

Privacy Champions

The California Consumer Privacy Act of 2018 (CCPA) in Context

March 29, 2019

Agenda



What is the CCPA?



What are your new rights?

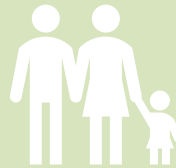


What's in store for the future?

What is the CCPA?



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What are your new rights?



What's in store for the future?

Overview of the CCPA and Impacts

- New privacy law in California
- How did the CCPA happen
- The ballot measure versus law
- Sweeping changes for businesses and consumers
- Penalties for violations
- Expanded definition of private information
- Impact on the County



A new privacy law
in California calls
for significant
reforms.

- With tech industry data breaches impacting more and more consumers, certain individuals along with the advocacy group, Californians for Consumer Privacy, pushed a petition drive to place a ballot measure on the November 2018 ballot
- *The Consumer Right to Privacy Act of 2018* ballot measure received enough petition signatures to allow constituents to vote on it
- Industry associations reached out to California Assembly and Senate legislators to pass a similar but less stringent law (AB-375)
- The backers of the ballot measure agreed to these terms so long as the bill was passed by the deadline to remove the ballot measure on June 28, 2018
- Both chambers of the state legislature passed and the governor signed the bill into law by the deadline and the ballot measure was then removed
- Sweeping new changes to consumer privacy will go into effect January 1, 2020

What sparked the call for change?

- After years of inactivity to pass strong privacy legislation, how did the CCPA come about so quickly?
 - Alastair Mactaggart's story and investment of \$3 million
 - The Californians for Consumer Privacy petitioned for 600,000 signatures and got on the ballot
 - Industry and the state legislatures were caught off-guard

Alastair & Industry = David & Goliath

\$3 million

vs.

\$6 trillion market cap

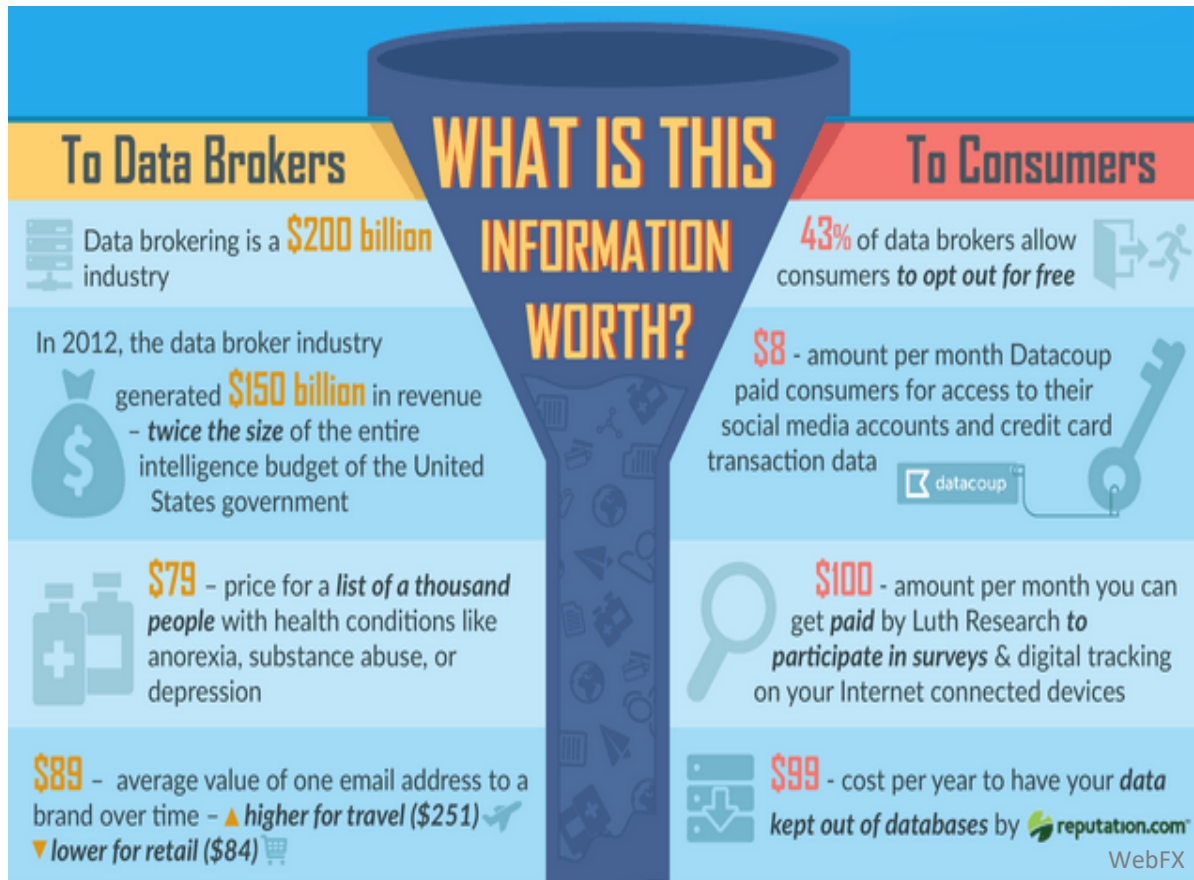
...and that's how the ballot measure became a bill.



