

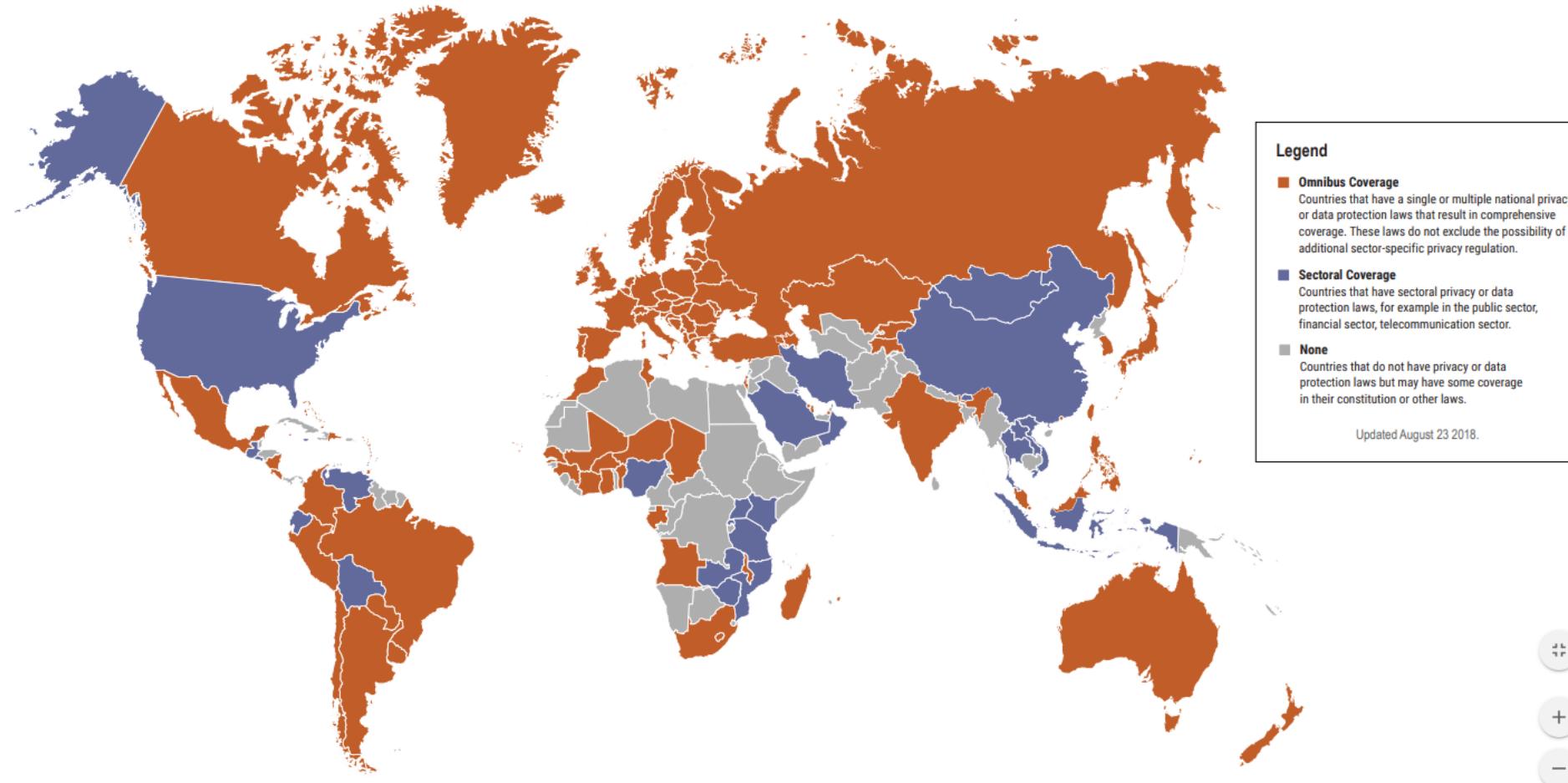
# Evolution of Privacy Law & Its Impact on the Legal/Paralegal Professions

