

Stirring the Pot: Anticipating Trends and Reading the Tea Leaves on State Privacy

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Presenters



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Agenda

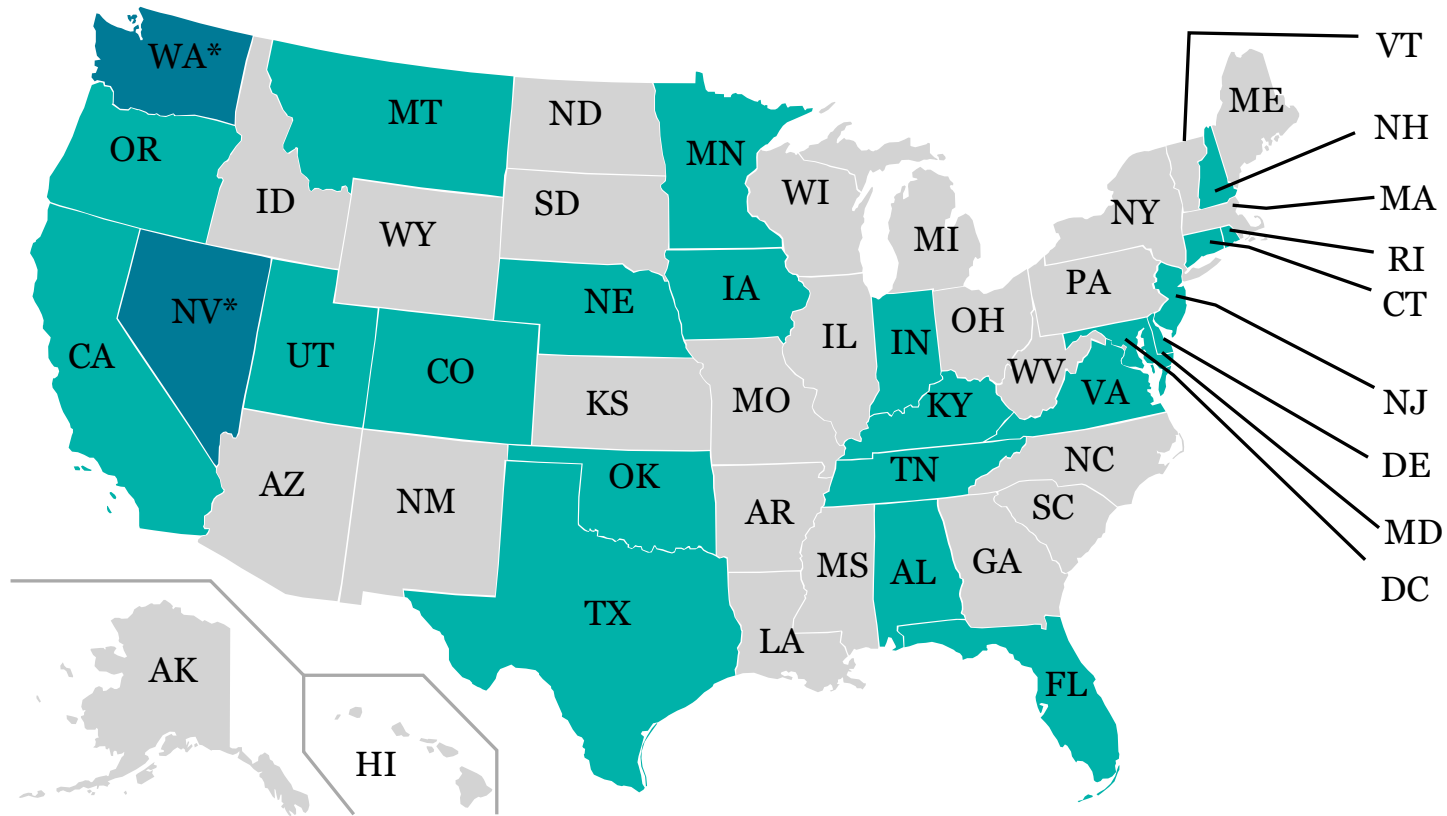
- Overview of State of the States
- Emerging Trends
- Questions

Overview of State of the States



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22 States With Enacted Comprehensive Privacy Laws



