

2023 Data Privacy Trends

Prepared for

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by Dentons

Grow | Protect | Operate | Finance

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Introduction

A new and complicated privacy landscape is on the horizon

The legal and regulatory landscape in the United States governing the collection, use and transfer of personal information is growing increasingly complex in 2023. Laws such as California's Consumer Privacy Act (CCPA) are being updated. New consumer privacy laws governing the collection, use, and sharing of personal information are taking effect in states such as Virginia, Colorado, Utah, and Connecticut. Employee privacy laws are on the rise, with jurisdictions such as California and New York introducing new legislation. More states are coming online with biometric privacy laws and rules regulating the use of artificial intelligence. And a federal data privacy bill is making its way through Congress with bipartisan support.

Adding more complexity to the mix, plaintiffs' lawyers are using decades old laws governing eavesdropping and the recording of telephone calls to the digital space – bringing class action lawsuits against companies using chatbots, session replay software and video components without appropriate disclosures.

With this new legal landscape comes increased scrutiny and regulatory enforcement. The California Attorney General's office recently announced a \$1.2 million penalty against Sephora for allegedly violating the CCPA. A group of Attorneys General announced a \$400 million penalty against Google for failing to adequately disclose certain features about its collection and use of data. And the Federal Trade Commission recently announced new enforcement actions against organizations for lack of adequate and truthful disclaimers concerning their collection and use of personal information. With a new privacy agency taking effect next year in California, the California Privacy Protection Agency, things are only just starting to heat up from a regulatory standpoint.

What you can do to prepare for 2023

There are four key areas organizations and property owners can take now to get ready for the new slate of obligations in 2023: (1) know your organizational risk and data; (2) update your external facing notices to avoid regulatory scrutiny; (3) update your vendor contracts; and (4) understand your advertising portfolio. More detail on each is provided below.

What we can do to help

Dentons can help organizations of all sizes and geographic scope to mitigate risk heading into 2023. Whether your organization requires a holistic view into your existing data privacy practices, or you require specialized advice and counsel, the Dentons data privacy team is prepared to help.

Thank you!



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5 Key Data Privacy Trends Heading Into 2023



New State Data Privacy Laws Are Coming

California, Colorado, Virginia, Utah and Connecticut each have new data privacy laws taking effect in 2023. California and Virginia laws take effect on January 1, 2023. These laws introduce broad new rights for consumers and impose new compliance obligations and restrictions on businesses. It's critically important your organization is ready for compliance on day one – the penalties will be steep otherwise!



Draft Federal Bills May Complicate The Landscape

New federal data privacy bills concerning data privacy and algorithmic decision-making are making their way through Congress with bipartisan support. With divided government following the midterm elections, it's possible the bills could make their way to President Biden. These laws, if passed, could significantly complicate the data privacy landscape for companies of all sizes throughout the country.



Biometrics & Artificial Intelligence in the Crosshairs

Cities like New York City and states like California have introduced new laws governing the use of artificial intelligence in making certain business decisions. States are also increasingly focused on regulating the collection of biometric information, including the use of voice prints (the patterns of a voice). Whether collecting this information for employment or business purposes, it's a hot area to stay ahead of in 2023.



Data Privacy Litigation on the Rise





A crop of new class action lawsuits are sweeping the nation, focused on targeting organizations that use tracking software on websites, chatbots where the chat transcript is recorded and sharing information relating to the watching of videos on websites. Taking steps now can save tens of thousands of dollars later in legal fees.



Increased Regulatory Enforcement

State Attorneys General are making a splash with high-ticket fines against companies for making inadequate disclosures about their data collection practices. The FTC is also renewing its focus on unfair business practices as it relates to data privacy and data collection. The enforcement environment in 2023 will get even hotter with the creation of a new data privacy enforcement action in California, and an easier mechanism to bring enforcement actions.

4 Steps To Prepare For 2023

	<p>Map Your Legal Obligations and Data. Now is the time to understand whether your organization is subject to new and expanding data privacy laws. The only way to truly understand the exposure for 2023 is to understand what data the organization collects, uses, stores and shares across the enterprise. This requires meetings with stakeholders, understanding strategic goals with regard to data and taking an inventory of assets and processes. Information is power.</p> <p>Undertaking or updating an exhaustive data inventory can help an organization understand what notices may be required digitally and offline, the need for data impact assessments and how users may interact with data – a critical first step in mitigating risk in 2023.</p>
	<p>Update Your External-Facing Privacy Notices. One of the first places regulators and plaintiffs’ attorneys look are your external-facing privacy notices. It’s important to ensure these are updated, accurate and reflect the disclosures required by law. These notices are especially important as they relate to new and expanding rules concerning the collection of biometric information, use of artificial intelligence and the collection of unique data points such as voice prints.</p> <p>The new trend in privacy litigation focused on disclosures in chatbots and the use of tracking technology also make clear that having adequate disclosures and consents where appropriate can save time and money.</p>
	<p>Update Your Third-Party Contracts. New data privacy laws taking effect in 2023 require third-party contracts to have certain restrictions in place. Now is the perfect time to update existing data processing agreements to ensure maximum protection and alignment with new legal requirements. Additional key provisions to pay attention to relate to how data is owned, indemnification, limitation of liability, force majeure and security requirements.</p>
	<p>Pay Attention To Advertising. The digital advertising space is rife with risk as it relates to selling personal information and obtaining consent. This analysis is becoming even more complicated in 2023 with the issue of “targeted advertising” or “cross-context behavior advertising” being specifically regulated by states. Examine your practices now to mitigate risk down the road!</p>

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Dentons is designed to be different. As the world's largest law firm with 20,000 professionals in over 200 locations in more than 80 countries, we can help you grow, protect, operate and finance your business. Our polycentric and purpose-driven approach, together with our commitment to inclusion, diversity, equity and ESG, ensures we challenge the status quo to stay focused on what matters most to you.

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