

Justin Prochnow ([00:00](#)):

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([00:14](#)):

Hello and welcome to Legal Food Talk. I'm your host Justin Prochnow a shareholder in the Denver office of the international law firm, Greenberg Traurig. And this is a podcast brought to you by our food, beverage and agribusiness practice to give you some insights and knowledge about the world of food, beverage and agribusiness.

([00:54](#)):

Okay, welcome to another episode of Legal Food Talk. Again, I'm your host, Justin Prochnow, and today I'm joined by one of my colleagues here at Greenberg Traurig, fellow attorney Tyler Thompson. Welcome to the podcast, Tyler.

Tyler Thompson ([01:10](#)):

Thanks. Great to be here.

Justin Prochnow ([01:11](#)):

Before we get started on important legal stuff, we have to talk about the CU Buffaloes because it's mandatory that any sort of Colorado discussion involve the CU Buffaloes. I know you're an alum, I think both of undergrad and law school. How are your feelings on the season so far of the CU Buffaloes?

Tyler Thompson ([01:35](#)):

I feel good about it. Prime, he's a genius marketer. We had a tough loss against Stanford and I was there. But, at the same time, if you would've told me this time last year that "Hey, next season we're going to have four wins at this point in the season," I'd be very happy with it. So the trajectory is 100% going the right way and just really believe in his message and really believe in his marketing ability, honestly, I think that's something that we don't talk about enough in college sports is it really is marketing to get people in the stands and to get the right players on the field. And I think he's just kind of a naturally talented genius at that.

Justin Prochnow ([02:11](#)):

That game was an interesting one. We were down in Arizona, and watching it and the difference between the shots in the stands in the first half and halfway through the fourth quarter was markedly different, let's say.

Tyler Thompson ([02:25](#)):

Yeah, it is one of those games that only CU could lose. But I always feel better with CU kind of playing from behind because they can pull games out, but they can also lose. They're a team that always plays to the level of their competition. And you just got to remember, this is still, last year was a one win team and the biggest surprise last year was that we got that one win. And so, there's going to be some growing pains, but I'm happy with the trajectory of it.

Justin Prochnow ([02:48](#)):

One thing I think that gets lost with Deon, because obviously Deon can be flashy... Not can be, he is. It does seem though that when it comes down to it, he still is a guy who caress about the players and even the way he came in, and I know he put it out there that, "A lot of you probably won't be here." When the incident happened with the kid from CSU and he was getting tons of heat on social media, Deon was one of the first ones to say, "Look, this is a football game. Whether it was a bad hit or not, no one was intentionally trying to hurt someone and it doesn't mandate death threats to him and his family." Deon was one of the first guys. And so, it really seems like at the end of the day with all the flash, it does seem like he cares about the players.

Tyler Thompson (03:39):

Yeah, I mean I think the message to the student athletes has been so strong, so solid. It's a really positive message and I can see why people around the country, they only see the flash and then maybe that's a negative. But what he's really doing with the student athletes, I like the message. One thing that really resonated with me, he has his oldest son, the one that doesn't play football, who basically runs the podcasting, runs the marketing, and lots of times in press conferences though, we'll be talking about Shedeur and Shiloh, the two that play for the team, and he will make a point to talk about his oldest son, I believe his name's Deon Jr. And say he's just as helpful, he's out here helping us and I think that's just a really good measure of his character of saying that, "Hey, I want to make sure the whole family's included or the whole team's included." So I've been very impressed with the message off the field. And it's a place where I would send my son there to learn from him.

Justin Prochnow (04:29):

All right well, we won't discuss the professional side of football in Denver other than they eked out a win yesterday. And we'll get onto actually Legal Food Talk. So Tyler, you're joining us today you've been here at Greenberg for a couple years now. Tell us a little bit about your practice here at Greenberg, and we're going to talk a little bit about that today affecting food companies.

Tyler Thompson (04:55):

So the easiest way to describe it to folks is I do everything tech. So anything that has kind of a tech bent to it, that's something that I do. I focus a lot on technology transactions, so if you're buying, acquiring software, blah, blah, blah, platform, but then a lot of it is also websites, e-commerce, data privacy, data security. So, again, it's anything with that tech bent. If you have a website, which is pretty much everybody these days, we probably do something that can help you out.

