

PRIVACY



What is privacy policy?

User privacy refers to a user's ability to have a say in how her data is collected, used, and shared. At the federal level, there is no single, comprehensive law governing user or data privacy. Instead, federal laws address privacy on a sectoral basis, where data held by health providers has a certain set of protections, data about consumers' credit has a different set of protections, and education-related data is governed by a third, for example. Meanwhile, more than a dozen states have enacted their own unique comprehensive and sectoral data privacy laws.

KEY TAKEAWAYS:

- As policymakers think through privacy protections, it's crucial to consider the impact on small and new companies, not just tech giants.
- Startups can benefit from reasonable, common-sense privacy rules that restore consumers' faith in the Internet ecosystem.
- Startups need a uniform set of rules around user privacy to provide predictability, not varying and potentially conflicting rules on a state-by-state or court-by-court basis.

Why does it matter to startups?

The Internet does not stop at state borders, and as more and more states pass unique privacy laws, the volume of rules for startups to keep up with is growing, threatening to bury resource-strapped startups under duplicative compliance costs, limit their scalability, and burden their chances of success. Startups have to navigate the same legal and regulatory framework without the resources of their larger counterparts—but much of the conversation around data privacy focuses on the practices of large Internet companies. The U.S. needs a consistently enforced, uniform federal privacy framework to create privacy protections for all Americans and certainty for the startups that serve them.

Where are we now?

At the start of 2023, just five states had enacted their own comprehensive privacy rules. Now, at the start of 2024, over a dozen states have enacted their own unique privacy rules. Several of those laws are modeled after one another, making the patchwork of laws more consistent, but still varying, creating complications and additional costs from performing similar compliance activities multiple times. Startups report spending hundreds of thousands on privacy compliance, and additional tens of thousands for each new state law added to the patchwork.

In early 2023, with a flurry of hearings on data privacy, lawmakers signaled interest in moving forward with a bipartisan federal privacy bill, called the American Data Privacy & Protection Act, that they had advanced in 2022. For startups, that bill had areas in need of improvement, including the potential impact on the ad-supported ecosystem, a complex private right of action, and limited preemption of state laws. Lawmakers have not reintroduced that bill, and momentum around comprehensive privacy died out toward the second half of the year in favor of narrower kids' focused privacy bills and after getting hung up on familiar sticking points.

Those sticking points include whether and to what extent a federal law should override individual states' laws, which, if not preemptive, would merely add to the complicated patchwork of privacy rules for startups to navigate. Another hurdle has been whether federal law should give individual users the ability to bring lawsuits against companies that violate the law, as opposed to a single federal agency, which would ensure that enforcement is consistent across the country and doesn't vary from court to court or open up startups to potentially abusive lawsuits.

