

In the Matter Of:

IAB STATE PRIVACY LAW SUMMIT 2024

FIRESIDE CHAT

November 19, 2024



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APPEARANCES

Michael Hahn, Executive Vice President, General Counsel,
IAB and IAB Tech Lab

Michele Lucan, Deputy Associate Attorney General, Chief
of the Privacy Section, Connecticut Attorney General's
Office

Kashif Chand, Chief, Deputy Attorney General, Data
Privacy & Cybersecurity Section, New Jersey Attorney
General's Office

1 (The proceedings commenced at 1:15 p.m.)

2 MR. HAHN: Welcome back from lunch, everybody.

3 We are now pleased to have a fireside chat
4 with Kash Chand, Chief Deputy Attorney General, Data
5 Privacy & Cybersecurity at the New Jersey Attorney
6 General's Office.

7 Kash will be joined by Michele Lucan, Deputy
8 Associate Attorney General and Chief of the Privacy
9 Section at the Connecticut Attorney General's Office.
10 We're going to have an interesting discussion.

11 We are transcribing this session, so please be
12 aware of that, and we're going to ultimately circulate
13 this out to IAB membership.

14 So with that, let's get started.

15 (Applause.)

16 MR. HAHN: All right, welcome.

17 MR. CHAND: Thank you.

18 MS. LUCAN: Thank you.

19 MR. HAHN: Well, great to have you here, and
20 this is a terrific opportunity for you to be able to
21 communicate with the broader IAB community about how you
22 look at your privacy laws and how you think about your
23 enforcement priorities.

24 So I thought maybe we could just get started
25 with both of you giving some background and detail on

1 the makeup and structure of your respective privacy
2 divisions.

3 MS. LUCAN: Sure. Do you want to take it
4 first.

5 MR. CHAND: I can go first. So I'm the
6 section chief of the Data Privacy & Cybersecurity
7 Section of the New Jersey Division of Law.

8 Four years ago, we were comprised of myself
9 and two other deputy attorney generals. Now, I think we
10 are the biggest in the country in terms of the size of
11 our staff. I have nine other attorneys who work below
12 me, and we have two openings, so we have the bandwidth
13 to have 12 attorneys working on data privacy and
14 cybersecurity work.

15 MS. LUCAN: Well, thank you very much for
16 having me today. I head up the Privacy Section at the
17 Connecticut Office of the Attorney General, and our
18 office has had a standalone Privacy Section since 2015.
19 We were the first office in the country to do that, just
20 saying.

21 MR. CHAND: We have more.

22 (Laughter.)

23 MS. LUCAN: And so I've been doing privacy
24 work full-time ever since. When I moved over to
25 privacy, there were just two of us attorneys in the

1 group, and now we're up to six full-time attorneys. We
2 have two paralegals. We just hired a legal
3 investigator, which was a piece we've been looking to
4 fill for quite a while, so, and for Connecticut, I think
5 that really is an outsized team for our state and shows
6 how much our office cares about privacy.

7 Kash and I work together very frequently.

8 MR. CHAND: Yes.

9 MS. LUCAN: So I guess another point worth
10 making here is it also doesn't really make sense to look
11 at the individual offices sometimes because we
12 collaborate so often and it's a large team of privacy
13 focused attorneys in AGOs across the country that we're
14 talking to on a daily basis.

15 MR. CHAND: Yeah, and we try to -- we all have
16 resources. We try to figure out where we can devote
17 resources, and they don't always have to overlap because
18 we want broader enforcement. And I think the
19 collaboration that the states have, you know, it's
20 something to be admired because we do have constant
21 conversations with one another about what we should be
22 doing.

23 MR. HAHN: So, Kash, the New Jersey Data
24 Privacy Protection Act, it goes into effect on January
25 15th, and it has a number of concepts that are similar

1 to other state privacy laws. There's an opt out of
2 sale, there's an opt out of targeted advertising.

3 To what extent will your office look to align
4 with some of the interpretations of those concepts that
5 have been adopted by other regulators?

6 MR. CHAND: So just to start, I just want to
7 make clear that I speak only for myself and not on
8 behalf of my Attorney General or the Attorney General's
9 Office, but from my position, and you know, obviously,
10 there's -- initially, we're going to look at the
11 statute, right? And we're going to make sure that the
12 definition that we have there meets the conduct or the
13 transfer sharing of information that we're looking at.

