

It's Not Just Europe Anymore: Practical Considerations in Complying with the New **California Consumer Protection Act of 2018**

Ami Rodrigues

Privacy Counsel, The Coca-Cola
Company

Rachel Drucker

Privacy Architect, Warner Media

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Roadmap

- Expansion and emergence of privacy regulations
- Key components of a privacy law
- What is **personal information** and data use
- California Consumer Privacy Act of 2018



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Your Internet Experience Since May 2018



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Personal
Information
is a Valuable
Commodity



"It's free, but they sell your information."

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- Regulation in place / due to come into force
- Regulation under discussion



Consumer Privacy Legislation

- Passed
- Introduced, Reasonably Possible
- Introduced, Remote
- Introduced, Defeated

Why is Privacy Suddenly Being Regulated Everywhere?



Data breaches are getting bigger and more serious



Data misuse is also becoming more common

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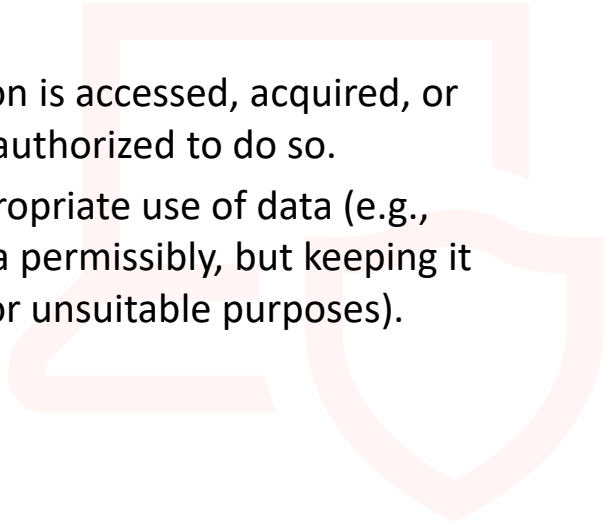
NYT: The Privacy Project

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Data Breach vs. Data Misuse



- **Data breach:** information is accessed, acquired, or viewed by someone unauthorized to do so.
- **Data misuse:** the inappropriate use of data (e.g., someone accessing data permissibly, but keeping it negligently or using it for unsuitable purposes).



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Key Components of Privacy Laws

USE OF
INDIVIDUAL
PERSONAL
INFORMATION

TRANSPARENCY &
NOTICE

INDIVIDUAL
RIGHTS

BREACH
NOTIFICATION
REQUIREMENTS

REASONABLE
SECURITY
MEASURES

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Personal Information

Examples of Personal Information

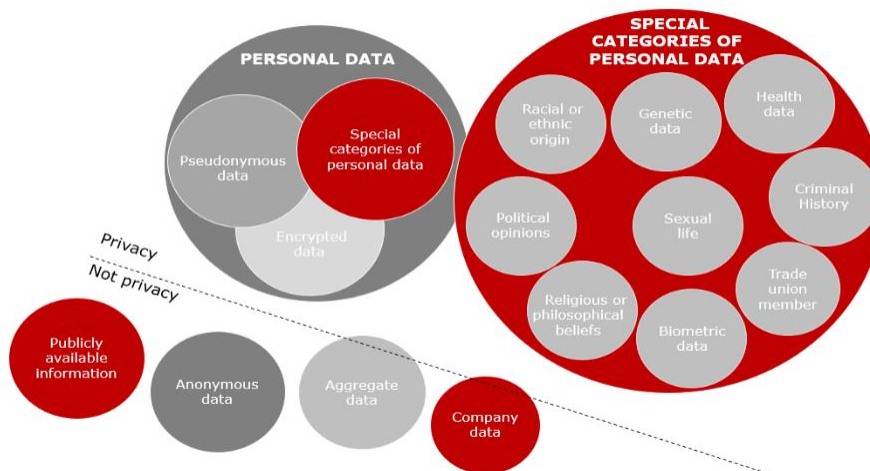
- Name
- Government ID Number
- Date of Birth
- Postal Address
- Telephone numbers
- Gender
- User name, email, passwords
- Social media public profile
- Hobbies and interests
- Consumption habits
- Information from cookies, pixel tags, and other technologies
- App usage data
- Activity / Engagement on sites
- Interactions with marketing communications

Examples of Sensitive Personal Information

- Racial or ethnic origin
- Political opinions
- Religious or other beliefs
- Health or medical information
- Criminal background
- Biometric data
- Sexual orientation or details regarding sexual habits

