information on the Internet. Private right of action.

## Other state laws

Other states have enacted laws that allow judges and other law enforcement officers to redact their personal information from public records. These laws do not apply to private entities or provide a private right of action.

# Best Practices



## Data Mapping

Conduct an inventory of the personal information that is collected, retained, and disclosed (especially any public dissemination of personal information). This will assist in understanding whether you collect any personal information that could be implicated under Daniel's Law.



## Compliance Program

Review any existing privacy programs to ensure a request can be effectuated within the law's timeframe (10 days). This program should include training so employees can spot a request if the request is not submitted through a typical channel.



## Exemptions to Daniel's Law

While few, there are exemptions under the law, such as for certain records affecting the title to real property. Review whether any of these exemptions apply to you.



## Follow the Daniel's Law Litigation (Join the Party)

Daniel's Law has already faced constitutional challenges and will likely face more. Keep an eye out for how courts rule and consider whether these can be folded into your own litigation strategies.

# FCC Regulation of Lead Generators



# Lead Generators

## December 13, 2023 New Rules under the TCPA

*“The new rules close a loophole through which unscrupulous robocallers and robotexters inundate consumers with unwanted and illegal robocalls and robotexts. The new rules make it unequivocally clear that comparison shopping websites and lead generators must obtain consumer consent to receive robocalls and robotexts one seller at a time – rather than have a single consent apply to multiple telemarketers at once.”*

FCC Press Release, Dec. 13, 2023

## December 13, 2023 New Rules under the TCPA

Require comparison shopping websites and lead generators to obtain a consumer's prior express written consent to receive robocalls and robotexts one marketing partner at a time.

**Effective Date – 12 months from publication**

## Four Requirements of New Rules

- One-to-One Consent.
- Clear and Conspicuous Disclosure.
- Logically and Topically Related.
- Burden of Proof for Valid Consent on Lead Generator.

# Lead Generators



**Implement process to obtain prior written consent for each seller (no lists, hyperlinks fine print).**



**Offering Consumers alternate ways to obtain information from sellers**

Check box

Click through links

Use manually dialed call without AI or prerecorded voice



**Marketing messages must align with express written consent**



**Document and record valid consent and take steps to verify details through the consumer.**

Questions?

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Thank you!

A futuristic cityscape with digital data overlays and binary code. The scene is dominated by blue and white tones, with a bright light source on the left creating a lens flare effect. The background shows a city with modern buildings, overlaid with a complex network of glowing lines and binary digits (0s and 1s). The overall aesthetic is high-tech and digital.

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