**Scott Goss**

VP, Privacy Counsel  
Qualcomm Incorporated

# Privacy laws are global

## Sectoral and Omnibus Privacy and Data Protection Laws



# Evolution of Privacy Law

*Out with the Old; In with the New*

## Old Privacy Law

Notice and consent

Outcomes based

Principles based

Reasonable expectations

Proof of harm

Small fines

## New Privacy Law

Regulatory compliance requirements

Affirmative evidence obligations

Compliance programs - people, processes & technology

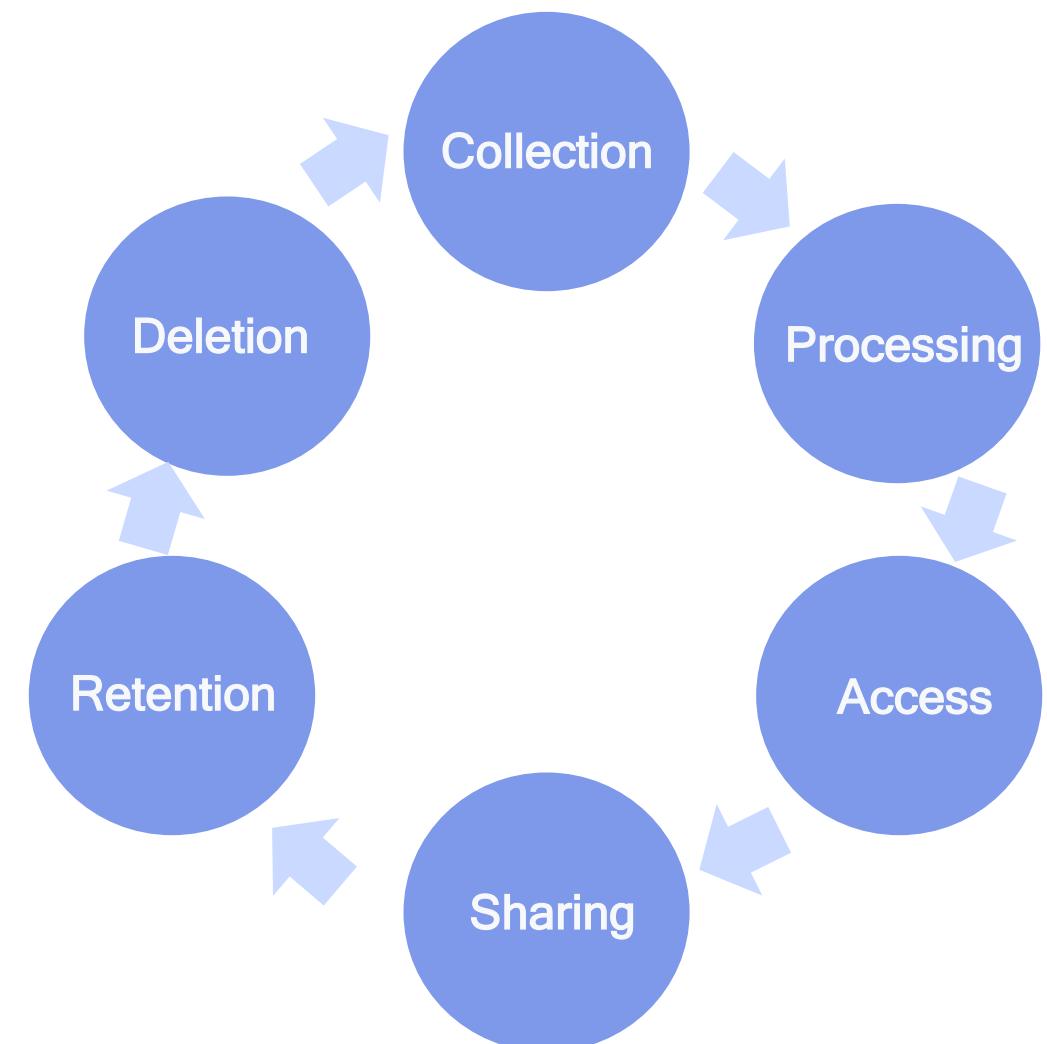
Expectations irrelevant

Harm irrelevant

Billion-dollar fines

# From Notice & Consent to Data Lifecycle Management

- Regulations govern entire lifecycle
- Before data is collected, must evaluate impacts



