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**But wait... there's more!**

**Practical Action Items for CCPA, CPRA, Virginia,  
Nevada, and Other States' Privacy Laws**

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# Welcome!



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# Agenda

**1** California Privacy Laws as US High-Water Mark?

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**2** Privacy Laws in other US States

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**3** Mitigating Privacy Litigation Risks

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**4** Additional Dispute Resolution Trends to Watch

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**5** Q&A

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# California Privacy Laws as US High-Water Mark?

# California: High-Water Mark?

- California Consumer Privacy Act (CCPA)
- California Privacy Rights Act (CPRA)
- Dozens of activity-specific laws:

CA Anti-Spam Law

CalOPPA

CCCDFA

Shine the Light

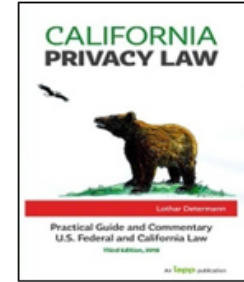
CMIA

Drones

Paparazzi

CIPA

Song Berberly



Supermarket Club Card Disclosure Act

## CCPA

Right to know and access

Right to deletion

Right to control sales

Right to be free of discrimination

Duty to train workers on privacy

Statutory breach damages

## CPRA

Right to correct inaccuracies

Right to control sharing

Right to limit processing of sensitive personal information

Rights regarding automated decision-making tech

Duty to use third-party data processing clauses

Duty to observe proportionality and purpose limitation principles

# Top 10 Action Items

01

Review Your Company's Data Map

02

Plan a Strategy

03

Align Activities Around Your Strategy

04

Update Data Processing Agreements

05

Prepare and Update Privacy Notices

06

Implement Rights Response Systems

07

Conduct Privacy Training

08

Maintain Security Measures

09

Revisit Website Terms

10

Stay Up-to-Date

2

# Privacy Laws in Other US States



## Virginia Consumer Data Protection Act

- Comprehensive consumer privacy law
- GDPR-like data subject rights
- Consent to process sensitive personal data
- Data protection assessments
- Third-party data processing terms

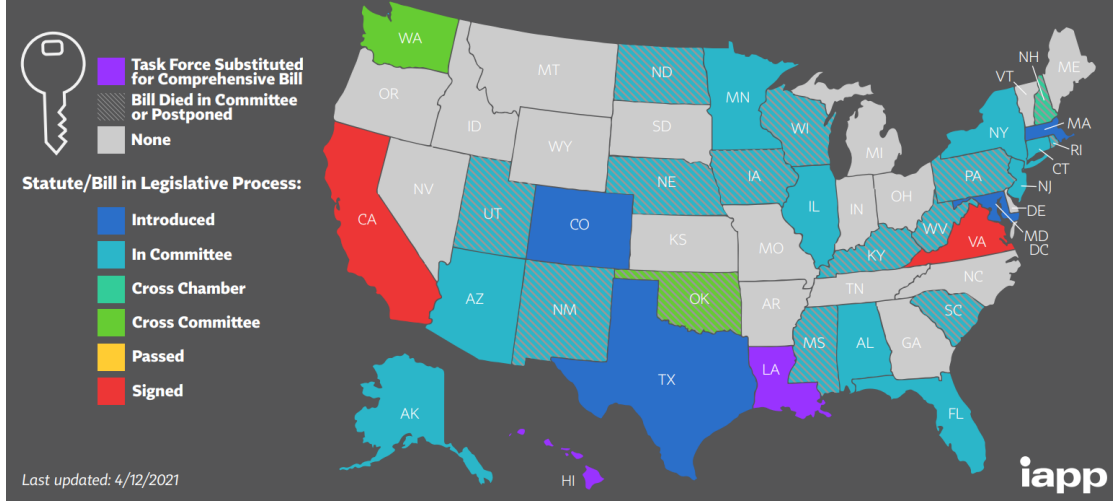
## Nevada Revised Statutes – Chapter 603A

- Online notice requirements
- Right to opt out of sales

## But also state and federal

- Biometric privacy laws
- Health privacy laws
- Breach notification laws
- And many more

# State Comprehensive-Privacy Law Comparison



State	Legislative Process	Statute/Bill (Hyperlinks)	Common Name
<b>LAWS PASSED (TO DATE)</b>			
California		CCPA	California Consumer Privacy Act (2018; effective Jan. 1, 2020)
California		Proposition 24	California Privacy Rights Act (2020; effective Jan. 1, 2023)
Virginia		HB 2307	*Consumer Data Protection Act
<b>ACTIVE BILLS</b>			
Alabama		HB 216	Alabama Consumer Privacy Act
Alaska		SB 116	Consumer Data Privacy Act
Arizona		HB 2865	
Colorado		SB 190	
Connecticut		SB 893	
Florida		HB 1734	Florida Privacy Protection Act
Florida		HB 969	
Illinois		HB 3910	Consumer Privacy Act
Maryland		SB 0930	Maryland Online Consumer Protection Act
Massachusetts		SD 1726	Massachusetts Information Privacy Act
Minnesota		HF 1492	Minnesota Consumer Data Privacy Act
Minnesota		HF 36	
New Jersey		ab 3283	New Jersey Disclosure and Accountability Transparency Act
New Jersey		ab 3255	
New York		A 680	New York Privacy Act
New York		A 6042	Digital Fairness Act
New York		SB 567	
Texas		HB 3741	
Washington		HB 1433	People's Privacy Act
Washington		SB 5062	Washington Privacy Act 2021