Justin Prochnow (05:22):

Now, you were at another firm before joining Greenberg. How has the Greenberg platform, if it has, helped with your practice?

Tyler Thompson (05:31):

Yeah, it's actually helped tremendously. Basically GT, they give you a lot of freedom in a good way. They say, "Run your practice the way you want to run it and we trust you, and at the end of the year we'll just make sure that everything's going the way it should and everything makes sense." That's been really huge for me personally, but also I think for the practice, because it's such a young practice, a young area of law, a lot of new developments, we really need that flexibility to be nimble and to always address whatever's new and upcoming. And GT has really provided that, so it's been a great switch for me. I liked

my old firm, I liked when I was in-house before that, but GT has been a great switch for me, and I always tell people I wouldn't be surprised if this is the last job I ever have.

Justin Prochnow ([06:14](#)):

I mean, this podcast focuses on issues affecting the food industry, food supplements, beverages, even cosmetics to a certain extent, FDA regulated products. One of the major issues and what comes up a lot in what we end up working together on are data privacy issues, and that's obviously changed a lot in the last years. I know it used to be 10 years ago even, a client would ask me, "Do you have some terms and conditions" and say, "Sure," and had prepackaged terms and conditions, pretty straightforward, will comply, and that's totally changed now with the addition of both the European laws, as well as state laws. Can you give us an idea first, overall data privacy issues and how data privacy concerns are governed in this current time?

Tyler Thompson ([07:14](#)):

Yeah, for sure. You have to start thinking about it from the European perspective. They have a very comprehensive privacy law, arguably the most comprehensive in the world called the GDPR. In 2018, that started a lot of things. So when I first was in the privacy law and doing the practice, GDPR really changed the way that we are looking at privacy law and really increased the regulations on it and the penalties for it. I mean GDPR, the penalties can be up to 4% of your revenue for the year.

([07:41](#)):

And then, the US space, we've really followed that trend. Now, unfortunately, we haven't followed it as far as interacting, or enacting the same law on a one-to-one basis. We followed it doing our own thing as the United States likes to do. But we have a lot of new comprehensive state privacy laws, California kicked that off. There will be five by the end of this year, by the end of 2023. And so by the end of 2023, we'll have five of these new comprehensive laws. Colorado will be one of them. And we expect by 2025 there will probably be around 25 new comprehensive privacy laws.

([08:21](#)):

A lot of folks say, "Well, this is so strange that every state is doing something different. Doesn't make any sense. Is there going to be a federal law?" My response to that is I don't think there's going to be a federal law anytime soon. This is something that we're used to in the data privacy and security space. So like a data breach law, there's 50 different laws for 50 different states. And unfortunately, the way that looks like it's going now will be the same on the privacy side where we're going to have at some point, I believe 50 different laws for 50 different states, and absent the federal government stepping in and unifying things, there's just a lot of variance there and a lot of individual things that you have to look at on a state by state basis.

Justin Prochnow ([08:59](#)):

Yeah, this issue of one governing federal law versus a bunch of different state laws comes up a lot, obviously, in all industries. In the food industry, I know listeners here will think about the GMO laws. There started to be different laws being passed. Vermont launched the first one. There were about 8 or 10 other laws that were going to follow. And basically, right when the Vermont law launched, at that time, President Obama passed a new law saying that there would be a federal law concerning GMOs and how to put that on the labeling, and that kind of froze the Vermont law. People have been hoping that would happen with CBD and that's become more, like you said, like the data privacy, where we have a different law governing the sale of CBD and hemp in each state. And part of that is because the FDA and

federal law has declined to do anything about it, but it becomes very hard to navigate across nationwide when you've got different obligations in each state.

[\(10:13\)](#):

So with that in mind, you said that there's the GDPR, does every company have to follow the GDPR?

Tyler Thompson [\(10:21\)](#):

No. So it's really, if you are doing business in Europe, there's a lot of specific tests to go through and if you need to comply with the GDPR. But if you're US only for the most part, not a lot of need to follow the GDPR, but it can be a nice base or a good thing to base your privacy program around to get some uniformity.

Justin Prochnow [\(10:39\)](#):

Right now, is there one state law that is the most encompassing where if you follow that law, you're probably going to be in compliance with the others?

