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ACC Association of Corporate Counsel HOUSTON

THE PRIVACY AND CYBERSECURITY BRIEFING: WHAT CHANGED, WHAT'S AT RISK, AND WHAT YOUR TEAM NEEDS NOW

ACC Houston — Data Privacy & Security Practice Group CLE
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YOUR PRESENTERS

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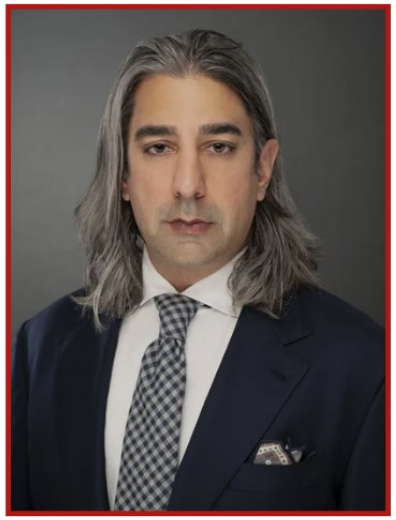

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AGENDA

1. The New Detection Layer: AI-Powered Compliance Scanning
2. Cybersecurity Update: The Threat Landscape in 2026
3. Privacy Law Updates: New State Laws & the Federal Picture
4. Litigation Update: Private Actions & Regulator Activity
5. Where AI Meets Privacy: Vendor Risk, Data Transformation, Discovery
6. Practical Takeaways

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Section 1

The New Detection Layer: AI-Powered Compliance Scanning

THE ASYMMETRY HAS FLIPPED: AI NOW FINDS YOUR GAPS BEFORE YOU DO

For years, privacy and cyber compliance operated behind a practical shield of human review

That shield is gone.

LIVE DEMONSTRATION: WHAT AN AUTOMATED FIRST-PASS SCAN FOUND ON YOUR SITES

- **Important disclaimers included on the handout and worth repeating: results are automated and unverified, false positives and false negatives are likely, results are a snapshot in time, results do not constitute legal advice, and no attorney-client relationship is formed by receipt**
- A plaintiff's firm, a regulator, or an investigative reporter can run the same kind of scan against you, at scale, for pennies per site
- What to do with it: treat the handout as a conversation starter with your privacy, engineering, and marketing teams, not a compliance finding; the gaps a first-pass tool flags are the same ones that tend to show up in demand letters, CIDs, and CIPA complaints
- **Your defense posture in 2026:** document what you found, what you fixed, what you chose not to fix and why, because regulators and plaintiffs increasingly start from "we already know there is a gap, explain yourself," not "prove there is a gap"

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Section 2

Cybersecurity Update: The 2026 Threat Landscape

THE 2026 THREAT ENVIRONMENT AT A GLANCE

- Three forces converging: sheer volume, AI-augmented attackers, and geopolitical spillover
- The "patch gap" (time from exploit discovery to patch release) is closing to near-zero while the "harden gap" remains 70+ days
    - This potentially affects insurance coverage limits and emphasizes the need to have robust IT monitoring and rollout
- Industrial, energy, and healthcare organizations are disproportionately in the crosshairs

FBI IC3 2025 ANNUAL REPORT: THE HEADLINE NUMBERS

$20.9B reported losses (26% YoY jump - first time losses exceeded $20 billion)

1M+ complaints (~3,000/day)

Top loss categories:

- Investment fraud: $8.6B | BEC: $3.0B | Tech support: $2.1B | Data breaches: $1.3B
- 85% of losses came from "cyber-enabled fraud": exploiting humans, not just systems
- Healthcare & Public Health led all critical-infrastructure sectors: 182 breaches, 460 ransomware events
  - Critical Manufacturing was second

- **Source:** FBI IC3 2025 Internet Crime Report: https://www.ic3.gov/AnnualReport/Reports/2025_IC3Report.pdf
- **FBI press release:** https://www.fbi.gov/news/press-releases/cryptocurrency-and-ai-scams-bilk-americans-of-billions

