

# Navigating the Evolving Ad Tech Landscape

**Discussion Leads: Doug Miller and Rob van Eijk**

## SESSION DESCRIPTION

Maryland's Online Data Privacy Act embraces substantive data minimization rules and takes effect this October. It joins laws like Washington's My Health My Data (MHMD) law and the New York Child Protection Act (NYCPA) in embracing this new approach to data minimization, potentially raising considerable compliance challenges for companies engaged in any aspect of digital advertising. This session will begin with a short presentation by FPF's Policy Counsel Jordan Francis on a new analysis of data minimization and key questions and operational challenges arising from what might well be a paradigm shift in compliance in the U.S. The roundtable discussion will then focus not on legislative remedies but on practical operational matters, e.g. how to effectively build substantive data minimization requirements into compliance strategies and the internal messaging privacy teams use to seek buy-in and resources from key organizational stakeholders.

Substantive data minimization rules differ from the traditional procedural approach that is baked into most of the existing state privacy laws. A procedural approach is premised on the notice and consent paradigm, in which the notice and/or consent is what makes the data collection and use legal. In the substantive data minimization paradigm embodied in MODPA, MHMD, and the NYCPA, the collection of data itself is prohibited unless it is deemed necessary for providing a product or service requested by the consumer. In this regard it is closely related to purpose specification. In a substantive model, collection and use is tied to the nature of the use and a relationship between consumer and controller. Responsibility is shifted from the consumer having to familiarize oneself with privacy disclosures to a company that limits collection to what is reasonably necessary.

## 5–8 KEY DISCUSSION QUESTIONS

1. What is “necessary?” In the absence of clear guidance from regulators, how will companies work through and implement an analysis of “necessary,” “reasonably necessary,” or “strictly necessary?”
2. Is data collection “necessary” in ad-driven business models where content is free in exchange for advertising? Is there a distinction between the “necessity” of data for ad measurement or attribution and data collected for first-party or cross-context behavioral advertising, or retargeting?
3. What are some of the key factors to clarify whether data collection fits with consumers’ “reasonable expectations?”
4. What are the implications for data brokers and the ability of companies to enhance their data with third party data?
5. Although consent has been criticized as an ineffective policy approach because of the burden to consumers, does it provide potential benefits for companies as a path forward to greater data use in a substantive data minimization regime? What is the difference between “consent” and “requested by the consumer?”
6. What are the implications of data minimization for compliance and the use of AI models in advertising?
7. What changes must companies start to consider now in their compliance approaches, whether for Maryland and other states with substantive data minimization laws, or nationwide? What is the likely legislative and enforcement trend?

# Navigating the Evolving Ad Tech Landscape

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## 0–3 PRE-READ DOCUMENTS (optional)

- *Data Minimization's Substantive Turn: Legislative Analysis, Key Questions, & Operational Challenges*. FPF U.S. Legislation White Paper, May 2025, Jordan Francis, Policy Counsel, U.S. Legislation.
- Jordan Francis, Unpacking the Shift Toward Substantive Data Minimization Rules in Proposed Legislation, IAPP (May 22, 2024), <https://iapp.org/news/a/unpacking-the-shift-towards-substantive-data-minimization--rules-in-proposed-legislation>.
- California Privacy Protection Agency, Enforcement Division, Enforcement Advisory No. 2024-1, "Applying Data Minimization to Consumer Requests" <https://cppa.ca.gov/pdf/enf advisory202401.pdf>