**Privacy Protection in the United States of America**

**Constitution**

The right to privacy is not explicitly provided for in the United States Constitution. However, the Bill of Rights (that is, some of the first 10 amendments to the Constitution) protect against invasion of privacy by state actors. These include the First Amendment provision on the right to free assembly, the Fourth Amendment provision against unwarranted seizure or search, the Ninth Amendment provision against denial of right due to others, and the Fourteenth Amendment provision on the right to due process. These Amendments combine to broadly establish a constitutional basis for the protection against invasion of personal privacy by state agencies.

**Federal legislation**

There is no particular federal legal framework that holistically provides for privacy regulation or data protection in the United States. Instead, several sector-specific federal laws focusing on different types of data represent an attempt at privacy protection legislation, including:

* The *Children’s Online Privacy Protection Act 2000* recognises the inherent safety and privacy risks posed by online harm to children and thus seeks to protect information privacy for children below the age of 13. It severely restricts the type of information or data about the children organisations are allowed to gather, distribute or appropriate. Most notably, the Act expressly requires website operators to not only notify parents but also acquire ‘verifiable parental consent’ prior to ‘collecting, using, or disclosing’ any personal and private data from children (Federal Register, 2024).
* The *Driver’s Privacy Protection Act 1994* seeks to protect personal information collected by the Department of Motor Vehicles. The Act regulates the privacy, storage, use, and disclosure of the personal information about drivers the Department collects on its online system with a view to safeguarding against misuse and data breaches.
* The *Video Privacy Protection Act 1988* guarantees the privacy of the personal information provided by individuals on online streaming sites. It proscribes unauthorised disclosure of personal records of people using online video streaming services, stipulates certain exceptions under which such information may be disclosed, and establishes penalties for related violations.
* *Cable Communications Policy Act 1984* establishes and safeguards subscriber privacy. It stipulates the manner in which cable system operators can collect and use personal information besides prohibiting them from collecting or using such data without first obtaining the express consent of the subscribers. The Act also restricts cable systems from collecting only the data they require to effectively offer their services to their subscribers and to safeguard cable communication from unauthorised reception.

**State laws**

In Alaska, the *Alaska Right of Privacy Amendment 1972* expressly recognises the right to privacy for the Alaskan people and sets out explicit provisions to safeguard the right and protect it from infringement.

In Montana, the *Montana Constitution* in Article 2, subsection 10 expressly entrenches the right of its residents to individual privacy. The provision further recognises the right to privacy as a key component in ensuring the welfare of a free society. It prohibits the infringement of this right with the exception being when compelling state interests can be demonstrated.

Other states including Florida and Washington provide for privacy protection through their respective constitutions and varied privacy legislations. For instance, the Florida Constitution in Article 1, subsection 23 stipulates every person is entitled to be left alone and their private life to be free from any form of intrusion. The instrument however provides for instances when the government can intrude into the private life of a person effectively demonstrating that the right to privacy in the state is not absolute. Similarly, the Washington Constitution seeks to protect the privacy of its residents through Article 1, subsection 7 which prohibits the state from invading homes or disturbing the private affairs of the residents without explicit legal authority. The provision safeguards the online communication and correspondences of private individuals against illegal access, searches and interception by state actors.

**Case law**

Across the United States, several court decisions have concerned privacy protection.

The first such court decision was rendered in the case *Pavesich v. New England Life Insurance Company* (1905) in which the right to privacy was recognised based on constitutional values, common law, and natural law.

The case *Cohen v. Cowles Media Co.* (1991) was also instrumental in establishing standards for the intrusion of seclusion and solitude which are key elements in the protection of the right to privacy. Decisions rendered by the court in the case stipulate when the intrusion of seclusion can be said to have occurred, that is, when the perpetrator deliberately invades electronically, physically or by other means the private affairs, seclusion, solitude, or private space of a person, where such intrusion is exceedingly offensive any reasonable person. The case further established the three core considerations that ought to be made to determine if an intrusion has taken place including:

* the use of fraudulent, misleading, or deceptive tactics to gain access;
* if intrusion or invitation to intrude occurred; and
* whether privacy was expected.

The court decision in the case *New York Times Co. v. Sullivan* (1964) established the standard on the tort of privacy on what constitutes false light. As a result, for breach of the right to privacy a non-public person is entitled to, specifically the tort of false light, to be determined as having occurred, the purported misleading or untrue impression created about them must be determined as having been a function of actual malice. The decision has been instrumental in interpreting the right to privacy due to non-public persons hence promoting the protection of not only their personal privacy but also their emotional and mental wellbeing in the event of a breach.