SQUIRE PATTON BOGGS

CPRA/CDPA Preparedness Guidance and Recommendations

Overview

New consumer privacy laws passed in California and Virginia create significant new compliance obligations for most businesses doing business in those states as of January 1, 2023. We recommend conducting a gap analysis, project plan and budget in 2021 and developing and implementing a compliant information governance program in 2022.

- The California Privacy Rights Act ("CPRA" or "Title"):
  - is a comprehensive rework of California's paradigm-shifting 2018 consumer protection law (the California Consumer Privacy Act or "CCPA"), that was enacted through ballot initiative on November 3, 2020.
  - it amends the CCPA to, among other things, eliminate the existing carve-outs for data collected from job applicants, employees, contractors and for data of persons representing another business in connection with a B-to-B transaction or communication.
- The Virginia Consumer Data Protection Act ("CDPA" or the "Act"):
  - is a holistic data privacy law that regulates the collection, use and disclosure of "personal data" (broadly defined to include most information that would be PI under CCPA/CPRA), but does not include persons acting in an employment or B-to-B context; provided, however that HR data used outside of HR purposes could be in scope of consumer rights.
    - is in many ways similar to the CPRA, but it also shares some additional concepts inspired by the EU's General Data Privacy Regulation (the "GDPR").

Accordingly, covered business will need to be prepared to honor new data subject rights well beyond what is currently required by CCPA (explained on the chart on the next page).

We have helped thousands of clients prepare for and comply with GDPR and CCPA, as wells as other privacy laws throughout the world. We bring that experience to developing information governance programs that are designed not only to address the immediate CPRA/CDPA obligations, but to be a foundation for compliance with future laws under consideration in about half the states, and at the federal level.

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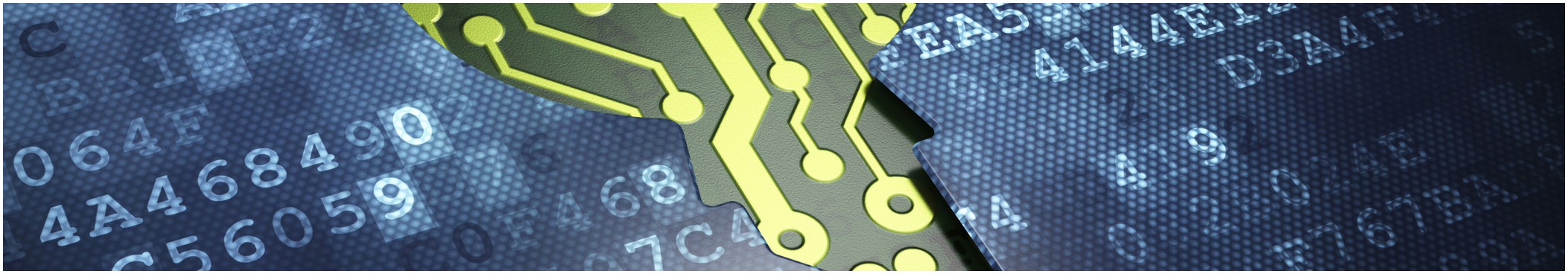

Comparison of Consumer Rights under the, Nevada Privacy of Information Collected on the Internet from Consumers Act (PICICA), California Consumer Privacy Act (CCPA), Consumer Privacy Rights Act (CPRA), Virginia Consumer Data Protection Act (CDPA) and General Data Protection Regulation (GDPR)

Below is a chart summarizing what consumer rights are provided under the VCDPA, CCPA, CPRA and GDPR.

Consumer Right	PICICA	CCPA	CPRA	VCDPA	GDPR
Right to access	✘	✔	✔	✔	✔
Right to confirm personal data is being processed	✘	Implied	Implied	✔	✔
Right to data portability	✘	✔	✔	✔	✔
Right to delete	✘	✔	✔	✔	✔
Right to correct inaccuracies/right of rectification	✘	✘	✔	✔	✔
Right to opt-out of sales	✔*	✔	✔	✔	✔**
Right to opt-out of targeted advertising/cross-context advertising	✘	✘**	✔	✔	✔
Right to object to or opt-out of automated decision-making	✘	✘	✔	✔	✔
Opt-in or opt-out for processing of "sensitive" personal data?	✘	✘	Opt-out†	Opt-in	Opt-in††
Right to object to/restrict processing generally	✘	✘	✘	✘	✔
Right to non-discrimination	✘	✔	✔	✔	Implied

* Website and online service operators are required to offer an 'opt-out' but only for limited disclosures of certain information and only if the disclosure is made in exchange for monetary consideration.

** Selling personal data under the GDPR generally would require the consent of the data subject for collection and would be subject to the right to object to processing.

*** However, certain data disclosures inherent in this type of advertising are arguably a "sale," subject to opt-out rights.

† Under the CPRA, consumers' opt out rights do not apply to processing sensitive personal information for certain limited purposes.

†† Under the GDPR, processing sensitive personal information is allowed with explicit consumer consent or where it is otherwise justified under another recognized lawful basis.

Both CPRA and CDPA have purpose, proportionality, minimization and retention obligations, and CPRA requires the disclosure of retention periods (or if not then "possible" how that period will be determined), by category of data, at the point of collection. As a result covered business will need to develop very detailed retention schedules that include purposes of processing, and are tied to categories of data, and a defensible destruction program. This goes well beyond what public companies must have in the way of retention programs and schedules under the Sarbanes-Oxley Act and SEC regulations, though these are a good starting point.

1. **Create or update data inventories or maps and develop and deploy data management capabilities.**
2. **Address personnel data and business to business communications.**
3. **Conduct privacy impact assessments of data activities, including website and mobile app audits.**
4. **Update privacy policy(ies) and notices.**
5. **Update or implement a vendor and data recipient management program, including** updating contacts to meet new statutory requirements, and ensure appropriate data handling and security.
6. **Assess current consumer request procedure, and** update to reflect the new rights.
7. **Shore-up data security and breach preparedness,** which we recommend be under our direction to provide for potential legal privilege.
8. **Implement Privacy-by-Design, by** launching an ongoing program for assessing and addressing privacy impacts, and establishing governance and goals for your data program.
9. **Assess compliance and gaps, prepare 2022 notices and 2023 preparedness plan to be completed during 2022.**
10. **Implement programs for retention and defensible destruction, reporting, record-keeping and training.**