Tyler Thompson [\(10:49\)](#):

California was the original one. Now, a lot of these other new privacy laws, they vary materially from California, but what we like to tell people is, "Look, it's not going to be a compliance waste if you say, 'Let's comply with California,' and then you have to add on Colorado, Virginia, any of these other new laws and the ones coming down the pipeline." You're not going to waste compliance effort. It's just additional things that you have to do.

[\(11:14\)](#):

So you can think about it as there's 70% of overlap between California and the other US comprehensive laws. If you're using GDPR in Europe as a base, maybe it's 60%, so that 60%, 70%, whatever you're using as a base is not wasted. That's going to be good for you no matter what law you have to comply with. It's just that additional margin that you have to think about to do things specifically.

Justin Prochnow [\(11:38\)](#):

And so, when you're looking at compliance, what is the compliance based on? Is it where you're located? Is it where your customers are located? Do I have to comply with all of the states, or is it just the law where my company is situated?

Tyler Thompson [\(11:53\)](#):

Yeah, it's a great question. So really where your company-

Justin Prochnow [\(11:56\)](#):

That's what I'm here for.

Tyler Thompson [\(11:58\)](#):

Yeah, for sure. Where your company is situated is largely irrelevant in most cases. It's usually a threshold, so there's a number of different thresholds. What usually ends up getting people to comply is the California monetary threshold, which is 25 million. So once you hit that 25 million, the CCPA, California Consumer Privacy Act applies to you.

[\(12:19\)](#):

Now, once you've hit that threshold, it makes a lot of sense to go ahead and comply with other laws. And we can do kind of a state by state analysis, how many consumer information records do you have in Colorado? Are you selling data in Virginia? But overall, the first trigger, if you're US only, usually is that 25 million, and then California applies, and then it makes sense to just, let's go ahead and handle this altogether.

[\(12:44\)](#):

Now there are companies, some exceptions to that, if you don't have that amount of money, but you have a lot of data in your space in the food industry, maybe you're a company that, hey, it's food marketing or something like that, where you have a lot of data on individuals, don't have that 25 million these laws still could trigger for you. So it really is, you have to go through the thresholds and understand where you are and where you fit.

[\(13:05\)](#):

And, at the same time, once you get close to that threshold, we usually say we should comply with it. Because you don't want to be in that scenario where the regulator reaches out and you're trying to justify why you haven't complied. That amount of time with that back and forth in the regulator, you could just use that money to comply and it's a lot easier for everybody.

Justin Prochnow [\(13:23\)](#):

And is it all data? What type of data are we talking about?

Tyler Thompson [\(13:27\)](#):

Yeah, so it's personal information. Now, it's important to realize that is so broad, and so think about pretty much any information that you have that even tangentially relates to somebody. So there's some things that are really obvious. I mean your name, your email, your address, obviously, sensitive stuff, date of birth, social security. That's the stuff that we all think about. The things that folks tend to not think about are more the technical type things. So your IP address from your computer, your identifier from your cell phone, your cell phones have individual identifiers, device identifiers just in general. Advertising identifiers, all those type of things are personal information.

[\(14:07\)](#):

At the same time, most of these laws have a catchall that's any information that can help identify you. So if you have something where you have somebody's their geolocation, but it's very broad. It's what we would call coarse geolocation. So it's not very specific. It's not this is Justin's house. If you have that in combination with other things that could help identify, oh, this person is Justin, that applies as well. So really, when you're thinking about what this applies to just be very, very broad with it. Even it's hard to even de-identify things fully. So if you say, "We're getting this information in, but we're going to anonymize it, we're gonna de-identify," it can be hard to even do that in a way to take it outside the law because the definition is so broad.

Justin Prochnow [\(14:47\)](#):

Does that include graphics too, like photos, pictures?

Tyler Thompson [\(14:50\)](#):

Yeah, definitely. Any media photos, pictures, there's even in some of these laws olfactory, so smell information, which we have not run into yet. But theoretically, if you had a smell that it could identify somebody that's to that level so you really see the breadth there.

Justin Prochnow ([15:06](#)):

Interesting.

([15:07](#)):

First of all, I guess is there anything specific to food companies, or do they kind of fall under the same category as anyone else in terms of collecting data?