14 But because we have this frequent
15 collaboration with other states, we try to deal with
16 matters in different ways. So for a matter where we're
17 dealing with it, and it's only a New Jersey focused
18 investigation, where no other states are involved, we're
19 going to make sure that, you know, the way we understand
20 the statute, that we're going to push for that.

21 That being said, we do work on matters with
22 other states, and other states have different laws, and
23 we try to make sure that we overlap in that regard, but
24 at the same time, it's up to opposing counsel to know
25 the differences between our laws and to point that out,

1 because we will work as a concerted team to resolve the
2 issue for the benefit of the citizens of each of our
3 states.

4 So to the extent that we can overlap, we try
5 to, and to the extent that, you know, it's New Jersey
6 focused, we, you know, have our statute and we're going
7 to rely on that definition.

8 MR. HAHN: So the New Jersey Data Protection
9 Act also grants the Division of Consumer Affairs
10 rule-making authority to issue rules and regulations to
11 effectuate the purposes of their privacy law.

12 Can you provide the audience with a bit of
13 color on what that process involves?

14 MR. CHAND: Yes. It's complicated. So even
15 our structure is complicated more than other states. So
16 my section is a part of the Division of Law, and that is
17 a separate office, technically, from the Office of the
18 Attorney General. It falls under the purview of the
19 Attorney General's authority.

20 The Division of Consumer Affairs is also a
21 separate office. They are our client in terms of the
22 attorney-client relationship. So we work with them.
23 You know, there's been questions asked about different
24 statutes, different privacy laws. You know, we provide
25 guidance, as you would in an attorney-client

1 relationship when you're asked to do something.

2 In terms of the regulations themselves, those,
3 I understand that there may be regulations that are
4 being worked on at this point. I can't speak to those
5 regulations. They tend to loop us in when they need our
6 assistance, and so that's really where we are now.

7 I am assuming there will be regulations that
8 are coming out, but I can't say anything about what
9 those are because they haven't been made public yet.

10 MR. HAHN: Michele, your law has been in
11 effect since January 1st, 2023. So could you give us
12 some perspective on what you've seen as areas of
13 non-compliance as well as any general takeaways from the
14 first year of the law being in effect?

15 MS. LUCAN: I would be happy to. And I
16 actually was here last year, and I remember talking
17 about a lot of our thought process, what we'd be looking
18 at, and I think it is crazy to think about a year has
19 passed since then, and we do have a lot of really good
20 work that we are doing and that we have done, and I'm
21 just happy to talk a little bit about it.

22 So yes, Connecticut's law has been in effect
23 now for a little over a year. And one interesting piece
24 of the law was that it required us to issue a report, a
25 public report, about our early enforcement efforts, and

1 that was something that was totally unique to us.

2 You know, I've never seen a provision like
3 that in a law that we enforce. We weren't opposed to
4 it. And I think we try to issue information about our
5 enforcement efforts and priorities anyway, so we had
6 said we don't really need this requirement because we
7 want to be transparent about issues that we're seeing
8 and what we're working on, but we had this requirement
9 in the law and we did issue what we're calling our
10 CTDPA, that's Connecticut's law, our CTDPA Enforcement
11 Report.

12 We issued that in February of last year, and
13 it covered the first six months of our enforcement, but
14 obviously wasn't time limited, and these are issues that
15 we continued to work on after that.

16 And the statutory mandate was pretty narrow.
17 It basically focused on these cure periods that are in
18 comprehensive state privacy laws and asked us to list
19 how many notices we sent, how many issues were cured.

20 And that, we just felt like was an ill fit,
21 first, because this notion of a cure is a complicated
22 one and we only have to issue those notices for matters
23 where we're looking at violations that can be fixed,
24 that our office deems can be fixed, which you can
25 imagine is a very complicated question to answer.

1 Second, we also didn't want to just issue a
2 lot of cure notices just to support a higher number in
3 the report. And we provided a lot of detail on what we
4 were working on, both from a cure notice standpoint and
5 just using our regular investigatory tools in that
6 report.

7 So it is online, it's on our website. If you
8 haven't looked at it, please take a look, because I
9 think it does still show some very good insight into
10 what we're working on.

11 The areas of non-compliance that we looked at,
12 one big one was privacy notices and non-compliance with
13 the CTDPA's transparency requirements. I've heard this
14 referred to as low hanging fruit, and I think that's
15 right because you can go on a company's website, pull up
16 the privacy notice, check the last updated date, and you
17 have a pretty good idea of how focused that company is
18 on the CTDPA and the CTDPA's transparency requirements.

