

**CYBERSECURITY & DATA PRIVACY GROUP WEBINAR**

**Countdown to CCPA Compliance:  
The Basics of California's New Privacy Law  
and What You Need to Be Doing Now**

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# Presenters



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# Agenda

- ✓ Does the CCPA apply to me?
- ✓ How is the CCPA enforced?
- ✓ What are the consequences of noncompliance?
- ✓ How do I comply with the requirements?



# Background

- Landmark privacy law that empowers CA residents to know the types of personal information that businesses collect about them and gives them the right to object to the sale of their personal information to third parties.
- Hastily passed to avoid a more stringent ballot measure.
- **Effective Date:** January 1, 2020.
- **Enforcement Date:** sooner of six months after publication of the final regulations or July 1, 2020.
- Regulations must be adopted on or before July 1, 2020

# Who Does The CCPA Protect?

## What is a “Consumer”?

- California “resident”
- Defined in California personal income tax regulations
  - Natural person
  - Includes those outside the state for temporary or transitory purposes
- No exception for employees or students

# What Does the CCPA Protect?

What is personal information (“PI”)?

- 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.



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# What Does the CCPA Protect?

What is personal information (“PI”)?

- Definition includes non-exhaustive list of identifiers, including
  - IP address
  - Biometric info
  - Inferences used to create a profile
  - Browsing and search history or info regarding consumer’s interaction with a site or ad
  - Professional or employment-related info
  - Education information
  - Geolocation data

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# What Does the CCPA Protect?

What is personal information (“PI”)?

- Does not include:
  - Aggregate information
  - De-identified information
  - Publicly available information that is lawfully made available from federal, state, or local government records
- Carve-out for information governed by HIPAA, CMIA, GLBA, CA Financial Information Privacy Act, or DPPA, or collected as part of clinical trial

# Who Does the CCPA Regulate?

## What is a business?

- ✓ For profit
- ✓ Does business in California
- ✓ Collects consumer PI
- ✓ Alone, or jointly with others, determines the purposes and means of processing PI
- ✓ Satisfies one of the following thresholds:
  1. Annual gross revenue  $\geq$  \$25M
  2. Annually buys, receives for commercial purpose, sells, or shares for a commercial purpose the PI of 50,000 or more consumers, households, or devices
  3. Derives 50% of annual revenue from selling PI

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# Who Does the CCPA Regulate?

## What is a business?

- Includes any entity that controls or is controlled by a business if they share common branding
- “Common branding” means a shared name, service mark, or trademark

# “Business Purposes” vs. “Commercial Purposes”

## What is a business purpose?

- Use of PI for a business or service provider’s operational purposes, or other notified purposes, provided the use of PI is reasonably necessary to achieve the operational purpose for which the PI was collected or for a compatible operational purpose

## What is a commercial purpose?

- To advance the business’s commercial or economic interests including by inducing a person to buy or exchange products, goods, information, or services, or enabling a commercial transaction

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# What Is a Sale?

A disclosure is a sale when a business:

- ✓ Sells, rents, releases, discloses, disseminates, makes available, transfers, or otherwise communicates
- ✓ Orally, in writing, or by electronic or other means
- ✓ A consumer's personal information
- ✓ To another business or a third party
- ✓ For monetary or other valuable consideration

# “Service Provider” vs. “Third Party”

What is a **service provider**?

- For-profit entity that processes info on behalf of a business and to which a business discloses consumer PI for a business purpose pursuant to a written contract

What is a **third party**?

- A person who is not a business or a service provider

# Enforcement – Overview

- Potentially large civil penalties and statutory damages.
- Private right of action under Section 1798.155(a)<sup>1</sup> and the proposed amendments.

<sup>1</sup> Major liability section of the CCPA.

