From Privacy Enforcement to Action: Key Lessons Learned from Recent Investigations

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Agenda

- Takeaways from Recent Enforcement Activity
- Enforcement Outlook for 2025
- Responding to Regulators

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Takeaways from Recent Enforcement Activity

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Enforcement Activity – Targets

Enforcement actions can originate in many ways.

- ***Regulators commonly review public materials like privacy policies, notices, and consumer rights processes to select targets for inquiry.***

Other common precursors of enforcement inquiries:

- Industry sweeps
- News coverage
- Consumer complaints
- Breach investigations
- Academic studies
- Requests from consumer groups or other areas of government

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Recent Areas of State Interest

- **Privacy Policies**
- **Cookie Banners/Cookie Preference Centers**
- **Consumer Rights Requests**
- **Precise Location Data**
- **Data Broker Registration**

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Privacy Policy Takeaways

- To lower risk of scrutiny, make it easy for consumers to understand and exercise their rights by state.
  - Consider naming relevant states in the privacy policy where consumer rights are available.
  - Describe the available rights in the privacy policy, even if available in only a few states.
  - Consumer rights webform should also be clear and consistent with the privacy policy.

Crunching Down on Cookie Banners

- U.S. law does not require consent to place cookies.
- BUT cookie banners have become more common to fend off nuisance lawsuits.
- **Recent enforcement shows implementation may be in tension with state privacy laws and must be carefully tailored for state privacy compliance.**
  - California:
    - *Honda*: The CPPA enforced against cookie banners that offered an "accept all" choice but required multiple steps to opt out. The CPPA stated that this lack of symmetry violates California's consumer choice standards.
    - *Todd Snyder*: The retailer failed to honor consumer opt-out requests due to a misconfigured cookie banner. The CCPA asserted the business should not rely on third-party privacy tools without testing and validating their effectiveness.
  - Connecticut: In an enforcement report, the Connecticut attorney general emphasized that cookie banners must not undermine consumer choices or create confusion. Banners should offer equal prominence for both "accept all" and "reject all" options.

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Cookie Banner Takeaways

- Surfacing the notice – the banner must be unavoidable to provide meaningful notice.
- Choices must be clear and symmetrical (equally easy to opt in or opt out) both on the banner and in the preference center.
- Test to confirm cookie banners are operational, even when a vendor is responsible for implementation.
- Review timing of when cookies are firing – cookies that require choice should not fire before options are presented to consumers.
- Disclosures and options must be carefully crafted in light of company practices and risk tolerance to address a variety of relevant goals – state law compliance, lawsuit prevention, industry self-regulation, and more.
- Don’t just accept your vendor’s template! Templates must be carefully tailored to account for competing concerns.
- Adopting your EU banner in the United States may not work for several reasons.

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Consumer Rights Processes

- **Verification of consumer identity is required for certain requests (such as access and deletion), but:**
  - **Only the minimum necessary information should be requested and**
  - **Verification is not required at all for opt-out requests.**

- Recent California Cases:
  - Honda:
    - Honda allegedly asked for more information than necessary, including requiring eight data fields instead of the minimum amount necessary to look up the request.
    - Additionally, Honda allegedly presented verification as necessary for opt-out requests.
  - Todd Snyder: Todd Snyder asked for government-issued identification for every consumer rights request, including opt-out requests.

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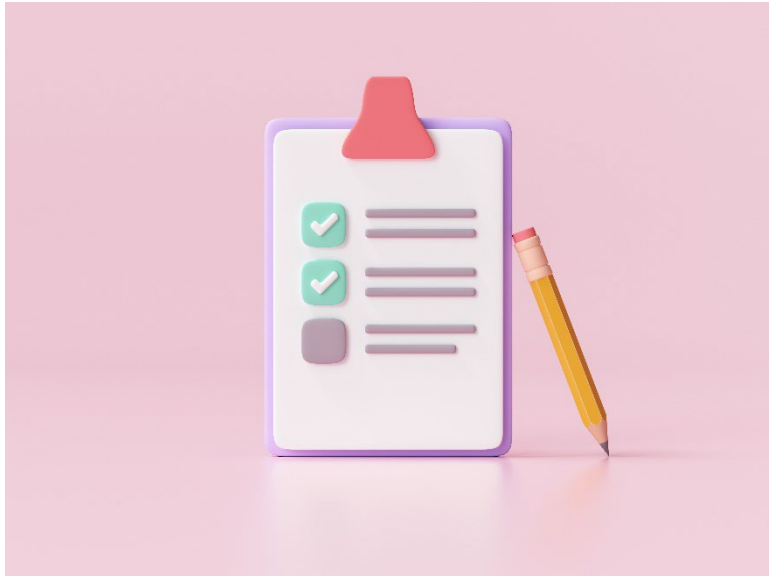
Consumer Rights Takeaways