19 Our team is doing that every day. We're all
20 consumers. I'm online all the time, and I have become
21 this person that looks at privacy notices before I make
22 a purchase. Sometimes I make purchases anyway. But I
23 really have, we've all gotten in the habit, on
24 Connecticut's team, of doing this exercise, and we'll
25 draft cure notices just based on our everyday online

1 activity.

2 And we're still seeing a lot of non-compliance
3 with transparency requirements. So we highlighted this
4 in the report. I think for the companies that we did
5 send cure notices to, we got a lot of cooperation,
6 really positive steps forward, quick updates, more
7 detail than we asked for. So this was all good, but
8 we're still seeing this as a real issue that we need to
9 work on.

10 We're looking at our laws, protections around
11 sensitive data. That's something we sought, too. The
12 law has, I think, pretty strict requirements around the
13 need to get consent for the processing of sensitive data
14 for Connecticut residents, and the definition of
15 "consent" sets a high bar. It's got to be expressed,
16 it's got to be affirmative, it's got to be specific.
17 Blanket terms don't work, and we're seeing a lot of that
18 too. So I think that's another area where we're still
19 focused on that also -- that we tried to highlight in
20 that enforcement report.

21 That's probably way too much from me, but you
22 know how I am.

23 MR. HAHN: I think that's helpful. So you
24 mentioned that you, in some ways, find matters just by
25 yourself being a consumer, which I think dovetails into,

1 how do you find your -- how do you inform yourself as to
2 what your enforcement priorities should be?

3 How do you get cases, or in the case of New
4 Jersey, how do you intend to approach this? Is it from
5 consumer complaints, your own observations? Are there
6 other investigations that are in other areas? How do
7 they matriculate?

8 MR. CHAND: I'm going to cheat off of
9 Michele's work in the CTDPA report. No, but in all
10 honesty, we're lucky enough to, you know -- our law has
11 caveats that are different from other states, but
12 there's a large amount of overlap in what other states
13 have done, and I think part of it is looking at the work
14 that other states have done, so that we can build off of
15 that.

16 So looking at the report, looking at what
17 companies they're looking at, and I agree with Michele's
18 earlier comment that I think the sensitive data, the
19 data that relates to children, that is not covered by
20 CAPA, those are areas where we're going to be keen on
21 trying to determine whether there are violations of the
22 law.

23 We have an 18-month cure period to sort of
24 test that out for a while and see what works, what
25 doesn't work as well. But I think ensuring the same

1 priorities that have been central to this office, in the
2 section that we have, kids have been a big part of it.
3 We filed suits against Instagram and we filed a suit
4 against TikTok. Kids are a core part, and I think
5 that's going to be important.

6 I think sensitive information that's being
7 used for marketing is also going to be a central aspect
8 of that. And it is -- there's a lot of ways we figure
9 out what cases to, what companies to look at. Sometimes
10 it does come from consumer complaints. You have, you
11 know -- most of the residents in the state aren't going
12 to take the onerous task of going to the Division of
13 Consumer Affairs' website, filling out, you know, a
14 complaint, and sending that to us.

15 But you do have some citizens who really want
16 their privacy protected, and they will do a lot to call
17 out companies that are violating the law. And so even
18 though we might have one complaint, you know, from a
19 specific individual, it may highlight, oh, this person
20 knows what's going on or is doing some of the work for
21 us in terms of, hey, flagging companies.

22 But we also have certain issues that come from
23 the front office where they identify areas of concern
24 that will become a priority as well.

25 But it's trying to figure out with the

1 resources we have, and as I said, we had a lot of them
2 as compared to Connecticut.

3 (Laughter.)

4 MR. CHAND: But in terms of resources, it's
5 not -- we have 10 other deputies. So it's not
6 overwhelming, and we can't put everyone on everything,
7 but we are going to try to triage it to the best of our
8 abilities.

9 MS. LUCAN: Yeah, so I mean, everything Kash
10 said except that last part.

11 (Laughter.)

12 MS. LUCAN: And yeah, we have -- there's many
13 different ways where matters will come into our office.
14 Consumer complaints, yes. I think -- I worked in
15 consumer protection before privacy, and I do think the
16 nature of the complaints we get from Connecticut
17 residents for privacy are different because there are a
18 lot of Connecticut residents that care a whole lot about
19 their privacy, and you know, some of these complaints
20 are impressive. They are giving us all the information
21 that we need to get a good handle on whether this is a
22 big issue.

23 We're reviewing media reports, we're talking
24 to consumer advocates and advocacy groups, we're talking
25 to our colleagues, we're talking within the office and

1 outside of the office.

