



# Colorado & Connecticut New Privacy Laws

Coming to a Privacy Policy Near You... this Saturday

**June 29, 2023**

# Agenda

1. Overview of Colorado and Connecticut Laws
2. Colorado Regulations
3. Automated Profiling Analysis
4. Broader Context
5. Q&A

# Statutory Overview

Everything the Light Touches...

# Key Definitions

- **Personal data (PD):** “information that is linked or reasonably linkable to an identified or identifiable individual”
- **Consumer:** “an individual who is a [Colorado/Connecticut] resident acting only in an individual or household context”
- **Sale:** “the exchange of personal data for monetary or other valuable consideration ... to a third party”
- **Targeted advertising:** “an advertisement that is selected based on personal data obtained or inferred over time from the consumer’s activities across nonaffiliated websites, applications, or online services to predict consumer preferences or interests”
- **Process:** [anything]

# Applicability

- Thresholds
  - 100k+ residents' personal data
  - 25k and
    - CT: 25% of revenue sales / targeted ads
    - CO: any revenue from sales / targeted ads
- Exemptions
  - HIPAA
  - GLBA
  - FCRA
  - Non-profits (CT only)



Poll #1

# Notice Requirements

- Types of PD processed
- Purposes for processing PD
- Types of PD shared with third parties
- Types of PD sold
- Rights
  - Method of exercising rights



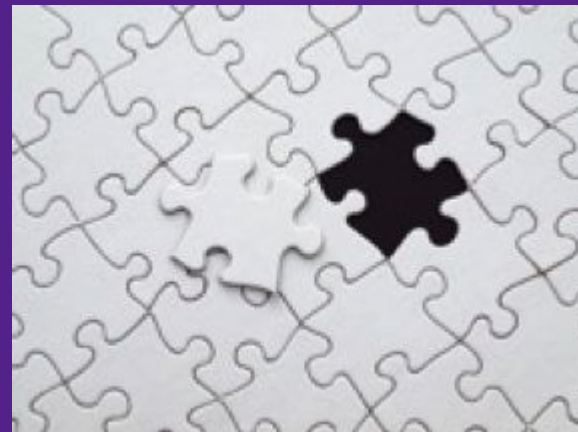
# Consumer Rights

- Access
- Deletion
- Correction
- Opt-outs
  - Sales
  - Targeted advertising
  - (Some) profiling
- Appeal
  - AG contact info
- Deadlines: 45 days (+45 if complex)



# Other Obligations

- Data minimization
- Data Protection assessments
- Sensitive data requires affirmative consent
  - Racial or ethnic origin
  - Religious beliefs
  - Health data
  - Sex life or sexual orientation
  - Citizenship or citizenship status
  - Genetic or biometric data
  - Children's data (under 13)
  - Precise geolocation data (CT only)





# Enforcement

- Attorney General
  - CO adds 22 District Attorneys as well
- Unfair or deceptive trade practice
- Fines
  - CO: \$2k – \$20k
  - CT: \$2k – \$10k
  - Cap of \$500k\*
- Cure periods
  - 60 days, if cure is possible
  - Sunsets Jan. 1, 2025



# Colorado Regulations

You're Gonna Need a Bigger Privacy Notice

# The Big Picture

- **Part One - General Applicability**
- **Part Two - Definitions**
- **Part Three - Consumer Disclosures**
  - Details how to communicate with consumers and avoid misleading language in notices and other documents
- **Part Four - Consumer Rights**
  - Defines the scope of different types of requests and providing rules for how and when businesses should respond
- **Part Five - Opt-Out Mechanisms**
  - Lays out technical and other specifications for opt-out mechanisms, along with rules for how and when businesses must recognize them
- **Part Six - Duties for Controllers**
  - Details how controllers collect and process data, and what information they must give to consumers
- **Part Seven - Consent**
  - Sets out when consent is necessary and how businesses should collect it
- **Part Eight - Data Protection Assessments**
  - Establishes when they should be conducted, what they should contain, and the AG's right to inspect them
- **Part Nine - Profiling**
  - Sets out rules for businesses that profile, including opt-out requests, consent, and disclosures that must be included in notices and assessments
- **Part Ten - Enforcement**
  - Reiterates that the Colorado AG has exclusive authority to enforce the CPA by bringing suit in state court

# Key Points



- Responding to Requests
- Collecting Consent
- Universal Opt-Out Mechanisms
- Data Protection Assessments
- Profiling and Automated Decision-Making

