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FOCUS

As 2023 Looms, There Is No “Magic Bullet” in Preparing for the New State Privacy Laws

By Andrew M. Baer, Chair, Technology, Privacy & Data Security, Cozen O’Connor

In 2023, the California Privacy Rights Act (CPRA, amending the California Consumer Privacy Act (CCPA)) and new comprehensive privacy statutes in Virginia, Colorado, Utah and Connecticut will go into effect. The new laws require, among other things, fulsome consumer notifications concerning how personal information is collected, used and disclosed, and also provide consumers with “data subject rights” over their personal information, such as rights to access, correct, delete and/or receive portable copies of this information, to prevent sales of personal information, and to limit the collection, use and disclosure of certain information deemed “sensitive.”

Unfortunately for businesses, all of the new privacy laws are somewhat different from one another, and CPRA (together with its recently issued draft regulations) diverges substantially from the other state laws in its prescriptiveness, terminology, exemptions, data subject rights, treatment of global privacy signals, and even definitions of shared concepts like “sales” of personal information. Conversely, certain requirements of other states (such as prohibitions on processing sensitive data without prior consent and rights to opt out of targeted advertising) do not appear in CPRA. Thus, compliance with CPRA’s demanding requirements does not automatically satisfy the requirements of any other statute.

A bipartisan federal privacy bill, H.R. 8152, also known as the American Data Privacy and Protection Act (ADPPA), is gaining traction in Congress and represents the best opportunity in years for comprehensive national privacy legislation. The current draft of the ADPPA would pre-empt state laws covered by its provisions, but only partially, as its numerous exemptions includes ones for state consumer protection laws of general applicability and for Illinois’ Biometric Information Privacy Act, which is generating a wave of class action litigation. Moreover, ADPPA in its current form has a broader private right of action than CPRA (and none of the other state privacy laws contains a private right of action at all). ADPPA’s passage is by no means a certainty, and the window will likely close after the midterm elections in November.

As this brief snapshot suggests, the current U.S. privacy landscape is highly fragmented, and many businesses lack the resources to handle multiple inconsistent state privacy requirements. Absent comprehensive federal privacy legislation with strong pre-emption, there is no “magic bullet” to resolve this quandary. However, businesses can simplify the overall com-



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If you have questions, please contact ACC’s membership department at 202.293.4103, ext. 360 or at membership@acc.com.

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pliance process by taking the following measures:

1. **Determine if it's possible to cross certain states off the list.** At present, California is the only state whose privacy law can apply on the basis of annual revenues alone (\$25,000,000 under both CCPA and CPRA). The other four states' privacy laws apply only if a covered entity controls or processes the personal information of at least 100,000 consumers in that state, or meets a numerical standard involving sales of personal information. Thus, as a practical matter, many small and medium-sized businesses will be exempt. All of the new privacy laws except California's also exempt financial institutions subject to the Gramm-Leach-Bliley Act, so many financial services businesses will be spared the headache of multiplicative state requirements. However, these businesses will still need to wrestle with the thorny optical issue of whether to publish privacy notices that afford greater privacy rights to Californians than to residents of other states.
2. **Create a data map.** The new state privacy laws require companies to provide enhanced privacy disclosures about their data practices and the types of third parties to whom they disclose personal information, respond to requests by data subjects to exercise their rights in data held by business entities and their service providers within defined time-

frames, and analyze and document the risks and benefits of high-risk data processing activities. Compliance assumes that a company can quickly access information about what types of data it is processing, the sources of the data, the different processing activities performed on the data (and the business purposes for which these are performed), where the data is stored (including with service providers), and which third parties have accessed the data. The process of gathering and centralizing this information is known as data mapping and is an essential first step to address the new state privacy requirements.

3. **Destroy personal information that is not needed.** The new privacy laws apply to personal information that remains in a business' possession or control. Too often companies retain personal information indefinitely, long after any legitimate business, audit or legal purpose has lapsed. Ridding oneself of unnecessary data simplifies the process of creating a data map, limits the number of data subject requests a company has to honor, reduces CPRA's retention period disclosure obligations, and also reduces a company's exposure to data breach-related costs and losses. If a dataset still provides some value but personal identifiers are not necessary, a company can realize the same benefits by anonymizing the data so that it is no longer personal information.

