Research and AI
Legal Trends and Emerging Issues
Justice Louis Brandeis

THE RIGHT TO PRIVACY

“The right to be let alone- the most comprehensive of rights and the right most valued by civilized men”
Privacy Law Globally

This map is an artistic rendering. There may be some inconsistencies with current, precise national borders.
Privacy Law in the US
“The Common Rule”

• Traditionally, the Common Rule has protected the rights and welfare of individuals participating in clinical trials and other interventional research.

• The rule lists several criteria for IRB approval, including the requirement that researchers obtain the informed consent of their research subjects.

• In addition, it sets out the types of information that must be provided to prospective research subjects during the informed consent process, including an explanation of the purpose of the research, a description of the research procedures, and a description of the risks and benefits of the research.

45 CFR Part 46 Subpart A

Adopted by 20 federal departments & agencies

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<th>Department of Agriculture</th>
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Privacy Law in Massachusetts
Sectoral, at both the Federal and State Level

Gramm-Leach-Bliley Act (GLBA)
Health Insurance Portability and Accountability Act (HIPAA)
Video Privacy Protection Act (VPPA)
Family Educational Rights and Privacy Act (FERPA)
Children’s Online Privacy Protection Act (COPPA)
Federal Trade Commission Act (FTC Act)

Data Breach Notification (Mass. Gen. Laws 93H, § 3(b)).
Privacy Law in the US
Framework for the “Patchwork”

Data Subject
- Child
- Patient
- Student
- Consumer

Data Owners
- Bank
- Hospital
- School
- Business

Data Use
- Credit Worthiness
- Sale
- Legal decision
<table>
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<th>Right to Be Informed</th>
<th>Right to Access</th>
<th>Right to Rectification</th>
<th>Right to Be Forgotten/Right to Erasure</th>
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<tr>
<td>The right to be informed about the collection and use of their personal data</td>
<td>The right to view and request copies of their personal data</td>
<td>The right to request inaccurate or outdated personal information be updated or corrected</td>
<td>The right to request their personal data be deleted</td>
<td>The right to ask for their data to be transferred to another controller or provided to them. The data must be provided in a machine-readable electronic format</td>
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<td>Right to Restrict Processing</td>
<td>Right to Withdraw Consent</td>
<td>Right to Object</td>
<td>Right to Object to Automated Processing</td>
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<tr>
<td>The right to request the restriction or suppression of their personal data</td>
<td>The right to withdraw previously given consent to process their personal data</td>
<td>The right to object to the processing of their personal data</td>
<td>The right to object to decisions being made with their data solely based on automated decision making or profiling</td>
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Privacy Law and AI
Data lifecycle considerations

• Data Collection  Especially for international projects, are the data sets collected or created using AI compliant?

• Data Use  How do I ethically (and legally) approach corporate data sets or tools that may be outside the scope of IRB review?

• Data Retention  How can I protect this data long term?

• Data Disclosure  Do I need additional legal agreements to disclose this data?

• Data Destruction  If this data is incorporated into a larger model, how can I ensure it’s actually destroyed?
[Congress shall have power] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

US Constitution Article I Section 8
Thaler v. Perlmutter, Civil Action No. 22-1564 (BAH), 2023 U.S. Dist. DC, August 18, 2023

- Plaintiff stated an AI program generated a piece of visual art “of its own accord.”
- The Copyright Office denied the application on the grounds that the work lacked human authorship.
- DC Circuit agreed, recognizing that “Plaintiff can point to no case in which a court has recognized copyright in a work originating with a non-human.”
Zarya of the Dawn

Comic book written by a human with AI generated images. US Copyright Office originally certified copyright but then canceled.

“The Office has completed its review of the Work’s original registration application and deposit copy, as well as the relevant correspondence in the administrative record. We conclude that Ms. Kashtanova is the author of the Work’s text as well as the selection, coordination, and arrangement of the Work’s written and visual elements. That authorship is protected by copyright. However, as discussed below, the images in the Work that were generated by the Midjourney technology are not the product of human authorship. Because the current registration for the Work does not disclaim its Midjourney-generated content, we intend to cancel the original certificate issued to Ms. Kashtanova and issue a new one covering only the expressive material that she created.”
• **Andersen v. Stability AI LTD, et al, Case 3:23-cv-00201, USDC ND California.**
  • Alleges AI tools were trained on copyrighted images scraped from the internet.
  • Describe this technology as “merely a complex collage tool,” and claim the training images are stored in the tools as compressed copies.

  • Numerous copyright and trademark-related claims, including claims of direct copyright infringement, violation of 17 U.S.C. § 1202, trademark infringement, unfair competition, trademark dilution, and deceptive trade practices.
• Doe v. GitHub, Microsoft, OpenAI, et al, Case 3:22-cv-06823, USDC ND California.

• Allegations that “Copilot” copies code from GitHub without meeting the requirements of the applicable open-source licenses.

• Alleges violations of CCPA, negligence, and other torts related to handling of personal information.
Remedies
D. Within ninety (90) days of entry of this Order, delete or destroy any Affected Work Product, and provide a written statement to the Commission, sworn under penalty of perjury, confirming such deletion or destruction;

56(a)(1), and 57b, Sections 1303(c) and 1306(d) of the Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. §§ 6502(c) and 6505(d), and the Commission’s Children’s Online Privacy Protection Rule (“COPPA Rule”), 16 C.F.R. Part 312. Defendants have waived service of the summons and the Complaint. The parties have been represented by the attorneys whose names appear hereafter. Plaintiff and Defendants stipulate to the entry of this Stipulated Order for Permanent Injunction and Civil Penalty Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.

2. The Complaint charges that Defendants violated the COPPA Rule by failing to provide direct notice to Parents, failing to obtain Verifiable Parental Consent prior to Collecting, using, or
Work With Counsel!

• How to protect against uncertainty:
  • Indemnification
  • Insurance
  • Escrow
• How to reduce risk
  • Use best practices in anonymizing data
  • Implement Compliance Reviews on Data Processing
AI: Global Solutions Hub

Artificial Intelligence (AI) is one of the most transformative technologies that we have ever experienced and the opportunities to implement AI solutions in business and everyday life seem endless. AI is a critical issue for all organizations across every sector and geography, presenting both challenges and opportunities. We created this hub to help our clients understand where responsibility sits for good governance, regulation and compliance—as well as to establish best practices to derive the full benefits of AI. Dentons’ AI group provides cross-practice solutions to grow, protect, operate and finance AI solutions for your business. To find out more about how we can help you address your specific AI queries or challenges, please contact your regional contact.

Featured:

The Future of AI Global Governance

The report offers a first-of-its-kind perspective on global AI regulation and governance that combines the legal expertise of Dentons, the AI prowess of VERSYS, and guidance on spati...