



HOW TO GET READY FOR THE CALIFORNIA CONSUMER PRIVACY ACT (CCPA)

Alexander (Sandy) R. Bilus

Saul Ewing Arnstein & Lehr
LLP

Leslie Cox

Olympus Corporation of
the Americas

Katherine Dickinson

Wawa, Inc.

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Presenters



Alexander (Sandy) R. Bilus
Saul Ewing Arnstein & Lehr LLP
Philadelphia, Pennsylvania
215.972.7177
Alexander.Bilus@saul.com



Katherine Dickinson
Wawa, Inc.
Wawa, Pennsylvania
610.358.8291
Katherine.Dickinson@wawa.com



Leslie Cox
Olympus Corporation of the Americas
Center Valley, Pennsylvania
484.896.5332
Leslie.Cox@olympus.com



***California Passes Sweeping Law to
Protect Online Privacy***

The New York Times



***California passes nation's
toughest online privacy law***

California lawmakers approve data-privacy bill
opposed by Silicon Valley



**Los
Angeles
Times**

California has become a battleground for
the protection of consumer privacy rules

California passes strictest online privacy law in
the country



**California Passes Sweeping
Data-Privacy Bill**

THE WALL STREET JOURNAL.

California's Toughest-in-U.S. Privacy Law May
Get Even Stricter **Bloomberg**

Most Companies Aren't Ready for
California's Tough New Privacy Law

FORTUNE

Today's Discussion



**The Principles of
Privacy Law**

CCPA Overview

**New Rights for
Californians**

**Responsibilities
of Controllers**

**What's next for
the CCPA and
privacy
compliance?**

The Principles of Privacy Law

Accountability. Adopt concrete and practical measures for the protection of Personal Data, including but not limited to documenting and communicating all privacy-related policies, procedures, and practices.

CCPA §1798.135

Consent and Choice. Data Subjects shall be provided with the opportunity to consent to use of their Personal Data. Provisions should be made to provide Data Subjects with the opportunity to choose how their Personal Data is handled.

CCPA §1798.120

Openness, Transparency, and Notice. When an organization collects and processes Personal Data, it will clearly identify what Personal Data it is collecting and how the Personal Data will be used.

CCPA §1798.100, §1798.110, §1798.115, §1798.130, §1798.135

Individual Participation and Access. To the extent required by law, provide Data Subjects with access and review of their Personal Data.

Purpose Legitimacy and Specification. Ensure that the purpose for collecting Personal Data complies with applicable law and relies on a permissible legal basis.

CCPA §1798.105, §1798.135

Collection Limitation. Limit the collection of Personal Data to that which is within the bounds of applicable law and strictly necessary for the specified purpose.

CCPA §1798.20 (minors only)

Data Minimization. Minimize the amount of Personal Data it processes and the number of stakeholders the Personal Data is disclosed to.

Use, Retention, and Disclosure Limitation. Limit the use, retention and disclosure of Personal Data to the extent which is necessary in order to fulfill the specific, explicit, and legitimate purpose for which it was collected.

Accuracy and Quality. Take reasonable steps to ensure that the Personal Data it collects is accurate, complete, up-to-date, adequate, and relevant for the purpose of use.

Compliance. Be able to demonstrate that the organization is in compliance with all applicable data privacy laws by creating auditable processes.

Information Security. Protect the Personal Data under its authority with appropriate controls at the operational, functional, and strategic level to ensure the integrity, confidentiality, and availability of the Personal Data.