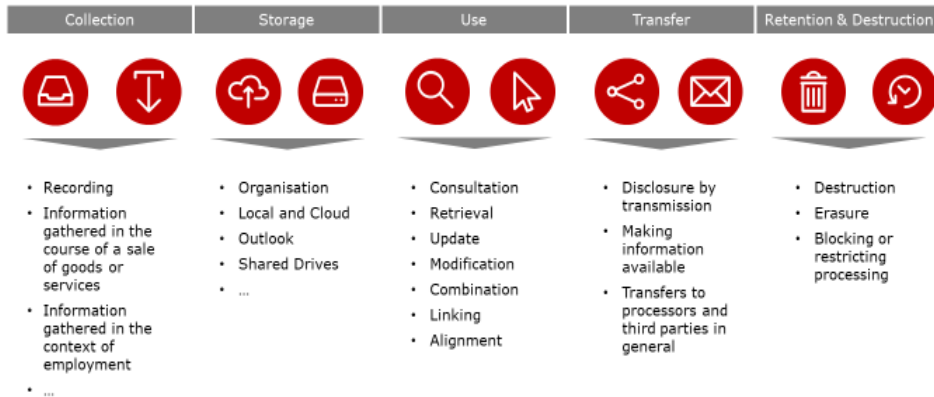
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What is Personal Information?



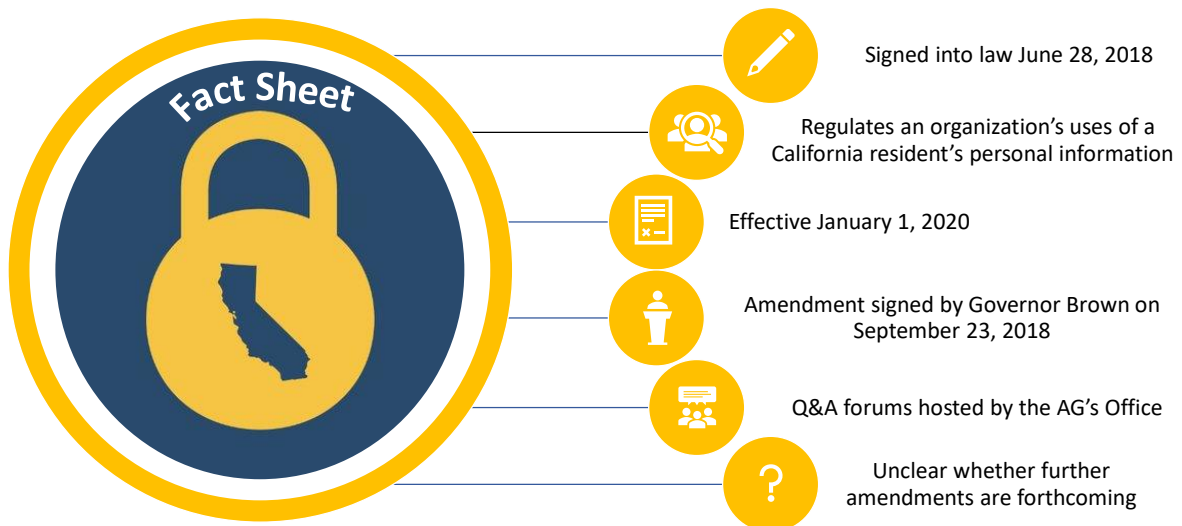
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Uses of Personal Information



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California Consumer Privacy Act of 2018



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The Act is intended to provide CA residents with the right to:

Know what information is being collected about them.

Know whether their personal information is sold to whom.

Say no to the sale of their personal information.

Access, request deletion, or request portability of their personal information.

Equal service and price, even if they exercise their privacy rights

Expect security and safekeeping of their personal information

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Use of Personal Information

- information that is “**reasonably** capable of being associated with” a particular consumer or household
- “**publicly available**” means information that is lawfully made available from federal, state, or local records, and clarify that that “personal information” does not include deidentified or aggregate consumer information.



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Definition of “Consumer” under CCPA

- The definition of “**Consumer**” under the California Consumer Privacy Act 2018 is “**a resident of California.**”



- As of May 29, “job applicants, employees, agents of a business, or contractors” are under consideration for an amendment excluding them from the definition of a consumer.
- **NOTE:** Businesses still must exercise a **reasonable duty of care** towards any information collected from any of these types of individuals.