# Enforcement— California AG

- **Opinions and warnings**
  - Opportunity to cure w/in 30 days. <sup>1</sup>
- **Enforcement Action**
- **Civil penalties** of up to \$2500 and not to exceed \$7500 per violation for intentional conduct. <sup>2</sup>
  - As allowed by section 17206 of Bus & Prof. Code.
  - Similar to enforcement system under CalOPPA.
  - Likely a per capita computation of damages

<sup>1</sup> Recent proposal eliminates right to cure.

<sup>2</sup> Section 1798.50



# Enforcement – Private Right of Action

Currently limited to data breaches involving narrow categories of PI<sup>1</sup>, and requires prior notice to the AG.<sup>2</sup>

- Statutory damages of \$750 per consumer per incident (without proof of actual harm) plus injunctive relief.
- 30 day cure period.

➤ 8/18 – CA AG urges lawmakers to broaden the private right of action.

➤ 2/19 – proposal for new amendment significantly expanding the private right of action.

<sup>1</sup> “PI” is defined more narrowly under this section to include last name w/ first initial, SS#, DL#, bank info, or health insurance info.

<sup>2</sup> Section 1798.150.

# INTERPRETING REGULATIONS

Public  
Comment  
Period  
Closed

More detailed  
Information

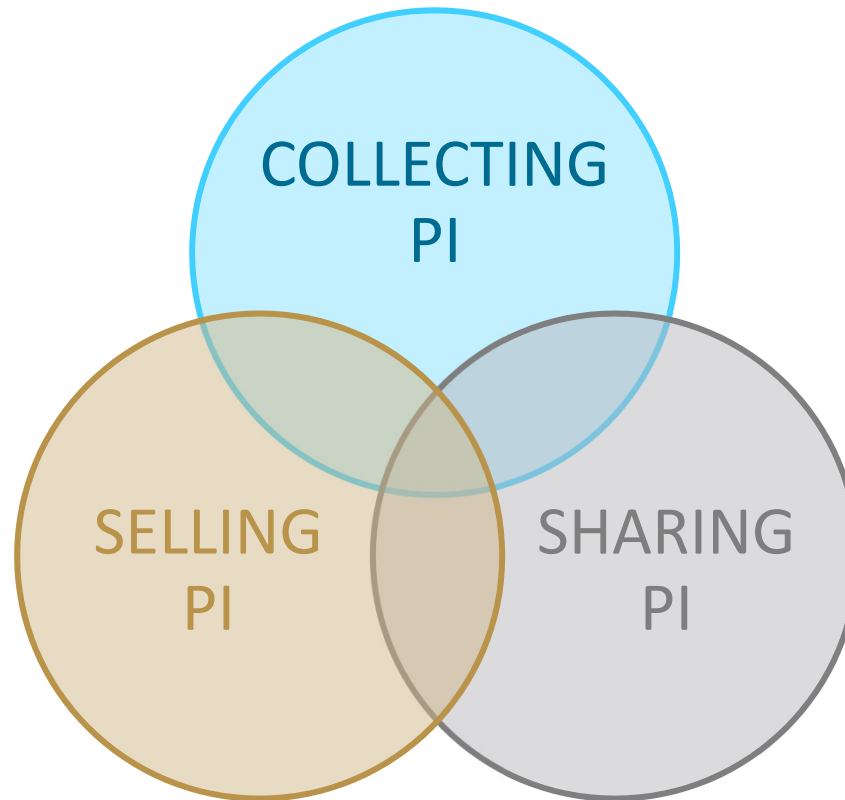
“As Necessary  
to Further the  
Purpose of the  
Act.”

