

California Consumer Privacy Act Compliance



Preparing for Compliance

Our privacy and data protection team provides in-depth, customized and scalable readiness assessments, compliance counseling and project planning for companies tackling the challenges posed by the forthcoming California Consumer Privacy Act (CCPA or Act), including efforts to supplement existing compliance programs for EU General Data Protection Regulation (GDPR) compliance. The GDPR, which went into effect on May 25, 2018, has some similarities to the CCPA, but additional and differing requirements of the CCPA will require even businesses that are already GDPR compliant to undertake new efforts to prepare for the CCPA. The CCPA is effective January 1, 2020, but companies will need to begin detailed data mapping and tracking of data practices as of January 1, 2019, to be able to comply in 2020 with notice and consumer request requirements that are subject to a 12-month look-back.

The CCPA represents an unprecedented change in U.S. data protection law. It will affect all but the smallest business that have data on California residents. The Act's definition of "personal information" is very broad, and handling personal information of as few as 50,000 devices, individuals or households per year triggers coverage for a company and potentially its affiliates. That equates to an average of 138 credit card transactions or unique website visitors a day, or a combination of these and other data activities. The CCPA is not limited to b-to-c business and protects the privacy of all California residents regardless of their relationship with a business, and whether the data is collected online or offline.

In short, the CCPA gives California residents the right to learn categories of personal information that businesses collect or otherwise receive, sell, or disclose about them, and the purposes therefor, as well as the categories of third parties with whom businesses disclose PI. It also grants California residents the right to obtain more detailed information about their personal information on an individualized basis, and the rights to obtain transportable copies of their personal information, to prevent businesses from selling their personal information, and, subject to certain exceptions, to request that a business and its service providers delete their PI. The CCPA also prohibits businesses from discriminating against consumers who exercise these rights, with some value-exchange-based, opt-in exceptions. The CCPA will require detailed disclosures in privacy policies or a California privacy notice, as well as multiple methods for exercising data subject rights. Further, the CCPA requires that contracts with service providers include certain terms, including requiring them to delete personal information obtained by a company when the data subject demands deletion by the business.

The California attorney general may also bring actions for civil penalties of \$2,500 per violation, or up to \$7,500 per violation if intentional. The CA Department of Justice has stated that it will need approximately 57 full-time staff to enforce the law and that it will need to secure over \$57.5 million annually in civil penalties to cover the cost thereof, suggesting the potential for robust enforcement. There is also a private right of action, though

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limited to security incidents. However, plaintiffs' class action attorneys may bring claims under California's Unfair Business Practices Act for CCPA violations, notwithstanding language in the CCPA that should preclude such actions.

Although bringing your company into compliance with the CCPA will require an investment of time and resources, it also provides an opportunity for the organization to identify inefficiencies, upgrade outdated processes, and proactively tackle privacy and data security concerns.

We offer a wide range of CCPA-related legal services to our clients, taking a pragmatic and results-oriented approach to risk management and compliance project implementation.

Our Services

- Evaluating applicability of the CCPA to organizations, including evaluating coverage exceptions for certain regulated industries, such as covered entities under state and federal healthcare privacy laws and financial institutions, due to conflicts with other laws that have been explicitly carved out of CCPA coverage by the Act.
- Data mapping and review of existing and prospective flows of California personal information.
- Reviewing existing materials (privacy and data security policies and procedures, notices and consents, data transfer practices, vendor agreements, etc.) to assess compliance with CCPA requirements.
- Preparing CCPA gap assessments, risk profiles and compliance analysis materials and recommendations to present to senior management and boards of directors.
- Developing comprehensive CCPA compliance project plans, setting internal benchmarks and timetables, and liaising with key stakeholders to implement recommendations.
- Preparing CCPA-compliant privacy policies and notices, as well as other notices of California residents' privacy rights.
- Assisting in developing and operating CCPA-required opt-in and opt-out programs, and how to do so in conjunction with transparency and choice programs required by other laws (e.g., GDPR, the CA Shine the Light Act, Cal. OPPA, HIPAA and state health information privacy laws, Gramm-Leach-Bliley, COPPA, FCRA, CAN-SPAM, TCPA and TSR, etc.)
- Drafting policies and designing internal mechanisms to fulfill access, portability, deletion, information and opt-out requests from verified California residents; establishing compliant notice and consent mechanisms and programs; and advising on the technical and administrative measures required to address data portability, deletion, information and opt-out rights.

- Developing customized privacy and data protection impact assessment questionnaires, review processes and evaluation metrics (tailored, as appropriate, to different business functions), and counsel on how to implement "privacy-by-design" and breach readiness.
- Establishing criteria for evaluating privacy and data protection compliance officer candidates and coordinating the selection process.
- Creating templates and procedures for record-keeping.
- Representing client and industry interests in discussions with California lawmakers during the ongoing amendment process, and providing comments to the California attorney general during the regulatory rulemaking process.
- Advising publishers, advertisers and ad tech companies on how CCPA affects interest-based, contextual and other advertising, marketing and promotional activities.
- Advising clients in the retail, hospitality, restaurant and other consumer-facing industries how to develop CCPA-compliant programs and campaigns that are appropriate for their industry and practices.
- Advising employers on HR-related implications of the CCPA.
- Advising service providers and companies that engage service providers on what contractual provisions or riders are required or prudent and how to develop and manage a CCPA-compliant vendor management program.
- Providing in-house and online trainings and tabletop exercises.

Representative Engagements

- We have been engaged by several clients to track the original ballot initiative efforts and the legislative responses to it which resulted in AB 375. For these clients, we continue to track further amendments to the CCPA and will track other relevant legislation, as well as the upcoming regulatory rulemaking by the CA attorney general.
- We have counseled over 150 clients on GDPR compliance, including how to develop and maintain appropriate compliance programs and policies. We have conducted thousands of privacy assessments to develop privacy notices, policies and compliance programs subject to various U.S. laws and self-regulatory programs. We are building off this experience to do the same for the CCPA.

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