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Definition of a “Sale” under CCPA

- Sell, selling, sale, or sold means *selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means* a consumer's personal information by one business to another business or a third party for monetary or other **valuable consideration**.
- When a company transfers Personal Information to its vendors to perform services on our behalf, this is **not** covered as a “Sale” under CCPA.



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Required Notices Must Include:

- A description of Consumers' right to request information and the non-discrimination right
- Categories of personal information disclosed and whether or not "sold"

Notice required "at or before the point of collection."



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Non-Discrimination & Financial Incentives

- Non-discrimination right for individuals exercising rights under the CCPA.
- Financial incentives allowed, but must "be reasonably related to the value provided to the Consumer by the Consumer's data."



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Non-Discrimination & Financial Incentives

- Non-discrimination right for individuals exercising rights under the CCPA.
- Financial incentives allowed, but must “be reasonably related to the value **provided to the business Consumer** by the Consumer’s data.”



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Non-Discrimination & Financial Incentives

- Non-discrimination right for individuals exercising rights under the CCPA.
- Financial incentives allowed, but must “be reasonably related to the value **provided to the business Consumer** by the Consumer’s data **or is in connection with the customer’s voluntary participation in a loyalty, rewards, or discount program.**”



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“Do Not Sell My Personal Information”

- Must include a link on (California) home page titled **“Do Not Sell My Personal Information”** that allows Consumer to Opt-Out
- **Note:** Stricter rules for children’s data – Sales of Personal Information regarding minors require opt-in consent; A **Child** is defined by the Act as an individual “under 16.” Any interaction with a child under 13 must *also* follow COPPA rules.



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Exercise of Individual Rights

- 45 days to respond
 - Add'l 45 day extensions allowed where “reasonably necessary”
- Disclosure must cover preceding 12-month period
- Must be free of charge



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Employee Training Required



“All individuals responsible for handling consumer inquiries about the business’s privacy practices or the business’s compliance” must be trained on:

- All the individual rights provided for in the CCPA; and
- How to direct consumers to exercise their rights.

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Data Breach – Statutory Damages

- A **data breach** is:
 - “Unauthorized access and exfiltration, theft or disclosure of unencrypted/non-redacted Personal Information”
 - CCPA explicitly states duty to implement and maintain reasonable security procedures and practices
- **Statutory damages** for data breach:
 - **\$100 - \$750** per Consumer per incident or actual damages, whichever is greater
 - Injunctive or declaratory relief
 - Any other relief the court deems proper
- No action if within 30 days, the breach has been cured.



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Side Note: Odds of a Data Breach



**Being struck by
lightning**
1 in 960,000



**Marrying a
millionaire**
1 in 220



**Having your data
compromised in a breach**
1 in 4

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AG Enforcement

- Failure to cure within thirty (30) days of being notified by the AG can lead to a violation of the law
- Civil penalties: up to **\$2500** for each non-intentional violation / **\$7,500** for each intentional violation
- Injunctive Relief
- Consumer Privacy Fund - protected enforcement fund within California budget



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Recap of the CCPA



Expanded definition of Personal Information



Expanded privacy rights for California residents



Businesses have an obligation to ensure proper security of Personal Information that is being collected



Privacy notices must outline to individuals what information is being collected on them, why it is being collected, with whom it is being shared, and a description of their rights.

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Questions?

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"Before I write my name on the board, I'll need to know how you're planning to use that data."

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Appendix

DRAFT - For Discussion Purposes Only
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Definitions

- **Deidentified data** (standard: anonymization) “information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer”, provided that a business that uses deidentified information:
 - has implemented technical safeguards that prohibit reidentification of the consumer to whom the information may pertain.
 - has implemented business processes that specifically prohibit reidentification of the information.
 - has implemented business processes to prevent inadvertent release of deidentified information.
 - makes no attempt to reidentify the information.”
 - *TCCC will adopt GDPR standard to deidentify or anonymize data (consider HIPAA deidentification standard of PI)
- **Pseudonymize** “the processing of personal information in a manner that renders the personal information no longer attributable to a specific consumer without the use of additional information, provided that the additional information is kept separately and is subject to technical and organizational measures to ensure that the personal information is not attributed to an identified or identifiable consumer.”

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Definitions

- **Aggregate consumer information** “means information that relates to a group or category of consumers, from which individual consumer identities have been removed, that is not linked or reasonably linkable to any consumer or household, including via a device.”