4. **Update service provider contracts.** All of the new privacy laws impose requirements to contractually limit third parties' usage of personal information that they receive in the course of providing services to covered businesses. Under CPRA and its draft regulations, these requirements are particularly rigorous, and failure to include the necessary contract language could result in a transfer of information to service providers being deemed a sale. For these reasons, businesses that utilize service providers, such as cloud services providers and outsourcing companies, to process personal information on their behalf should consider adding a European-style data processing agreement or addendum to their service contracts which contains all of the necessary contractual restrictions and also requires the service provider to honor data subject requests (e.g., for the deletion of data) as directed by the covered business.

Many businesses face a daunting challenge in preparing for five (and counting) similar-but-different sets of state privacy requirements. However, by starting early and following the steps recommended above, businesses can front-load the hard work of compliance while positioning themselves well for the passage of additional state privacy laws or a federal privacy bill.

ACC Annual Meeting October 23-26, Las Vegas

ACC is incredibly excited to return to an in-person Annual Meeting experience. We're completely reimagining this year's conference with curated content paths, lots of networking to catch up with old friends and make new ones, an interactive exhibit hall, and of course, engaging sessions and tons of time to just have fun. You can also choose from three different experience options: in-person, virtual, and global day. So no matter your schedule or location, you won't want to miss the ACC 2022 Annual Meeting. Rates increase after September 21 so [register today!](#)





New Board Member Spotlight

Jan Fink Call

Senior Legal Director, North America, Firmenich

1. Tell us a bit about your current position, and the year that you started it.

I have served

as Sr. Legal Director, North America for Firmenich since January 2018. I am responsible for all non-IP legal matters in North America and also have overall responsibility/oversight of all litigation matters globally. I supervise a small team in the US (2 other attorneys and a contract manager) and am part of a global legal team of approx. 20 people.

2. In what year did you first work in-house, and how did you end up in your current position?

I first went in-house in 2010 and worked initially for a company which unexpectedly went under about 6 months after I joined – I was the last employee standing by the time I turned out the lights and shut the door more than 3 years later. When looking for a new position, I saw the opening on the ACC-GP Local Job Board. I found the company fascinating (we create and manufacture fragrances and flavors) and the position seemed perfect for me – a generalist position with responsibility of employment and litigation as well.

3. What law school did you attend? Where did you attend college and graduate school? What degrees do you hold?

I graduated from the University of Kansas – both undergrad and law school. Rock Chalk Jayhawk! (I am happy to explain that cheer to anyone who is interested.)

4. Can you tell us how you successfully navigated your career from law school to your current position?

I started out in private practice in Kansas City and always wanted to be a litigator. I've worked at big firms and boutiques, but always wanted to learn a new area

of the law or a new skill or take on new responsibilities. I think being open to new learning experiences, opportunities and challenges was key – and is key to anyone's career success. I moved in-house later in my career than most, but just hadn't found the right position for me. Sometimes you just have to wait until that opportunity comes along.

5. What do you consider to be your most pivotal career move?

For me, it was simply the move from Kansas City to Philadelphia. My career would look very different if we had stayed in Kansas City. Although not intentional, being counsel for a company that went under and having responsibility for the wind down was the most challenging since I had to handle literally everything (did I mention I am a litigator by training not a corporate attorney?), but it gave me a better insight into the business side of the equation and I ended up learning so much that has helped me in my current position.

6. What is the best thing about your current job?

The people! Not only in my own legal team but getting to work with people all around the globe with different backgrounds and talents – including perfumers and flavorists! Their creativity is amazing.

7. What is the worst job you have ever had?

Working at a fast-food restaurant during high school. No further explanation needed.

8. What is the most valuable life lesson you still apply today?

My father lived by the motto "It's not the what of your actions, but the why." It applies to life in so many different ways.