- Tailor verification requirements to the different types of rights.
  - Notices and interfaces should be clear that opt-out requests do not require verification.
  - Minimal information may still be collected to communicate and keep records.

- Do not collect more details than are necessary to verify consumer identities.
  - What is “necessary” will vary by company and by the type of right.



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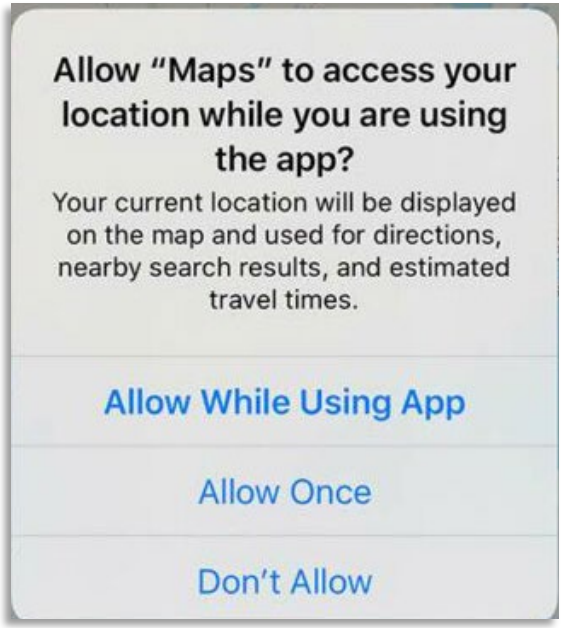
Location Data

Multiple states are engaged in investigating the collection and use of precise geolocation data. The Federal Trade Commission has also been active in pursuing location data practices.

- California: In March 2025, the California attorney general announced an **investigative sweep** on location data, focused on compliance with opt-out requests from sale or sharing of sensitive information, and the right to limit the use of sensitive personal information, including precise geolocation data.
- Texas: The Texas attorney general has brought **enforcement action** involving driver location and driver behavior data. For example, in January 2025, the Texas attorney general sued an auto insurance company and its data subsidiary, alleging unlawful collection and sale of driving behavior data without consent.
- In California, Connecticut, and Texas, regulators are reviewing the use of location data as part of broader investigative initiatives focused on connected vehicles. Targets include connected vehicle manufacturers, manufacturer partners, insurance companies, and connected vehicle technologies.

Location Data Takeaways

- **Obtain Consent**: In most cases, companies collecting precise location data will need to obtain consumer consent. Numerous state laws explicitly require this.
- **Clear Disclosures:** Use and sharing of precise location data should be clearly disclosed, especially sharing for advertising purposes.
- **Sensitive Location Data:** Companies may wish to adopt policies limiting collection or sales of location data that can reveal visits to certain locations like specialty medical clinics, religious sites, or shelters.
- **Monitor Data Brokers and Partners:** To help limit risk, conduct diligence on data suppliers and get contract assurances on how precise location data is obtained.



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Data Broker Registration

Multiple states now have registration requirements for "data brokers."

- **California, Vermont, Oregon and Texas** have such laws.
- The **relevant definitions vary** across states, so it is encouraged to review individually and see if your organization qualifies.
- Registration as a data broker can lead to increased consumer rights requests, including from third-party agents.

