

Filling the Void: State Attorney  
General Enforcement on AI,  
Privacy, and Security During the  
Second Trump Administration



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[Website bio](#)

Rebecca has extensive experience defending against inquiries by state AGs. Her experience ranges from large multistates, including resolving a data breach through simultaneous stipulated judgments with all 51 state AGs, to individual office letters. Rebecca has developed long-term relationships with the attorneys who handle privacy and data security in state AG offices in California, Connecticut, Illinois, Indiana, Massachusetts, New York, Texas, and Washington, among other states.



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A former FTC attorney, Aaron regularly defends companies in investigations by state AGs. Aaron has helped businesses navigate investigations on topics such as data security incidents, online advertising practices, collection and use of geolocation information, use of consumer data for AI model training, email marketing, consumer review and endorsement practices, advertising substantiation, and billing practices.

# What We'll Cover Today



- ① Setting the Stage: State of Affairs at the FTC
- ② State AG Enforcement Priorities
- ③ Trend? More Formal Coordination Between Regulators
- ④ State AG Enforcement Procedural Approaches
- ⑤ Strategies for Defending Against State AGs

# Setting the Stage: State of Affairs at the FTC

# FTC Commissioners



- Chair Andrew Ferguson
- Commissioner Melissa Holyoak
- Commissioner Mark Meador
- Administration fired two remaining Democratic commissioners. Their court challenges pending.





## Artificial Intelligence

- No: Regulating “AI qua AI”
- No: Expansive upstream liability, bias
- Yes: Support U.S. AI tech development
- Yes: Consumer protection claims for AI

## Privacy & Security

- No: Commercial surveillance rulemaking
- Different: Bias, content moderation
- Yes: Kids and teens online data
- Yes: Standard privacy and data security

## Jurisdiction & Remedies

- No: Expansive and aggressive views
- Yes: Traditional approach

“Congress has not given us power to regulate AI standing alone.”

“[T]he Commission must not charge headlong to regulate AI.”

# State AG Enforcement Priorities

# AI Authority: AI-Specific State Laws



## “Comprehensive” AI Laws

- CO AI Act (really algorithmic disc.)

## Disclose if Interacting with AI

- CA Bot Act; UT AI Act; CO AI Act

## Labeling & Disclosure Laws

- CA AB 2013 (Training Data Disclosures)
- CA AI Transparency Act (Labeling GenAI Content)

## Other Types of AI Laws

- Right of publicity expansion (TN, CA)
- Election deepfakes (CA)
- Sexually explicit deepfakes (CA)
- Sector- or context-specific (labor and employment, insurance, healthcare)

# AI Authority: Pre-Existing State Laws



## Comprehensive Privacy Laws

- AI angle: right to opt out of use of PI for profiling [in furtherance of] [for] decisions that produce legal or similarly significant effects
- In effect or will soon be in 20 states
- Enforceable by state AGs, with per-violation penalties
- CA rulemaking on ADM

## State UDAP Laws

- Prohibit unfair or deceptive acts or practices
- In place in every state
- Enforceable by state AGs, with varying monetary relief

# Privacy/Security Authority



## Comprehensive Privacy Laws

- Rights of transparency/access, data correction/deletion/portability, and use/sharing restrictions
- In effect or will soon be in 20 states

## Other Privacy/Security Laws

- Biometrics laws; health privacy laws
- Data breach reporting laws
- Can enforce some federal privacy laws (e.g., COPPA, CAN-SPAM)

## State UDAP Laws

- Prohibit unfair or deceptive acts or practices
- Enforcement avenue for privacy issues, e.g., misrepresentations, failures to disclose, and unfair collection or sharing
- In place in every state

# Recent CA Settlements: Privacy



SEPHORA

(California)

- First CCPA enforcement (Aug. 2022)
- Violations relating to “sales” for targeted advertising
- Failed to cure within 30 days
- Settlement included \$1.2m fine, injunctive relief



(California)

- First **CPPA** enforcement (March 2025)
- Violations included requiring verification to opt out of sale/share, asymmetric opt-in vs. opt-out for sale/share
- Settlement included \$632.5k fine, injunctive relief

# Recent CA Settlements: Privacy



(California)

- CCPA enforcement (May 2025)
- Violations relating delayed processing of opt-outs, verification requirements for opt-outs, and collecting more information than necessary for proper verifiable requests
- Settlement included \$345k fine, injunctive relief