FBI IC3 2025: AI GETS ITS OWN CHAPTER

22,364 AI complaints **$893M** adjusted losses

- The IC3's first-ever dedicated AI section
- Top AI-enabled losses: Investment fraud $632M | BEC $30M | Tech support $19.5M
- FBI notes the reported number is a floor, not a ceiling — most victims do not know AI was used against them
- Confirmed AI vectors: synthetic voice clones, deepfake video of executives or loved ones, fabricated identification documents, fake social profiles, mass-produced personalized phishing
- **INTERPOL (2026): AI-assisted fraud schemes are ~4.5x more profitable than non-AI schemes**

- **Interpol Source**: https://www.interpol.int/en/News-and-Events/News/2026/INTERPOL-report-warns-of-increasingly-sophisticated-global-financial-fraud-threat

AI AS ATTACKER FORCE-MULTIPLIER

- AI is not creating new crime categories; it is scaling existing ones in volume, precision, and persistence
- BEC messages are now grammatically perfect, context-aware, and part of multi-stage, multi-day conversational campaigns
- Detection models built to look for bad grammar, generic templates, or crude impersonations are rapidly obsolete
- Phishing-as-a-Service (PhaaS) platforms now couple AI-generated lures with session-cookie theft and MFA-token harvesting
- **Practical implication:** static controls alone are failing; identity, behavior, and out-of-band verification are the new baseline

THE NEXT WAVE: AI THAT FINDS EXPLOITS HUMANS CANNOT

- April 2026: Anthropic disclosed Claude Mythos Preview, a frontier model that autonomously discovers zero-day vulnerabilities and builds working exploits
- Findings include a 27-year-old OpenBSD TCP flaw, a 16-year-old FFmpeg H.264 bug, and CVE-2026-4747 (17-year-old FreeBSD NFS remote code execution)
    - All missed by decades of human review in very broadly and tested tools
- 72.4% exploit success rate vs. near-zero for prior models; identified 271 vulnerabilities in a single test of Firefox 150
- Economics have collapsed: a Linux kernel root exploit developed autonomously for under $2,000 in roughly a day
- Anthropic declined to release Mythos publicly and launched Project Glasswing with 12 partners (AWS, Apple, Cisco, CrowdStrike, Google, JPMorgan, Microsoft, NVIDIA, Palo Alto, the Linux Foundation, and others)

- **Anthropic announcement:** https://www.anthropic.com/glasswing

WHAT MYTHOS MEANS FOR DEFENDERS (AND COUNSEL)

- Expect a near-term surge in published Common Vulnerabilities and Exposures (CVEs),
- The gap between disclosure and in-the-wild exploitation will collapse, possibly to hours
- Reasonable-security standards will ratchet up; boards, regulators, and insurers will expect automated patching, zero-trust, and strict segmentation
- Houston implication: very mature companies (regardless of industry) often rely on decades-old systems that cannot be patched on demand
  - Compensating controls (segmentation, anomaly detection, internet isolation) become the defense
- **Document the reasonable-security program now** to defend against negligence, regulatory, and SEC-disclosure theories later

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- **Source:** https://www.bain.com/insights/claude-mythos-and-ai-cybersecurity-wake-up-call/

GEOPOLITICAL INSTABILITY: THE STRYKER CYBERATTACK

March 11, 2026

- Iran-linked Handala Hack Team compromised a Global Administrator account in Stryker's Microsoft environment and issued bulk wipe commands via Intune
- Impact: ~200,000 devices wiped, ~50 TB reportedly exfiltrated, offices in 79 countries disrupted; ~80,000 enrolled endpoints bricked
- Not ransomware
  - A destructive "hack-and-leak" attack with geopolitical motivation, not financial extortion
- Attackers abused phishing-resistance gaps and legitimate administrative tooling
  - Customers pre-emptively disconnected from Stryker systems
- CISA launched its own investigation; the attack has become a reference incident for pro-Iranian retaliation targeting US industrial and medical companies

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- **Stryker customer updates:** https://www.stryker.com/us/en/about/news/2026/a-message-to-our-customers-03-2026.html
- **Incident analysis:** https://specopssoft.com/blog/stryker-cyber-attack-what-we-know-remote-wipe/