2 The point I wanted to make, though, is so this
3 report that we issued is, you know, static in time in
4 terms of what's contained in the report, but it's so
5 interesting because these laws are not static. And
6 you've had -- so you still have laws coming online in
7 states like New Jersey, but you also have laws in states
8 like Connecticut and Colorado and California that are
9 being amended constantly.

10 And for Connecticut, our law was amended
11 before it even took effect, and so that is something
12 that will shift our priorities and help us focus too.
13 So the two big areas where Connecticut's law was updated
14 was to add protections around kids' data, and again,
15 second everything that Kash said there, and consumer
16 health data. So this makes sense. And so just
17 considering those changes in the law, you'll have a
18 pretty good idea of what our team will be focusing on.

19 The other point I wanted to make too is some
20 of these laws have delayed effective dates for certain
21 provisions. And so for the CTDPA, we have a universal
22 opt-out requirement that's coming online in January. So
23 this was something that didn't take effect when our law
24 did, and it's about to come online, and we're already
25 talking about this requirement very regularly amongst

1 our team.

2 We're talking about what efforts can we do to
3 make sure that companies are taking that requirement
4 seriously, to start doing the legwork, like I mentioned,
5 for the transparency requirements, going online and
6 doing these exercises ourselves and figuring out which
7 companies are taking steps to implement these mechanisms
8 and who isn't.

9 And then, you know, the issues I think that
10 probably you all have been talking about today specific
11 to the ad industry, these are probably the same issues
12 that we're talking about. So I think maybe that's
13 another good way to look at it. I think sometimes I see
14 the agenda for conferences like this, the agendas, and
15 you know, I'll think how timely, and this is exactly,
16 we're having these same conversations in parallel,
17 trying to navigate these issues and address new topics,
18 new technologies, just like you all are.

19 MR. HAHN: Well, that's really interesting,
20 the discussion about new topics and new technologies,
21 because one of the things that I think I heard both of
22 you say is that, you know, we're consumers ourselves.
23 We're also listening to the consumers in your states.

24 But there's also an aspect to digital
25 advertising that's not just on the publisher side, the

1 advertiser side. There is a complex set of data flows
2 that happen around identity resolution and measurement,
3 and all these sorts of activities, some of which you
4 talked about in some detail last year.

5 And so, as we look at this ecosystem
6 holistically, as opposed to certain constituent parts,
7 how do you think about enforcement priorities going
8 forward?

9 MR. CHAND: So I think it really does change
10 over time. We have new technologies that come about,
11 and we're oftentimes in a position of lagging behind
12 because we're trying to get up to speed on each of those
13 technologies, specifically AI, right? It's been one of
14 those technologies that came in very quickly, and our
15 laws still don't address data breaches in the most, you
16 know, succinct way, but we're now having to deal with AI
17 laws, and AI, at this point.

18 And I think one of the things that we have
19 that should -- everyone should be aware of is our UDAAP
20 statutes, our Unfair, Deceptive Practices Act statutes.
21 Those are such powerful statutes to AGs' offices because
22 they fill in the gaps where laws like the NJDPA or other
23 privacy laws don't actually capture the conduct because
24 they might have been specific to the industry, right?

25 And so that's an area where we have new

1 technologies, we can use those laws to still regulate
2 what's happening there for the benefit of the residents
3 of the state.

4 MS. LUCAN: Yeah, that's a good point. I know
5 our colleagues in Massachusetts, their office recently
6 issued something saying, basically stop saying
7 regulations don't exist for AI. They do, and they exist
8 in our Unfair and Deceptive Trade Practices Acts. I'm
9 paraphrasing, but that was the gist that I got from it.

10 Other issues that I can offer that I think
11 we're -- that we're paying attention to, that I think
12 may be interesting for folks in this room, is,
13 obviously, opt-outs for targeted advertising. That's a,
14 I think, a core component of these laws, that opt-out
15 right?

16 And I've sat in conferences like this and I've
17 heard folks talk about the complexities involved with
18 getting mechanisms in place to ensure opt-outs are
19 honored down the chain. You know, we're paying
20 attention to those things, but I think the long and
21 short of it is these rights are important and they need
22 to be honored, and that's something our team is focusing
23 on a lot too.

24 Another topic I know is subject to a lot of
25 attention are online trackers. This isn't a new topic,

1 it's not new like AI, it's been around, but something
2 we're continuing to look at. I know the FTC has also
3 done a lot of really good work around that, with the
4 idea being that, like, if you're using these trackers,
5 you're responsible to know what information is being
6 sent through these tools. And this is, I think
7 something, it's not -- it's not new, but I think worth
8 highlighting because that's certainly not an issue that
9 has gone away.

