

BRANN & ISAACSON

PRIVACY “HOT ISSUES” CHECKLIST: ALIGNING WITH CONSUMERS

“Wiretapping” (and VPPA) Claims: Avoiding Shakedowns

- ___ Are the nature and recipients of “under the hood” communications **plainly disclosed in your website privacy policy**? Do you really know **what** is being transmitted to service providers and others and have you disclosed it?
- ___ Do you provide adequate **notice of your privacy policy** on your website (more than just a hyperlink in your footer)?
- ___ Do your third-party advertising and analytics partners fall into the **high-risk category** requiring heightened disclosure and consent?
- ___ Do you offer **video content** which requires purchase, a subscription, or registration (with or without payment) to access, and do URLs disclose *the names of those videos*?
- ___ Are you prepared to be a **test case** for a post-cookies world?

State Privacy Law Compliance

- ___ Are you keeping a **running list** of compliance requirements to account for new state laws?
- ___ Have you adopted **“best practices”** that lessen your profile for governmental and private enforcement efforts?
- ___ Have you developed a **written information security plan** or a **data assessment/cybersecurity audit protocol**?
- ___ Do you have a **communication and disclosure protocol** in the event of a security breach?

Terms of Use

- ___ Do you have terms of use that can be defended as an **enforceable agreement** with your consumers and help defend against privacy claims?
- ___ Have you determined whether to include an **arbitration agreement**, including one with mass arbitration protection?

SMS Marketing

- ___ Do you have a **double-opt in** requirement?
- ___ Have you scrubbed your list against the FCC’s **reassigned numbers list**?
- ___ Can your vendor provide an **audit trail** for text recipients?
- ___ Do you adequately honor **stop requests**?
- ___ Do you meet state law **heightened consent** requirements for telemarketing (including text-based marketing)?

Key Internal Controls

- ___ Do you take steps to ensure agreements with third parties have **adequate privacy terms**?
- ___ Have you undertaken a **benefit versus risk** analysis for vendor contracts which involve the transmittal or use of customer information?
- ___ Do you have **insurance coverage for privacy-related claims**?
- ___ Have you created **internal policies** and **training programs** to evidence a good faith effort to comply?