THE INSURANCE PROBLEM: WAR EXCLUSIONS AND COVERAGE GAPS

- Stryker reportedly does not carry cyber insurance, highlighting a growing gap even for large, sophisticated companies
- Lloyd's of London (effective 2023) requires syndicates to exclude nation-state-sponsored attacks from standalone cyber policies
- Post-NotPetya (Merck/Mondelez), courts have split on whether war exclusions apply
  - Newer policy wordings are being drafted expressly to exclude state-linked activity
- Houston has many prime targets for these types of attacks
  - **To-do:** audit war-exclusion language now; assume the check may not arrive and plan financial recovery accordingly

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- **Coverage analysis:** https://www.insurancebusinessmag.com/us/news/cyber/stryker-cyberattack-tests-insurers-war-exclusion-boundaries-569451.aspx
- **Broker guidance:** https://global.lockton.com/us/en/news-insights/cyber-insurance-war-exclusions-explained
- https://assets.lloyds.com/media/35926dc8-c885-497b-aed8-6d2f87c1415d/Y5381%20Market%20Bulletin%20-%20Cyber-attack%20exclusions.pdf

CYBERSECURITY BOTTOM LINE FOR IN-HOUSE COUNSEL

- The threat surface is wider, faster, and more geopolitical than it was 12 months ago
- Reasonable-security expectations are rising, what was defensible in 2024 may not be defensible in 2026
- Insurance is narrowing; counsel should be at the table when policy wordings are renewed, not just when claims arise
- **Priority actions:**
  - Phishing-resistant MFA for admin accounts; tight privilege and session-token controls; tabletop a destructive-wiper scenario (not just ransomware); confirm incident response retainers with counsel cover geopolitical scenarios

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Section 3

Privacy Law Updates: New State Laws & the Federal Picture

THE STATE PRIVACY PATCHWORK IN 2026

- 21 states now have comprehensive consumer privacy laws in force or enacted
- Two dominant frameworks: California (CCPA/CPRA - unique structure, agency, private right of action) and Virginia (VCDPA-derived - AG-only, no private right of action, adopted by the majority of states)
- A third evolution is emerging around profiling/ADMT, data minimization, and universal opt-out signals, led by Minnesota, Maryland, Colorado, Oregon
- **Texas:** first state without a volume/revenue threshold, it applies to nearly everyone doing business in Texas who is not an SBA-defined small business
- Federal preemption is still not a reality; compliance programs must be built state-by-state

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- **Tracker:** https://pro.bloomberglaw.com/insights/privacy/state-privacy-legislation-tracker/
- **IAPP state tracker:** https://iapp.org/resources/article/us-state-privacy-legislation-tracker/

MINNESOTA CONSUMER DATA PRIVACY ACT (MCDPA)

Effective July 31, 2025

- 19th state to enact comprehensive privacy; 21st by the time Oklahoma follows
- Applies to businesses processing data of 100,000+ Minnesotans, or 25,000+ if 25%+ of revenue comes from selling personal data
- Small-business exemption using the SBA definition (like Texas and Nebraska), but even small businesses need opt-in consent to sell sensitive data
- AG-only enforcement (no private right of action); up to $7,500 per violation; 30-day cure period sunset on January 31, 2026
- Considered by the Future of Privacy Forum to be "among the strongest" state privacy laws currently in force

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- **Statute:** https://www.revisor.mn.gov/statutes/cite/325M.16
- **Minnesota AG announcement:** https://www.ag.state.mn.us/Office/Communications/2025/07/28_MCDPA.asp

WHAT MAKES MINNESOTA DIFFERENT: PROFILING RIGHTS

- Unique right to question the results of profiling that produces legal or similarly significant effects (employment, housing, credit, insurance, healthcare, essential services)
- Right to a list of third parties where a company sold your data
- Right to be told why profiling produced a particular decision and, if feasible, what the consumer could have done differently
- Right to review the data used in profiling, correct inaccuracies, and force a re-evaluation
- Though the statute does not use the term "AI," any AI-driven automated decisioning falls squarely within the profiling definition
- **Minnesota is effectively first-in-the-nation on consumer-facing ADMT rights, expect other states to copy this**