# Responding to Consumer Requests

- Businesses must provide methods for CO residents to submit requests
  - Businesses that operate exclusively online and have a direct relationship with consumers need only provide an email address
  - Everyone else needs to provide at least 2 methods that reflect the ways consumers normally interact with the business
- Must respond to requests within 45 days
  - Can extend this period by another 45 days when “reasonably necessary”
  - Should fulfill opt-out requests “as soon as feasibly possible”

# Authenticating Requests

- CO requires businesses to authenticate the consumer's identity before fulfilling a request
  - If applicable, must also authenticate the agent's authority
- Agents are only allowed to submit opt-out requests in CO
- Must use “commercially reasonable” methods to authenticate
  - Avoid asking for new information if possible



# Colorado & Consent

- Must obtain consent before:
  - Processing Sensitive Data (with one exception);
  - Processing Children's Data; or
  - Processing any data for “purposes that are not reasonably necessary to, or compatible with” the purpose disclosed to consumers
- Can forego consent for processing “Sensitive Data Inferences” in limited circumstances
  - SDI are inferences made based on Personal Data that are used to indicate an individual's racial or ethnic origin; religious beliefs; mental or physical health condition or diagnosis; sex life or sexual orientation; or citizenship or citizenship status

# What are Universal Opt-Out Mechanisms?

- Mechanisms that send a signal to “clearly communicate a Consumer's affirmative, freely given, and unambiguous choice to opt out”
  - Usually browsers or browser extensions (like the Global Privacy Control)
  - Can be used to effectuate opt-outs of sale, targeted ads, or both
- Colorado businesses must start recognizing these signals on July 1, 2024
- Colorado's AG will provide a list of mechanisms businesses must recognize by January 1, 2024

## Poll #3



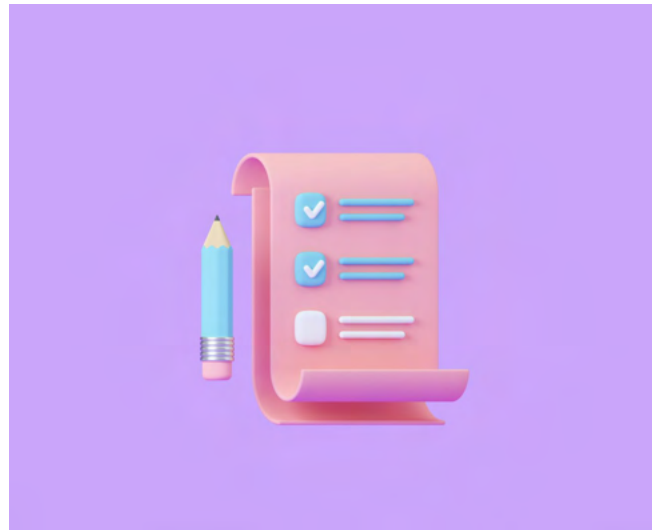
# What should you do when you get an opt-out signal?



- It's easy, just treat the signal as any other opt-out request
  - Stop selling/sharing covered data “as soon as feasibly possible” and within 45 days of receipt
  - Notify all processors to stop selling/sharing data
- Must effectuate opt-out for the browser or device that sent the signal and, if possible, the consumer themselves
  - MAY ask for additional information
  - If the consumer does not provide that info, still must process opt-out

# Data Protection Assessments

- Required for "processing that presents a heightened risk of harm to a consumer"
  - Must provide them to the CO AG upon request
- Content is similar to other states
  - Businesses can reuse assessments that address similar activities
  - Can submit supplements to include any info CO requires that other state's don't
- Unique requirements for assessments based on profiling



# Profiling & Automated Decision-Making

- Profiling is any type of automated data processing used to evaluate, analyze, or predict details of a person's life
  - Consumers can opt out when profiling is used to make certain automated decisions
- New, expansive disclosure requirements in Risk Assessments and Notice
  - Notice - required for businesses that use profiling to make significant decisions
  - Assessment - required for any profiling that poses a risk of:
    - Unfair or deceptive treatment
    - Unlawful disparate impact;
    - Financial or physical injury;
    - Substantial violation of privacy; or
    - Other substantial injury



## Assessment

- Decision(s) subject to profiling and the types of data involved;
- The name of the software used to profile and any evaluations showing that software's reliability/accuracy
- Explanations of:
  - Why automated processing is better than manual processing to accomplish the business' goal;
  - How the profiling relates to the business' goods and services;
  - What outputs the business gets from the profiling and how those outputs are used;
  - How the profiling system is evaluated for fairness & disparate impact;
  - The logic behind the profiling system and any training data used to create it;
  - The safeguards implemented; and
  - Any human involvement

