

What's On the Horizon: Looking Ahead to 2026 Data Privacy Trends and Developments

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Mario Ayoub

Artificial Intelligence Practice Group

Cybersecurity and Data Privacy Practice Group

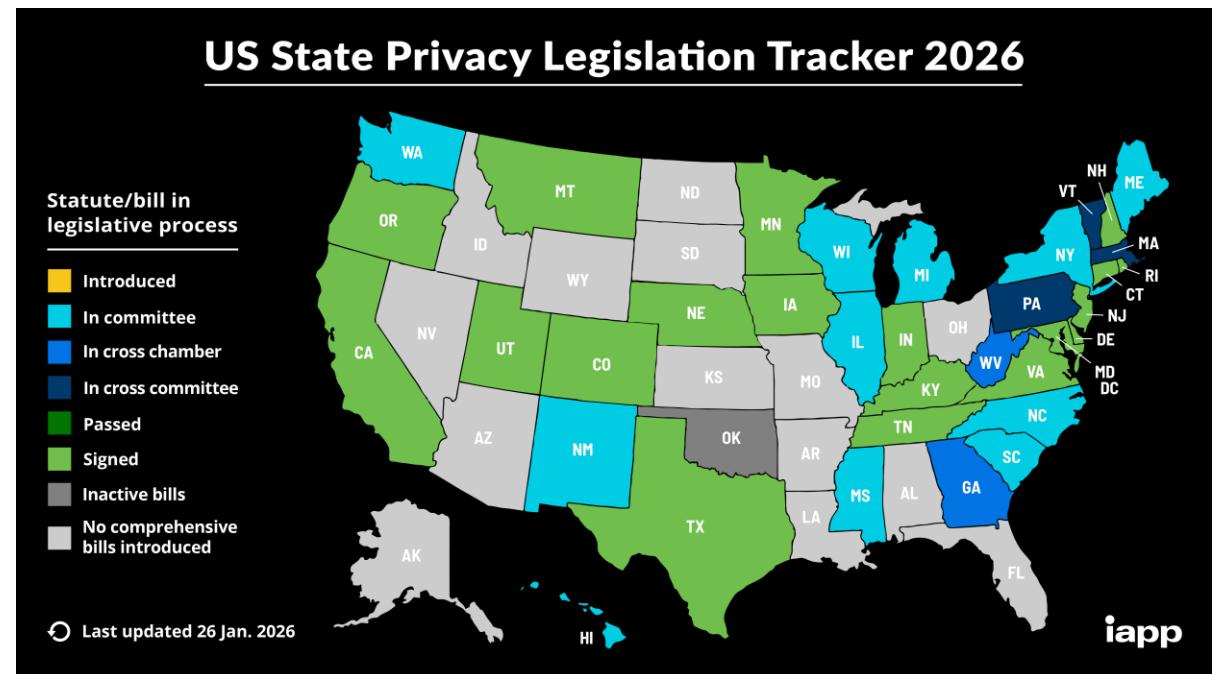


Agenda

- State Privacy Laws Expansion
- Children's and Teen Privacy
- AI Governance and Oversight
- Enforcement and Litigation Trends
- Emerging Cybersecurity Threats

State Privacy Laws Expansion

- New Privacy Laws:
Indiana, Kentucky, and
Rhode Island
- 20 State consumer privacy
laws
- Different definitions,
exceptions, and rights



State Privacy Laws Expansion – Action Items

- Check to see if your organization is subject to new or existing state consumer privacy laws
- Update privacy policies and agreements to reflect changes in privacy landscape
- Ensure you are implementing proper notice and collection mechanisms when collecting data from individuals

Children's and Teen Privacy

- **Children's Online Privacy Protection Act Updates:**
 - Heightened parental notice obligations
 - Written security program processing data collected from minors
 - Separate verifiable parental consent for third-party data sharing
- **FTC Enforcement Trends:**
 - Child directed platforms
 - Connected device manufacturers (smart device and toys)
- **NY's Child Data Protection Act**
 - Restricts data collection from minors
 - Limits certain design feature deemed harmful or addictive (dark patterns)
 - Prohibits targeted advertising to minors