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Enforcement Outlook for the Coming Year

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Multiple Privacy Enforcers

- U.S. Federal Trade Commission
- U.S. Department of Justice (Bulk Data Rule)
- States
  - Typically, state attorneys general
  - For California, also the California Privacy Protection Agency (CPPA)
- **Privacy is a bipartisan issue.**

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Multiple Privacy Enforcers

- **Different agencies can collaborate on joint enforcement actions.**
  - Recently, seven states formed a bipartisan coalition to collaborate on privacy enforcement.
  - The Consortium of Privacy Regulators includes the CPPA and the attorneys general of California, Colorado, Connecticut, Delaware, Indiana, New Jersey, and Oregon.
  - The regulators signed a memorandum of understanding outlining shared goals, including aligning enforcement around common statutory rights, such as access, deletion, and opt-outs from the sale of personal information.

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Federal Trade Commission

Currently, the FTC has three Republican commissioners.

The FTC will continue to bring privacy enforcement actions, although priorities and theories may be different from those of the prior commission.

- Chairman Ferguson has pledged that enforcement actions will not be used as a substitute for federal privacy legislation.

Areas to watch include:

- Data Transfers to Foreign Adversaries
- Children's Privacy
- Content Moderation

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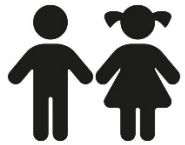
Children's Privacy



- The Federal Trade Commission recently finalized an updated Children's Online Privacy Protection Rule.
  - Continued active enforcement is likely, given the money penalties available under the law.
- Child and teen privacy legislation remains under active discussion in the U.S. Congress, which could change the obligations.
- Numerous states have also moved to regulate child and teen online privacy, although such laws have suffered setbacks in court.

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DOJ Bulk Data Rule

- Prohibits certain "bulk" data transactions with a nexus to a country of concern – China, Cuba, Iran, North Korea, Russia, Venezuela.
  - **Routine advertising and other data transactions can be covered.**
- Restricts vendor, employment, or investment agreements with a covered person by imposing due diligence, data security, auditing, and reporting requirements for companies.
- Currently, there is a 90-day pause on enforcement until July 8, 2025 for those engaged in good faith efforts to comply.

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State Consumer Privacy Laws

Many states are active on privacy enforcement, even those with cure periods.

Potential areas of ongoing interest:

- California is continuing to issue new regulations
- Following up on consumer complaints
- Privacy policies and consumer rights
- Data broker registration
- Location data collection, use, and sharing

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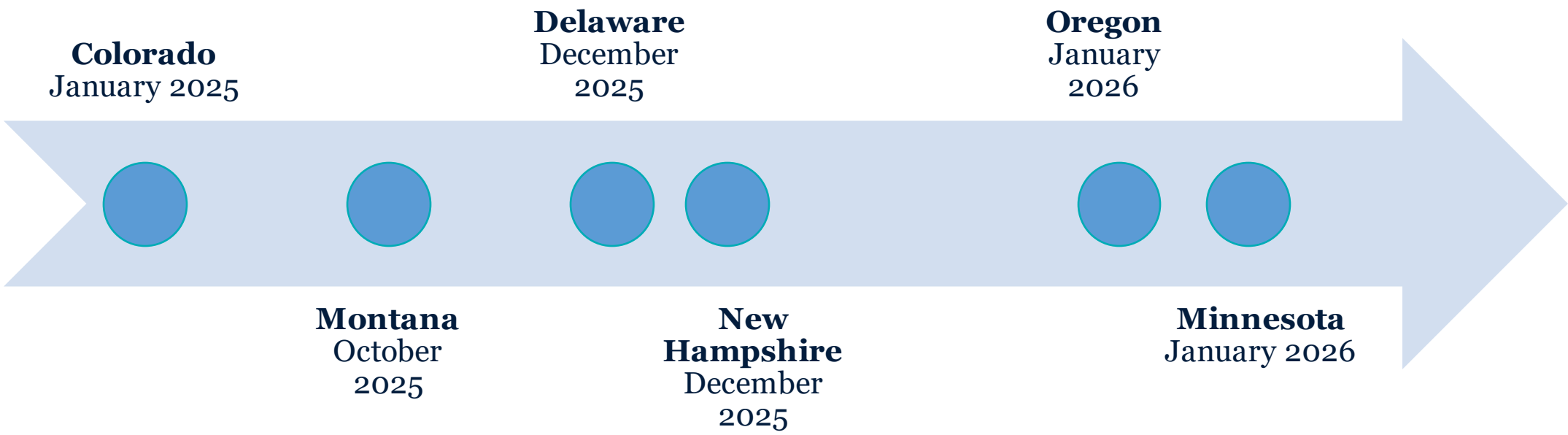
Sunset on Cure Periods