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**WA and NV have enacted separate consumer health data laws; NV also has certain other protections for sales of personal data.*

Key Controller Obligations

Privacy Notices

Data Subject Rights
(including opt out rights)

Minimization and
Retention

Service Providers and
Contractor Terms

Protections for Sensitive
Data (including for
minors)

Reasonable Security
Procedures and Practices

Data Protection
Assessments

Discrimination/
Retaliation

Key Processor Obligations

Duty of Confidentiality

Reasonable Security Measures

Data Return or Deletion

Consumer Request Compliance

Subcontractor Compliance

Comply with Reasonable Assessments

Provide Relevant Information for Compliance

Categories of State Privacy Laws

“Fewer Substantive Obligations”

- Utah
- Iowa

“Baseline Approach”

- Virginia
- Indiana
- Kentucky
- Tennessee
- Florida
- Texas
- Nebraska

- Rhode Island*

- Oklahoma
- Alabama

“More Substantive Obligations”

- Colorado
- Connecticut
- New Hampshire
- New Jersey
- Montana
- Delaware
- Oregon

“Variations”

- California
- Maryland
- Minnesota
- Washington and Nevada consumer health data laws

Areas of Divergence

Scope

- California law applies to employee and B2B data
- Variation in exemptions, including for financial institutions, non-profits, etc.

Sensitive Data

- Variation in definitions of sensitive data
- Variation in opt-in versus opt-out approach

Children & Minors

- Most states treat data about children under 13 as sensitive
- Some states impose additional requirements for children 13-16 (e.g., opt-in to sale of data)

Opt-Out Rights

- Variation in scope of rights, including sale definition
- Variation in required mechanisms for consumers to opt out (e.g., global opt-out preference signals)

DPIAs

- Most state laws are not prescriptive
- Colorado rules including detailed requirements (e.g., profiling). Recently finalized California rules.

Other

- Oregon and Minnesota give consumers right to obtain a list of specific third parties to whom controllers disclose a consumer's personal data.
- Financial incentive/loyalty program requirements

Policy: What's Changed Over the Past 12 Months?



Oklahoma and Alabama enacted new comprehensive privacy laws



Several states have enacted more narrow privacy laws



3 state comprehensive privacy laws have come into effect



Ongoing amendments to comprehensive privacy laws



CA finalized ADMT, Risk Assessment, and Cyber Audit Rules

Enforcement: What's Changed Over the Past 12 Months?



Enforcement
Actions



FAQs



Enforcement
Reports



Additional
resources

Emerging Trendlines



Landscape

Concerns about privacy laws that apply too narrowly

Concerns about both US government and foreign government misuse of sensitive personal data

Ongoing interest in and convergence with AI regulation and minor safety concerns

Increased willingness among states to depart from existing models to address unique concerns

Data Minimization



MODPA FAQs



**MAINE LEGISLATURE
DISAGREEMENT**

Ban on Sale of Sensitive Data



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Dark Patterns and Consumer Choice

The screenshot shows a cookie consent interface. At the top left is a blue button labeled "Allow All". Below it is the heading "Manage Cookie Preferences". There are four rows of cookie categories, each with a plus sign on the left and a toggle switch on the right:

- Strictly Necessary Cookies: Always Active
- Performance Cookies: Toggle is turned on (blue)
- Functional Cookies: Toggle is turned on (blue)
- Advertising Cookies: Toggle is turned off (grey)

At the bottom left is a blue button labeled "Confirm My Choices". At the bottom right, it says "Powered by onetrust".

One Step to Opt-In: “Allow All”

Two steps to Opt-Out: Toggle + “Confirm My Choices”

*“Dark pattern” means a user interface designed or manipulated with the **substantial effect** of subverting or impairing user autonomy, decisionmaking, or choice, as further defined by regulation.*

