



January 24, 2020
2020 Southern CA Regional Conference
Costa Mesa, CA, United States

Nuts and Bolts of CCPA Compliance

1



LISA BETH LENTINI WALKER
CEO & Founder

COMPLIANCE ILLUMINATED

Strategic, Pragmatic and Effective
Advice for Complex Times



LUMEN

2

Taking practical and effective steps today

CCPA Compliance Program Priorities

3

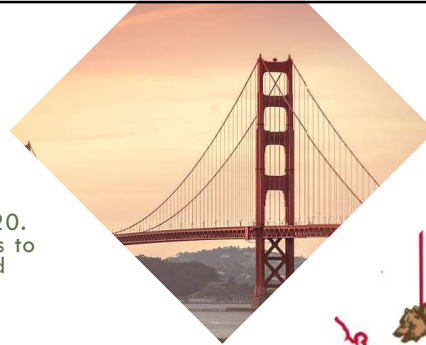
1. What are the basics of the CCPA?
2. What practical, sensible steps can a company take now toward compliance?
3. What are the top operational impacts of CCPA?
4. What are the real risks of enforcement under the new law?

4

4

The California Consumer Privacy Act ("CCPA")

- The CCPA took effect for data between companies and consumers on January 1, 2020. The new law grants additional privacy rights to California residents, including consumers and employees.
- CCPA was delayed for portions of the employee/job applicant population and certain business to business data until January 1, 2021, but beware the lookback period.
- The law requires that companies know what personal information is collected on California residents and what is done with it. It also requires the implementation of additional measures to safeguard these new privacy rights.
- Penalties for failure to comply with the new law are severe.



5

5

Who does it apply to?

- The CCPA applies to every for profit company in the world if:
- They collect personal data of California residents
- They (or their parent company or a subsidiary) exceed at least one of the three thresholds:
 - » *Annual gross revenues of at least \$25 million*
 - » *Obtains personal information of at least 50,000 California residents, households, and /or devices per year*
 - » *At least 50% of their annual revenue is generated from selling California residents' personal information*

6
N
E
W
L
U
M
E

6



What is personal data

- CCPA defines personal data as 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. This law differs from others by including household information in the scope of the definition of personal data.
- Personal information may include but is not limited to names, email address, biometric data, IP address, Internet of Things information, geolocation data, professional or employment information, and other information.
- Publicly available information is not generally considered personal information under the CCPA.



What is a “sale” under CCPA?

- The CCPA definition of “sale” is very broad
- “Sale” doesn’t just mean monetary transactions, it includes any transfer or exchange for valuable consideration.
- It can mean selling, renting, disclosing, disseminating, making available, transferring, or communicating orally, in writing or otherwise.

Safeguarding the Privacy Rights of California Residents

The CCPA confers privacy rights on California residents that businesses must respect.

– These rights include the right to:

- » **Know** *what personal information is being collected about them,*
- » **Know** *whether their personal information is being sold or shared and to whom,*
- » **Prohibit** *the sale of their personal information to others,*
- » Request that a business **delete** *the personal information collected about them,*
- » Have **access** *to a portable version of their information,*
- » **Not be discriminated** *against exercising these new privacy rights (such as refusing to do business with someone who makes a request that their personal data not be sold)*

9

9

Top 10 Operational Impacts of CCPA

Data inventory and mapping of in-scope personal data and instances of “selling” data

Updates to privacy policies and review with update at least every 12 months

New processes for individual rights to data access (no more than twice in a 12 month period), data portability and deletion

“Do Not Sell My Data” button

Toll free number, interactive webform and other requirements



10

10

Top 10 Operational Impacts of CCPA

Training and awareness for employees

Updating agreements with third-party data processors

Remediation of information security gaps and system vulnerabilities

Creating change management process for any changes to data usage

Employees and job applicant notices

NUMEN



11

The Information Security Connection

Review

Review and/or upgrade your network security to ensure that standards are reasonable—particularly with regard to the collection and maintenance of consumer PI.

Incident Response

Review and revise incident response plan and potentially your BC/DR plans.

Governance

Address governance issues, including how and when executive leadership manages cybersecurity and involvement of independent directors.

Insurance

Evaluate risk profile and appetite of company, current levels of applicable insurance coverage, and assess need for additional insurance coverage.

12

12

Right to Deletion

– Some key exceptions

- » *Necessary for transaction*
- » *Necessary to detect security incidents or fraud*
- » *Required for functionality*
- » *Exercise of free speech*
- » *Complies with the California Electronic Communications Privacy Act*
- » *For scientific, historical or statistical public-interest research (limited)*
- » *Solely for internal uses aligned with the consumer's relationship with business*
- » *To comply with a legal obligation*

Do Not Sell My Data

- The CCPA allows consumers to opt out of a business' sale of its PI and In addition, businesses must affirmatively obtain permission from consumers between 13 and 16 years of age, and parental consent from minors younger than age 13, before selling their PI.
- No resolicitation- it's prohibited for the business to ask the consumer to change their decision for at least 12 months.

Responding to requests

- Within 10 days- Acknowledgement letter
- Within 45 days
 - » *Right to Know Letter*
 - » *Right to Delete Confirmation*
 - » *Right to Data Portability*
 - » *Do Not Sell My Data Confirmation*
 - » *Unable to Validate Requestor*
 - » *Denial of Request with Reason and Any Opportunity to Appeal*
- Optional extension letter for additional 45 days
- Notice of violation and show cause letter response

15

Non-Discrimination

- The CCPA does not permit a business to discriminate against a consumer because the consumer exercised any of the rights set forth in the statute. For example, businesses may not do the following to consumers who exercise their CCPA rights:
 - » *Deny goods or services to the consumer;*
 - » *Charge the consumer different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties;*
 - » *Provide different levels or quality of goods or services to the consumer.*

16

FORMIDABLE CONSEQUENCES FOR NON-COMPLIANCE

Consequences for non-compliance are severe. Failure to comply with the CCPA could cost companies thousands or even millions of dollars in fines and penalties, as well as severe reputational damage and lost business opportunities.

Penalties include:

- The California Attorney General may bring an action for civil penalties of \$2,500 *per inadvertent violation* and up to \$7,500 *per intentional violation*.
- For example, if 1,000 consumers were impacted at a cost of \$7,500, the fine could be up to \$7.5 million. If you process the data of ~400,000 Californians (about 1% of the population), and you are found to have *intentionally violated* CCPA in your dealings with each person's data, you could face fines of up to \$3 billion.
- Consumers may be able to bring private rights of action, including class actions, seeking actual damages or statutory damages ranging from \$100 to \$750 *per consumer per incident*.

AG Statements to Date

- In early December, California AG Xavier Becerra noted that AG enforcement will focus on company compliance efforts and that he intends to “make an example of” businesses that fail to comply.
- In October, when the proposed CCPA regulations were released, AG Becerra noted that the gap between January 1, when the CCPA goes into effect, and July 1, when enforcement commences, should not be seen as providing a safe harbor.
- Enforcement authority is not limited to the CCPA. His office has relied on other California laws to address perceived violations of privacy to date, and can be expected to continue to do so before the CCPA is fully enforceable or if its remedies are deemed insufficient to address perceived privacy violations.