What's the big deal?

"Between the dawn of civilization and 2003, we only created five exabytes; now we're creating that amount every two days. By 2020, that figure is predicted to sit at 53 zettabytes (53 trillion gigabytes) – an increase of 50 times."

Hal Varian, Chief Economist, Google



Industry Revenue
\$200,000,000,000

CCPA Investment
\$3,000,000

Into perspective...

That would equate to an investment of \$3 that could threaten a \$200,000 revenue stream

If the ballot measure and the bill were similar, why did industry support the bill instead?

What's the difference?

- The requirements placed upon businesses are somewhat less stringent in the bill versus the ballot measure
- In the bill, a consumer's private right of action (e.g., the right to sue) is only afforded for data breaches rather than the more far-reaching impact of the ballot measure which would have allowed it for data breaches and other violations even without showing harm
- In the bill, local and county district attorneys do not have a private right of action as was afforded in the ballot measure
- In the bill, local and county codes and ordinances are superseded and pre-empted by the state in regards to any rules covering the collection and sale of personal information as was afforded in the ballot measure
- The new law will not go into effect until January 1, 2020. In the meantime, amendments may be proposed and industry groups are planning on suggesting and supporting amendments which may reduce the requirements and penalties noted in the law.
- Amending or overturning a **law** only requires a simple majority in both chambers along with the governor's signature. Overturning a **ballot** measure approved by the voters would require a two-thirds majority in both chambers.

The California Consumer Privacy Act of 2018 will bring about sweeping changes for businesses and consumers

New Law	Major Points
<p>Consumers rights</p>	<ul style="list-style-type: none"> • The right to know what personal information is being collected why it was collected • The right to know if personal information is sold or disclosed, and to whom • The right to say no to the sale of that personal information • Right to request the deletion of personal information • Opt-out of the sale of personal information • Private right of action allowed for unauthorized breach of non-redacted or non-encrypted personal information • Access the personal information in a “readily useable format” that enables its transfer to third parties without hindrance
<p>Businesses responsibilities</p>	<ul style="list-style-type: none"> • Respond to verifiable requests to acquire records, make changes, stop selling, stop transferring, and removing personal info. (right to be forgotten) within 45 days • Comply with state Attorney General requests remediate privacy violations within 30 days

Which businesses will be impacted and which won't

New Law	Major Points
<p>Organizations impacted</p> <ul style="list-style-type: none"> • <i>Specifically applies to California residents' information</i> • <i>Only one of the criteria need to be met</i> 	<ul style="list-style-type: none"> • Businesses with over \$25 million annual gross revenue • Businesses that buy, receive, sell, and/or share personal information on more than 50,000 consumers, households, or devices • Businesses that derive more than 50% of their income from selling personal information • Businesses that have subsidiaries and/or parent companies that meet one of the criteria noted above (even if the business itself does not directly meet the criteria)
<p>Organizations <u>NOT</u> impacted</p>	<ul style="list-style-type: none"> • Small businesses that do not meet at least one of the criteria noted above • State, county, and local government • Non-profit entities • Covered Entities (Protected Health Information (PHI) is not in scope) • Consumer reporting agencies for the purpose of generating consumer reports

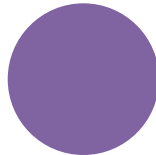
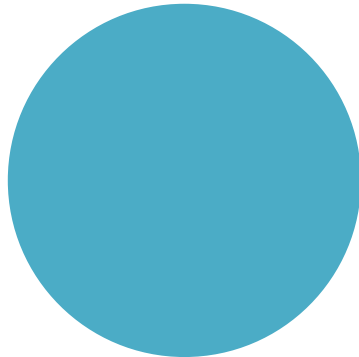
Penalties for privacy violations can add up in cases where a major data breach impacts a large audience

