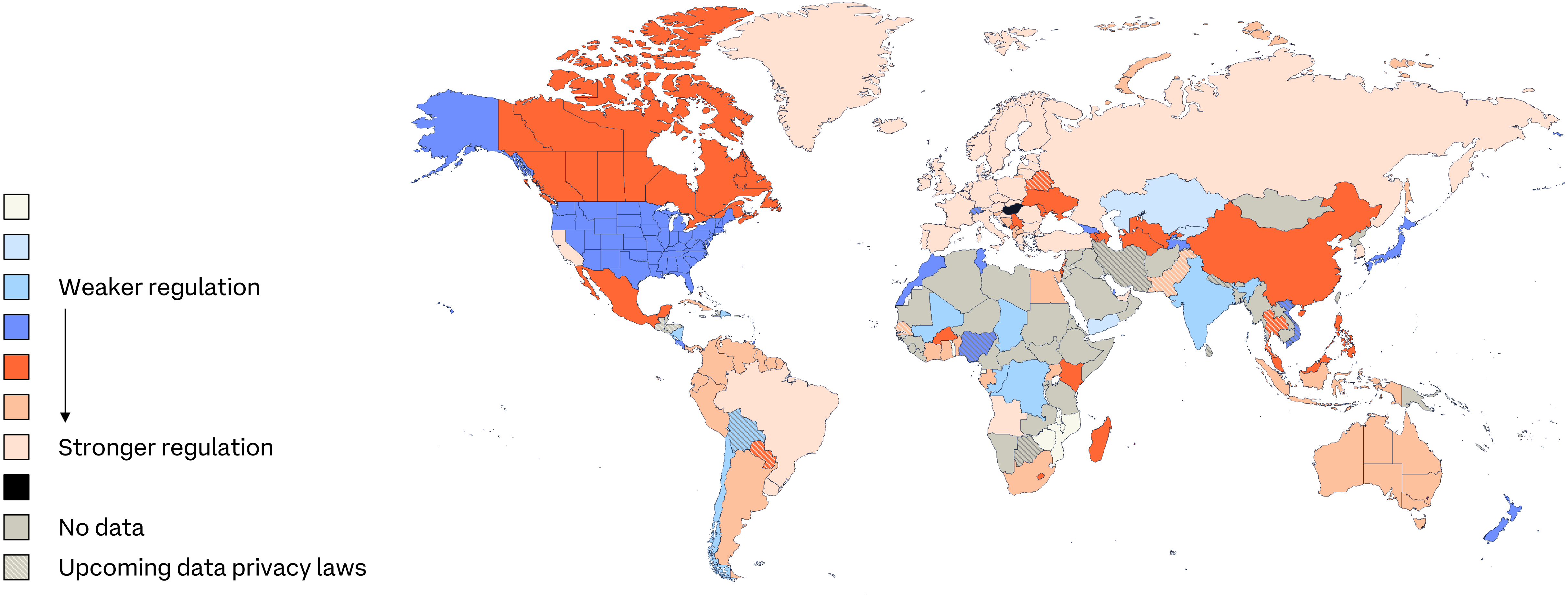
FRESHFIELDS

Privacy and AI Trends in M&A and Data-Driven Transactions

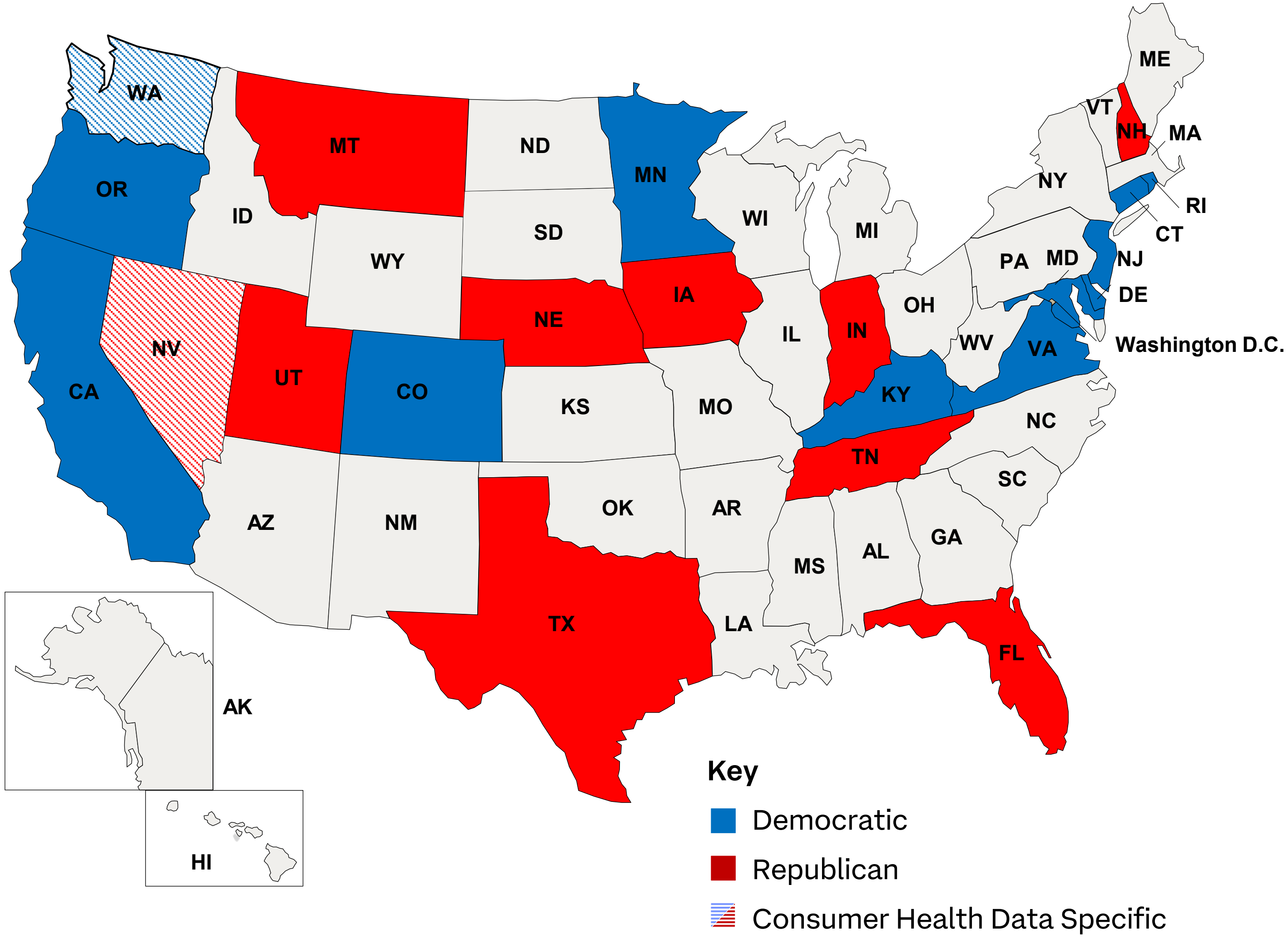
November 2025

Why is data protection part of M&A?

Privacy Laws and Enforcement are Expanding Globally



New Wave of State Consumer Data Privacy Laws



Consumer Data Privacy Laws

- California
- Colorado
- Connecticut
- Delaware
- Florida
- Indiana
- Iowa
- Kentucky
- Maryland
- Minnesota
- Montana
- Nebraska
- New Hampshire
- New Jersey
- Oregon
- Rhode Island
- Tennessee
- Texas
- Utah
- Virginia