Tyler Thompson ([15:18](#)):

They fall under the same categories as everybody else, unless you're doing something really unique. I mean, if you're really getting down that health food and oh, we're getting some biometrics, or we're pairing you. We've seen entities that more custom supplementation, with something like that we can create a scenario where you're going to have a little bit higher burden. But in general, they fall under the same umbrella as everybody else.

([15:40](#)):

But a lot of these food companies, depending on your space, especially if you're direct to consumer, you have a lot more information on folks than a lot of other companies. So it might be a little bit different if you're a little bit B2B, you're going through a wholesaler or a retailer, but if you are direct-to-consumer, you have a lot of that information, a lot of that marketing data, and so you're going to have some pretty robust requirements.

Justin Prochnow ([16:00](#)):

So this law seems to work a little bit in conjunction or maybe not in conjunction, but overlap with HIPAA requirements, but maybe much broader than HIPAA requirements because, of course, HIPAA requirements applies to healthcare facilities, or companies that have personal data. But this goes beyond that to all companies and not just the HIPAA related information, but any sort of information.

Tyler Thompson ([16:32](#)):

Yeah, that's exactly right. I mean, if you're a listener and you are a covered entity under HIPAA or HIPAA applies to you, your business associate, there are some exemptions where that PHI, which is the type of information that's covered under HIPAA is not subject-

Justin Prochnow ([16:46](#)):

Personal health information?

Tyler Thompson ([16:47](#)):

Protected health information.

Justin Prochnow ([16:48](#)):

Protected health information.

Tyler Thompson ([16:49](#)):

And where that information is not covered under these comprehensive state privacy laws. And so, you do have some exemptions there. Now, it's not always a blanket exception, so you might have a company where if we're a covered entity, some of the information we collect is that PHI, some of it is not. And so, only the HIPAA exemption is going to apply to the PHI health information exemption.

[\(17:14\)](#):

It's important to realize though that these comprehensive state privacy laws, they apply to some things that you might think of as medical information. So one of these things that the comprehensive privacy laws are trying to do is fill that gap because there's a general thinking among privacy folks that there is a gap between HIPAA and the rest of the medical information where there's a lot of health medical information that isn't covered by HIPAA. And so, these laws are trying to bridge that gap.

[\(17:42\)](#):

And you see, even in Washington, the My Health My Data Act where that's really the whole goal of it, is to bridge that gap and to put a lot more robust requirements around health information.

Justin Prochnow [\(17:56\)](#):

So we're talking about the requirements, and again, this is the type of thing I know that you and your team do fairly regularly. We have a client who says, "Hey, can you take a look at my terms and conditions, my privacy policy?" I take a look at it and say, "You better talk to Tyler and his team because this might've been okay 10 years ago, but not now." Typically, we'll give an assessment of it, kind of tell them what's going to be entailed and needing to fix it.

[\(18:24\)](#):

Let's say they don't come to us. I assume that you've been at least somewhat keeping up on it. Are we seeing litigation over this? Is it state attorney generals that are taking action? Or is this another area where our friendly class action plaintiff lawyers are jumping in on?

Tyler Thompson [\(18:41\)](#):

Yeah, unfortunately it's both. So on the regulatory side, the biggest penalty under US privacy laws has been under the CCPA, which again is that California Comprehensive Act, and it's been \$1.2 million. And this related to really just what was happening on that retailer's website with cookies and ad tech, which I'm sure we'll be talking more about. And then, the plaintiff's side, that has been huge as well. So what has happened is a lot of these comprehensive privacy laws, they don't give a private right of action, or the ability for an individual to sue. Or if they do, it's very narrow. So the plaintiffs' bar has decided we're going to find new unique ways to bring these claims. And sometimes the ways that they're doing it are actually looking at older laws,

Justin Prochnow [\(19:25\)](#):

State consumer protection acts?

Tyler Thompson [\(19:27\)](#):

Yeah, state consumer protection acts, and even some weird one-offs where Video Privacy Protection Act, which is something that was passed in the '80s to protect your VHS rental history because Robert Bork got exposed during his Supreme Court nomination procedure.

[\(19:42\)](#):

Same thing with Federal Wiretap Act. I mean for food companies, for listeners, they might think, well, there's absolutely no way that we're wiretapping people that come to our website. But actually that's a lot of the claims that we're seeing now is, "Hey, this is a class action. We think that your use of technology on the website, just like a common advertising cookie that again, 50% or higher of websites probably have that, that's a wiretap under this Wiretap Act, and now we're going to sue you under it."

