

## **Overview of Privacy and Data Protection Issues**

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To: Governor Commonwealth of Virginia

From: Stuart Howard III

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## 1. Overview of Privacy and Data Protection

Privacy is a fundamental right that every person is entitled to. It allows individuals to control their personal information and limit its exposure to others. Concerns about personal data protection focus on safeguarding sensitive data from unauthorized access, misuse, or exploitation. Without adequate protection, individuals are exposed to various risks, such as identity theft, financial fraud, harm to their reputation, and discrimination crucial in today's digital landscape. Personal data includes biometric information such as fingerprints, facial recognition patterns, iris scans, and Personally Identifiable Information (PII), which comprises names, addresses, social security numbers, and financial records, exemplify vulnerable data categories susceptible to misuse if not safeguarded effectively.

## 2. The General Data Protection Regulation (GDPR)

The General Data Protection Regulation (GDPR) was approved in 2016 and authorized on May 25, 2018. The GDPR, enacted by the European Union (EU), stands as a comprehensive privacy regulation with key provisions including broad coverage encompassing organizations processing personal data of EU residents, irrespective of location, and extending to EU citizens' data processed outside the EU. Its data protection principles emphasize legality, fairness, and transparency in processing, with data collection mandated for specific, legitimate purposes while ensuring data minimization and accuracy. Additionally, storage limitation dictates that personally identifying data may only be stored for as long as necessary. Processing must also maintain integrity and confidentiality, ensuring appropriate security measures like encryption. Further, accountability is crucial, as the data controller is responsible for demonstrating GDPR compliance with these principles.

The GDPR regulates and mandates limited data retention, necessitates maintaining data integrity and confidentiality through stringent security measures, and grants individuals rights such as access, rectification, and data erasure. These rights, enshrined within the GDPR, include the right to be informed, ensuring individuals know how their data is processed. Additionally, individuals have the right to rectification, enabling them to correct any inaccuracies in their data. The right to erasure, also known as the right to be forgotten, allows individuals to request the deletion of their data under certain circumstances. Furthermore, individuals have the right to restrict processing and data portability and the right to object to the processing of their data. Finally, the GDPR provides rights to automated decision-making and profiling, granting individuals safeguards against potentially harmful or discriminatory automated processes. These comprehensive rights empower individuals to assert control over their data and ensure their privacy is respected in the digital age.

### 3. Privacy Laws in Other States

Several states have taken significant steps toward safeguarding consumer data, while Virginia lacks a comprehensive privacy law. California's Consumer Privacy Act (CCPA) stands out, as it gives consumers the right to know what data is being collected and allows them to opt out of data sales globally, rather than having to opt out on every individual website. The CCPA also requires businesses to provide transparent privacy notices and implement reasonable security measures. The Colorado Privacy Act (CPA), which is largely influenced by the CCPA/CPRA, expands on the definition of "sale" and mandates companies to respect privacy signals from around the world. The CPA also uses the categories of "controller" and "processor," as seen in the GDPR. Additionally, various states, such as Massachusetts, Florida, and Texas, have implemented data breach notification laws and regulations to further enhance data protection measures across different regions of the United States.

### 4. Recommendations

The Governor of Virginia is currently faced with a critical decision that could have significant implications for privacy legislation in the state. At the heart of the matter is whether to prioritize Virginia-specific privacy laws or to advocate for federal action. While enacting laws at the state level could address Virginia's unique needs and concerns, it may create compliance challenges for businesses operating across state lines. Conversely, advocating for federal legislation can ensure uniform standards nationwide and streamline business compliance, but may take longer to pass due to the complexities of the legislative process. In order to find an effective solution, it is essential to take a combined approach, starting with state-level action while simultaneously advocating for federal laws. This approach can provide the most comprehensive solution to address privacy concerns and ensure uniform standards nationwide. The well-being, trust, and security of Virginia citizens depend on privacy and data protection, making it crucial to consider these issues when considering legislation. By considering both the state-level and federal approaches to privacy laws, the Governor can create a better, more privacy-protective environment for Virginians. This, in turn, will have a positive impact on the business community and ensure that Virginia remains an attractive place to do business.

## References

Kesan, J. P., & Hayes, C. m. (n.d.). *Cybersecurity and Privacy Law in a Nutshell*. West Academic Publishing. ISBN 978-1-63460-272-3

Klosowski, T. (2021, September 6). *The State of Consumer Data Privacy Laws in the US (and why it matters)*. The New York Times. <https://www.nytimes.com/wirecutter/blog/state-of-privacy-laws-in-us/>

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