Consumer Health Data Specific Laws

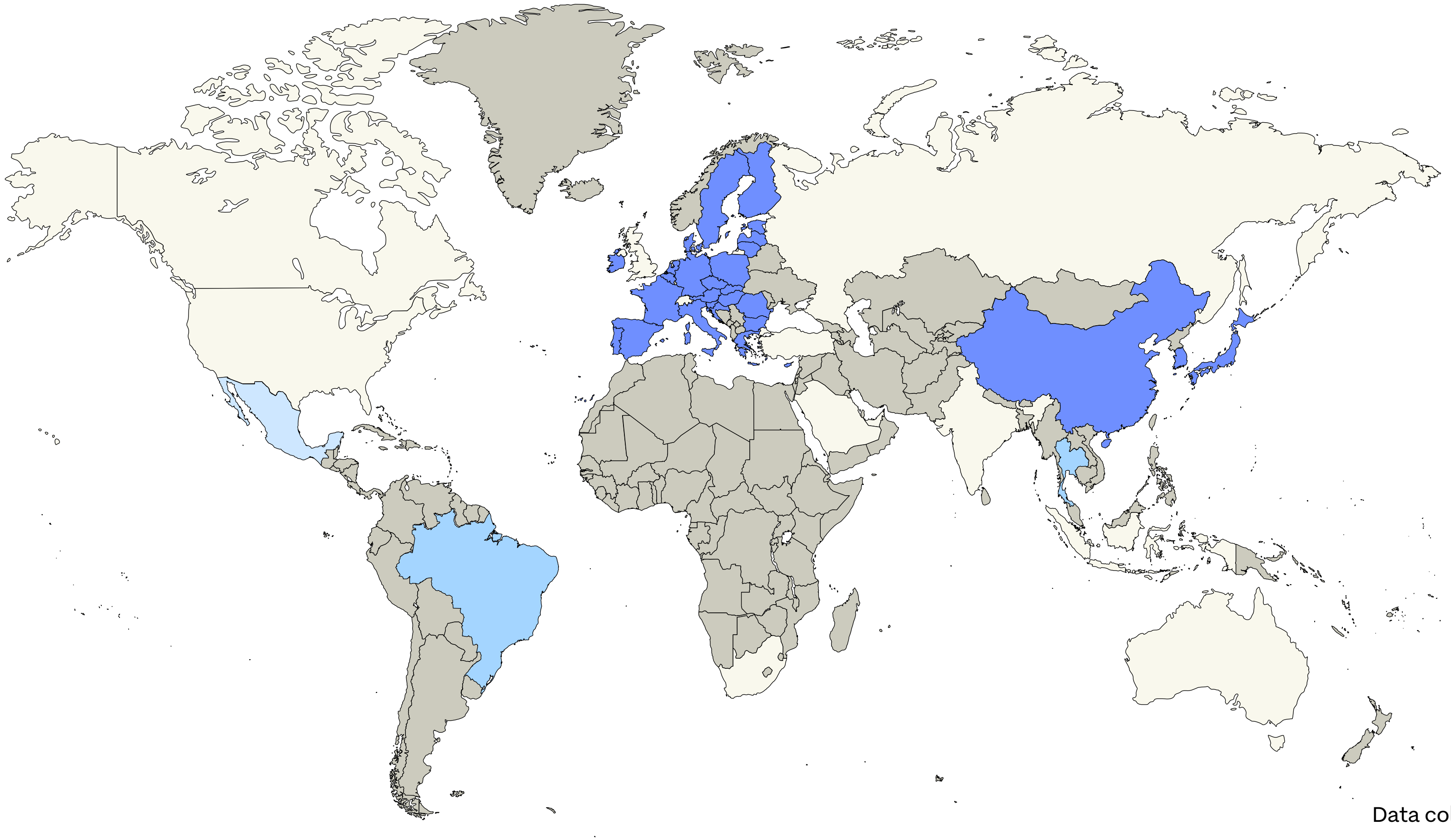
1. Nevada Act Relating to Data Privacy
2. Washington My Health My Data Act

Laws passed as of 08/31/2025

National AI-Specific Laws

Current and pending regulation in selected jurisdictions

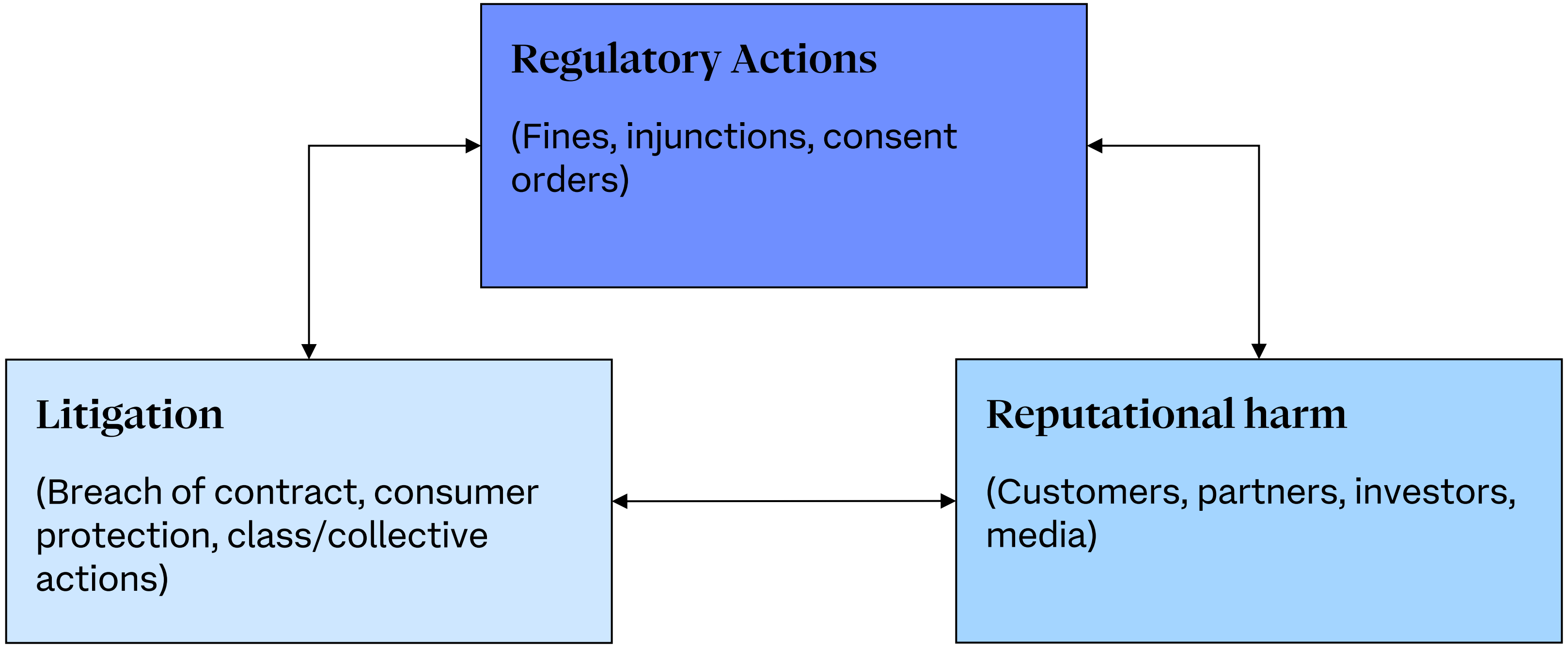
- 🟦 AI specific laws enacted at national level (or awaiting mere formalities)
- ▦ AI specific laws planned at national level with published draft text
- □ Policies aimed at streamlining AI regulation at national level (but short of draft AI specific laws)
- ▨ Out of scope



