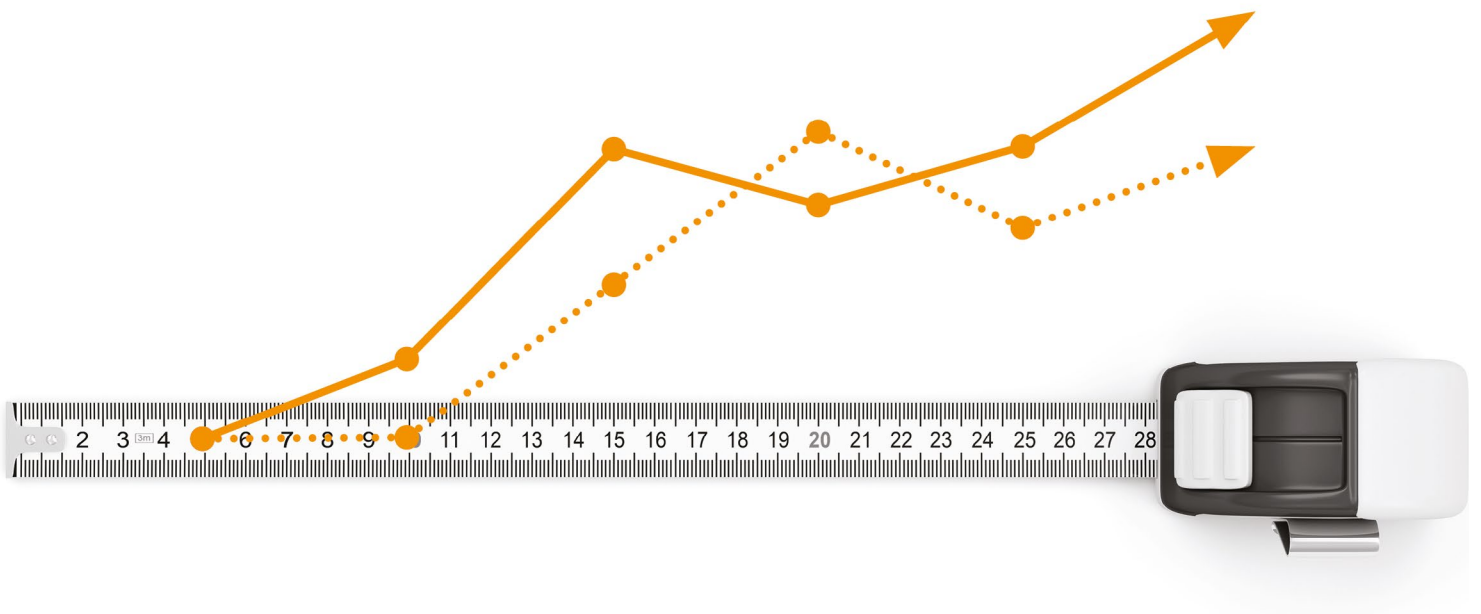


A measured approach

US Cybersecurity and Data Privacy review
and update: Looking back on our 2021
articles and planning ahead for 2022



Executive summary

US trends in privacy and cybersecurity during 2021 will continue, if not intensify, in 2022, including:

- federal and state efforts to enact comprehensive consumer data privacy laws;
- consumers' efforts to exert their rights under existing laws, and plaintiffs' efforts to advance theories to test the boundaries of those rights;
- increasing restrictions on the ability to freely transfer data from overseas to the US;
- more devastating ransomware attacks, often facilitated by cryptocurrency transactions, and increasing governmental efforts to strengthen reporting, preparedness and enforcement action;
- greater business opportunities in revolutionary technologies like Artificial Intelligence, Machine Learning, Biometrics, and Distributed Ledger Technology; and
- increased focus on employee privacy rights, particularly in California.

