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Spring Symposium: Consumer Privacy Law

A Brief Overview of US and European Union Privacy and Data Security Laws

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BREACH NOTIFICATION AND DATA SECURITY

50 states (plus the District of Columbia, Guam, Puerto Rico and Virgin Islands) have breach notification laws that require notification of a breach to affected individuals

More than:

- 40 state breach notification laws have risk of harm provisions
- 30 state breach notification laws require notification of a breach to a state attorney general or regulator in addition to notifying affected individuals
- 20 states have laws addressing data security procedures

Interplay of state laws with federal laws

BREACH NOTIFICATION AND DATA SECURITY (CON'T)

Federal HIPAA / HITECH Act breach notification for covered entities and business associates regarding protected health information:

- has risk of harm provision
- requires notification of a breach to a regulator as well as the media in addition to notifying affected individuals

Federal HIPAA / HITECH Act addresses data security procedures

Will there be a comprehensive US federal breach notification and data security law?

Provisions in contracts and policies

BREACH NOTIFICATION AND DATA SECURITY (CON'T)

European Union's General Data Protection Regulation (GDPR) addresses:

- breach notification, including:
 - risk of harm provisions
 - notification of a breach to a competent supervisory authority in addition to data subjects
- data security

CONSUMER PRIVACY

California Consumer Privacy Act (CCPA), scheduled to become operative January 1, 2020, addresses consumer rights (including disclosure, access, deletion, antidiscrimination, opt out and website and privacy policy requirements)

- Interplay with state laws and federal laws

More than 10 other states are considering consumer privacy legislation

Will there be a comprehensive US federal consumer privacy law?

GDPR addresses data subject rights (including access, rectification, erasure, restriction of processing, data portability, objection, automated individual decision-making, including profiling) and privacy notices

ePrivacy Regulation not finalized yet

RESOURCES

- <http://www.vlplawgroup.com/wp-content/uploads/2016/10/USandEUGDPRPrivacyandDataSecurityResourcesJanuary2019Krasnow.pdf>
- <http://www.vlplawgroup.com/wp-content/uploads/2019/01/Domestic-Privacy-Profile-Minnesota-Jan-2019.pdf>
- <http://www.vlplawgroup.com/wp-content/uploads/2018/03/GDPRBreachReporting-BloombergLaw-MK.pdf>
- <https://www.irmi.com/articles/expert-commentary/breach-notification-laws-state-attorney-general-or-regulator>
- <https://www.irmi.com/articles/expert-commentary/massachusetts-amends-breach-notification-law>
- <https://www.irmi.com/articles/expert-commentary/a-summary-of-ccpa-of-2018>

Thank You!



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