# Conflicts Remain

*Global customers and/or employees lead to conflicting privacy obligations*

- Examples:
  - Employee Consent
    - Required in Korea; subjected PWC to €150K fine in Greece
  - Discovery
    - Sanctioned by US judge for failing to produce; Fined by EU regulator for producing

# Scope

Personal data has broadened in scope

**EU:** Personal data is any information relating to an identified or identifiable natural person ('data subject'). An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

**CCPA:** Personal Information means any information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. . . .

## Examples

- Employee or other unique ID's
- Log in information
- Government ID (SS#)
- Date and Place of Birth
- Mother's Maiden Name
- Medical Information
- Govt IDs (license, Passport)
- Business Contact Information such as:
  - Qualcomm email or phone #
- IP address or cookie identifier
- Biometric, genetic and location data

## Not considered personal data

- A company registration number
- General email (e.g. [info@qualcomm.com](mailto:info@qualcomm.com))
- Anonymized data (individual no longer identifiable; must be irreversible)

## Upcoming Laws

- [California Consumer Privacy Act](#)  
(Effective 2020)
- [Brazil Data Protection Act](#) (Effective 2020)
- [India](#) (discussion draft)
- EU [e-Privacy Regulation](#)
- China: law evolving by rule making

# GDPR Overview

- ❖ General Data Protection Regulation
- ❖ Effective May 25, 2018
- ❖ Replaced the 23-year-old data protection directive
- ❖ Goals
  - ❖ Modernization
  - ❖ Better uniformity
  - ❖ Less paperwork
  - ❖ Compliance incentives (i.e., bigger fines)
- ❖ Privacy & Data Protection = fundamental human rights
  - ❖ Expectation of privacy and/or harm are irrelevant
  - ❖ PD Processing is prohibited unless expressly permitted

- ❖ GDPR is an evolution, not revolution of privacy law.
  - ❖ From principles to regulation
  - ❖ Not solely about outcomes; must prove compliance
    - ❖ Privacy-by-design
    - ❖ Minimization & Pseudominimization
    - ❖ Data Protection Impact Assessment
    - ❖ Records of Processing
    - ❖ Vendor contracting obligations
    - ❖ Data security obligations
    - ❖ Data Subject Rights
- ❖ Fines
  - ❖ 4% max global gross revenue fine for substantive violation
  - ❖ 2% max global gross revenue fine for process violation

## Privacy v. Security

No privacy without security.

Security without privacy?



## CCPA Overview

# California Consumer Privacy Act

“Consumer” a resident of California.

AB 25 will delay some aspects applicable to employees until 2021.

## 1. Transparency & Consumer Rights

- Notice obligation
- Consumer rights
  - Information re: the specific data the company has collected
  - Request deletion
  - Opt-out of personal data being sold
  - Non-discrimination for exercising these rights
- Include a “do not sell” button on website

Enforced by State AG

Effective earlier of July 2020 or AG publication of rules

30-day cure period

## 2. Liability for Data Breach

Any “consumer” whose personal information is subject to unauthorized access or disclosure due to company’s failure to reasonably secure, may bring civil lawsuit for not less than \$100 per consumer and not greater than \$750 per consumer or actual damages, whichever is greater.

Individual or class actions

Effective January 1, 2020

# Data Subject Rights

GDPR v. CCPA

GDPR Rights
Information
Access
Rectification (correction)
Erasure
Restriction
Portability
Objection
Opt-in/out of automated decisions

CCPA Rights
Information
Access
Deletion
Opt-out of selling

## Role for the Paralegal

- Privacy laws have evolved into regulations
  - Liability for failure to have the process, not just for the outcome
- Need for privacy professionals is growing
  - [International Association of Privacy Professionals](#)
- Large cross-over with data governance and records management
- Need for compliance program management

# Thank you

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