CCPA §1798.150

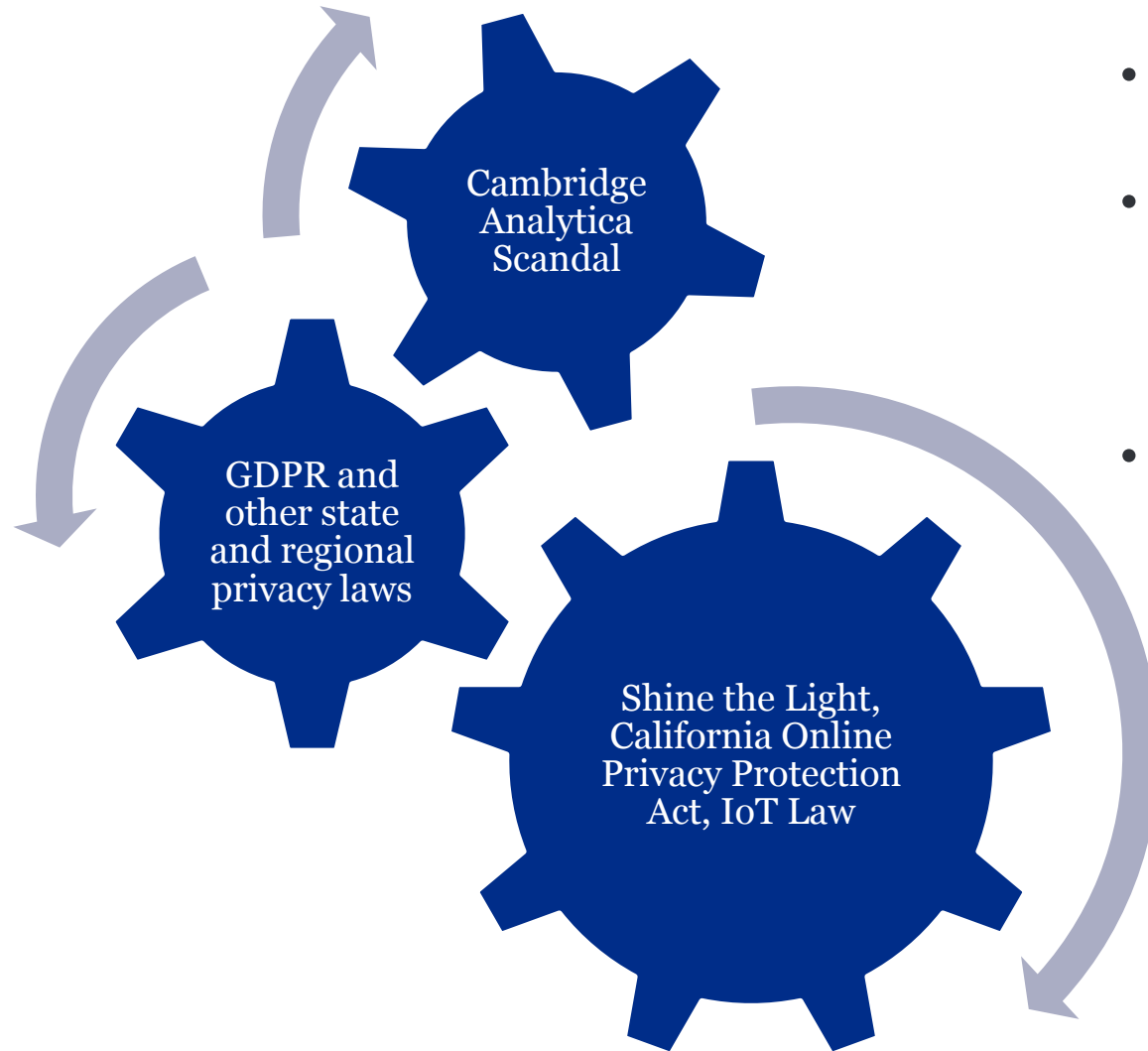
Privacy by Design. Proactively embed privacy into the design and operation of its Information Technology, products, services, and business practices.

Overview of the CCPA

- California law that applies to the collection and use of “personal data”
- Enacted on June 28, 2018, goes into effect on January 1, 2020
- Comprehensive consumer privacy law
- Potentially massive class action damages for violations (up to \$750 per class member)



Context/Background



- Widely opposed by technology companies
- The bill was signed in a hurry to avoid adding a privacy initiative to CA's November ballot
- The bill was drafted with lots of errors and ambiguities. Amendments have already begun (SB 1121).

Enforcement



- Potentially massive class action damages for violations (up to \$750 per class member)
- Enforced by:
 - Private right of action
 - AG investigations and enforcement actions
 - Individual requests to exercise rights



In Scope

- Applies to any for-profit business that collects the personal information of California residents and:
 - Annual gross revenues of at least \$25 mm,
 - Buys/sells/receives/shares info for 50,000 or more consumers/households/devices, or
 - Derives at least 50% of revenue from selling info.
- Even if you are not located in California!

~~COPA~~ Out of Scope

- PHI subject to HIPAA
- Personal Information subject to Gramm-Leach-Bliley Act (GLBA) and the California Financial Privacy Act have a blanket exception
- Clinical Trials data subject to federal policy

Key Terms

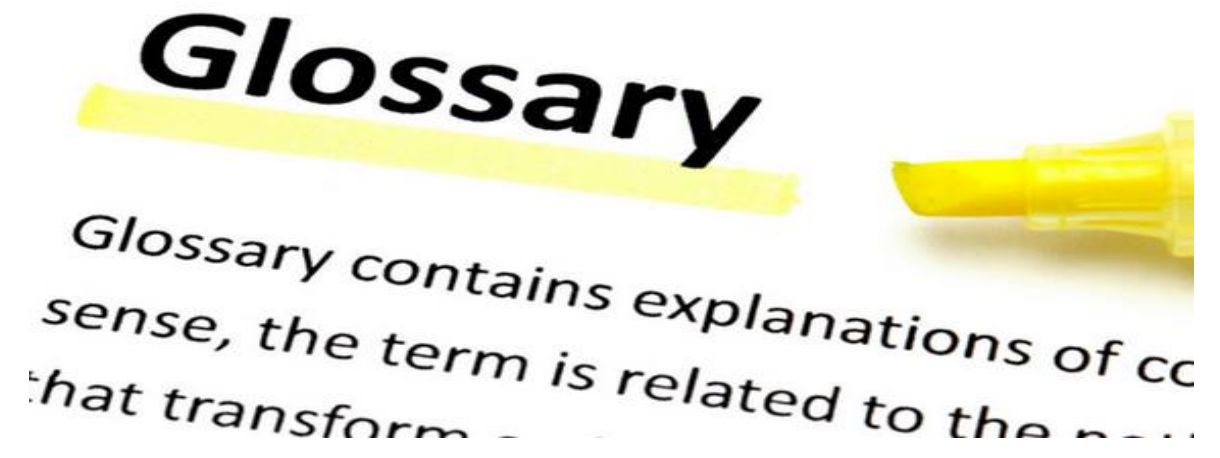
Broad Definition of Personal information