FRAMEWORK COMPARISON: MINNESOTA VS. TEXAS VS. CALIFORNIA

	Minnesota	Texas	California
Applicability	100K consumers (25K if data-broker model)	No threshold; SBA small-biz carve-out	$25M rev OR 100K consumers OR 50%+ data-sale rev
Consumer Def.	Excludes employees and B2B	Excludes employees and B2B	Includes employees and B2B
Private Right of Action	No	No	Yes (limited, data breaches)
Universal Opt-Out	Yes	Yes (eff. Jan. 2025)	Yes
Profiling / ADMT	Strongest consumer rights to date	Disclosure and opt-out only	CPPA regulations still in rulemaking

- **Comparison chart:** https://www.recordinglaw.com/us-laws/data-privacy-laws/us-state-privacy-laws-comparison/

TEXAS TDPSA: WHY IT HITS HARDER THAN MOST STATE LAWS

- No revenue or data-volume threshold
  - If you do business in Texas (or produce products/services "consumed by" Texans), you likely qualify
- SBA small-business exemption is the only carve-out and it evaporates if the business sells sensitive personal data
- Opt-in consent required for sensitive data; universal opt out mechanism recognition required since January 1, 2025
- 30-day right to cure without a sunset, which is a friendlier posture than Minnesota or California
- AG-only enforcement, $7,500 per violation, but the Texas AG has built the most aggressive state privacy enforcement program in the country (more on this shortly)

- **Texas AG TDPSA page:** https://www.texasattorneygeneral.gov/consumer-protection/file-consumer-complaint/consumer-privacy-rights/texas-data-privacy-and-security-act

OKLAHOMA JOINS: OCDPA SIGNED MARCH 2026

Effective January 1, 2027

- 21st state to enact comprehensive privacy; signed by Governor Stitt
- Thresholds: 100,000 consumers, OR 25,000 consumers + 50% revenue from sale of personal data
- Closely tracks the Virginia Consumer Data Protection Act (VCDPA) framework
    - Access, correct, delete, portability, opt-out of sale/targeted advertising/profiling
- Notable omissions (vs. newer state laws): no universal opt-out mechanism requirement; no authorized-agent recognition; no ADMT-specific rights
- AG-only enforcement; $7,500 per violation; 30-day cure period with no sunset

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- https://www.osano.com/articles/oklahoma-data-privacy-law

THE "VIRGINIA MODEL" IS WINNING THE STATE LAW RACE

- Virginia's 2021 framework (AG enforcement only, no private right of action, risk-based assessments rather than universal opt-in) is now the template for most Republican-led states
- Oklahoma, Texas, Tennessee, Kentucky, Iowa, Indiana, Montana, Nebraska, and others all follow the Virginia model with only minor variations
- Practical implication: companies already complying with Virginia and California likely cover 80% or more of multistate obligations
- But the differences that remain (thresholds, definitions of "sale," sensitive-data categories, UOOM recognition) can create unexpected compliance gaps
- B2B-focused Houston clients often get a partial reprieve because most laws (other than CCPA) exclude B2B and employee data

FEDERAL PICTURE: RENEWED MOMENTUM IN 2026

- April 21, 2026: Vice Chair John Joyce (R-PA) and Chair Brett Guthrie (R-KY) introduced HR 8413, the SECURE Data Act (Securing and Establishing Consumer Uniform Rights and Enforcement over Data)
- Product of the House Energy and Commerce Privacy Working Group (formed Feb. 2025), which received more than 250 written responses and met with more than 170 organizations
- Paired with a House Financial Services companion, the GUARD Financial Data Act, aligned in substance
- Earlier 2026 vehicles still alive: HR 8014 (Lofgren's Online Privacy Act of 2026) and prior iterations of APRA/ADPPA
- Industry signaling strong support, including the National Association of Manufacturers, but the same fault lines remain: preemption of state laws and private right of action

