



COMPLIANCE WEBINAR SERIES

BROUGHT TO YOU BY OLD REPUBLIC TITLE INSURANCE CO.

Understanding Consumer Privacy Rights

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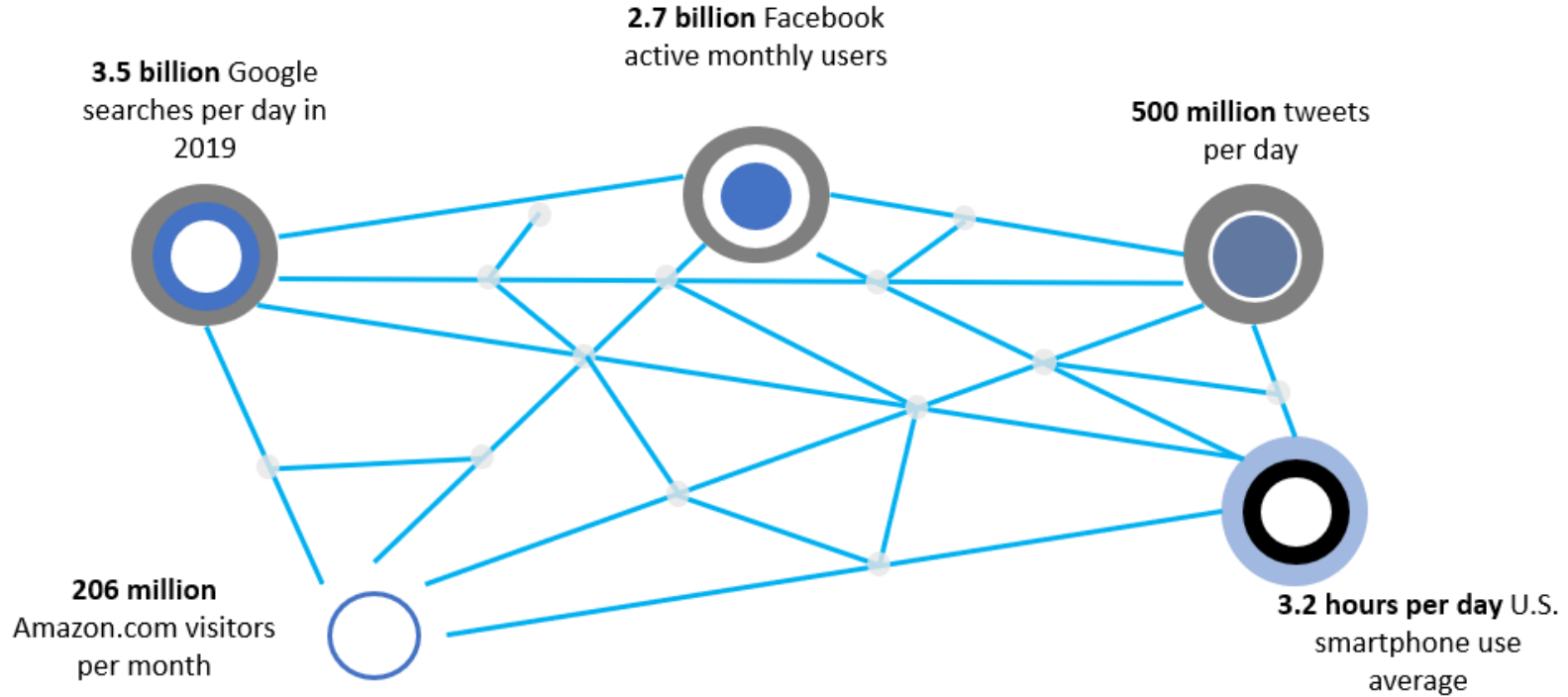
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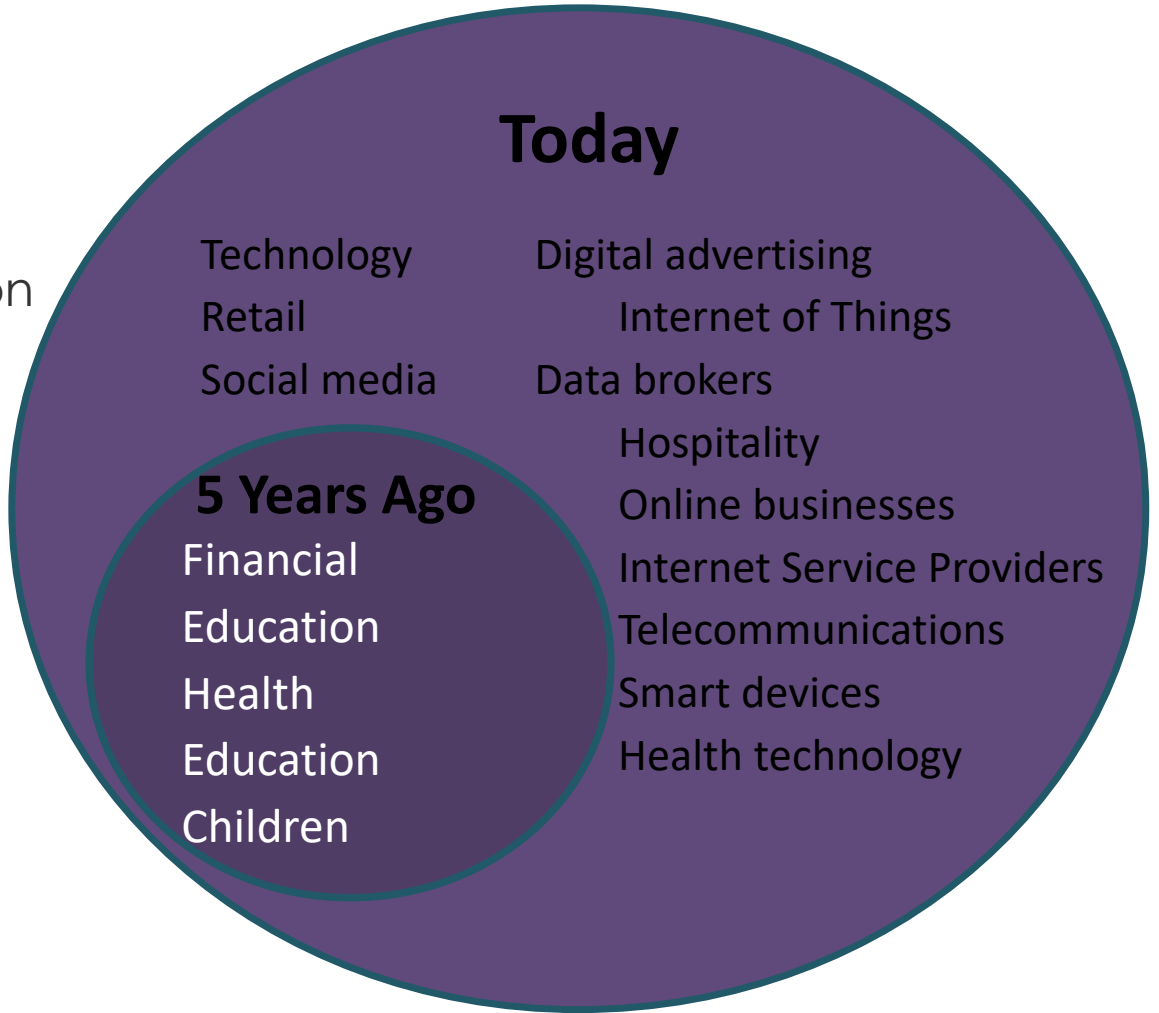
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Privacy in the Data Economy



