



CCPA Coming in 2020 – What you need to know now to comply with new privacy laws



Smart decisions. Lasting value.™

Agenda

- CCPA timeline
- CCPA application
- CCPA definitions
- What are areas of exclusions from CCPA?
- Consumer rights under CCPA
- Preparing for CCPA
- CCPA enforcement and civil action
- Nevada's amended privacy law
- Resources
- Any questions?



Speakers



Pam Hrubey,
DrPH, CCEP,
CIPP/US
Crowe LLP



Melissa Krasnow,
CIPP/US, and
Partner,
VLP Law Group LLP

Polling question one

Will your company will be subject to the CCPA when it becomes operative on January 1, 2020?

1. Yes, our company will be subject to the CCPA
2. No, we do not believe our company will be subject to the CCPA
3. Help! We don't know if our company will be subject to the CCPA

California Consumer Privacy Act, as amended (CCPA) timeline

- CCPA becomes operative on January 1, 2020



- California attorney general released *proposed* CCPA regulations in October 2019, available at <https://www.oag.ca.gov/privacy/ccpa>
- California attorney general needs to adopt CCPA regulations on or before July 1, 2020
- However, California attorney general cannot bring enforcement action until 6 months after publication of such CCPA regulations or July 1, 2020, whichever is sooner

CCPA application

- CCPA applies to a business, a service provider and a third party



- **Business:** a legal entity organized or operated for the profit or financial benefit of its owners, which meets one of the following criteria:

- **Either:**

- Has annual gross revenues in excess of \$25 million
- Alone or in combination, annually buys, receives for the business's commercial purposes, sells, or shares for commercial purposes, alone or in combination, the personal information of 50,000 or more consumers, households, or devices
- Derives 50 percent or more of its annual revenues from selling consumers' personal information

- **And:**

- Collects consumers' personal information or on behalf of which that information is collected
- Alone, or jointly with others, determines the purposes and means of the processing of consumers' personal information
- Does business in California

CCPA application (con't)

- **Business** also means any entity that controls or is controlled by a business and that shares common branding with the business, meaning sharing a name, servicemark, or trademark
- **Service provider:** a legal entity organized or operated for the profit or financial benefit of its owners that 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 the CCPA, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract with the business



CCPA application (con't)

- **Third party:** a person that is not either of:
 - Business that collects personal information from consumers under the CCPA
 - Person 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 person receiving the information from:
 - Selling the personal information
 - Retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract
 - Retaining, using, or disclosing the information outside of the direct business relationship between the person and the business
 - Includes a certification made by the person receiving the personal information that the person understands the foregoing restrictions and will comply with them

CCPA definitions



- **Consumer:** a California resident
- **Personal information:** information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household
- **CCPA describes various types of personal information**
- **Sell, selling, sale, or sold:** selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means a consumer's personal information by one business to another business or a third party for monetary or other valuable consideration, subject to certain specified exceptions

What are areas of exclusions from CCPA?

- **Must read each CCPA exclusion carefully**
- Areas of exclusions from the CCPA include, without limitation:
 - Wholly outside of California commercial conduct
 - Preemption by/conflict with federal law or the US or California Constitution
 - Protected health information/HIPAA or medical information/California Confidentiality of Medical Information Act
 - Personal information/Fair Credit Reporting Act
 - Personal information/Gramm-Leach-Bliley Act or personal information/California Financial Information Privacy Act
 - Personal information/Driver's Privacy Protection Act
 - Vehicle information or ownership information
 - Before January 1, 2021 exclusions

Polling question two

Do you believe your company will be subject to the CCPA when it becomes operative on January 1, 2020?

1. Yes, we believe our company will be subject to the CCPA
2. No, we do not believe our company will be subject to the CCPA
3. Help! We still don't know if our company will be subject to the CCPA

Consumer rights under CCPA



A consumer under the CCPA has the right to request the following (regarding the past 12 months):

- Categories of and specific pieces of personal information collected from and/or about consumer
- Categories of sources from which the personal information was collected
- Business or commercial purpose for collecting or selling personal information
- Categories of third parties with which personal information was shared
- Categories of personal information sold and categories of third parties to which the personal information was sold by category of personal information for each category of third party
- Categories of personal information disclosed for a business purpose

Consumer rights under CCPA (con't)



A consumer under the CCPA has the right to request the following (regarding the past 12 months):

- Delivery to the consumer of categories and specific pieces of personal information collected from the consumer
- Deletion of any personal information about the consumer that the business has collected from the consumer (and direct any service providers to delete the consumer's personal information), subject to certain exceptions

Additional consumer rights:

