

A high-angle photograph of the Golden Gate Bridge in San Francisco, California. The bridge's iconic orange-red towers and suspension cables are prominent against a clear blue sky. The bridge spans across the blue waters of the Golden Gate Strait, with the San Francisco city skyline visible in the distance. The foreground shows the rocky, brownish terrain of the bridge's approach.

# CCPA Is Here: What Does It Mean For Me?

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## Getting Down to CCPA Basics



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# CCPA in a Nutshell

- Signed into law on June 28, 2018
- Went into effect January 1, 2020
- First comprehensive privacy law
- Law: enforceable since July 1, 2020
- Enforcement already started, lawsuits filed
- Final regs approved



# Personal Information

- Very broad definition!
- 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
- Persistent identifier that can be used to recognize a consumer, family or a device linked to a consumer or family...





# Key Concepts of CCPA



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# Scope

- You collect **California consumers' personal information**
- You **determine the purposes and means of processing**
- You **control or are controlled + common branding**
- You **do business in California**

# Consumer

- AKA: Resident
- AKA:
  - In California for other than a temporary or transitory purpose
  - Domiciled in California but is outside California for a temporary or transitory purpose



## "Doing Business in California"



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# Doing Business in California

Comment seeks clarification of Civil Code § 1798.140(c)(1)'s phrase "does business in the State of California." This lack of clarity leaves foreign corporations without guidance as to whether their level of activity in California constitutes "doing business." Needs further clarification.

No change has been made in response to this comment. In the absence of a specific definition, the phrase "does business in the State of California" should be given meaning according to the plain language of the words and other California law.



# “Doing Business” in California

Actively engaging in any transaction for the purpose of financial or pecuniary gain or profit

- Organized/domiciled in the state
- Sales
- Real property in the state
- Tax paid
- Including pass through entities



# “Doing Business” in California

- Broad definition
- Also “transacting intrastate business?”
- Also imposition of CA jurisdiction?
  - “[S]uch minimum contacts with the state ‘that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice’” (*Int'l Aerial Tramway Corp. v. Konrad Doppelmayr & Sohn*)
  - Purposefully availing to the benefits of CA



# “Doing Business” in California

- “Interactive website”
- What about targeted advertising?

# Scope Thresholds

- Annual gross revenues > \$25 million

OR

- Personal information of  $\geq 50,000$  consumers, households or devices

OR

- Sale of personal information accounts for  $\geq 50\%$  of annual revenues

# Key Concepts

- Expanded transparency
- Consumer rights
- Service providers/downstream



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## CCPA Regs: Transparency



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# Privacy Notices: Privacy Policy

- Easy to understand/helpful to consumer
- Categories (PI, sources, third parties)
- Purposes – use or lose
- Granular description of sharing
- Sharing in past 12 months
- 12-month review

# Privacy Notices: ...And Then There Were Four

- Privacy Policy
- (Employee Privacy Policy)
- Notice at collection
- Notice of opt out
- Notice of financial incentive

# Notice at Collection

- Category + purpose + opt out + link
- Physical and temporal proximity
- Accessibility
- Just in time notice for surprising purpose
- Data brokers

# Financial Incentive

- Related to the collection, retention or sale of personal information
- Summary of incentive + how to opt in + opt out
- Material terms + valuation
- Reasonably related to the value of the consumer's data





## CCPA Regs: Consumer Rights



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# Access and Deletion

- Two methods (toll-free number +)
- Verification

# Do Not Sell My Information

- AG enforcement focus
- No verification
- What is a sale?
- What about cookies?
- DNSMPI button?

# Do Not Sell My Information (Cont'd)

as long as they are complying with a contract that meets the CCPA's requirements. With regard to the meaning of "valuable consideration," the CCPA's use of the terms "valuable" and "consideration" are reasonably clear and should be understood by the plain meaning of the words.





# Service Providers and Third Parties

# Service Providers and Third Parties

- If it's a data processor, it's a service provider
- If it's a data controller – it might be a service provider
- Some internal uses permitted
- DPA required



# Enforcement



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# Enforcement Issues

- Private right of action – data breach only?
- CA AG enforcement
- Statutory fines
- Low-hanging fruit
- Children's information



## CPRA: CCPA 2.0?



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# CPRA: Key Concepts

- Closer to GDPR
- Purpose limitation
- Data Minimization
- Sensitive Information
- Profiling
- DPIA's
- New enforcement authority



First California, Then the World?

# Coming up next:

- (NY SHIELD/NYDFS)
- Employee and B2B carve out expiration
- Washington state
- NJ/IL/TX?
- Federal privacy law??



# Top 5 Things to Do Now



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# What to Do/Start With Now:

- Make/follow a plan for compliance
- Consumer rights mechanism/disclosure
- Privacy notice
- Notice at collection
- Do not sell
- Training

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