

Data Privacy Implications for Service Provider & Third-Party Contracts



New comprehensive data privacy laws, like the California Consumer Privacy Act (CCPA), require covered entities to manage service provider and third-party relationships. These laws may also impart joint obligations regarding disclosures and responses to consumer data privacy rights requests. If your business is subject to CCPA or a similar data privacy law, consult counsel on updates to both new and existing contracts. Below are some tips to get the conversation started.

Definitions

Be aware of definitions and concepts in contracts that relate to privacy laws.

Step 1: Determine what data privacy laws or regulations apply to your business.

Step 2: Map definitions and concepts in your contracts against your regulatory obligations, ensuring that key terms don't exclude required elements and that regulatory obligations and contract terms align.

Here are some definitions and concepts to consider:

- Applicable laws (state and federal)
- Third-Party
- Service Providers, vendors, and subcontractors
- Sale, sell or selling
- Marketing
- Data ownership and/or data use
- Data storage and accessibility
- Data breach
- Data retention, deletion and return
- Confidentiality obligations and exceptions

Disclosures, Notifications & Privacy Rights Compliance

Comprehensive data privacy laws require disclosures to consumers on what data is being collected and how it is being used. In the event of a data breach, notifications to consumers and/or regulators may be required. Under some laws, consumers can also exercise data privacy rights, such as requesting data to be updated, deleted or provided in a portable format.

Contracts with business partners should clearly delineate expectations, communications and responsibilities for providing disclosures, notifications and/or responding to data privacy rights requests.

Other Contract Tips

As you review your contracts, consider how the factors below might also impact your data privacy requirements.

- Reps and warranties
- Indemnification and limitations of liability
- Data breach responsibilities
- Audit rights
- Cooperation
- Security requirements
- Insurance

This document, including the recommended actions, should be used for informational purposes. It is not meant to be exhaustive and does not constitute legal advice. Businesses should work with their attorneys to develop practices and procedures for compliance with all applicable laws or regulations.