Privacy in the Data Economy

Industries subject to regulation



Privacy Defined: Fundamental Shift & Core Regulatory Concepts

Fundamental Shift

- Data Ownership
- Consumer Data Privacy Rights

Core Concepts in Current Privacy Regulation

- Website privacy policies
- Disclosure of information usage and privacy practices
- Lawful basis for collection
- Limitations on use of personal information
- Opt out/opt in for certain personal information uses
- Portability, deletion or erasure of information
- Non-discrimination
- Reasonable security measures to protect information

Privacy Defined: Privacy vs. Security

Key differences emerging:

	Privacy Regulations	Security Regulations
Target audience	Sector-agnostic	Sector-specific
Protected data	Broadly defined personal information	Sensitive personal information
Harm	Data misuse	Data loss
Requirements	Consumer privacy rights + “reasonable” security	Cybersecurity programs

Privacy Timeline

2018

EU & EEA -

- GDPR effective

US -

- CCPA enacted
- VT data broker registration law

2019

US -

- CCPA amendments
- Nevada Online Privacy law
- Failed or carried over privacy legislation in 26 states

EU & EEA –

- Significant GDPR enforcement

2020

US -

- CPRA Ballot Initiative
- 6 Federal Bills
- Legislation in 15 states

California Consumer Privacy Act



Sweeping first-of-its-kind privacy law, which took effect January 1, 2020

Covers for-profit entities doing business in CA who collect personal information of a CA resident and control what happens to the information AND

- Earn \$25 million in annual gross revenue annually
- Buy, receive, sell or share for commercial purposes 50,000 consumer records per year OR
- Earn at least 50% of annual revenue “selling” personal information

California Consumer Privacy Act

Creates a series of rights for California residents:

- **Right to Know** – categories and specific pieces of personal information held
- **Right to Delete** – all personal information held about the consumer
- **Right to Opt-Out of Sale** – “sale” is any exchange of personal information for value
- **Right to Non-Discrimination** – cannot charge a different price for exercising rights under the CCPA
- **Right to litigate/damages** – CA consumer whose information is involved in data breach can sue for statutory damages



California Consumer Privacy Act

Personal information* includes:

- Identifiers (name, address, online identifier, email address, account name, SSN, driver's license number, passport number)
- Education, medical, or health insurance information
- Financial information
- Personal property records, products or services purchased or considered
- Internet activity, internet browsing history, and interactions with a website
- Professional or employment-related information
- Geolocation data
- Inferences drawn from the consumer's information for creating a consumer profile

*Excludes public record data, employee data and B2B/CRM data (AB 1281 Update)



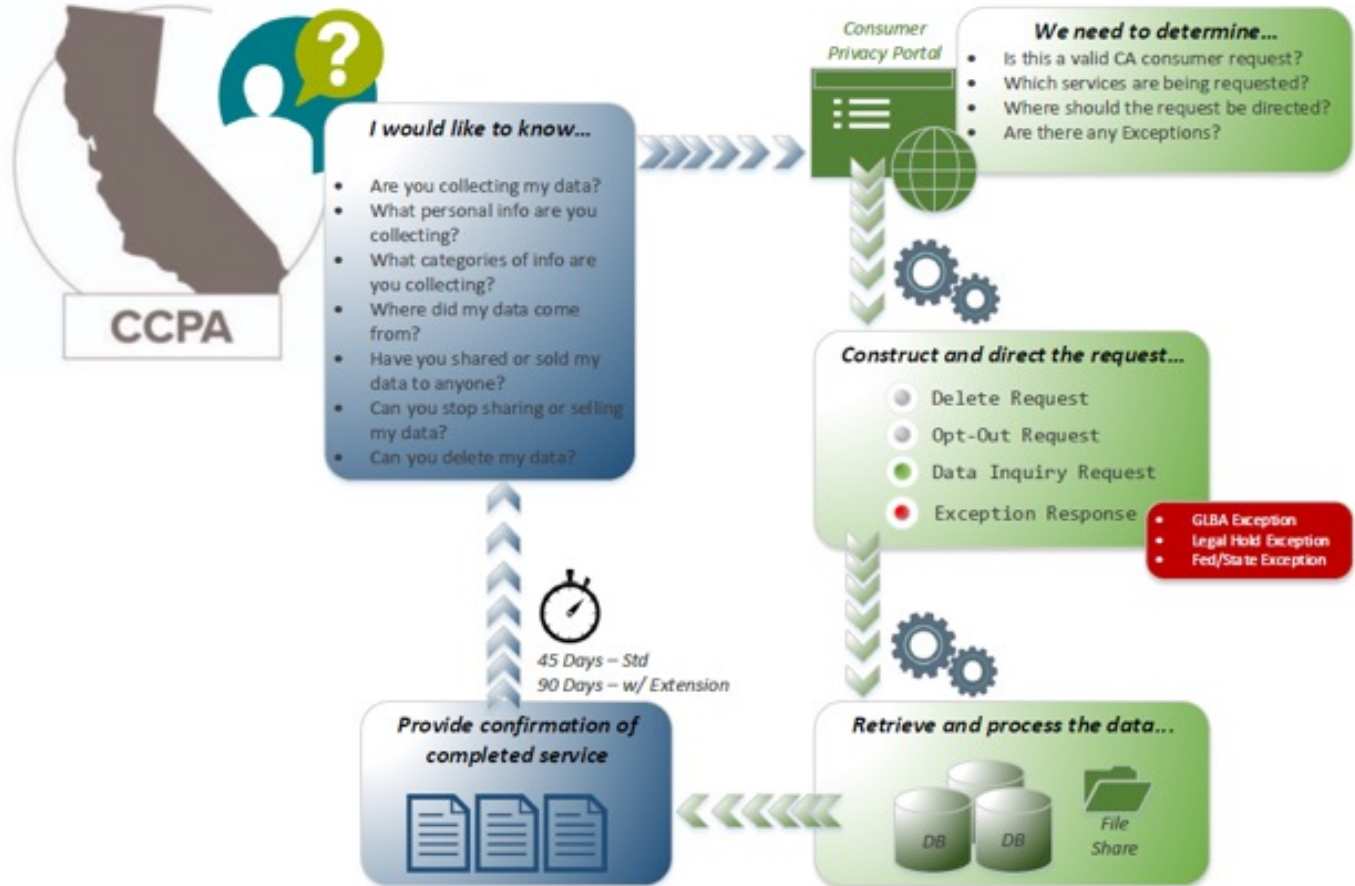
California Consumer Privacy Act



Service Provider vs. Third Party Contracts

“**Service provider**” processes information on behalf of a business and to which the business discloses a consumer's personal information for a business purpose pursuant to a written contract, **provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the business, or as otherwise permitted by this title,** including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract with the business.”