Universal Choices

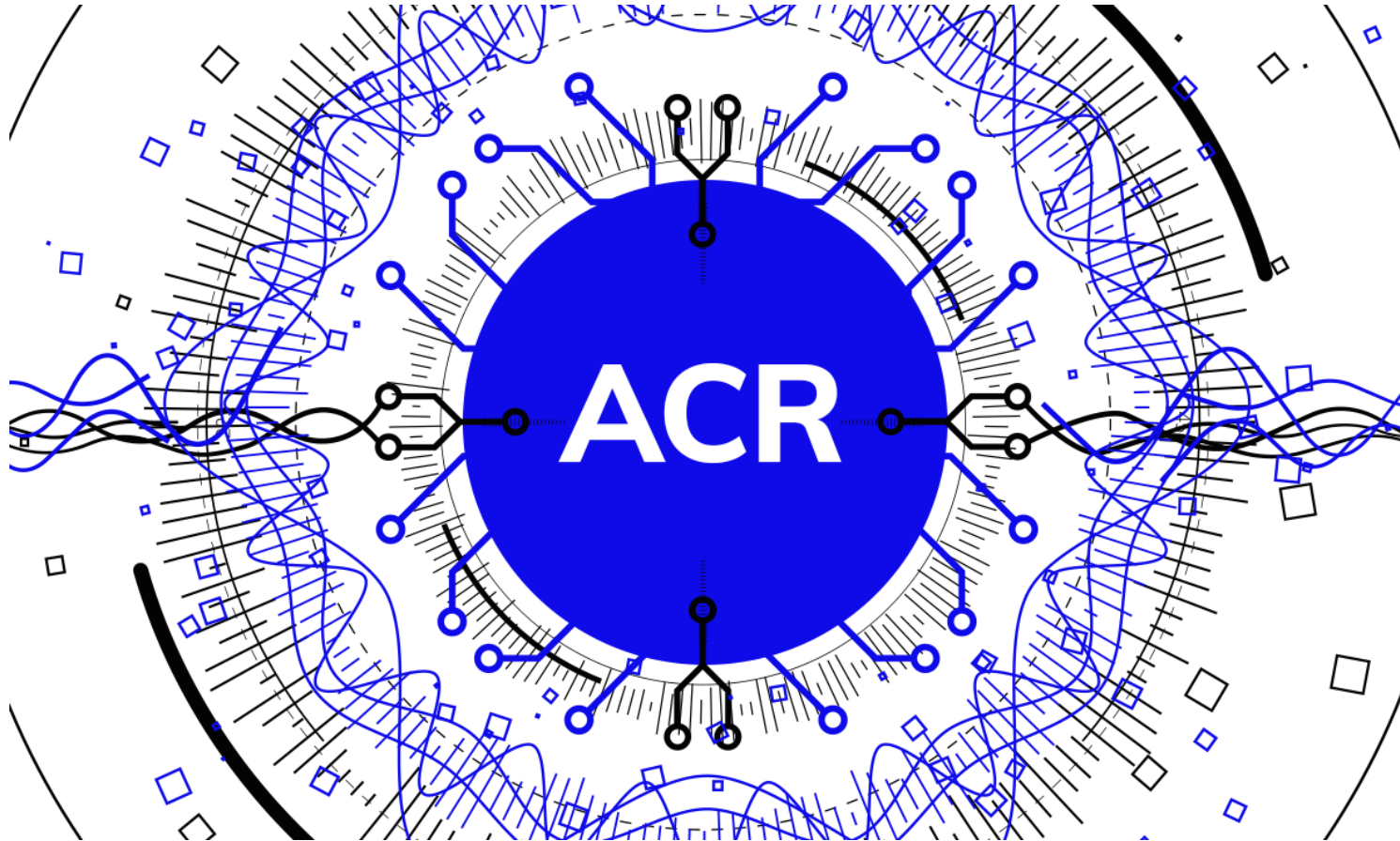


**GLOBAL
PRIVACY
CONTROL**



Coalition of attorneys general urges Congress to close 'data broker loophole'

Automatic Content Recognition



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Employee Privacy



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Additional Trend Lines

Neural Data

AADC and Age
Assurance Bills

Genetic Privacy

Vehicle Privacy

Enforcement Do's and Don'ts

1

Set forth a clear narrative

2

Emphasize policies, practices,
and procedures

3

Technical readiness

4

Assume sharing among
regulators

5

Public communications

Upleveling Your Privacy Program Dos and Don'ts



Privacy policies/other privacy notices updates



Effective choice and opt-out mechanisms



Data minimization



Vendor/subsidiary risk management

Questions?