Includes any information that “identifies, relates to, describes, references, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.” The Act specifies a variety of new data elements that constitute PI including but not limited to:

- (1) identifiers such as any unique personal identifier or IP address;
- (2) electronic network activity information, including, browser histories, search history, and any information regarding a consumer’s interaction with a Web site, application or advertisement;
- (3) audio, electronic, visual, thermal, and olfactory information; and
- (4) geolocation data. In addition, the Act specifies that any “inferences drawn” from various data elements of PI “to create a profile about a consumer reflecting the consumer’s preference, characteristics, psychological trends, preferences, predispositions, behavior, attitudes, intelligence, abilities and aptitudes” constitutes PI.

Other Key Terms

- Consumer
- Collects
- Processing
- Business
- Service Provider





New Rights for Californians

- California residents have the right to:
 - know the categories of personal information collected
 - access and data portability
 - be forgotten
 - opt out of the sale of personal information to third parties
- No discrimination - incentives are okay

Responsibilities of Controllers

- Transparent Data Privacy Practices
 - Clean and conspicuous link to a “Do not Sell My Personal Information” internet web page
 - Privacy notices – not just for your website
 - California specific description of consumer’s privacy rights
- Train employees that are responsible for compliance
- Reasonable security procedures and practices appropriate to the nature of the information
- Incorporate CCPA compliance provisions into service contracts



Responsibilities of Controllers

Responding to Consumers' requests (overview)

- Controllers must respond to consumer requests within 45 days, in an electronic format, free of charge
- Must have two or more designated methods for submitting access requests including, at a minimum, a toll-free telephone number and a website address.
- Request must be verifiable
- Must be able to identify the personal information collected for the 12-month period preceding the request
- Can't ask more than 2x during 12 month period

The Data Inventory

Businesses cannot comply with verified requests from consumers, or accurately make the disclosures required under the CCPA without performing a data inventory.

- Business activities with connections to California?
- Personal data collected that relates to Californians – sources and categories?
- Purpose of the collection?
- Third party recipients?

Practice Tips ✓

- Cozy up with marketing (whether in-house or outside) - ask about the developers they use
- Get an inventory of all websites
- Ask for data flow diagrams (DFD's)
- There are products that can help!
- Walk through the website yourself (and set up a profile)
- Trust, but verify – run live scenarios
- Engage your information security team
- Review your incident response policy/procedures

What are the open/unsettled issues for the CCPA?

- All California personal data, or exclude employees?
- How will the “lookback” period work?
- Does it apply to non-profit organizations?
- How will it impact loyalty programs?

What's next for the CCPA?

- The CA Attorney General is authorized to implement further regulations “as necessary to further the purposes of this title” after public comment SB-1121 (September 23, 2018)
- More amendments are likely coming
- Will other state legislatures copy the CCPA?
- Federal Privacy Regulation?

What's Next for Privacy in the United States?

New Jersey Bill Gives Consumers Increased Control Over Their Personal Data

- NJ joins growing list of states poised to adopt legislation modeled after the CCPA
- Goal is to promote transparency, accountability and individual choice
- One bill creates new expanded definition of PII and establishes significant new obligations for operators who collect PII
- Operators must allow customers to opt out of the sale or disclosure of their PII
- Must provide conspicuous “DO NOT SELL MY INFORMATION” link
- Second NJ bill also regulates the use of customer GPS data and provides for notice and choice rights for GPS data
- Bills apply to any operator collecting PII from a customer within NJ

The Present and Future of Privacy

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Privacy Tracker

The new Brazilian General Data Protection Law — a detailed analysis

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CRITICAL QUESTIONS

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New China Data Privacy Standard Looks More Far-Reaching than GDPR


January 29, 2018

The Chinese government recently released the final version of a new national standard on

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India Finally Has A Data Privacy Framework -- What Does It Mean For Its Billion-Dollar Tech Industry?


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— Tim Cook calls for GDPR-style privacy laws in the US

The Apple CEO believes personal data is being 'weaponized.'

 Rachel England, @rachel_england 10.24.18 in Security

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The Present and Future of Privacy

GO DIRECTLY TO JAIL —

Elizabeth Warren wants jail time for CEOs in Equifax-style breaches

Should more CEOs go to jail after data breaches? Elizabeth Warren thinks so.

TIMOTHY B. LEE - 4/3/2019, 4:34 PM



Questions?

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