California Consumer Privacy Act



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California Consumer Privacy Act- Litigation

California consumers can bring civil suits for **statutory damages** after a data breach:

- Can seek statutory damages of between \$100 and \$750 “per consumer per incident or actual damages, whichever is greater.”
- No need to prove actual damages, a big shift for data breach litigation.
- Data breach involves **narrower definition** of “personal information” - Name + SSN, DL Number, or CA ID card number; account, credit card, or debit card number, with password or code giving access to financial account; or medical or health insurance info.

California Privacy Rights Act

California voters passed a ballot initiative in November to replace CCPA with the CPRA, which the legislature can not substantial change:

- Effective January 1, 2023, but applies to any information collected on or after January 1, 2022
- Removes 30-day right to cure
- Reduces applicability to small business by increasing number of consumers from 50k to 100k
- Expanded and modified “rights” and new category of “sensitive” information
- Creates new regulatory enforcement authority
- Disclosure of data retention time frame
- Retains GLBA exemption
- Extends employee and B2B exemptions to January 1, 2023

Preparing for CCPA/CPRA and Similar Regulations

Determine law's applicability

- Am I a covered business?
- Do I possess personal information covered by the law?
- Am I subject to partial or complete exemptions?

Data mapping

- What personal information do I collect?
- Where it is stored? Is it accessible if I have to modify or delete?
- For what purpose do I collect it? Do I use it for any other purpose?
- Do I share the information with third parties or services providers?

Preparing for CCPA/CPRA and Similar Regulations

Update disclosures

- Notice at collection
- Right to opt-out of the sale of personal information (Do Not Sell)
- Regarding incentives
- Privacy policy (listing privacy rights and how to exercise them)

Develop operational compliance program

- Website and app notices
- Enable “do not sell” capabilities if selling data
- Develop consumer rights response process
- Set up multiple contact points for consumer requests
- Require training for all employees handling consumer requests

Preparing for CCPA/CPRA and Similar Regulations

Security practices and procedures

- Benchmark information security program against industry standards
- Create and test incident response plan

Review third party contracts

- Do service provider contracts meet regulatory requirements?
- Do they restrict information use and prohibit sale of personal information?
- Do contracts require cooperation with consumer requests and compliance obligations?

REDACTION: PENDING LEGISLATION AND BEST PRACTICES



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Redaction and Record Shielding

- The title industry recognizes limiting access to certain personal information in government records can help protect the safety of at-risk groups.
- The title industry needs to be a leader in identifying thoughtful solutions that protect at-risk parties, without restricting the ability to buy, sell or refinance real estate.
- The industry needs to prepare to accommodate process changes, knowing we can't continue with the status quo.

Identifying Effective Solutions

- The best way to shield sensitive information is to limit who has access to the protected data, without removing or altering vital public records.
- Effective state programs have taken one of two approaches:
 1. In [Arizona](#), an eligible person files an affidavit with the court to prohibit the general public from accessing personal information. If approved by the court, an order is issued directing the clerk to prohibit public access to the information. The prohibition on public access expires after a period of time, generally 4-6 years. Access for real estate/title professionals is available.
 2. In [Minnesota](#), an eligible person files an application with a state agency, usually the Attorney General or Secretary of State, to certify eligibility for the program. Once certified, a participant may file a notice to prohibit public access to government records containing personal information. Access for real estate/title professionals is available.

Creating Best Practices for Implementation

- Permitted access should be available to:
 - Someone with a signed release from the protected individual or court order;
 - Licensed professionals with existing consumer privacy/confidentiality requirements (attorneys, title professionals, assessors, etc.);
 - Licensed entities with a signed confidentiality agreement with a government entity.
- State-wide uniform standards and processes must be followed to ensure all records pertaining to an individual are properly shielded.
- The general index must not shield or redact the full combination of name and address. Records must be discoverable within the public records index, which should include a flag indicating that the document has been shielded.
- Shielding requests should be time limited to minimize long-term impact on the real estate conveyancing system and ensure the continued accuracy of the public records. A renewal request can be submitted every four to six years.
- A process for record restoration must exist to facilitate real estate transactions and transfers, or administration of a will.
- Authorized access to shielded government records should be available electronically, as well as in-person, to allow for social distancing measures and, absent a public health necessity, to accommodate access for non-local authorized parties.
- Government entities and third parties should maintain robust records to track and log access of shielded records.

State and Federal Legislative Activity

- Congressional Activity: Daniel's Law, the Judicial Security and Privacy Act of 2020 (S. 4711 and H.R. 8591)
- Increasing State Activity
 - New Jersey
 - Florida
 - Ohio



THANK YOU

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