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# **Current Privacy Law Topics**

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# Purpose

Privacy is a complex, multifaceted topic. The purpose today is to provide a brief high-level overview of some of the current privacy topics in the US.

# Sectoral Approach to Privacy

As presented:

- U.S. approach to privacy legislation is sectoral
- Resulting in a hodge-podge of federal and state privacy laws that deal with privacy in different contexts
- Each aimed at different problems with different definitions of what is personal information
- Let us explore

# Examples of Federal Laws

- **Cable Communications Policy Act**
- **CAN-SPAM Act**
- **Children's Online Privacy Protection Act**
- **Computer Matching and Privacy Protection Act**
- **Consumer Credit Reporting Reform Act**
- **Driver's Privacy Protection Act**
- **Electronic Communications Privacy Act (ECPA)**
- **Electronic Funds Transfer Act**
- **Electronic Signatures in Global and National Commerce Act**
- **Employee Polygraph Protection Act**
- **Fair and Accurate Credit Transaction Act (FACTA)**
- **Fair Credit Reporting Act (FCRA)**
- **Family Educational Rights and Privacy Act**
- **Financial Services Modernization Act (aka Gramm-Leach-Bliley)**
- **Foreign Intelligence Surveillance Act**
- **Freedom of Information Act**
- **Health Insurance Portability and Accountability Act (HIPAA)**
- **Health Information Technology for Economic and Clinical Health Act (HITECH Act)**
- **Identity Theft and Assumption Deterrence Act**
- **Privacy Act of 1974**
- **Privacy Protection Act of 1980**
- **Right to Financial Privacy Act**
- **Telecommunications Act**
- **Telemarketing and Consumer Fraud Act**
- **Video Privacy Protection Act**
- **Video Voyeurism Prevention Act**

# Subjects

	MARKETING	HEALTH CARE	HUMAN RESOURCES	LITIGATION	REGULATORY	SECURITY	LEGISLATION	INTERNATIONAL	BREACHES	BIG DATA	MISC.
	A	B	C	D	E	F	G	H	I	J	X
<b>1</b>	BEHAVIORAL TARGETING	FDA/MEDICAL DEVICES/SMARTPHONE	BYOD	HTC	SEC	DRONES	MOTOR VEHICLES	NSA	TARGET	BIG DATA DATA BROKERS	
<b>2</b>	MOBILE APPS	GENETIC DATA	BREACH	PATH	FTC	NSA	SOCIAL MEDIA	SAFE HARBOR	MICHAELS		
<b>3</b>	LOCATION	HIPAA	BACKGROUND CHECKS	CLAPPER	FCRA	BREACH	<DRONES>	EU COOKIES	NIEMAN MARCUS		
<b>4</b>	MALL TRACKING	DNA		NETFLICKS	CREDIT CARD NUMBERS		<BREACH>	BCR PROCESSORS	SMART GRID		
<b>5</b>	FACIAL RECOGNITION			DATA BROKERS	DRONES		<SOCIAL MEDIA PASSWORDS>	CHINA			
<b>6</b>	DO NOT TRACK			CELLPHONE SEARCH	DPPA			MALAYSIA			
<b>7</b>	COPPA				TCPA			SINGAPORE			
<b>8</b>	CALIFORNIA LAWS				LICENSE PLATE SCANS			SOUTH AFRICA			
<b>9</b>	SOCIAL MEDIA							INTERNATIONAL TRADE AGREEMENTS/PRIVACY			
<b>10</b>	WEARABLE							US BORDER PRIVACY			
<b>11</b>	BIOMETRICS							LATIN AMERICA			
<b>12</b>	INTERNET OF THINGS							APEC			

# Approach

## Address by sectors

- Marketing
- Financial
- Health
- Regulator

# Areas of Privacy Activity - Marketing

- Cloud
- Geo-location
- Facial Recognition
- BYOD
- Social Media
- Online Behavioral Advertising
- COPPA
- Mobile Apps
- Mail Tracking
- Internet of things
- Wearables
- Biometrics
- Breach
- COPPA