In this rapidly evolving field, businesses looking to remain safe, compliant and ahead of the curve in 2022 would be well served to heed the lessons of 2021 and maintain a proactive, holistic, risk-based approach to managing their data privacy and cybersecurity efforts while boldly adopting the newest technologies.

Below is a compendium of our key articles and alerts from 2021 to help guide you as you plan your digital strategies for 2022, starting with our Foresight 2022 article.



FORECAST 2022
Read full article [here](#).

Did you know?

\$10.5 trillion

Global cost of cybercrime by 2025

Source: Cybersecurity Ventures

\$5 trillion

Business losses to data breaches by 2024

Source: Jupiter Research

70%

Increase in cybersecurity breaches over next five years

Source: Juniper Research

600%

Cybercrime increase due to COVID-19 pandemic

Source: United Nations

\$134 billion

Global business spend on cybersecurity solutions by 2022

Source: Juniper Research

\$170 billion

Global spending on cybersecurity in 2022

Source: Gartner

287 days

Average time to detect and contain a data breach

Source: IBM

\$345.4 billion

Estimated worth of 2026 cybersecurity market

Source: Statista

\$401 million

Average cost of a breach of more than 50 million records

Source: IBM

Visit our [GDPR](#), [CCPA](#) and [Blockchain/Crypto Assets](#) hubs for one-stop information on each of these landmark privacy issues.

Access [BreachLawWATCH](#), our mobile app, providing easy, consistent access to data breach statutes.



A Focus on Cybersecurity

2021 Cybersecurity and Data Privacy Legal Alerts

Cryptocurrency and financial services

What's inside

Sanctions 2.0: US Treasury Department announces results of sanction policy review and OFAC releases compliance guidance for the virtual currency industry (October 28, 2021)

The US Department of the Treasury (Treasury) has released the results of its review of economic and financial sanctions first announced in December 2020 by then President-elect Biden (Report). From that review, Treasury has issued recommendations... [Click for full article.](#)

The publications highlight the government's focus on stopping ransomware attacks, which are often facilitated via virtual currency. Companies operating in this space should develop and implement a risk-based sanctions compliance program to ensure they are adhering to OFAC's regulations as well as reduce the risk of OFAC enforcement.

OFAC sanctions virtual currency exchange and updates ransomware advisory (September 24, 2021)

On September 21, 2021, the US Department of the Treasury took actions in response to the increasing prevalence and severity of ransomware attacks in the United States and address the central role that virtual currency and virtual currency exchanges play in these attacks. These actions included... [Click for full article.](#)

OFAC reminds businesses that payments to ransomware actors may violate US sanctions regulations and provides guidance on actions to take to mitigate OFAC enforcement. Also, for the first time ever, OFAC designated a virtual currency exchange on the Specially Designated Nationals and Blocked Persons List for its role in enabling financial transactions connected to ransomware payments—signaling these exchanges will likely continue to be on OFAC's radar.

FinCEN on fire: Rapid release of AML Act updates (July 9, 2021)

On June 30, 2021, the Financial Crimes Enforcement Network (FinCEN) provided an update on implementation of the Anti-Money Laundering Act of 2020 (AML Act) and issued the first government-wide priorities for anti-money laundering and countering the financing of terrorism (AML/CFT) policy (Priorities). The Priorities... [Click for full article.](#)

On June 30, 2021, FinCEN released eight government-wide priorities for anti-money laundering and countering the financing of terrorism, with corruption and cybercrime topping the list. Be on the lookout as FinCEN must promulgate rules before the end of 2021 about how financial institutions should incorporate the priorities into their risk-based anti-money laundering programs.

FinCEN proposes and seeks public comment on new AML Corporate Transparency Act Rulemakings (April 6, 2021)

The US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) has published an Advance Notice of Proposed Rulemaking (the Proposed Rule)¹ seeking input from the public on the implementation of a reporting system intended to curtail the flow of illicit funds through shell companies... [Click for full article.](#)

ANPRM Alert! FinCEN sought public comment on the implementation of a new reporting system meant to reduce the flow of illegal funds through shell companies.