## Notice

- Decision(s) subject to profiling and the types of data involved;
- Benefits and consequences of the decision(s);
- Explanations of the logic behind the profiling system and the decision-making process broadly;
- How the profiling system is evaluated for fairness, accuracy, and bias; and
- Information on how to opt-out
- Any human involvement

# Colorado Universal Opt-out Mechanism Timeline

2023

**July**

Law takes effect

2024

**Jan.**

List of mechanisms published

2024

**July**

UOOMs must be processed

# Colorado Profiling Analysis

Here's Where the Fun Begins

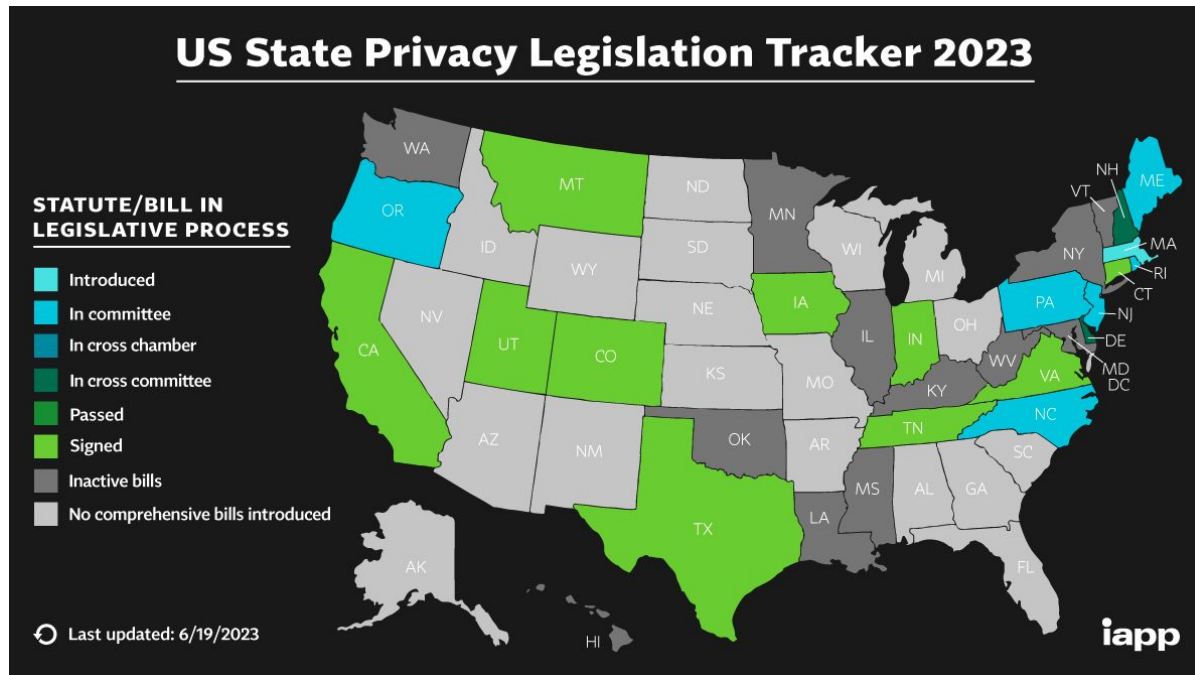
# Broader Context

**Privacy law moves pretty fast**

**If you don't stop and look around once in a while, you could miss it**

# General Consumer Privacy Laws

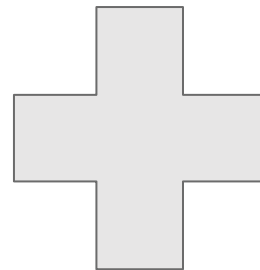
- California
- Colorado
- Connecticut
- Indiana
- Iowa
- Montana
- Oregon\*
- Tennessee
- Texas
- Utah
- Virginia





# Other New Privacy Laws

- Health data
  - Nevada
  - Washington
    - **Very** broad definition of health data
    - Private right of action
- Mega-corporation privacy
  - Florida
    - \$1B revenue and one of:
      - >50% of revenue from sales of online ads
      - Has a smart speaker + voice command system
      - Owns an app store with 250k apps



# 10,000 Foot Overview

	CA	CO	CT	UT	VA
Disclose Retention Period	✓	✗	✗	✗	✗
Affirmative Consent for Sensitive PI	✗	✓	✓	✗*	✓
Opt Out of Profiling	✗*	✓	✓	✗	✓
Right to Appeal	✗	✓	✓	✗	✓
Risk Assessment	✗*	✓	✓	✗	✓
HR Data Covered	✓	✗	✗	✗	✗



# Q&A

# Thank you!



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