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- **Committee announcement:** https://republicans-energycommerce.house.gov/posts/committees-on-energy-and-commerce-and-financial-services-introduce-pair-of-privacy-bills-to-establish-comprehensive-data-protections-for-all-americans
- **Bill status:** https://www.congress.gov/bill/119th-congress/house-bill/8413

SECURE DATA ACT: WHAT COUNSEL SHOULD WATCH

- Builds on the Virginia-model framework rather than California, making it less prescriptive than prior APRA drafts
- Establishes a data-broker registry administered by the FTC
- Enforcement by FTC and state attorneys general, with no private right of action (in contrast to APRA)
- Notable omissions: no data protection impact assessment requirement, no explicit ADMT/AI rules, and no UOOM mandate (a Commerce study is required instead)
- Expect significant revision through subcommittee hearings in the coming months, and expect California (CPPA, AG Bonta) to oppose preemption aggressively

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- **IAPP analysis:** https://iapp.org/news/a/secure-data-act-analysis-of-the-new-federal-privacy-bill

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Section 3.5

Litigation Update: Private Actions & Regulator Activity

THE LITIGATION LANDSCAPE IS BIFURCATING

- Two tracks of meaningful risk: private plaintiffs' class actions and regulator enforcement
- Private side: CIPA and ECPA-driven website tracking litigation continues to explode, with roughly 3,500 filings since 2022
- Regulator side: the FTC has narrowed focus but remains aggressive on deception; state AGs are the real engines
- For B2B Houston clients, regulator risk is more material than private class-action risk, but both must be managed
- Material appeals pending in the Ninth Circuit will drive whether these theories survive into 2027

PRIVATE CAUSES OF ACTION: CIPA AND ECPA

>3,000 CIPA filings in CA **235%** ECPA case increase in 2025

- ECPA carries $10,000 statutory damages and nationwide reach (vs. $5,000 under CIPA)
- ECPA is a one-party consent statute, but plaintiffs have cracked it open using the "crime-tort exception" where the interception was for a tortious purpose
- California SB 690 would exclude tracking tech for commercial purposes

PRACTICAL PLAYBOOK ON CIPA/ECPA EXPOSURE

- Audit tracking tech on every consumer-facing property (pixels, SDKs, session replay, chat vendors, ad tech partners)
- Ensure "prior consent" via layered banners with actual affirmative interaction, not just boilerplate "by using this site" language
- Align privacy policy disclosures precisely with what is happening at the browser level, because the ECPA crime-tort theory often hinges on privacy policy misrepresentations
- For healthcare, financial services, and regulated B2C contexts, treat pixels on authenticated portals as near-toxic until validated
- Add contractual risk-shifting and auditing rights to ad-tech and analytics vendor contracts

REGULATOR ACTIVITY: FTC UNDER CHAIRMAN FERGUSON

- Stated philosophy: "vigorous enforcement" of existing laws rather than new rulemaking, a significant shift from the prior administration
- High-priority areas: children's privacy (COPPA), precise location data, data brokers, generative AI companion products, and "AI washing"
- Recent enforcement: Disney (Sept. 2025); Match/OkCupid (March 2026); 6(b) orders on AI companion services (Sept. 2025)
- Expect case-by-case Section 5 unfair/deceptive enforcement rather than broad rulemaking, but expect it to reach companies that overstate AI capabilities, misuse location data, or misrepresent privacy practices

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- **FTC privacy enforcement page:** https://www.ftc.gov/news-events/topics/protecting-consumer-privacy-security/privacy-security-enforcement

REGULATOR ACTIVITY: STATE AGS AND DECEPTIVE TRADE PRACTICES

$1.4B Meta settlement **$1.375B** Google settlement

- State AGs are now the most aggressive privacy enforcers, and they do not need comprehensive privacy statutes to bring cases
- Texas AG Ken Paxton's Data Privacy and Security Initiative (launched June 2024) runs one of the largest state privacy enforcement teams in the nation
- Texas settlements in 2024 to 2026: Meta ($1.4B) and Google ($1.375B), both leveraging the Texas Deceptive Trade Practices Act (DTPA), not comprehensive privacy laws
- Recent Texas targets: Allstate (TDPSA, Data Broker Law, Insurance Code); Pieces Technologies (first-of-its-kind healthcare AI settlement); 100 or more data brokers; five smart-TV manufacturers over ACR (automatic content recognition); Temu ("Trojan horse" app allegations)
- DTPA is broad, flexible, forgiving on standing (no actual injury required), and carries $10,000 per violation (up to $250,000 for violations involving seniors)