Data collected: 16 July 2025

What are the Real-World Risks of Privacy Noncompliance?

Risks are not limited to monetary damages but can include operational business impacts (such as having to change data flows or processing activities), loss of data, and loss of business opportunities



Regulatory Actions

(Fines, injunctions, consent orders)

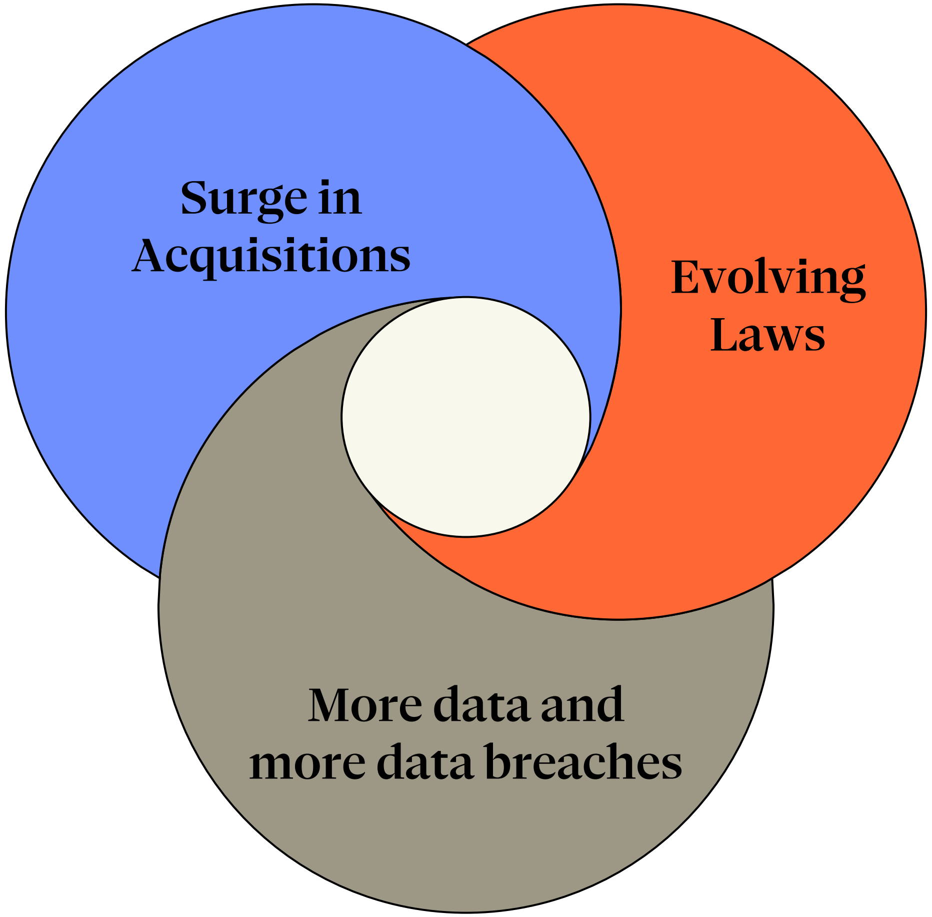
Litigation

(Breach of contract, consumer protection, class/collective actions)

Reputational harm

(Customers, partners, investors, media)

Recent Trends



What does the transactional landscape look like?