Enforcement actions and litigation

What's inside

Once more out of the breach: SCOTUS resolves the CFAA circuit split (June 7, 2021)

While there are efforts afoot to broaden the impact and reach of US law on hackers, particularly with the US Department of Justice (the DOJ) planning to coordinate ransomware attack investigations with similar protocols it uses for terrorism cases, and with members of Congress... [Click for full article.](#)

In a 6-3 opinion, the Supreme Court of the United States (SCOTUS) held that, under the Computer Fraud and Abuse Act (CFAA), violations of the "exceeds authorized access" clause occur when individuals access information on a computer they are prohibited from accessing, as opposed to the alternative interpretation that violations occur when individuals use a computer to access information they are authorized to access but do so for an unauthorized purpose.

The First Circuit Court of Appeals confirms government's expansive authority to search electronic devices (February 19, 2021)

In a closely watched decision, the US Court of Appeals for the First Circuit confirmed the government's expansive authority to search cell phones, laptops, and other electronic devices at the border. On February 9, 2021, the First Circuit held... [Click for full article.](#)

Take note international business travelers: the First Circuit ruled border agents do not need a warrant or even reasonable suspicion before conducting a search of an electronic device.

Taking a stand on standing in data breach cases (January 21, 2021)

Plaintiffs continue to test the boundaries of the California Consumer Privacy Act (CCPA) and its private right of action. But, in an important case out of the Central District of California, absent injury in fact... [Click for full article.](#)

Standing still counts – the federal district court for the Central District of California dismissed a private right of action brought under the CCPA, ruling that data breaches are only actionable if the compromised data involves a combination of an individual's name with sensitive information (e.g., Social Security number, credit card number or password).

Federal Trade Commission signals increased focus on commercial collection and use of biometric data (January 19, 2021)

In a major development for companies that collect, use, and store biometric data, the US Federal Trade Commission (FTC) reached a proposed settlement of a complaint against a company that allegedly deceived consumers... [Click for full article.](#)

The FTC's consent order, admonishing the practices of a photo storage app, puts companies that employ biometrics data and/or the use of AI algorithms on notice that the FTC is ready and willing to enforce in this area, including adopting a broad definition of biometric data and imposing strict consent requirements.

Insurance

What's inside

EU-US Insurance Dialogue Project takes up new technologies and cyber threats that have no borders; regulatory collaboration in a digital world (November 5, 2021)

The EU-US insurance Dialogue Project (Project) began in early 2012 as an initiative by the European Commission, the European Insurance and Occupational Pensions Authority (EIOPA), the Federal Insurance Office (FIO) of the U.S. Department of Treasury, and the National Association of Insurance Commissioners (NAIC) to enhance mutual understanding and cooperation... [Click for full article.](#)

In October, the Project (an initiative designed to enhance mutual understanding and cooperation between the EU and the US for the benefit of insurance consumers, business opportunity, and effective supervision) presented a webinar to provide updates on (1) big data and AI in insurance; (2) cybersecurity risk; and (3) the cyber insurance market.

NAIC Report – 2021 Summer National Meeting (September 10, 2021)

The National Association of Insurance Commissioners (NAIC) held its 2021 Summer National Meeting from August 14 to 17 in Columbus, Ohio. The meeting was held in a hybrid in-person and remote format due to the ongoing COVID-19 pandemic... [Click for full article.](#)

Notable developments from the NAIC 2021 Summer National Meeting included: the announcement of a new "letter" committee to focus on AI, innovation, and cybersecurity; the Special Committee on Race and Insurance's adoption of 2021-22 charges for itself and its five workstreams; the adoption of amendments to the Statement on Statutory Principles (SSAP) Number 71 – Policy Acquisition Costs and Commissions; and a vote to adopt revisions to the Process for Evaluating Qualified and Reciprocal Jurisdictions.

