

## The Final Countdown – Is Your Business Ready for the California Consumer Privacy Act?

The California Consumer Privacy Act (“CCPA”), the most expansive data privacy law passed in the United States to date, takes effect on January 1, 2020.

With this deadline fast approaching, businesses must act now to ensure timely compliance with the CCPA and to avoid potentially severe financial penalties. We provide the following list of action items to assist businesses in getting started with their compliance efforts.

### □ Determine whether you are affected by the CCPA

The CCPA applies to any for-profit entity that:

- does business in California;
- collects the personal information of California residents (“Consumers”);
- determines the purposes and means of processing Consumers’ personal information; and
- meets one or more of the following criteria:
  - (i) has annual gross revenues in excess of \$25 million;
  - (ii) annually buys, receives for a commercial purpose, sells, or shares for commercial purpose the personal information of 50,000 or more Consumers, households, or devices; or
  - (iii) derives 50 percent or more of its annual revenues from selling Consumers’ personal information.

### □ Audit the personal information you collect, store, and sell

Under the CCPA, a business must take stock of the personal information it collects, stores, and sells. The CCPA’s definition of “personal information” is extremely comprehensive – it includes any *“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.”* A “sale” is also broadly defined under the CCPA, covering any disclosure of data to a third party for “monetary or other valuable consideration.”

### **□ Assess your data security practices**

Under the CCPA, Consumers whose personal information is subject to a security breach, as a result of a business's failure to provide "reasonable security," may have a private right of action against the business, which could result in statutory damages up to \$750 for each affected Consumer.

### **□ Review and update your privacy policy**

Under the CCPA, a privacy policy must include details about the personal information a business collects, sells, or discloses for a business purpose, as well as inform Consumers of their CCPA rights and how to exercise them. This information must be updated at least once every 12 months.

### **□ Implement a system for responding to Consumers' CCPA requests**

Under the CCPA, Consumers have the right to access, and request the deletion of, the personal information a business has collected about them. Businesses must make available at least two methods for Consumers to submit requests, including a toll-free telephone number and a website address (if the business has a website), unless the business operates exclusively online and has a direct relationship with Consumers, in which case it need only provide an email address for submitting requests. In responding to requests, businesses must be able to verify that the request came from the Consumer about whom the personal information relates, or from a person authorized to act on the Consumer's behalf. In addition, if a business sells Consumers' personal information, it must provide a link on its website homepage labeled "Do Not Sell My Personal Information" to enable Consumers to opt out of the sale of their personal information at any time.

### **□ Review vendor contracts**

In order to take advantage of the CCPA's exceptions related to the sharing of personal information with service providers and third parties, businesses should review (and potentially revise) their vendor contracts.

### **□ Remember that GDPR compliance is not enough**

Businesses can leverage their existing compliance programs for the EU's General Data Protection Regulation ("GDPR"), as the GDPR and CCPA share some key similarities, but compliance with the GDPR does not equate to compliance with the CCPA.

### □ Stay tuned for more CCPA developments

Even upon the publishing of this Alert, the CCPA continues to be shaped through legislative amendments and proposed regulations from the California attorney general, with additional changes likely on the horizon before the CCPA takes effect at the end of the year.

To discuss how to ensure that your business is compliant with the CCPA, please get in touch with your usual Curtis contact or any of the following:

**Jonathan Walsh**

Partner

[jwalsh@curtis.com](mailto:jwalsh@curtis.com)

New York: +1 212 696 8817

**Edward Combs**

Associate

[ecombs@curtis.com](mailto:ecombs@curtis.com)

New York: +1 212 696 6069

**Daniel Banaszynski**

Associate

[dbanaszynski@curtis.com](mailto:dbanaszynski@curtis.com)

New York: +1 212 696 6153

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