July 2020

Last Day By  
Which  
Enforcement  
Can Begin

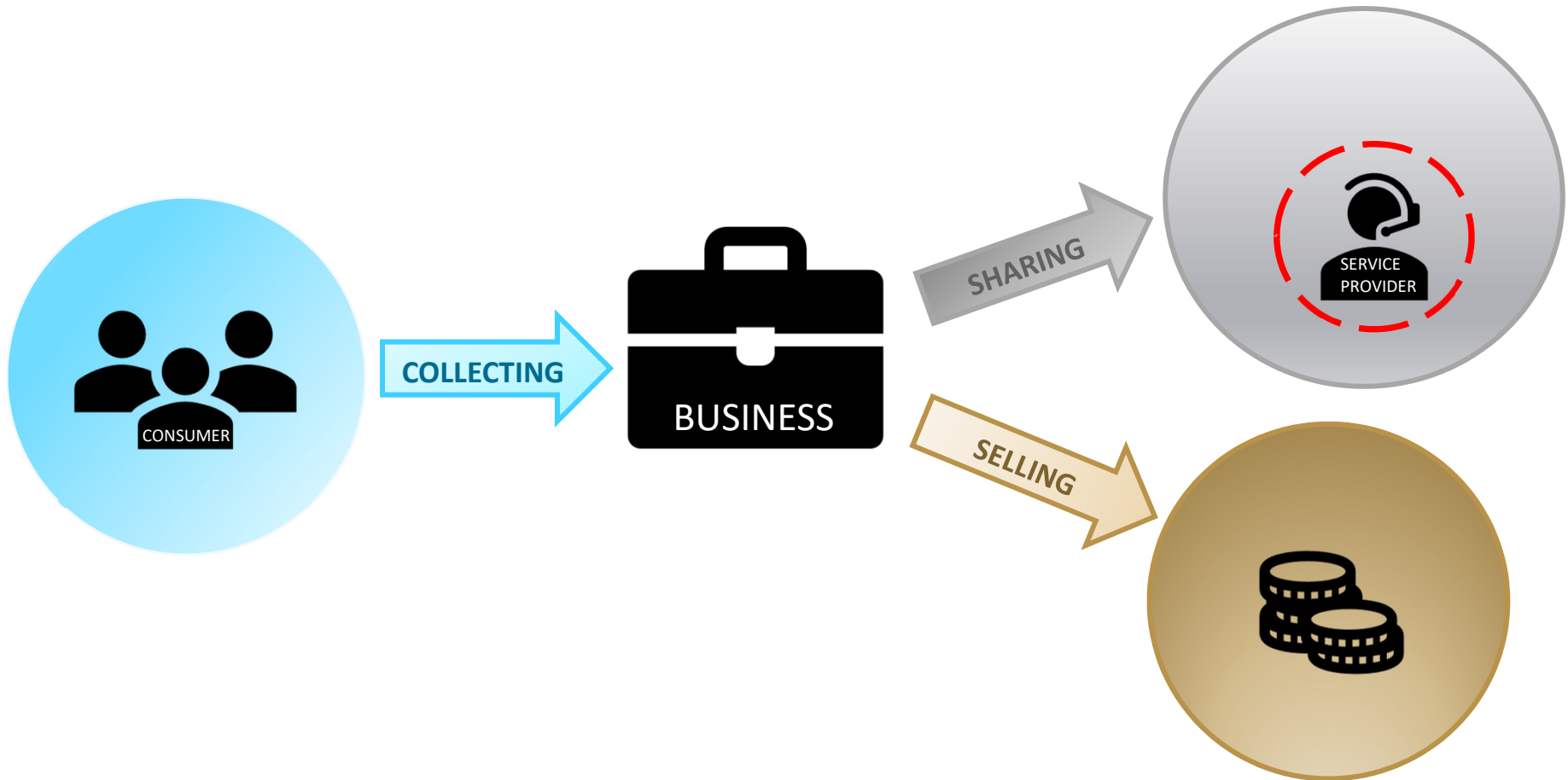
One Year Look  
Back Period – Is  
it looking  
good?