NAIC Report – 2021 Spring National Meeting (April 20, 2021)

The National Association of Insurance Commissioners (NAIC) held its 2021 Spring National Meeting from April 7 to April 14, 2021. The meeting was held in an all-virtual format due to the ongoing COVID-19 pandemic... [Click for full article.](#)

Notable developments from the NAIC 2021 Spring National Meeting included an update on diversity and inclusion in insurance; the establishment of a working group on best practices for e-commerce activities that increased during COVID; and a proposal to add amendments to the Insurance Holding Company System Regulatory Act and Model Regulation as a state accreditation standard.

New technology, privacy, and cyber legislation and guidance

What's inside

Colorado's new privacy law: How it stacks up against other US privacy laws (July 15, 2021)

There are many similarities between the [Colorado Privacy Act](#) (ColoPA), the California Consumer Privacy Act (CCPA), the California Privacy Rights Act (CPRA), the Virginia Consumer Data privacy Act (VCDPA), and Europe's GDPR, which gives companies that are compliant—or are working towards compliance—with these other laws a substantial headstart... [Click for full article.](#)

The Colorado Privacy Act (ColoPA), effective July 1, 2023, shares many similarities with other states' (i.e., California and Virginia) comprehensive, enhanced privacy laws as well as Europe's GDPR, signaling the importance of implementing and maintaining a well-designed, agile privacy compliance program.

US House AI Task Force is the latest authority to address algorithms and racism (May 12, 2021)

On May 7, 2021, the US House of Representatives Task Force on Artificial Intelligence (AI) held a hearing on "Equitable Algorithms: How Human-Centered AI can Address Systemic Racism and Racial Justice in Housing and Financial Services"¹ It was the latest among several federal, state and international initiatives... [Click for full article.](#)

Hearing witnesses noted the power and pervasiveness of AI algorithms in determining significant events in people's lives and that, although algorithms can reflect biases, they can also be designed to promote fairness and equity. The hearing underscores the growing trend of state, federal and international regulators increasing focus upon ensuring AI actors strive for truth and fairness in their use of the technology.

Getting back when HACT: Congress's idea to provide redress to recent cyberattacks (May 6, 2021)

Amidst the ever-worsening onslaught of cyberattacks, companies are longing to go on the offensive, whether by "hacking-back" or by going after malicious actors in United States courts. While Congress has previously refused to enable the former, it now appears... [Click for full article.](#)

The House's proposed legislation would eliminate the immunity of foreign nations that engaged in cyberattacks against US nationals and allow them to be sued in US courts; however, the proposal is rife with complications (e.g., Supreme Court precedent of limiting exceptions to foreign sovereign immunity and the threat of other countries responding in kind), emphasizing the need for private companies to build strong cyber defenses and engage in information sharing.

Virginia is for lovers (of privacy) – The Consumer Data Protection Act passes into law (March 4, 2021)

On March 2, 2021, Governor Northam signed the [Virginia Consumer Data Protection Act](#) (CDPA or the Act) making it the country's second comprehensive data privacy legislation following California's Consumer Protection Act of 2018 (CCPA). It is unlikely to be the last, emphasizing the importance... [Click for full article.](#)

In March 2021, Virginia became the second (and certainly not the last) state to enact comprehensive data privacy legislation, again underscoring the importance of organizations to establish and maintain proactive and comprehensive data strategies.

The ePrivacy Regulation (February 18, 2021)

Europe's movement to replace the 2002 ePrivacy Directive with a new ePrivacy Regulation picks up steam, signaling the potential need for US companies to add further privacy protections over electronic communications that may reach users in the EU... [Click for full article.](#)

A new ePrivacy Regulation (i.e., an updated ePrivacy Directive) governing the privacy and confidentiality of electronic communications is being negotiated by the Council of the European Union and the European Parliament. The Regulation is potentially applicable to companies for actions originating outside of the EU. Stay tuned!

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