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"Not-so Incognito: Lessons from a Texas-sized Settlement"

As artificial intelligence and data collection techniques evolve at an unprecedented pace, states are taking consumer privacy protection into their own hands. One lone-star example is Texas, where Attorney General Ken Paxton recently established a specific privacy law enforcement team.

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In October 2025, Texas secured Google's signature on a $1.375 billion settlement agreement stemming from two Texas-sized data privacy enforcement actions. Paxton alleged that, under Texas law, Google unlawfully tracked and collected users' private geolocation data, incognito browsing activity, and biometric identifiers.

The complaint attacked Google's "Incognito Mode," alleging that the feature deceived Texans about what information Google sends and collects during its use. Further, Texas alleged that "Google apparently carefully chose the name Incognito as the average Texan would understand the word 'incognito' to mean having 'one's identity concealed,'" citing to the Merriam-Webster Dictionary's definition of "incognito." Acknowledging that "Incognito Mode" did, in fact, have a splash scene with some information about privacy during the incognito internet use, Texas argued the screen was "insufficient to alert Texans to the amount, kind, and richness of data-collection that persists during Incognito mode."

Most businesses will not offer their own "incognito" features, however, this issue highlights the importance (and pitfalls) of the words used in privacy notices and web functionality. The reality of consumer expectations also come into play when evaluating the sufficiency of data privacy notices. Said differently, the words a business uses in its data privacy notice(s) carry legal significance and, if not handled with care, consequences.

While the enforcement action spotlight has recently shined on California and the California Invasion of Privacy Act (CIPA) (look no further than Judge Vince Chhabria's opinion in *Doe v. Eating Recover Center LLC* out of the Norther District of California calling the language of CIPA a "total mess"), it's important to note that other state governments—like Texas—are taking big data privacy swings.

As the data privacy and consumer protection landscape continue to develop at the state and federal levels, it is important for companies of all sizes to be aware of the risks and requirements of their markets. Data

privacy counsel can help business leaders navigate the regulatory waters and proactively protect consumers.

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