9. What do you consider to be the best thing about ACC membership?

Love the free CLEs, of course, but the best thing is simply getting to know other in-house lawyers and making those connections.

10. What tips do you have for attorneys new to in-house?

Get to know the business – their goals, their needs and their risk tolerance. As in-house counsel, we have to make practical, risk-based legal decisions and you can only provide that guidance if you truly understand the business.

11. What are your interests outside of work? What do you do to decompress and relax?

I am a huge sports fan – Kansas Jayhawks, Pittsburgh Steelers and the Philly teams, of course. I also like to travel, although haven't done much of that in the last few years, like everyone else. With two grown children (in Georgia and Texas), spending time with family is something I cherish.

12. If I were not practicing law, I...

have no idea what I would be doing. I decided I wanted to be a lawyer at the age of 8 and never looked back.

13. My favorite vacation spots are:

I love visiting new places, so hard to say I have a favorite. But I am always up for a return trip to Puerto Rico and to London.

14. A place I have never been but would most like to visit is:

Hawaii and Australia

15. My all-time favorite movies are:

Forrest Gump, Christmas movies (from It's a Wonderful Life to Elf!)

16. If applicable, please tell us about your pet(s):

The current Call household pets include 4-year-old "Flint" (a Lab/Pit mix), 15 ½ year old cat "Captain Jack Sparrow" (a tuxedo cat with a black spot on his chin) and a 12-year-old cat, "Roxy."

New and Returning Members

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In Case You Missed It

Sports & Entertainment CLE Institute

Atlantic City, NJ

August 19, 2022



Meet Your Counterparts

w/Cozen O'Connor

August 11, 2022



Meet Your Counterparts

Estia Greek Taverna

July 26, 2022



Annual Family Fun Night

Wilmington, DE

July 20, 2022





Meet Your Counterparts

Savona

July 14, 2022



Meet Your Counterparts

City Tap House

June 23, 2022



Meet Your Counterparts

Makers' Alley in Wilmington, DE

June 9, 2022



2022 Upcoming ACCGP Events

Visit [ACC Greater Philadelphia](#) for the most current event details or to register for chapter events.

OCTOBER

October 6

International Law CLE Institute with Stevens & Lee and Eversheds Sutherland (Virtual)

October 11

Litigation Webinar with Ogletree Deakins (Virtual)

October 13

Annual Corporate Counsel University with Duane Morris & Anderson Kill (Virtual)

October 18

Meet Your Counterparts Networking Reception with Stevens & Lee at the Elmwood Zoo in Norristown (In-person)

October 19

Health, Biotech & Pharma CLE Institute with Shook Hardy Bacon & McCarter English (Virtual)

October 20

IT/Privacy Roundtable with Fisher & Phillips at 333 Belrose (In-person)

October 24

Chapter Party at the Annual Meeting in Las Vegas, NV (In-person)

NOVEMBER

November 1

Health, Biotech & Pharma CLE Webinar with Troutman Pepper (Virtual)

November 3

Annual Fall Gala at the Reading Terminal Market (In-person)

November 4

Annual Paralegal Institute at the Ritz Carlton (In-person)

November 8

Meet Your Counterparts Networking Reception with Anderson Kill (In-person)

November 9

Labor & Employment CLE Webinar with Cozen O'Connor (Virtual)

November 10

Contracts & Commercial Law CLE Institute with Flaster Greenberg, Blank Rome, and Duane Morris (Virtual)

November 16

Women's Summit (In-person)

November 29

Meet Your Counterparts Networking Reception with Reed Smith (In-person)

DECEMBER

December 1

Ethics CLE Institute with Ballard Spahr (Virtual)

December 6

Litigation CLE Webinar with Anderson Kill (Virtual)

December 8

Diversity Summit at the Jewish History Museum (In-person)

December 9

GC/CLO Lunch Club (In-person)

December 13

Annual Holiday Party/Board Installation (In-person)

Be on the
lookout for
calendar
updates!

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