10 MR. CHAND: We have, you know -- we talked
11 about the collaboration earlier between states. You
12 know, even though the office sizes might not have the
13 armies that big law firms have to address these issues,
14 you know, when you look at all of the states, we have
15 our deputies looking at these issues.

16 I don't tell my deputies to just work on their
17 cases and, you know, bring back good results on those
18 cases. It's not just about resolving the issues that we
19 see, it's about finding the issues that we don't. And
20 so making sure that the deputies are keeping abreast of
21 all of the new developments in technology and reading
22 articles, listening to podcasts that talk about these
23 new technologies.

24 The first thing I tell my deputies is set a
25 few Google alerts on data breaches and technology and

1 innovations because that's where new things are
2 occurring that we may not be aware of. And it's been a
3 great way of us to understand, you know, some things are
4 priorities, but they get de-prioritized when there's
5 something else that comes about.

6 It's a lot of moving and shifting, but we do
7 look at, you know, it's not in a vacuum. We're looking
8 at articles, we're seeing, you know, what's happening in
9 journals and press releases.

10 MR. HAHN: Let's dive a little deeper, if we
11 could, on the scope of targeted advertising.

12 One of the issues that privacy lawyers
13 consider is whether an advertiser's uploading of its
14 first-party email addresses to social media platforms
15 constitutes targeted advertising under the state privacy
16 laws, or whether it fits within the exception in
17 Connecticut, for example, for advertisements based on
18 activities within the controllers' own internet websites
19 or online applications.

20 So, Michele, I know you can't opine on this
21 specific hypothetical, but how would you more broadly
22 approach that kind of issue?

23 MS. LUCAN: Well, you know I love
24 hypotheticals. I love them, love them. No, I don't. I
25 don't. But it is tough for us to answer these

1 questions, A, because, first of all, it's just me
2 speaking, like Kash said; B, because we can't offer
3 legal advice, you know, we're not allowed to.

4 But I think what I can do is just share a
5 little bit more about how we would address this question
6 if it came up to us as part of one of our
7 investigations, and that is do the legwork to make sure
8 that we understand every piece of the picture.

9 Okay, so there are too many issues in privacy
10 world to be an expert on everything, and I think we are
11 humble about that, and the first thing we will do is
12 look at the language of the law, okay? So we have a
13 definition of targeted advertising, we have this
14 exception that Michael just referenced, which I think,
15 you know, there's an intent behind that exception, and
16 we'll think about that, which I think was really to mean
17 that it's not talking about internal stuff.

18 And here, what I heard was there's a transfer
19 of information to a social media platform. So these are
20 the type -- this is the type of thought process that
21 we'll take.

22 We also have a definition for "sale" in the
23 law, which is very broad, I think rightfully so, and
24 covers the exchange of data, not just for monetary
25 consideration, but any valuable consideration. So we'll

1 look there. We'll ask the companies involved, you know,
2 what was -- what was going on? Why were you sharing
3 this data? What benefit did you get out of it? Did you
4 put any parameters around this data sharing? These are
5 the types of things we'll look at.

6 So it's not an answer, but I guess what I'm
7 trying to do is just assure you that we will -- we take
8 this seriously and we will, for all of these complicated
9 issues that we look at, make sure we have all the
10 information we need to make a fair assessment, and then,
11 ultimately, have an answer that I can't provide today,
12 but we would eventually get to if we were working on it
13 as part of an investigation.

14 I don't know, Kash, if you agree.

15 MR. CHAND: I think that was exactly how the
16 process works. I tend to treat, because I have a
17 litigation background, a lot of these investigations
18 like litigation, to some degree, from the outset,
19 because a lot of the information we need is in the hands
20 of the company. And so we -- if we get that
21 information, we can better understand what the conduct
22 was and whether it falls within the language of our
23 statutes.

24 And so it's very important for us to make sure
25 that we're taking a concerted effort to look at each

1 piece of the process, especially for the when, where,
2 why, how, you know, of why this sharing took place and
3 does that fit our statute, and then what is an
4 appropriate response from our offices? Because it's not
5 scorched earth for everything. It is not, you know, one
6 size fits all in terms of penalties or injunctive relief
7 or a settlement or litigation. We take that all into
8 consideration and we speak to the companies.

9 MS. LUCAN: And also one last piece, which I
10 think could be helpful too, is it shouldn't be
11 surprising that we're going to take a consumer
12 protective approach. That's our jobs.

