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“Secondary Uses” of Personal Data Should Still be Your Primary Concern: Consent Requirements under US State Privacy Laws

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Since March of 2023, the number of comprehensive U.S. privacy laws has doubled. Many of these new laws contain an opt-in consent requirement that might affect your company’s operations—especially the use of personal data for product development, data science and marketing. The laws require consent for what we’ll call a company’s “secondary use” of personal data—although the concept is often unclear or ill-defined. A secondary use of personal data generally refers to data processing that isn’t tied to the purposes or context for which a company originally collected the personal data.

As a part of complying with the myriad of new US privacy laws, companies must consider whether obtaining opt-in consent for the “secondary uses” of personal data is required. The likelihood of needing to obtain opt-in consent is strongest if your company is using personal data for any purpose that may not have been: 1) originally described to the consumer (especially if you’re not collecting the information directly from the consumer); 2) reasonably expected by the data subject; or 3) is otherwise inconsistent with the original purpose. For more detailed information about the requirements, see our [Legal Alert](#).