- **Texas AG privacy initiative announcement**: https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-launches-data-privacy-and-security-initiative-protect-texans-sensitive
- **Chamberlain Hrdlicka analysis:** https://www.chamberlainlaw.com/intellectual-property-and-technology/ccp-texas-privacy-crackdown-what-businesses-need-to-know-about-ag-enforcement-trends
- **ACR lawsuits overview:** https://iapp.org/news/a/automated-content-recognition-technology-takes-privacy-enforcement-spotlight

THE TEXAS DTPA PLAYBOOK: WHY IT IS SCARIER THAN TDPSA

- The TDPSA has thresholds, exemptions, a cure period, and a $7,500 per violation cap
- **The DTPA has none of that;** any misalignment between a privacy policy and actual data practices can become a deceptive-practice claim
- The AG can pursue DTPA and privacy-specific statutes simultaneously, dramatically increasing exposure
- The DTPA reaches companies that may be otherwise exempt under TDPSA or federal preemption
- **For Houston in-house counsel:** privacy-policy accuracy and vendor-practice alignment are now DTPA liability questions, not just privacy compliance questions

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Section 4

Where AI Meets Privacy: Vendor Risk, Data Transformation, and Discovery

AI HAS CHANGED THREE PRIVACY FUNDAMENTALS

- **Who has the data:** vendors, sub-processors, and model providers now sit between you and your data
- **Where the evidence lives:** AI prompts, outputs, and logs are now discoverable business records
- **What data is:** ordinary images become biometric identifiers once run through a face-geometry model
- Each of these shifts creates new compliance and litigation exposure that existing privacy programs were not built to handle

VENDOR MANAGEMENT IN THE AI ERA

- Every AI deployment introduces at least one new data processor, often layered (SaaS vendor to model provider to sub-processor to training data source)
- Standard processor addenda and security questionnaires are not sufficient for AI vendors, because they miss training use, model-weights exposure, output retention, and re-identification risk
- Minimum contractual asks: no training on customer data without express opt-in, deletion rights, output and log retention limits, audit and attestation rights, and incident-notification timelines compatible with state breach laws
- Apply the TDPSA data protection assessment (DPA) framework, as AI deployment is typically "heightened risk of harm" triggering DPA obligations
- DeepSeek-style flash adoption events (early 2025) are a cautionary case study: pre-deployment diligence must account for jurisdiction of data storage and national-security concerns

AI CAN TRANSFORM THE TYPE OF DATA YOU HOLD

- A photograph of a face is PII; a face-geometry template derived from that photograph is biometric data under Texas CUBI, Illinois BIPA, and every state privacy law's "sensitive data" category
- An audio clip is PII; a voiceprint derived from it is biometric data
- Gait data, keyboard cadence, and even mouse-movement patterns are increasingly being treated as behavioral biometrics by regulators
- Same source data, dramatically different compliance obligations: opt-in consent, retention limits (one year under Texas CUBI), disclosure restrictions, and destruction requirements
- **Practical implication: when an AI tool converts input data into a biometric template or embedding, a new data-type inventory and compliance assessment is required, even if the raw input was lawfully collected**

- **Texas CUBI statute**: https://statutes.capitol.texas.gov/Docs/BC/htm/BC.503.htm
- **FTC biometric policy statement:** https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-warns-about-misuses-biometric-information-harm-consumers