So the claims have been really unique. They've been lightning fast. The claims that we're thinking about today are not the same type of thing that we were thinking about really even three months ago. And so, that's why it's so important to have that good base layer of compliance so you can work off of that and protect yourself with all these changes.

Justin Prochnow ([20:26](#)):

That's a lot of discussion on Privacy Act, but an important area these days as it comes up a lot. In addition to the issues on privacy, and I know what I was thinking before that. So this act and these various state acts are responsible for that popup you get now on every website about do you accept the cookies, gathering of cookies and other information?

Tyler Thompson ([20:49](#)):

Yeah, the cookie popup, I probably talk about that on three calls a day literally. But this is a big driver of it is either the comprehensive state laws or the comprehensive international laws. And then, also what we just talked about too with some of these other claims where for US law, you technically do not need that pop-up. You can just do it on an opt-out basis. Now, there's a lot to get into the weeds on that, but there's no real reason that you need that popup cookie banner just for us state law privacy compliance. But at the same time that popup cookie banner may be saving you from some of this class action litigation, mass arbitration, these unique claims that the plaintiffs' bar is doing. So there's a lot to go into with that cookie compliance piece of what's the right thing for me, for my website, what's the right fit for us as far as risk versus reward on the advertising technology side?

Justin Prochnow ([21:43](#)):

Outside of the privacy laws, there's a couple other ones I know that you in particular have been dealing with more frequently lately. One of them, and I know we have several teams around the office, is the ADA compliance issue with the website. Generally, that blind people or people who are sight impaired have to be able to have reasonable access to the website. Can you explain a little bit about that and this recent increase in litigation over ADA compliance?

Tyler Thompson ([22:16](#)):

Sure. So if you're familiar with the Americans with Disabilities Act, and you might think of it as, okay, this is what is making us have the ramp into a physical location or something like that. But there's a digital component to it as well where how can an individual come to my website? How can they order some food products, whatever it might be, if they're using something like a screen reader or some other assistive technology because they're not able to interact with the web in the way that you and I take for granted every day.

([22:46](#)):

And there's a lot of plaintiff firms that they really focus on this. And the important thing to know is they can land on your website, or I can land on your website and really tell if it's accessible to individuals with these disabilities in literally 10, 15 seconds. I mean, there's automatic scanning tools where they can land on a website, run the scanning tool. It's not perfect, but it gives them enough to know about are there larger problems here? And so, this is what we're seeing is what were happening is these plaintiffs' firms will do that. They'll land on the website, run the scanner, and then all of a sudden you'll get that complaint, you'll get that in the mail.

Justin Prochnow ([23:21](#)):



And I take it, this is somewhat like the food litigation cases where these are typically more plaintiff attorney generated actions where they're going around finding these, and then maybe they have a cadre of plaintiffs that will then once they know, okay, that's a website, then they'll try to access it themselves. And then, the complaint comes as so-and-so person tried to access your website, but these typically are not someone calling them up and saying, "I couldn't access this." They're finding the websites and then having their people fail to access them.

Tyler Thompson ([23:58](#)):

Unfortunately, yes. I mean, it's very plaintiff driven. Now, the plaintiff's firms would argue, "Well, we're out there, we're the good guys just because we're starting it." But it is very plaintiffs driven. You even see things with industries that you wouldn't necessarily normally think of it. So movie theaters, I mean, just things that you would say that, "Okay, maybe somebody who does have some of these impairments doesn't make some sense for some of these folks in some of these categories. That's not to minimize the fact that anybody should be able to access whatever they want, but you can tell that it's being very plaintiff driven.

([24:38](#)):

The other thing that's sad is it's not really the plaintiff's side. What I get sad about is on the compliance side, there's a lot of technologies out there where they say, "Hey, come and pay us \$50 a month, we'll put a widget or an overlay on your website." If you go to the websites, you might've seen these and usually it's a blue circle and kind of a guy doing a snow angel type of pose. And so you click that and it purports to allow folks to use your website better.

