



# PRIVACY TRENDS

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- If you have any questions, or require further information on these materials, please do not hesitate to call our office at: (818) 241-0103.



# OVERVIEW

- CPRA Status
- Automated Decisionmaking Regulations
- Risk Assessments & Cybersecurity Audits
- Google Play Store Requirements for Apps
- Chat Lawsuits
- Multi-State Privacy Law Update



# Status of CPRA

- Effective as of January 1, 2023
- CPRA regulations effective July 1, 2023. Prior court cases brought by Cal. Chamber of Commerce delaying enforcement to March 29, 2024 was overturned on appeal Feb. 9, 2024.
- California Privacy Protection Agency (CPPA) currently working on draft regulations on automated decisionmaking technology (ADMT) & risk assessments and cybersecurity audits
- Formal rulemaking process hasn't started on these topics yet as draft regulations are for discussion purposes at Board meetings.

# Automated Decisionmaking Technology Regulations

## KEY DEFINITIONS:

- *Automated decisionmaking technology*: “any system, software, or process—including one derived from machine-learning, statistics, or other data-processing or artificial intelligence—that processes personal information and uses computation as whole or part of a system to make or execute a decision or facilitate human decisionmaking ... includ[ing] profiling.”
- *Decision that produces legal or similarly significant effects concerning a consumer*: “a decision that results in access to, or the provision or denial of, **financial or lending services**, housing, insurance, education enrollment or opportunity, criminal justice, employment or independent contracting opportunities or compensation, healthcare services, or essential goods or services.”
- *Profiling*: “any form of automated processing of personal information to evaluate certain personal aspects relating to a natural person and in particular to analyze or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.”

# Automated Decisionmaking Technology Regulations

## *APPLICABILITY THRESHOLDS:*

- Decisions that produce legal or similarly significant effects concerning a consumer
- Profiling a consumer acting in their capacity as an employee, independent contractor, job applicant, or student
- Profiling a consumer in a publicly accessible place
- Profiling consumers for behavioral advertising
- Profiling consumers under the age of 16
- Processing personal information to train ADMT

# Automated Decisionmaking Technology Regulations

## ***KEY REQUIREMENTS:***

**“Pre-Use Notice”** that includes, among other things:

- an explanation of the purpose for which the business uses ADMT,
- a description of the consumer’s right to opt-out of the business’s use of ADMT,
- a description of the consumer’s right to access information about the business’s use of ADMT,
- additional information about the business’s use of ADMT, including the ADMT’s logic and outputs, the role that ADMT outputs play in the business’s decisionmaking processes, and the results of any evaluation that the business has conducted of the validity, reliability, or fairness of its use of ADMT.

# Automated Decisionmaking Technology Regulations

## **KEY REQUIREMENTS:**

- **Opt-Out Right** for consumers to opt-out of business's use of ADMT.
  - 15-days to comply with opt-out request.
  - Opt-out must be communicated to service providers, contractors, and other parties as appropriate.
- **Exceptions:**
  - (1) preventing, detecting, and investigating security incidents;
  - (2) "resist[ing] malicious, deceptive, fraudulent, or illegal actions directed at the business";
  - (3) "protect[ing] the life and physical safety of consumers"; and
  - (4) providing a good or service specifically requested by the consumer, provided that the business has "no reasonable alternative method" of conducting the relevant processing.
- GLBA/CalFIPA/FCRA exceptions may apply if ADTR is applied to personal data processed pursuant to such statutes. These statutes do not apply to business purpose accounts and credit or processing of data for HR purposes.





# Automated Decisionmaking Technology Regulations

## *KEY REQUIREMENTS:*

- **Access Right**
  - Consumers have a right to access information about business's use of ADMT, including,
    - The purpose for which the business used ADMT;
    - The output of the ADMT with respect to the consumer;
    - How the business used that output in relation to decisionmaking concerning the consumer;
    - How the ADMT worked in relation to the consumer (e.g., logic, key parameters);
    - The ADMT's range of possible outputs; and
    - how the consumer can exercise their other CCPA rights or file a complaint concerning the business's use of ADMT.
- **Affirmative Obligation to Notify:** a business uses ADMT to deny a good or service to a consumer, it must notify the consumer of the decision and provide the consumer with information about how to exercise their access right and file a complaint with the CPPA or California Attorney General.

# Risk Assessments

- Required when processing activities present significant risk to privacy, such as:
  - Selling personal information
  - Sharing personal information for cross-context behavioral advertising
  - Processing sensitive personal information (except HR data)
  - Using ADMT
- Key Risk Assessment Requirements
  - Summary of how business processes information (i.e., how it collects, uses, discloses and retains information)
  - Benefits to consumer
  - Negative impacts
  - Safeguards to address negative impacts
- Must submit risk assessment materials to CPPA, including certification of compliance

# Cybersecurity Audit Regulations

- Audits required when processing activities present significant risk to privacy
- Key Audit Requirements
  - Audits required annually
  - Audit must
    - Assess, document and summarize each applicable component of cybersecurity program
    - Identify any gaps or weaknesses in the business's cybersecurity program
    - Address the status of any gaps or weaknesses identified in any prior audit
    - Specifically identify any corrections or amendments to any prior cybersecurity audits
  - Annual submission to CPPA certification of compliance

# Google Play Store Requirement for Apps

- Starting March 31, 2024, all apps on Google Play Store must adhere to more stringent data privacy standards
- Need separate Online Privacy Policy (GLBA privacy notice & CCPA privacy policy alone not sufficient)
- Online Privacy Policy needs to be incorporated into text of website (no PDFs)
- Comprehensive data disclosure of all types of personal data collected, utilized and shared.
  - Financial information, device photos, contact lists, transactional data, location data
- Legal basis for processing personal data must be clearly articulated



# Chat Feature Litigation

- *Javier v. Assur. IQ LLC, 2023 U.S. Dist. LEXIS 1866*
- *California Invasion of Privacy Act (Penal Code 631)*
- *Must be prior consent for monitoring and recording before chat engagement*
- *Software providers may be deemed a third-party eavesdropper*



# Privacy Laws in Other States

State Law	Effective Date	Credit Union exemption?	CUSO exemption?
Colorado Privacy Act	July 1, 2023	Yes	Yes
Connecticut Personal Data Privacy and Online Monitoring Act	July 1, 2023	Yes	No
Indiana Consumer Data Protection Act	Jan. 1, 2026	Yes	Yes
Iowa Consumer Data Protection Act	Jan. 1, 2025	Yes	Yes
Montana Consumer Data Privacy Act	Oct. 1, 2024	Yes	Yes
Oregon Consumer Privacy Act	July 1, 2024	Yes	Yes, but only if directly engaged in financial activities pursuant to 12 USC 1843(k)
Texas Data Privacy and Security Act	July 1, 2024	Yes	No
Utah Consumer Privacy Act	Dec. 31, 2023	Yes	Yes
Virginia Consumer Data Protection Act	Jan. 1, 2023	Yes	No
Delaware Personal Data Privacy Act	Jan. 1, 2025	Yes	Yes
New Jersey (Bill S332)	Jan 15, 2025	Yes	Yes
Tennessee Information Protection Act	July 1, 2025	Yes	Yes



# CONTACT US



550 N. Brand Blvd., Ste. #550  
Glendale, CA 91203



[joe.garibyan@swmlp.com](mailto:joe.garibyan@swmlp.com)



(818) 241-0103



<https://swmlp.com>



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