Children's and Teen Privacy – Action Items

- Evaluate your online service offerings and media for COPPA application
- Carefully document parental consent and create a written information security plan tuned to COPPA's requirements
- Ensure your website doesn't embed third-party functionality that will enable targeted advertising to children

AI Governance and Oversight

- State patchwork of laws (similar to consumer privacy laws)
- Some states have general, standalone AI privacy laws, while others have sector or use case specific laws
- Federal oversight limited to FTC enforcement through Section 5 of the FTC Act
- NY recently passed laws governing digital replicas and synthetic performers

What are deepfakes?

- **Deepfakes:** synthetic media created using AI techniques to produce convincing audiovisual content of events that did not occur, which can be weaponized to distort truth, manipulate opinion, and blur the line between authentic and fabricated content.
- **Digital Replica:** a newly created, computer-generated, highly realistic electronic representation readily identifiable as a person's voice or visual likeness.
- **Synthetic Performers:** fully synthetic AI avatars and lifelike virtual models not tied to a real individual.

Risks Associated With Deepfakes

- Fraud and social engineering
- Data integrity
- Reputational harm
- Consumer protection harms
- Right of publicity and IP exposure

Deepfake Example

Real Reference Photo



Deepfake



Synthetic Performer



New York's Approach to Deepfake Technology

- **Senate Bill S7676B:** Effective January 1, 2025, New York updated its General Obligations Law to void any clause in a personal or professional services agreement that authorizes a “new performance by digital replication” of an individual’s voice or likeness in place of work the individual would have done in person, if:
 - clause permits substitution
 - it lacks a “reasonably specific” description of intended uses, and
 - the individual lacked either counsel negotiated, clearly and conspicuously presented terms or coverage under a collective bargaining agreement that expressly addresses digital replicas.
- **Senate Bill S8420A:** Effective June 9, 2026, New York amended its General Business Law to require conspicuous disclosure when an advertisement features a “synthetic performer” if the advertiser has actual knowledge of its inclusion.
 - Civil penalties of \$1,000 for a first violation and \$5,000 for subsequent violations.
 - Carveouts include exemptions for advertisements of expressive works if consistent with use in the work, exclusion of audio-only ads, and exceptions for AI used solely for language translation of a human performer.

AI Governance and Oversight – Action Items

- Form an AI Governance Committee and adopt a formal AI Governance Policy
- Implement and enforce AI Tools Acceptable Use Policy
- Collect consent from individuals prior to introducing personal data to an AI Tool (especially when tool is used to make a decision)
- Implement and maintain oversight and audit processes to guard against bias, and promote transparency and accuracy

Aggressive Enforcement and Litigation Environment

- Increase in regulatory enforcement and investigations arising from data breaches
- State attorney generals continue to bring actions targeted organizations that fail to honor opt-out rights and implement cybersecurity controls
- Data breach class actions are proceeding more often past the early dismissal stage

Aggressive Enforcement and Litigation Environment – Action Items

- Make sure your organization is following the practice and procedures established in privacy policies and notices
- Develop and maintain an incident response plan to mitigate risks stemming from delayed response
- Document cybersecurity compliance to demonstrate compliance to regulators and courts

Emerging Threats Reshaping Compliance Expectations

- Attackers are increasingly leveraging AI to enhance phishing, automate lateral movement, and evade detection, compressing the time between intrusion and data exfiltration
- Supply-chain compromises (often targeting third-party vendors) remain high-impact vectors
- Low barrier to entry thanks to AI tools

Emerging Threats Reshaping Compliance Expectations

– Action Items

- Update workforce training and incident response plan to account for emerging threats
- Adopt a rigorous cybersecurity framework (NIST or ISO)
- Conduct annual security audits, risk assessments, and penetration testing
- Enforce rigorous cybersecurity controls on your vendors and service providers

Thank You

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