# Compliance Roadmap



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# Compliance Roadmap



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# Compliance – Collecting PI

**NOTICE:** At or before the point of collection, provide notice of:

- The *categories* of PI to be collected
- Purposes for which each of the categories of PI will be used <sup>1</sup>
- Consumers' rights

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<sup>1</sup> Provide subsequent notice prior to collecting additional categories of PI or using the previously collected PI for additional purposes

# Compliance – Collecting PI

**RIGHT TO DELETION:** Upon request, delete any PI collected about the consumer.

**RIGHT TO DISCLOSURES:**

- Specific pieces of PI collected
- Categories of PI collected
- Categories of sources from which the PI was collected
- Business or commercial purpose for collecting the PI

# Compliance – Sharing PI

**NOTICE:** At or before the point of collection, provide notice of:

- Purposes for which each of the categories of PI will be used <sup>1</sup>
- Consumers' additional rights

## **RIGHT TO DISCLOSURES:**

- Business or commercial purpose for sharing the PI
- Categories of PI disclosed for a business purpose
- Categories of third parties with whom the PI is shared

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<sup>1</sup> Provide subsequent notice prior to collecting additional categories of PI or using the previously collected PI for additional purposes

## Compliance – Sharing PI with Service Providers

Businesses may be vicariously liable for breaches of third parties they share the PI with (!!!)

Businesses are not vicariously liable for breaches of “Service Providers” if at the time of disclosing the PI, the Business does not have actual knowledge, or reason to believe, that the Service Provider intends to commit such a violation.



## Compliance – Sharing PI with Service Providers

The “Service Provider” exception applies only where PI is disclosed for a **business purpose** pursuant to a **written contract** that:

- ✓ Prohibits the recipient from (1) selling the PI, and/or (2) using the PI for any purpose other than performing the specified services.
- ✓ Includes a certification that the recipient understands the foregoing restrictions and will comply with them

# Compliance –Selling PI

**MINORS MUST OPT-IN:** PI of minors may not be sold without consent (parent/guardian required for minors under 13 years old).

**RIGHT TO OPT-OUT:** Provide a clear and conspicuous link on the homepage, titled “***Do Not Sell My Personal Information,***” to a page that enables a consumer/authorized person to opt out of the sale without requiring creation of an account.

# Compliance –Selling PI

**NOTICE:** Include a description of a consumer’s rights to opt-out, along with a separate link to the “Do Not Sell My Personal Information” page in:

- (1) the online privacy policy or policies, and
- (2) any California-specific description of consumers’ privacy rights.

**TRAINING:** All individuals responsible for handling consumer inquiries about the privacy practices or compliance with the CCPA must be informed of all opt-out requirements and how to direct consumers to exercise their opt-out rights

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# Compliance –Selling PI

**RIGHT TO DISCLOSURES:** Upon request, disclose to the consumer the categories of PI that were sold, or if consumer's PI was not sold, disclose that fact.

**RE-SELLING:** PI may not be re-sold unless the consumer has received explicit notice and is provided an opportunity to exercise the right to opt out

# Compliance –Selling PI

**NO DISCRIMINATION:** Businesses cannot discriminate against consumers who exercise their right to opt-out, such as making certain services or features available only to those who do not opt-out.

**DIFFERENT PRICING PERMISSIBLE:** Businesses *may charge a different price* to consumers who exercise their right to opt-out for using certain services or features.

# Final Remarks

- What's next:
  - Create an inventory, including categories of PI collected and specific pieces of PI collected, sources of PI collected, the business or commercial purposes for which PI is used and shared, third parties with whom PI is shared
  - Determine where you are acting as a business, a service provider, or a third party
  - Identify any instances where you are “selling” personal information and whether you are able to stop selling if requested or if the sale falls into one of the exceptions
  - Determine when you must provide notice and the best way to deliver it
  - Update service provider agreements
  - Create or update processes for requesting access, opt-out, and deletion
  - Train employees
  - Follow statutory and regulatory updates in California, as well as activity in other states and in Congress

# Questions

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# If you have any questions, please contact:



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