



# What the Future Holds for Enforcement of Privacy Laws

A discussion of what to expect from privacy regulators and how to respond

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# Brief Overview of Today's Discussion

- Where are we today?
  - California Consumer Privacy Act of 2018 (CCPA); California Privacy Rights Act passed in November 2020 (CPRA)
  - Continued progress of federal privacy legislation
  - Other states moving comprehensive privacy legislation forward
- Where are we going?
  - New privacy regulator on the block in California: the California Privacy Protection Agency
- How can businesses prepare and respond?

# Where are we today?

## California Consumer Privacy Act (CCPA)



- California leads the way for development of privacy laws
  - First state to pass a comprehensive consumer data privacy law: CCPA
  - November 2020, California voters passed CPRA
  - Many other states now contemplating their own consumer data privacy laws
- Federal privacy regulators
  - **FTC**, FCC, Department of Health and Human Services, CFPB
  - Federal privacy legislation on the horizon? Preemption and private right of action hurdles

# Where are we going?

## California Privacy Rights Act of 2021 (CPRA)

- Current law in effect, still California Consumer Privacy Act (CCPA)
- CPRA will significantly modify the CCPA
  - Effective January 1, 2023; enforced July 1, 2023
  - Modifies definition of covered “business”
- Several changes align with Europe’s GDPR
  - Introduces “sensitive personal information” as a new regulated dataset in California, which will be subject to new disclosure and purpose limitation requirements
  - Expands consumer rights (e.g., right to correction, opt-out and access to automated decision making) and amends existing rights
  - Adopts certain GDPR concepts (data minimization, purpose and storage limitation)

# Regulatory Enforcement:

## California Privacy Protection Agency

- The CPRA creates a new privacy regulator on the block: the California Privacy Protection Agency (CPPA)
  - First privacy agency in the United States devoted solely to consumer data privacy
  - Responsible for enforcement, rulemaking, auditing, and education
  - CPPA will have the power to cooperate with other privacy enforcement agencies in the state and beyond (e.g., EU data protection authorities)
  - Serve as “independent watchdog” whose mission is to “vigorously enforce” the CPRA
  - Monitor and provide input on privacy-related legislation
- California AG will still have power to enforce CPRA through civil penalties and will coordinate its actions with the CPPA

# What can we learn?

## Current investigation scenarios

- Deficiency letters
- “Just want to Talk”
- “Here is a Subpoena”

## Your Response:

- Call your lawyer

# How should you respond?

## Deficiency Letters & Interviews

- When and how do they occur?
  - Usually unexpected
- What should you do when you receive a deficiency letter?
- What should you do when you receive a request for an interview?
  - Agree, but at a later point (with your lawyer)
- What are the dangers of the interview?

# How should you respond?

## Subpoenas

- When and how do they occur?
- What should you do when you receive a subpoena?
  - Call your lawyer
    - Understand scope of requests and investigation
    - Try to narrow, if possible
- Penalties possible for noncompliance



# Media and Public Relations Strategies?

- Depends upon the context
  - Deficiency Letters
  - Investigations
  - Subpoenas

# How can you **prepare now**?

- Have a **plan for compliance** with the CPRA and other data privacy laws
- Have a way to **monitor developments** in the law, e.g., new laws, amendments, regulations, interpretive advice and guidance from regulators
- Know **who you are going to call** when you receive contact from a regulator (your attorney)

# Conclusions and Parting Advice

- First regulator dedicated to consumer privacy
- We can heed lessons from investigations by other government regulators
- Privacy regulation landscape in a new era



Questions?

# Thank you!



Questions? Please  
contact us at any time  
for guidance.



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