AI CHAT LOGS ARE DISCOVERABLE: FORTIS V. KRAFTON

Del. Ch. March 16, 2026

- The Delaware Court of Chancery (Vice Chancellor Lori Will) ordered specific performance of a merger agreement after finding the acquirer acted in bad faith to avoid a $250M earnout
- Krafton's CEO used ChatGPT to develop a takeover strategy ("Project X") aimed at ousting Unknown Worlds founders without paying the earnout, bypassing in-house counsel
- The court relied extensively on the CEO's ChatGPT logs as evidence of intent and bad faith, including drafts, rebuttals, and messaging ChatGPT was asked to write
- The CEO admitted at trial that he had deleted specific chat logs, a fact the court treated as independently damaging
- **Key takeaway:** AI chat logs are ordinary business records, subject to preservation, discoverable, and usable as evidence of intent

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- **Fortune coverage:** https://fortune.com/2026/03/17/krafton-subnautica-chatgpt-delaware-court-ruling-ceo-reinstated/

AI CHAT LOGS ARE NOT PRIVILEGED: U.S. V. HEPPNER

S.D.N.Y. Feb. 17, 2026

- The defendant (former chair of GWG Holdings and CEO of Beneficient) used Claude to prepare documents for his attorneys in a securities-fraud case
- The court held that the AI platform is a third party, so communications with it are not made "in confidence" to a lawyer, and no attorney-client privilege applies
- The government was permitted to obtain and use the chat logs as evidence
- Post-hoc sharing with counsel does not restore privilege that never attached
- Compare: Felder v. Warner Bros. Discovery (S.D.N.Y. 2025) and an E.D. Mich. decision (Feb. 2026) found that AI-assisted litigation prep can qualify as work product, so some protection may remain, but it depends on the use case

AI AND PRIVILEGE: THE EMERGING RULES

- Treat consumer AI tools (ChatGPT, Claude, Gemini, DeepSeek) as third parties for privilege purposes unless used through a controlled enterprise deployment with a formal confidentiality framework
- Employees using personal AI accounts to discuss legal strategy are likely waiving any privilege
- Enterprise deployments with no-training commitments, zero-retention settings, and routing through counsel may better preserve work-product protection, but the law is unsettled
- Preservation obligations likely already apply to AI chat logs under existing ESI rules, including chats users "deleted"
- Update legal-hold notices, AI acceptable-use policies, and discovery response protocols to address AI logs explicitly

AI GOVERNANCE: WHAT COUNSEL SHOULD BE DOING NOW

- Inventory AI tools in use, including shadow AI on employee personal accounts
- Adopt an AI acceptable-use policy with explicit categories of prohibited input (legal strategy, M&A, personnel decisions, trade secrets, regulated data)
- Require enterprise (not consumer) licenses for AI tools handling any sensitive business information
- Build AI use into data protection assessments, vendor due diligence, and incident-response playbooks
- **Train on the Krafton and Heppner cases**, because employees need to understand that AI chats are business records, not private conversations

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Closing

Practical Takeaways for In-House Counsel

PRACTICAL TAKEAWAYS FOR HOUSTON IN-HOUSE COUNSEL

Cyber:

- Tabletop a destructive-wiper scenario; audit war-exclusion and sub-limit language in your cyber tower; insist on phishing-resistant MFA for all privileged access

Privacy:

- Confirm TDPSA compliance, extend programs to Minnesota and (by 2027) Oklahoma; align privacy-policy language word for word with actual practice to neutralize DTPA risk

Litigation:

- Audit website tracking tech now; assume continued increase in plaintiff and regulator activity

AI:

- Inventory tools, adopt an acceptable-use policy, update legal-hold notices to cover AI chats; treat every AI vendor as a sensitive data processor

Over-communicate with the business:

- The 2026 risk environment has outpaced most companies' privacy and cyber governance frameworks

RESOURCES AND CONTACT

Resources

- FBI IC3 2025 Annual Report: https://www.ic3.gov/AnnualReport/Reports/2025_IC3Report.pdf
- IAPP US Federal Privacy Legislation Tracker: https://iapp.org/resources/article/us-federal-privacy-legislation-tracker
- IAPP US State Privacy Legislation Tracker: https://iapp.org/resources/article/us-state-privacy-legislation-tracker/

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Questions and Discussion

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