

# Digital and E-Commerce Engagement and Innovation

## Overview

We advise clients through all phases of development and implementation of:

- Digital marketing and engagement practices, including the use of Google Analytics, Google Ads, Meta Pixel, and LinkedIn Insight Tag.
- Contracting on a digital basis, including the use of electronic signatures, such as verbal and interactive voice response (IVR).
- Algorithms, artificial intelligence, and machine learning.
- Biometric information programs, including for identity verification and fraud detection.

We counsel clients on:

- Privacy policies, procedures, notices, and authorizations under the:
  - California Consumer Privacy Act, as amended, and other comprehensive state privacy laws
  - Gramm-Leach-Bliley Act
  - Health Insurance Portability and Accountability Act
  - General Data Protection Regulation
  - New York DFS's Part 500
  - Telephone Consumer Protection Act
  - CAN-SPAM Act
  - Biometric Information Privacy Act
  - Video Privacy Protection Act
  - SEC Reg S-P
  - State insurance laws
- Website and mobile application terms of use and user license agreements and compliance with the Americans with Disabilities Act.
- Due diligence on, and contracts with, third-party partners and data brokers, including data processing agreements.
- eSign Act and Uniform Electronic Transactions Act (UETA).
- Electronic delivery of SEC-required documents and electronic recordkeeping under the Securities Act and Exchange Act.
- SEC Regulation SCI (Systems Compliance and Integrity) and SEC Regulation S-ID (Identity Theft Red Flags Rules).
- Litigation strategy under state and federal privacy and cybersecurity laws.

## Experience

### Marketing and Sale of Life Insurance Products

Advising life insurers and producers developing an all-digital engagement processes for the marketing and sale of life insurance products, including:

- Counseling on process flow and placement of notices and consents for acquiring data from, and sharing data with, third parties for transactional and marketing purposes.
- Drafting notices and consents, website terms and conditions, and privacy policies that take into account state insurance laws and GLBA and HIPAA requirements and exemptions.
- Negotiating with third-party vendors of consumer data and algorithms used in the underwriting process.
- Counseling on state insurance requirements applicable to website and social media marketing.
- Addressing various means of obtaining consents and signatures, including the use of check boxes, voice signature, and third-party electronic signature vendors.
- Developing processes for the electronic delivery of policy documents and advising on when paper delivery is required.
- Advising regarding notices and consents for voiceprint programs.

### **Digital Marketing and Targeted Advertising**

Advising insurance, financial services, health care, retail, and other clients on the use of digital engagement tools and marketing campaigns including their use of website tracking technologies (e.g., session replay technology, website analytics), and digital advertising partnerships (e.g., use of Google Analytics, Google Ads, Meta Pixel, and LinkedIn Insights Tag). We address:

- Implications of various tool settings and compliance steps, including website disclosures, related to the same.
- Data processing agreements, including scope, use of aggregate and/or deidentified data, responsibilities and indemnification surrounding data security and associated incidents, cross-border data transfers, and cyber insurance.

### **Digital Engagement**

For clients across various industries seeking to digitally engage with consumers:

- Drafting website and mobile app terms of use, privacy policies, and cookie banners.
- Advising on data collection, access, storage, disclosure, and transfer, including sharing among affiliates, service providers, joint marketing partners, and other non-affiliates, including:
  - Consumer notices and consents
  - GLBA and HIPAA exemptions within various privacy laws and implications of the same across affiliates and lines of business
- Negotiating contracts with third-party data providers.

- Counseling regarding the use of verbal or other electronic signatures.
- Advising on the digital delivery of documents and consent to same.
- Collection, use, and disclosure of biometrics (e.g., voiceprints, facial analysis), including consumer notices and consents.

## Data Management

Advising clients regarding ongoing electronic and other data management, including:

- Drafting policies and procedures for processing consumer privacy requests, including data subject requests to know, access, correct, delete, and limit use or sharing.
- Drafting policies and procedures related to data retention.
- Cybersecurity obligations, both preventative and in response to suspected and confirmed incidents.

## Regulatory Oversight and Litigation

Counseling regarding regulatory examinations, enforcement actions, and litigation associated with the above (e.g., pursuant to federal securities laws, the Americans with Disability Act, HIPAA, Video Privacy Protection Act, Illinois Biometric Information Privacy Act, state consumer protection laws, and state insurance laws).

# Insights

05.09.2024

Racing Ahead: Privacy, Cybersecurity, and AI Heats for the Life Insurance Industry

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05.09.2024

Cybersecurity and AI Certification

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05.09.2024

Current Standings of AI Guidance and Requirements by State

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09.28.2023

NAIC Privacy Working Group Goes All-in on New Draft Privacy Model

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08.04.2023

Colorado DOI Fast-Tracks Big Data Governance Rulemaking

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08.02.2023

Four Points for Your Artificial Intelligence Acceptable Use Policy

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06.20.2023

Colorado DOI Summer Reading for Life Insurers

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05.25.2023

Social Media Influencers Take Center Stage

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05.24.2023

It's 3 AM: Do You Know What Your Website Is Doing? Tips for Reducing Regulatory and Litigation Risk Stemming From Website Technologies

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02.16.2023

SEC Brings Broker-Dealer Electronic Recordkeeping Rules Out of Deep Freeze

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02.16.2023

SEC and CFTC Fines for Texting Augur Billions More from DOJ

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10.20.2022

Financial Services Cyber Fraud: The Latest Risks and Best Responses

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10.07.2022

Regulation S-ID: Financial Institutions Take Note

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01.11.2022

What Will the SEC Do About the “Gamification” of Trading in 2022?

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01.11.2022

FINRA Atwitter Over Social Media Influencers

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01.11.2022

AI Insurance Company Faces Class Action for Use of Biometric Data

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10.14.2021

New DOJ Enforcement Team Suggests DOJ May Take Additional Efforts to Recover Cyberattack Ransoms

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10.13.2021

New York City Creates Right to Sue Over Use of Biometric Data

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10.12.2021

New Cybersecurity Enforcement Through DOJ's Civil Cyber-Fraud Initiative and the False Claims Act

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10.04.2021

Making Good on Its Promise: SEC Pursues Cyber Enforcement Actions Against Financial Services Companies

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04.10.2017

FINRA Fines Firms for WORM Problems

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## Our Team

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## Related Capabilities

### Practices

- Life, Annuity, and Retirement Solutions
- Cybersecurity and Privacy
- Financial Services Regulatory
- Insurtech
- Intellectual Property
- Labor & Employment
- Life, Annuity, and Retirement Litigation
- Technology

### Industries

- Life, Annuity, and Retirement Solutions
- Life, Annuity, and Retirement Solutions
- Technology