Transactional Landscape

Statista estimates the global AI market will reach a market volume of $1.01 trillion by 2031.

McKinsey found 78% of organizations used AI in at least one business function as of July 2024, with 71% using generative AI in some capacity.

Surveying M&A buyers, KPMG found that 77% of respondents used AI tools during those transactions, including 23% who used them for due diligence tasks.

Surge in acquisitions of AI companies

Vertical Integration

Companies seek to control the full stack, from data ingestion to model deployment

Strategic Consolidation

Mature AI firms and companies are acquiring startups to expand capabilities and enter new markets

Talent Acquisition

AI M&A is increasingly driven by the need to acquire specialized technical talent

Diligence! What are key concerns

Making the most of due diligence

Major deal-related risks

Valuable opportunity to ask target to explain what they actually do, and ask about data sharing, data flows

More acquirers developing detailed privacy and data security due diligence request lists to collect more operational detail

Where target is a processor, probe that subprocessor list...

AI-specific Due Diligence

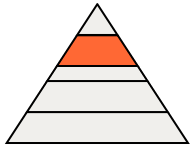
Data Provenance

Transnational use of AI systems

Governance

High-risk AI Systems

High risk AI Systems



What are high risk AI systems?

- AI systems as safety components in critical infrastructure, such as road traffic, supply of water/gas/heating/ electricity
- Biometric identification, categorization and emotion recognition systems
- Education and vocational training
- Employment, workers management and access to self-employment
- Credit scoring and risk assessment and pricing of life/health insurance
- Essential public services, inc. healthcare and emergency services
- Law enforcement, migration, asylum and border control, administration of justice and democratic processes

Providers of AI systems must conduct a **conformity assessment** through which they certify themselves that the below obligations have been fulfilled. High-risk systems must then be **registered in an EU database**.

- Risk management system
- Data and data governance
- Technical documentation
- Record-keeping
- Transparency
- Human oversight
- Accuracy, robustness and security

Defining "High Risk" According to US State Law

California, AB 2885

"“**High-risk automated decision system** means an automated decision system that is used to assist or replace human discretionary decisions that have a legal or similarly significant effect, including decisions that materially impact access to, or approval for, housing or accommodations, education, employment, credit, health care, and criminal justice."

Utah, S.B.226

"**High-risk artificial intelligence interaction** means an interaction with [GenAI] that involves:

(a) the collection of sensitive personal information

(b) the provision of personalized recommendations, advice, or information that could reasonably be relied upon to make significant personal decisions [; or]

(c) or other applications . . . ."

Texas, S.B. 1964

"**Heightened scrutiny artificial intelligence system**" means an artificial intelligence system specifically intended to autonomously make, or be a controlling factor in making, a consequential decision."

Kentucky, S.B.4

"**High-risk artificial intelligence system**:

(a) Means any artificial intelligence system that is a substantial factor in the decision-making process or specifically intended to autonomously make, or be a substantial factor in making, a consequential decision; and

(b) does not include a system or service intended to perform a narrow procedural task, improve the result of a completed human activity, or detect decision-making patterns or deviations from previous decision-making patterns and is not meant to replace or influence human assessment without human review, or perform a preparatory task in an assessment relevant to a consequential decision"

AI Litigation Risk

Emerging themes

- assumption of responsibility through AI systems
- IP infringement
- Claims re automated decision making with unfair/discriminatory outcomes
- Data protection
- AI washing

Compound nature of multiple AI systems

- Risk of bias in AI decision making
- Complexity and technical matrix behind AI decision making

Liability uncertainties

- Developing legislative and regulatory regime increases obligations on companies and litigation risk

Potential for large scale consumer redress schemes (incl class actions)

- Possible regulatory intervention – overlap between regulatory investigations and litigation
- Pending EU AI Liability Directive

Best Practice?

- Risk analysis
- Documentation
- Appropriate oversight by senior managers

Integration

Consider integration from the outset

Privacy-related risks and obligations vary significantly depending on the deal structure

Will we continue operating target as a standalone business?

Or will we integrate target's products and services into our own offerings?

Will we continue using target's data only for target's own business?

Or would we like to access and use target's data for our own R&D, marketing, or other purposes?

Will we maintain target's own databases?

Or would we like to merge target's data into our own at some point?

Q&A