13 So if there's anything that's hanging out on
14 the cusp, you know, we're going to be looking to protect
15 our state residents and preserve their privacy. So
16 maybe that's just helpful to know too, like those areas
17 where you could be -- if you can take an approach that's
18 consumer protective or you can take the opposite
19 approach, you know what we'd be looking for.

20 MR. HAHN: It's real interesting that you say
21 that because, you know, oftentimes, lawyers in the
22 industry, we're faced by, you know, commercial demands
23 and we're faced with, you know, balancing privacy, we're
24 faced with counter-parties who also have different
25 positions. Sometimes they're more privacy centric,

1 sometimes they're not as privacy centered.

2 And it's interesting to hear because, you
3 know, lawyers do a lot of things, like interpreting the
4 law and how does it apply to a certain set of facts?
5 And in my experience in dealing with regulators during
6 the course of my career, I've never met a regulator who
7 said, you know, I'm going to narrowly apply that
8 consumer protection statute. It hasn't happened once.

9 And so I'm just curious, and I know this isn't
10 in the script, but --

11 MS. LUCAN: Now we're going to go rogue.

12 MR. CHAND: We're going rogue.

13 MR. HAHN: But when you're conducting an
14 investigation and you're presented with, you know,
15 really smart outside counsel who makes some sort of
16 creative argument that narrowly applies the law, than
17 broadly applies the law, does that fall on deaf ears?
18 Does that occasionally resonate? How does that work?

19 MS. LUCAN: Great question. I'll --

20 MR. CHAND: No, go ahead, go ahead. I --

21 MS. LUCAN: You had your answer ready.

22 MR. CHAND: I was going to say it depends. I
23 always love hearing the creative arguments, even though
24 they just have that "huh" moment to them. But I like
25 hearing them to see, okay, this is the most tortured way

1 you're going to use our statute. If you were to say
2 that to a judge, would that have any persuasiveness to
3 it?

4 And so it gives me a lot to understand where
5 the counsel is coming from because if that's what you're
6 giving me, it means that you know there's not much here
7 for you in terms of arguing against the application of
8 the law. And we obviously, you know, if it actually is
9 a narrowing of the statute that actually, you know, fits
10 with the language and it was intended by the
11 legislature, you know, not to cover, you know, let's say
12 certain types of people or certain numbers of people, if
13 it does that, it's the law. We are going to look at the
14 black letter of the law, and if it fits, it fits.

15 But if it's a creative argument that, you
16 know, floats on different interpretations of an
17 undefined word, that is a tougher one to say, okay,
18 we're going to step away from this investigation.

19 If you have good creative arguments, we do
20 want to hear them, and we do take that into
21 consideration because it is also about what the law was
22 intended to do. At the same time, there's a lot of
23 telling that comes from making certain creative
24 arguments as to what your position is at the end of the
25 day, and so we read that as well.

1 MS. LUCAN: Yeah, I was going to say creative
2 is not bad, it's not wrong, and I think -- I think, if
3 we are having these conversations, you know, we're
4 not -- we're not discounting other views from the
5 outset. We listen. And I think that is something that,
6 for the cases we work on, if you've ever worked with us
7 before, hopefully that's something that you've seen.

8 The other point I guess just to make here is,
9 yeah, there's -- we want to apply our laws in a consumer
10 protective way, but we also don't play "gotcha." We
11 don't take gray area cases, we don't -- Kash made the
12 point before that we have limited resources and we're
13 constantly making decisions about how to best leverage
14 those. So maybe that can offer some reassurance too.

15 I think there's always going to be cases where
16 sometimes you -- our interpretations are totally
17 different and we have to agree to disagree and try to
18 get at the heart of the matter and hopefully seek a
19 resolution that puts consumers in a better standpoint
20 from a privacy perspective.

21 But I don't -- I don't think we see a lot of
22 this. We don't see it a whole lot where opposing
23 counsel will come to us with an argument that really
24 just doesn't make any sense. Maybe I'm --

25 MR. CHAND: No, it's a rare --

1 MS. LUCAN: You know, yeah --

2 MR. CHAND: But it happens, yeah.

3 MS. LUCAN: -- I think it's mostly realizing
4 that there's, you know, there's always a lot of common
5 goals as part of these discussions. There's always a
6 lot of what we do agree on. It's less, oh my gosh, that
7 position was so wild, could they even raise it? It is,
8 I didn't think of it that way, and even if I don't
9 agree, can we talk about how we can find common ground
10 and come to an approach that helps people?