Source:

- [https://iapp.org/media/pdf/resource\\_center/State\\_Comp\\_Privacy\\_Law\\_Map.pdf](https://iapp.org/media/pdf/resource_center/State_Comp_Privacy_Law_Map.pdf)
- [https://iapp.org/media/pdf/resource\\_center/State\\_Comp\\_Privacy\\_Law.pdf](https://iapp.org/media/pdf/resource_center/State_Comp_Privacy_Law.pdf)

# California: High-Water Mark?

## Additional Action Items



Data Protection Assessments



Activity-, Industry- and  
State-Specific Due Diligence

**3**

# Mitigating Privacy Litigation Risks

# Two Recent Decisions Will Impact Privacy Litigation

## Facebook Inc. v. Duguid, United States Supreme Court

- Telephone Consumer Protect Act Case (TCPA)
- Narrowly defined Automatic Telephone Dialing System to require the use of a random or sequential number generator
- Will eliminate around 80% of TCPA litigation
- Plaintiffs' lawyers handling bringing TCPA cases will need to find other areas to focus on

## Smith v. LoanMe, Inc., California Supreme Court

- Held that California Penal Code § 632.7 applies to recording of wireless phone calls by a party
- Will make it easier to bring class actions for recording wireless calls without consent
- Mitigate risks by making measures to obtain consent redundant and more robust

# Privacy Litigation Trends

## California Invasion of Privacy Act (Cal. Penal Code §§ 630, et seq.)

- Class actions started around 2006 when California expanded its law to interstate telephone calls

## Shine the Light Law (Cal. Civil Code § 1798.83)

- Cases filed when statute first became effective in 2005, faded away, and recently began to get attention again

## California Anti-Spam (Cal. Business & Professions Code § 17529, et seq.)

- CAN-SPAM Preemption
- Increasing number of cases filed attempting to avoid preemption

## Data Breach Litigation

- Around 50 to 100 class action filed per year pre-CCPA

## Session Replay Litigation

- Based on state wiretapping laws

# California Invasion of Privacy Act

- California Penal Code § 631 – third-party wiretapping
- California Penal Code § 632 – monitoring or recording of confidential communications
- California Penal Code § 632.7 – recording of wireless communications
- California Penal Code § 637.2 – \$5,000 statutory damages per violation

# Session Replay Litigation

## Based on Wiretapping Statutes

- Session replay tools record consumer interactions with websites and mobile apps tracking such interactions as keystrokes, scrolling, mouse movements and clicks
- Lawsuits argue that consent is required under various state wiretapping statutes for recording these interactions
- Cases are filed in states that require all party to consent to record communications and where statutory damages are available for violations – biggest targets are California and Florida
- Cases have not had much success yet
- Mitigate risk by obtaining consent



# Mitigating Litigation Risks



Consent



Judicial Reference  
Clauses



Strategic Variability



Choice of Law and Venue



Limitations of Liability and  
Indemnity



Class Action Waivers

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# **Additional Dispute Resolution Trends to Watch**

# Trends to Watch

## CCPA Arguments and Trends

- Data Breach
- UCL
- Negligence Per Se
- Breach of Contract

## Mass Individual Arbitrations

## CCPA for Pre-Suit Discovery

- Consumer's Factual Information
- Verification Process
- Data Retained by Company

## Deletion v Litigation Holds

# Additional Resources

**iapp**

CALIFORNIA LAWS SET THE STANDARD FOR  
**U.S. PRIVACY**

*This book sets the standard for interpreting them*

In the United States, California leads the charge in developing privacy standards. That makes it imperative for anyone addressing privacy's policies to stay on top of the state's ever-changing laws and guidelines. California Privacy Law, now in its newly updated fourth edition, provides business, attorneys, privacy officers and other professionals with the practical guidance and in-depth information to navigate the state's strict policies.

- Knows exactly where compliance duties, and exceptions for each California and U.S. federal privacy law
- How the laws apply to companies in other states and countries
- Rules and remedies under California and U.S. federal privacy law
- Drafting tips based on specific legal requirements in California
- Checklists and risk mitigation suggestions
- How to start and maintain a compliance program

Author Lothar Determann is a highly respected practitioner and professor of privacy, compliance and software law in California. This definitive text draws on his substantial experience, and is a must have for anyone providing counsel on privacy and data protection.

**New in the 4th edition:**

- Practical roadmap for compliance with the California Consumer Privacy Act and the final regulations
- Detailed compliance guidance on new and existing federal and California laws, including an overview of major federal security, data brokers, the CCPA and the California Privacy Rights Act (CPRA)
- Insights from major federal and California cases, regulatory actions and settlements as of July 2018
- Updates on pending related regulations and clarifications



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ELGAR COMPLIANCE GUIDES

Lothar Determann

**Determann's Field Guide to Data Privacy Law**

International Corporate Compliance

FOURTH EDITION



[Global Data Privacy & Security Handbook](#)



**Questions**

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