# Recent TX Enforcement: Privacy and AI



**Allstate**

pieces

- First TDPSA lawsuit (Jan. 2025)
  - Integration of SDK into third-party apps, resulting in collection of geoloc data without consent
  - Violations include failure to provide notice of collection/sale, failure to obtain consent to collect sensitive data
  - Case ongoing
- Texas DTPA matter against AI healthcare tech company (Sept. 2024)
  - Offers a genAI product that summarizes patient condition and treatment
  - TX alleged false and misleading claims regarding product safety and accuracy, e.g., error rate of <1 per 100,000

# Recent TX Investigations (TX Announced Publicly)



- TDPSA investigation, with notice to DeepSeek of violations of TDPSA (Feb. 2025)
- Per AG, investigation concerns the privacy practices of DeepSeek's AI platform and its claims that its AI model rivals the most advanced AI models in the world, including OpenAI's Model o1



- TDPSA investigations, with notice to of violations of TDPSA (May 2025)
- “I have notified several Chinese-owned companies that they must stop violating Texas’s privacy laws and protect Texans’ data from falling into the hands of the CCP. Failure to do so will be met with the full force of my office,” said Attorney General Paxton

# Recent MI Lawsuit: Privacy



(Michigan)

- Violations of COPPA & Michigan Consumer Protection Act, and more (April 2025)
- Alleged violations include collecting children's personal information without parental consent, offering "Do not share or sell my personal information" but sharing even if selected
- Case ongoing

# Expectations for AG Enforcement Priorities



## Privacy

- Data subject rights, particularly sale/share opt-out issues
- Kid & teen privacy and social media experience
- Sensitive data collection, use, and sharing
- Consent for use of data for model training

## AI

- Misrepresentations/AI washing
- Failure to disclose use of AI/interaction with AI
- Failure to disclose known issues with AI products
- Use of AI for decision-making (biased/unfair outcomes)

# Expectations for Future AI Legislation and Enforcement



## Further Legislation

- Likely to see more laws passed
- More likely to be the “targeted” type rather than comprehensive AI laws
- Also likely to see more sector-specific laws passed

## Enforcement

- Many of the state laws not yet in effect
- When they are, likely to see same approach as for state omnibus privacy laws—AG letter inquiries
- Enforcement likely to continue under existing laws

# Trend? More Formal Coordination Between Regulators

# New State AG “Consortium”



**California Privacy Protection Agency** Search this website

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## State Regulators Form Bipartisan Consortium to Collaborate on Privacy Issues

*News: April 16, 2025*

SACRAMENTO, CA – Eight state regulators are collaborating on the implementation and enforcement of their privacy laws with the shared goal of protecting consumers. The Consortium of Privacy Regulators is a bipartisan effort that includes state Attorneys General and the California Privacy Protection Agency. The regulators have entered into a memorandum of understanding outlining the group's goals, including facilitating discussions of privacy law developments and shared priorities, with a focus on consumer protection across jurisdictions.

Recently announced “Bipartisan” “Consortium” to “Collaborate” on Privacy Issues. California Privacy Protection Agency and state AGs from California, Colorado, Connecticut, Delaware, Indiana, New Jersey, and Oregon

[https://cppa.ca.gov/announcements/2025/20250416.html?trk=feed\\_main-feed-card\\_reshare\\_feed-article-content](https://cppa.ca.gov/announcements/2025/20250416.html?trk=feed_main-feed-card_reshare_feed-article-content)

# State AG Enforcement Procedural Approaches

# State AG Procedural Approaches



## Inquiry Letter

- Less formal
- Often less detailed, focusing on a specific issue
- Opportunity to resolve without receiving a CID

## Cure Notice

- Notice of violation with opportunity to cure, or explain why not in violation
- Statutorily prescribed, e.g., TDPSA—but no longer for CCPA
- Typically 30 days

## CID/Subpoena

- CID equivalent to subpoena
- More formal, akin to discovery
- More likely to be fulsome, reach into secondary issues, include document requests

## Enforcement Action

- Lawsuit for violations
- Often results after other steps, e.g., if violation not cured or consent negotiations fail
- State AGs are like any plaintiff in lawsuits—not an administrative process