11 MR. HAHN: So, Kash, under Section 8(b) of
12 NJDPA, it states that, after six months from the law's
13 effective date, the controller needs to opt-out rights
14 via the universal opt-out mechanism.

15 But before then, under Section 8(a),
16 controllers need to honor opt-out rights where the
17 consumer has designated an authorized agent via browser
18 settings or other global device settings.

19 Can you talk about the relationship between
20 8(a) and 8(b)?

21 MR. CHAND: Yeah, I think it's a little bit
22 confusing, and when you first read it, 8(a) specifically
23 talks about the ability to designate an agent. And
24 again, these are all my way of reading it, there's
25 nothing official from the AG's office on this, but the

1 way I see it is that it does, after six months, then
2 that's when you can start using, as a consumer, the
3 global opt-out, but that global opt-out has to meet the
4 requirements that follow Paragraph B.

5 It can't, you know, impact other -- other
6 companies. It has to be able to determine whether the
7 resident is actually a resident of New Jersey. And so
8 that's an area where, you know, there's a little bit of
9 confusion. It might be an area where there's further
10 regulation on or, you know, regulations that clarify
11 that.

12 But it's going to be really hard for a
13 company, I think, to receive a global opt-out when
14 they're able to get that in other states and not accept
15 that global opt-out. If other states have that as part
16 of their provisions and they're already able to take
17 that in, doesn't mean that it's something that can be
18 actionable on our part.

19 But there's also a part of what a company does
20 as a whole, which we also see in terms of other issues
21 that may arise. So if they're being very specific to
22 the black letter of the law that is to the detriment of
23 consumers, it might be right in one instance, but it
24 may -- there might be a violation of the law in other
25 areas. But we're looking at the company as a whole. So

1 it is really a thing that will be fleshed out more in
2 negotiations of the other issue.

3 MR. HAHN: A question for both of you. So if
4 a consumer opts out, whether it's via the GPC or the
5 toggle on their page, do you expect the opt-out to
6 persist on an account level for users or device by -- or
7 at device level?

8 MR. CHAND: I think --

9 MR. HAHN: How do you think about that?

10 MR. CHAND: I think that's a hard one. Again,
11 this is another area where our law is still new and
12 we're trying to determine, with the benefit of our
13 client, how it's going to be enforced.

14 I think it goes back to the same general
15 principles of what is the company doing as a whole in
16 terms of the opt-outs. Is there -- is there something
17 that they could be doing that's protecting consumers?
18 It might not be actionable, and we'll talk to them, you
19 know, with the company about that.

20 But on the other side of the spectrum, it's
21 you may be investigated again or you may be investigated
22 for another issue, and is that sort of the tone you want
23 to take in terms of the discussions?

24 MR. HAHN: So, Michele, under the Connecticut
25 Data Privacy Act, a controller is required to have a

1 contract with its service provider where they need to
2 allow for and cooperate with reasonable assessments by
3 the controller.

4 Of course, the law itself doesn't mandate that
5 the controller actually has to exercise that contractual
6 right. So what is your expectation for controllers in
7 conducting due diligence of service providers?

8 And similarly, if I can add onto that and make
9 a compound question that you can object to --

10 (Laughter.)

11 MS. LUCAN: Sure.

12 MR. HAHN: And what about third parties that
13 the controller has sold personal information to, which
14 is something that's covered in California under
15 diligence but not explicitly in Connecticut?

16 MS. LUCAN: Yeah, this is -- this is a great
17 question, and we actually, we've done a lot of work in
18 this space already, vendor management overall, okay?
19 So, you know, even between -- before these comprehensive
20 consumer data privacy laws took effect, we've had breach
21 notice laws, personal information protection acts, or
22 unfair deceptive trade practices acts, and we've dealt
23 with a bunch of data breaches involving vendors.

24 So we've had our Experian T-Mobile case, which
25 we settled a few years ago, which was a big breach at

1 Experian, impacted data that Experian was holding on
2 T-Mobile's behalf. That was a case where we were
3 talking about vendor management.

4 And we've always taken the position, on the
5 data security side of things, that you can delegate
6 responsibilities with respect to data, but you can't
7 delegate the obligation that you have under the law to
8 protect your customers' data. So this is something,
9 like, you know, there's already -- the work is already
10 there to support this.