- Right to opt-out: right, at any time, to direct a business that sells personal information about the consumer to third parties not to sell the consumer's personal information
- A business must not sell the personal information of consumers if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, regarding consumers who are at least 13 years of age and less than 16 years of age, or the consumer's parent or guardian, regarding consumers who are less than 13 years of age, has affirmatively authorized the sale of the consumer's personal information (right to opt-in)
- A business must not discriminate against a consumer who exercises any of the consumer's rights under the CCPA

Preparing for CCPA



Privacy policy / notice / website updating ("Do Not Sell My Personal Information" link on Internet homepage)



Consumer request methods, process and procedures:

- Number and types of methods for a consumer to submit a request
- Authentication
- Response mechanics, including timing

Preparing for CCPA (con't)



Consumer personal information

- Identify where personal information of consumers exists
- Map the storage locations and data flow



Training (employees, etc.)



CCPA contract language

- Prepare CCPA contract language and implement
- Anticipate receiving CCPA contract language from and responding to contract partners

Polling question three

If you believe the CCPA applies to your company, please select the action items you have implemented, revisited, or otherwise addressed in preparation for the CCPA's operative date of January 1, 2020:

1. We have started creating data maps outlining where personal information is collected, stored, used, or shared
2. We have written or updated our privacy policy regarding the CCPA
3. We have written or updated our privacy notices regarding the CCPA
4. We have made changes to the design of our website regarding the CCPA
5. We have identified at least two methods for a consumer to submit a request under the CCPA
6. We are designing CCPA training for our employees, etc.
7. We have prepared CCPA language for our vendor contracts (existing and going forward) and plan to implement
8. We are working on other items relating to the CCPA
9. Help! We don't know what our company is doing or have not started to work on action items relating to the CCPA

CCPA enforcement and civil action



- Any person, business, or service provider that violates the CCPA shall be subject to an injunction and be liable for a civil penalty of not more than \$2,500 for each violation or \$7,500 for each intentional violation
- A consumer can bring a civil action (after satisfying certain procedural requirements):
 - In an amount not less than \$100 and not greater than \$750 per consumer per incident or actual damages, whichever is greater
 - Regarding their nonencrypted and nonredacted personal information that is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of the business's violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information

Nevada's amended privacy law

- Nevada's amended privacy law became effective October 1, 2019
(Does this mean that what happens in Vegas can stay in Vegas?)
- Privacy notice and consumer request requirements
- Applies to a data collector that also is an operator
 - Data collector: any governmental agency, higher education institution, business entity, or association that, for any purpose, whether by automated collection or otherwise, handles, collects, disseminates, or otherwise deals with nonpublic personal information
 - Operator: a person that owns or operates an Internet website or online service for commercial purposes, collects and maintains covered information from consumers who reside in Nevada and use or visit the Internet website or online service and purposefully directs its activities toward Nevada, consummates some transaction with Nevada or a Nevada resident, purposefully avails itself of the privilege of conducting activities in Nevada, or otherwise engages in any activity that constitutes sufficient nexus with Nevada to satisfy the requirements of the US Constitution

Nevada's amended privacy law (con't)

- Operator does not include:
 - Third party that operates, hosts, or manages an Internet website or online service on behalf of its owner or processes information on behalf of the owner of an Internet website or online service
 - Financial institution or an affiliate of a financial institution subject to the Gramm-Leach-Bliley Act and its regulations
 - Entity subject to HIPAA and its regulations
 - Exclusion regarding motor vehicle manufacturer or person who repairs or services a motor vehicle
- Definitions for consumer, covered information, personal information and sale
- Nevada attorney general enforcement and no private right of action against an operator

Resources

- <https://www.crowe.com/about-us/our-people/pam-hrubey>
- <https://www.vlplawgroup.com/attorneys/melissa-krasnow/>
- <https://www.irmi.com/biographies/melissa-krasnow>

Polling question four

Have you received CCPA-related questions from customers, employees, management/board of directors, third parties, or other stakeholders associated with your business?

- 1. Yes, we have received CCPA-related questions from customers
- 2. Yes, we have received CCPA-related questions from employees
- 3. Yes, we have received CCPA-related questions from management/board of directors
- 4. Yes, we have received CCPA-related questions from third parties
- 5. Yes, we have received CCPA-related questions from other stakeholders
- 6. No, we have not received any CCPA-related questions to date
- 7. We are not aware of receiving any questions that may relate to the CCPA

Any questions?



Thank You!

Pam Hrubey

+1 (317) 208-1904

Pam.Hrubey@Crowe.com

Melissa Krasnow

+1 (312) 350-1082

MKrasnow@VLPLawGroup.com