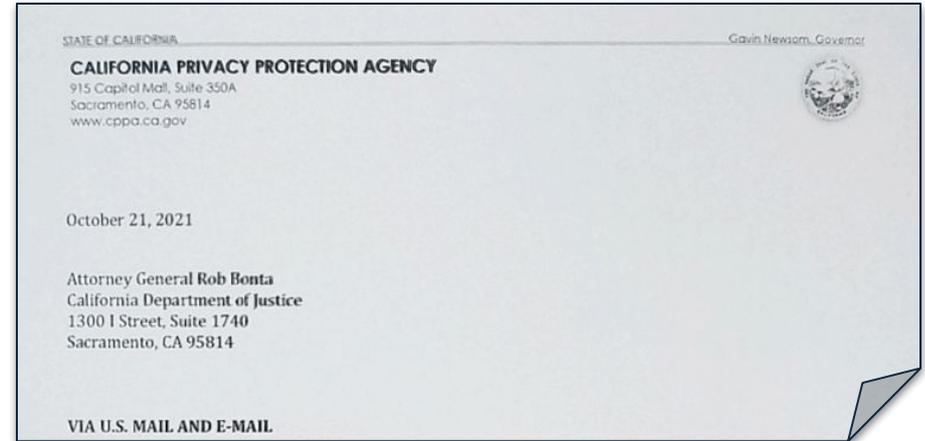
All can lead to consent order or lawsuit

# Strategies for Defending Against State AGs

# Strategy Considerations



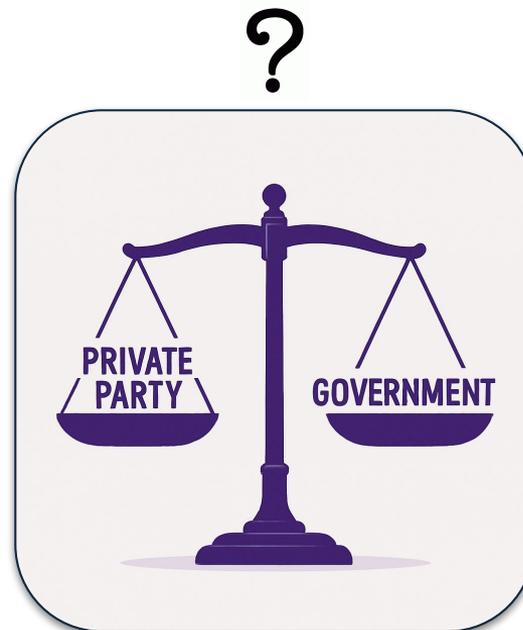
A letter is just a letter,  
even if from a state AG . . .  
or is it?



# Strategy Considerations



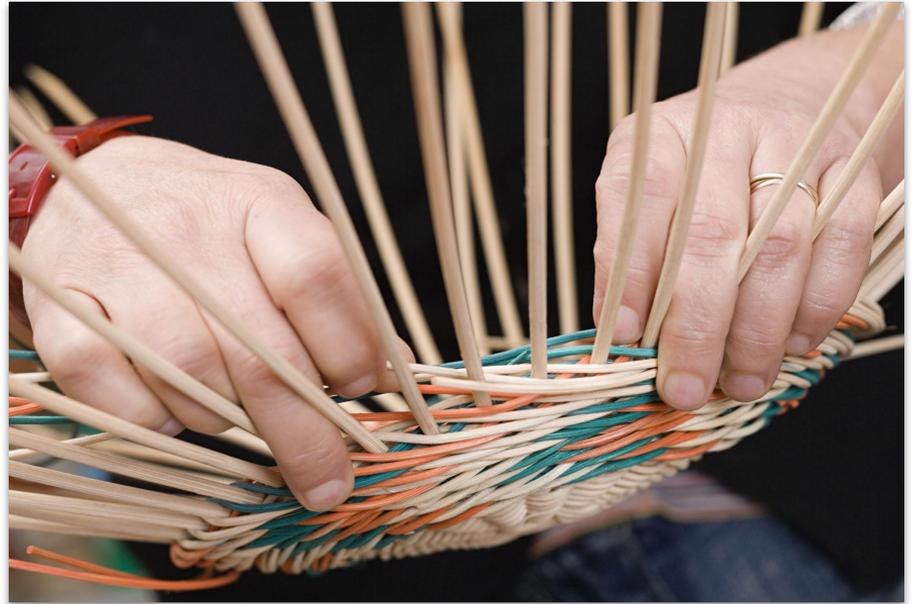
Defending against a state  
AG is very different from  
defending against a  
private party litigant



# Strategy Considerations



Weave in advocacy  
early and often,  
throughout the process





Don't be afraid to fix or improve conduct mid-stream (but do so carefully)

## **PRIVACY POLICY**

**Last updated May 9, 2025**

This Privacy Policy describes how we collect, use, and disclose information about you.

We may collect certain personal information when you use our website, such as your name, email address, and other contact details.

We use this information to provide and improve our services, communicate with you, and comply with legal obligations.

We may disclose your information to third parties.



How to approach ambiguity  
about when the matter is  
over

## **CLOSING LETTER**

Date: Never Coming

To Whom It May Concern,

Thank you!