([25:05](#)):

Unfortunately, in my experience, it's been the exact opposite. I would say out of every one of these digital accessibility claims that we tackle, probably 1 out of 3 is somebody that is using those overlays. So just speaking from my personal experience, I think those overlays, those technologies are really making your target. There's also great article in advice about how those technologies actually make your website less accessible. There's a very comprehensive petition from accessibility advocates saying that those type of technologies make your website less accessible and we should stop using them.

([25:40](#)):

So that's one of the things, I mean, it's kind of a snake oil salesman on the compliance side sometimes where they're trying to sell you this technology saying, "Hey, this happens you're not going to get sued," and it's entirely not the case. And there's great vendors out there as well too, but you really need somebody to come in and do a remediation in the code, look at the individual issues, fix the code on the website so that they don't have those issues. Any type of pay \$20 a month and you're going to have this overlay and it's done, it's just not going to work for you.

Justin Prochnow ([26:08](#)):

Realistically, I'm not pinning you down to any particular, but what type of cost are we talking about for a company that's maybe not in compliance with ADA to get in compliance?

Tyler Thompson ([26:22](#)):

Yeah, that's a good question. I would say if you can devote 10 grand to it, you can really, really improve your accessibility compliance. But I will also caveat of even if you only have 2500 bucks, 5 grand, you can take a big chunk out of that risk. And that's a lot of what we do is provide these health help tools for folks because there's a lot of things you can do on your own end, on your own website, and hey, maybe

this is more of a gradual process and my web team is going to do this bit by bit, but that's a great thing to consider is really any amount of money, you can take a big bite out of the accessibility risk.

[\(26:59\)](#):

One thing to think about is if you have to settle this, the common settlement range right now is 25 to 50 grand. Well, if you took 50 grand, you could have the best accessibility program of any company in your industry. And, at the same, time, when you have to settle it, part of those settlement agreements will be that you're going to have to do this accessibility program anyway. So, in my mind, it's very much let's spend the money upfront, whatever we can afford right now, and we'll reduce that risk and it's just going to save us time and money on the backend.

Justin Prochnow [\(27:27\)](#):

The Benjamin Franklin, the stitch in time saves nine usually.

Tyler Thompson [\(27:31\)](#):

Yes.

Justin Prochnow [\(27:31\)](#):

My sell to people when I'm talking about reviewing the label, the website is the one hour, the two hours that you spend having me review it now could save you 100,000 down the road when I tell you that having artificial crab meat in your product means that you're not all natural anymore.

[\(27:50\)](#):

So at the risk of people hearing this and never wanting to do business again, but again, we're pro business, we just want to make sure people are spending money on the right things and not having to deal with some of these issues after the fact. Anything else that jumps out in particular besides those two things as companies should really think about in terms of tech and whether they're in compliance or not?

Tyler Thompson [\(28:17\)](#):

Yeah, I mean overall it is what we were just talking about where if you can just devote a little money upfront right now to let's check our website, let's check if you have any other digital platform, find some gaps, spend a little bit of money fixing it, it really can make a huge end down the road.

[\(28:33\)](#):

So my overall takeaway would be find whatever your budget is and for whatever that budget is, we can find something that's right for you and reduce your risk a lot. Really, to your point, \$1 spent now can save \$100 down the road. The other areas to look at, if you have a mobile app, that's been a big thing we've been seeing recently, and that is really from the app stores themselves coming and saying, "Hey, your app isn't compliant," and then pulling it down and depending on your industry, I mean your app being offline for even a week could mean big, big bucks lost. So that's something to think about and there's new requirements there as well.

Justin Prochnow [\(29:09\)](#):

And when we were talking about app being compliant, what types of things are we talking about with that?

Tyler Thompson (29:14):

Yeah, it's a great question. So the app store providers themselves, they're so large, they put hundreds and hundreds of requirements. Right now, I think just for Apple alone, we're at like 120 requirements. And so, this is the requirements that when you sign up to be on the App Store, they put these on you and you have to comply with them or else they can pull your app at any time, even delete your account, ban you from coming back on. So the requirements vary. There are privacy requirements, so things that you have to have in your privacy policy, not because of state law or US law, but because Apple wants you to. The big one right now is account deletion requirements, which happens for Apple and Google. So if you create an account on your mobile app, I want to be able to buy products you have to be able to delete that account on the mobile app too. That's for anybody that uses the app all over the world.