# Marketing Privacy Hot Topics

- Geo-location
- BYOD
- Social Media
- Online Behavioral Advertising
- Mobile Apps
- Mall Tracking
- Internet of things
- Wearables
- Biometrics



# Areas of Privacy Activity - Financial

- Cloud
- Geo-location
- BYOD
- Social Media
- Online Behavioral Advertising
- Mobile Apps
- Internet of things
- Biometrics
- Breach
- Security

# Financial Privacy Hot Topics

- Data Brokers
- Mobile Apps
- Internet of things
- Biometrics
- Breach
- Security

# Areas of Privacy Activity – Health Care

- Medical Devices
- Smart phones
- Genetic Data
- Marketing
- Social Media
- Internet of things
- Security
- Breach

# Health Care Privacy Hot Topics

- Medical Devices
- Smart phones
- Electronic records and portals
- Genetic Data
- Marketing
- Social Media
- Internet of things
- Security
- Breach

# Regulators

- Federal Trade Commission
- Consumer Financial Protection Bureau
- Security and Exchange Commission
- Federal Communications Commission
- Federal Aviation Administration
- National Labor Relations Board
- Food and Drug Administration

# Federal Trade Commission



- Big Data
- Internet of Things
- Data Brokers
- Geo-location
- Security
- Breach
- DNA testing
- Mobile Apps
- OBA
- COPPA
- Health
- Wearables
- Privacy policies

# Consumer Financial Protection Bureau



- Big Data
- Data Brokers
- Student Loans
- Motor Vehicle Financing
- Disclosures

# Federal Communications Commission



- Geo-location
- Security
- Breach
- Mobile Apps
- OBA
- Net Neutrality
- CPNI
- Motor Vehicle Data





# Federal Aviation Administration



- Drones
- Security

# Health and Human Services-OCR



- Security
- Breach
- Mobile Apps
- Health Care
- Genetic Data
- Marketing

# National Labor Relations Board



- Social media
- Privacy policies
- Use of electronic communications assets

# Food and Drug Administration



- Medical devices
- Smart phones
- Social Media
- Internet of things

# National Highway and Transportation Safety Administration

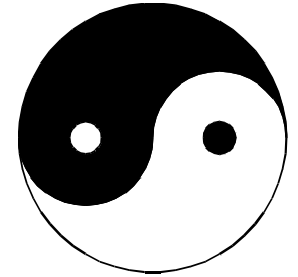


- Motor Vehicle Event Data Recorders
- Infotainment systems
- RFID
- Internet of things

# Selected Areas of State Legislation

- Security breach notification
- Identity theft protection
- Social security number protection
- Marketing
- Spyware and adware
- Radio frequency identification devices
- Insurance
- Vehicle data event recorders
- Background checks
- License Plate Scanning
- Drones
- Social media password protection
- Rights to deceased user content

# Privacy - Security



- Privacy laws focus on the collection, use, and disclosure of personal information
- Security is the means by which we safeguard information against unauthorized acquisition, use, disclosure, alteration, destruction
- Security is necessary to maintain privacy, but . . .
  - Security alone will not maintain privacy (e.g., notice, consent, retention)
  - Security may conflict with privacy (e.g., national security, employee monitoring)

# Breach Notification Laws

- Designed to help enforce security obligations
  - In theory helps consumers protect themselves
  - Provides government authorities enforcement opportunities
  - Bad PR and breach-associated costs encourage compliance
- In nearly every state and also at the federal level
- Michigan Identity Theft Protection Act



# Breach Notification Laws

- Breaches generally triggered by the unauthorized access to, or acquisition of, Personally Identifiable Information covered by the law
- Other variables affect whether a breach notification law applies such as:
  - Storage medium involved
  - Use of data encryption
- More to follow on topic by Shawn Clark

# Conclusion

- Privacy is a broad, complicated and increasingly critical area of the law
- While some will claim the US lacks adequate data protection because it lacks an overarching privacy law, there is far more in place than most realize
- As technology continues to explode the law will have to struggle to keep up

# Contact Information

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