11 For these matters, both on the data security
12 side and the privacy side, we will look at contracts and
13 what rights exist. So this is all irrespective of this
14 requirement. Do you have the right to audit your
15 vendor? Do you -- what do you -- what do you ask for in
16 return? And I think this can be case specific, but if
17 this is a whole lot of sensitive data and you have
18 contractual rights that you are not exercising ever, I
19 think that would be an interesting conversation.

20 So we've -- we've had those conversations.
21 There might be some vendors that are very low risk.
22 It's not a lot of data, it's not sensitive. I don't
23 know what the answer would be there about the
24 expectation.

25 But if you have sensitive data, we need to see

1 proactive steps to make sure that vendors are protecting
2 data, both from a privacy standpoint and a data security
3 standpoint. And I think our state AG settlements, you
4 can look at them, they're also on -- you know, we issue
5 press releases. They're online.

6 There's been a number of recent settlements
7 that contain vendor management provisions that require
8 companies to have contractual terms, allowing for these
9 audit rights and requiring companies to exercise them,
10 follow up on deficiencies, and make sure they're
11 remedied.

12 So I think we've kind of already spoken on
13 this, even if it's not in the law, I think there's an
14 expectation for these vendors that are holding sensitive
15 data of yours, that you have to be doing more to make
16 sure their privacy and data security practices are what
17 they should be. You can't just assign away the
18 responsibility over that data.

19 MR. CHAND: Yeah. Michele alluded to this,
20 that, you know, even though the respective data privacy
21 laws may not say that you have to conduct due diligence,
22 there's still an argument that your failure to conduct
23 due diligence is a violation of the UDAAP statutes.

24 It's going to be a very fact specific analysis, right?

25 But if you have very sensitive information and

1 you give it to a vendor that does not have the security
2 capability to protect that information, that's going to
3 be telling of whether there may be an issue there.

4 You have a repeat offender who is not
5 protecting their data and you know it internally in the
6 company and you still did nothing, that's another
7 situation where it could cause, you know, us to look
8 more closely at whether your vendor management is
9 appropriate.

10 It is going to be fact specific. We can't
11 tell you specifically what facts are going to be a
12 violation of the law, but even if they're not under our
13 data privacy laws as a requirement to have vendor
14 management, I think, generally, you know, you're going
15 to want it as a company to protect yourselves from, you
16 know, potential negative side effects. But we're also
17 going to look at the whole world of facts to determine
18 whether you should have done more on your vendor side.

19 MS. LUCAN: We forgot your subpart, but that
20 applies down the line. So there we go. Now, I covered
21 it.

22 MR. CHAND: There we go.

23 MR. HAHN: Final question to take us out for
24 the day.

25 What is one thing that you find that

1 businesses get wrong or misunderstand about privacy
2 compliance?

3 MS. LUCAN: Okay, so my -- my number one thing
4 I think is just waiting for an issue to come up to
5 really be taking a look at your privacy practices. We
6 have seen that before where I think companies just bury
7 their head in the sand and, you know, don't have a lot
8 of -- to show for themselves about efforts to come into
9 compliance until we reach out, and that is tough. So I
10 think that's the -- that's the biggest thing that I see
11 that I would caution against and being proactive is
12 best.

13 Our office views it itself as a resource for
14 companies that are well-meaning and trying to comply.
15 We are here. We want to see compliance best for
16 everyone.

17 MR. CHAND: I think one of the things that
18 concerns me the most is when companies create this
19 gigantic privacy program, they have everything in place,
20 but they don't consider the impact on consumer privacy.
21 It's more business focused privacy, protecting the
22 internal documents versus protecting the information of
23 individuals. So they will have these big programs, but
24 central to that program is no discussion of how to
25 protect consumer information.

1 And it surprises me oftentimes because I
2 think, sometimes, if you do put that consumer focus
3 first, you will avoid a lot of money spent down the
4 line. A lot of the actions companies take, because they
5 have limited resources, just like every other section of
6 the AGs, just like every other part of the world,
7 there's limited resources, but if you make sure that
8 you're protecting consumer information, you're going to
9 protect that bottom line as well.

10 There is the initial expenditure that you
11 have, but there's also the liability down the line. And
12 if you at least address the consumer protection of
13 information, it's going to go a long way to avoiding
14 spending more money down the line that you didn't want
15 to spend anyway.

16 MR. HAHN: Well, thank you so much for this
17 incredibly helpful discussion for the IAB community. We
18 really appreciate you joining with us.

19 MR. CHAND: Absolutely.

20 MS. LUCAN: Thank you for having us.

21 MR. CHAND: Thank you. Thank you.

22 (The proceedings concluded at 1:59 p.m.)
23
24
25

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