New Law	Major Points
<p>State Attorney General Action</p>	<ul style="list-style-type: none"> Any person, business, or service provider that intentionally violates this title may be liable for a civil penalty of up to seven thousand five hundred dollars (\$7,500) for each violation.
<p>Consumer right to private action</p> <p>(Limited to data breach violations (i.e., nonencrypted or nonredacted personal information that is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of the business' violation of the duty to implement and maintain reasonable security procedures))</p>	<ul style="list-style-type: none"> To recover damages in an amount not less than one hundred dollars (\$100) and not greater than seven hundred and fifty (\$750) per consumer per incident or actual damages, whichever is greater. Injunctive or declaratory relief. Any other relief the court deems proper. In assessing the amount of statutory damages, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

What is considered “personal information?”

“**Personal information**” means 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. Personal information includes, but is not limited to, the following:

- Identifiers such as a real name, alias, postal address, unique personal identifier, online identifier Internet Protocol address, email address, account name, social security number, driver’s license number, passport number, or other similar identifiers
- Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies
- Biometric information
- Internet or electronic network activity information, including, but not limited to, browsing history, search history, and a consumer’s interaction with a web site, application, or advertisement.
- Geolocation data
- Audio, electronic, visual, thermal, olfactory, or similar information
- Professional or employment-related information
- Education information, defined as information that is not publicly available personally identifiable information
- Inferences drawn from any of the information identified in this subdivision to create a profile about a consumer reflecting the consumer’s preferences, characteristics, psychological trends, preferences, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes



While county governments are not directly in-scope for this law, our vendors and other contracted third-parties may have to follow these requirements and may request our cooperation

The requirements in this law may help to serve as part of a roadmap in providing our constituents with a safer experience in protecting their personal information

Should constituents reach out to the County for more information about their rights, they should be pointed in the right direction (e.g., provide materials / links, provide contact information to the state Attorney General's office)

For any civil penalties recovered as a result of Attorney General action, 80% goes to the jurisdiction on whose behalf the action leading to the civil penalty was brought (20% goes to the state Attorney General with the intent to fully offset any costs incurred by the state courts and the Attorney General)

What does it mean for the County if government entities are not obligated to comply with the new law?

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What's in store for the future?

What are your new rights?



Button to request businesses to not sell your data



Ability to request the categories and specific data companies have collected about you personally or your household



Right to request deletion of your personal information



If business negligence leads to a breach, you'll have a private right of action and the loss of your data constitutes "harm" in itself

How Will CCPA Impact Kids' Privacy?



Gives **parents and teens more control** over what personal data companies can collect from minors.



Raises age for data consent for minors from 13 in the Children's Online Privacy Protection Act (COPPA), to **age 16 for residents of California**.



Minors under 16 years of age must authorize the sale of their personal information. For children that are under 13, the **opt-in consent must be collected from a parent or guardian**.



The definition of "personal data" has been expanded beyond names, addresses, SSNs, and email addresses.



Includes **geolocation, IP addresses**, shopping or **browsing history**, psychological profiles, consumption behaviors, and consumer preferences.



Will impact privacy and data collection on devices ranging from smartphones, augmented reality, gaming consoles, apps and more.

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How has the CCPA impacted the national landscape?

- **CCPA-like laws**

- Washington
- Massachusetts
- Other states

- **Other privacy laws**

- Utah (passed)
 - Requires law enforcement to obtain a warrant in order to access electronic data stored with third parties like Google or Facebook.
- Oregon
 - Considering a bill that would prohibit the sale of de-identified protected health information without first obtaining a signed authorization from an individual.



How else may the CCPA influence privacy?

- Influencing the nation:
 - Companies fear the “patchwork” of state (and local) privacy laws
 - At least 5 proposed bills in 2018 and 2019 focusing on privacy
 - Sen. Richard Blumenthal (D-Conn.):
“We need a privacy bill of rights, a set of protections that is no less stringent than the people of California enjoy, no less protected than the people of Europe have.”
- But major questions remain:
 - CCPA as a floor or ceiling?
 - To preempt or not to preempt (fed vs. state)?



What's next on the horizon for the CCPA?



- The CCPA Goes into effect in January 1, 2020
- Attorney General (AG) regulations are due by July 1, 2020
- AG enforcement is available once regulations are published

Questions & Answers (open)

Privacy Office Contact

Email: PrivacyOffice@ceo.sccgov.org

Internal website: <https://sccconnect.sharepoint.com/sites/cpo>

External website for constituents: <https://www.sccgov.org/sites/cpo>