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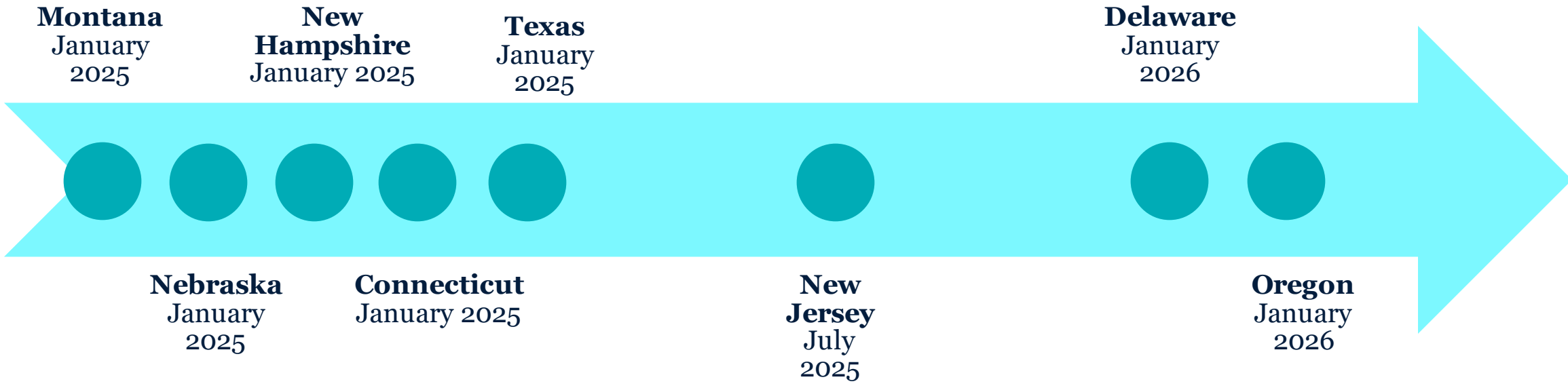
Universal Opt-Out Mechanism Implementation Timelines



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Responding to Regulators

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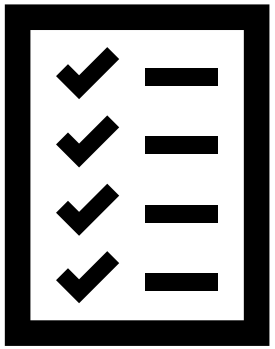
Prepare in Advance

- Make sure any regulatory inquiry will reach the right team quickly!
- Know what laws apply to your organization and take advantage of exceptions
- Confirm and document compliance
  - Comprehensive risk assessment
  - “Red team” reviews of external notices and processes
  - Test consumer rights tools
  - Vendor and third-party risk assessments
  - Security risk assessments
  - White papers for outside audiences



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If You Get An Inquiry….

- ***Don't panic!***
- An inquiry is a long road, and many investigations are concluded without any enforcement action.
- ***Do make sure to…***
- Brief management and Board
- Notify insurance
- Issue a legal hold right away

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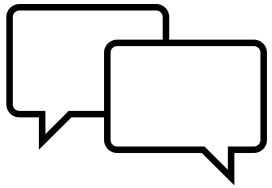
Talking to Regulators

- Engage through outside counsel
- Begin the dialogue promptly
- Where possible, determine reasons for inquiry
- Negotiate rolling productions
- Attempt to narrow the scope of the response to what is reasonable
- Cultivate goodwill where possible – regulatory defense is not civil litigation



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Avoiding Pitfalls

- Make sure to explain the business model and technical terms
- Think of compelling ways to present crucial information: white papers, presentations, consumer surveys, experts
- When implementing legal hold, consider challenges like automated deletion schedules, terminated employees, messaging, and other applications
- Keep in mind regulators have technical expertise at their disposal, but practices can easily be misunderstood by an external reviewer

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Questions?

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