(30:05):

Another big one is because we're on the food podcast, you deal with nutrition labels a lot. We call it a privacy nutrition label, and these live in the App Store pages for both Apple and Google. You click on an app to download it, you scroll down about midway down the page and it says how the app is using your data. We do X, Y, and Z with your data, we share it for marketing purposes, we collect your name, your phone number. And so,

(30:28):

That's a big piece of it as well. The problem with that is that's generated automatically by filling out a questionnaire with the app store. And so, you could fill out that questionnaire wrong and now, all of a sudden the app store provider is making a statement that is an incorrect statement about your privacy practices. And now, that can get you in trouble with the FTC as well. So there's a lot of little detail things around the app to make sure that you're being honest and transparent, and that you understand when you're putting in that app through the submission process how is this going to affect me on the backend and affect what the actual user sees?

Justin Prochnow (31:00):

We're now several years removed from COVID, still popping up from time to time, but at least the big shutdown of COVID. Did COVID have any effect on these types of things?

(31:12):

I mean, to some extent, I know a lot more companies are doing online business than they ever did before we had, and that really showed during COVID. I know at least in the food space, obviously, a terrible time for everyone, but in the food space, depending on what you did, maybe the best years that you ever had in terms of financial, not great to be a restaurant, but pretty great to be a delivery company, or a company that had transitioned to being able to sell products online. COVID have any effect on this other than that?

Tyler Thompson (31:48):

Yeah, I mean, what I saw on your space, it seems like a lot more folks since COVID, they're trying to customize food, health, medical, whatever, products in that space to the individual user. And that seems like that's a really growing trend of what are you eating on a day-to-day basis? What are your health metrics? Just anything like that.

Justin Prochnow (32:08):

So they're collecting more information.

Tyler Thompson (32:10):

Yeah, they're collecting more information.

(32:10):

And you can cross that line too from normal personal information which, as we've talked about, there's a lot of regulations on, you can cross that line into special or sensitive personal information very easily by going down that road. So that's something to consider. It doesn't mean don't do it. As you said earlier, we're very pro business. We will make whatever you want to do with that product we will make it happen for you and have you do it compliantly, but you just got to think about that. The more information you get, the more information you intake, the different types of information, those are all things that are going to have certain impacts on the backend that we should address.

Justin Prochnow (32:46):

No, that's a great point.

(32:47):

And you bring up a nice segue for those of you who haven't listened to it, go back a couple episodes and listen to my episode with another GT colleague, Barry Schindler, where we talk about AI in food, creating the first energy drink. But also to your point, specialized nutrition where you can have a 3D printer that will print out a dietary supplement just for you based on your make-up. And, of course, the only way to be able to do that is to be gathering private information about you in order to compile that. And that's where the data privacy comes back into play.

Tyler Thompson (33:28):

Yeah. And just the technology in general, I mean, that's a great technology, but there's a lot of concerns there. Even other over non-personal information data. So all this data, it's a data world now, we got to protect it, you got to live in it. You want to get as much data as possible. You want to learn as much as possible from that data. But, at the same, time, there's just a right way to do it. And that's what we're here to help you with.

Justin Prochnow (33:53):

There was a TV show a couple of years ago where an EMP went off across the United States, I'm blanking on the name now. And they went back to horse-drawn carriages and the Wild Wild West.

Tyler Thompson (34:08):

Exactly. So until that EMP, everything's going to be data. But there are certain days when that EMP doesn't sound too bad.

Justin Prochnow (34:16):

Great.

(34:16):

Well, thank you very much, Tyler. I think a lot of food companies think specifically about, "Okay, we need to have this on our label and we need to be registered with the FDA," and forget about some of the other outside issues that affect all companies, including companies in the food industry. So, hopefully, this podcast will help those think about what's on your website, what kind of data you're collecting. And if you have any questions, contact Tyler. So thank you again for joining us.

Tyler Thompson ([34:49](#)):

Yeah, thanks Justin. It's been great.

Justin Prochnow ([34:51](#)):

All right, well thanks everyone for listening. If you enjoyed the podcast, please like it, or give other comments on the appropriate platform. And if you didn't, as my mom used to say, if you don't have something nice to say, don't say anything at all. Thank you.