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CCPA Presentation to Senate Judiciary Committee

- History
- Address Myths & FUD (Fear, Uncertainty, Doubt)
- Explain Critical Elements of CCPA

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WHY SHOULD I CARE?

- Geofencing
- In-home devices
- Apps
- Potential voting manipulation
- Autos

**Standard Oil was powerful...
but Standard Oil didn't know everything about you.**

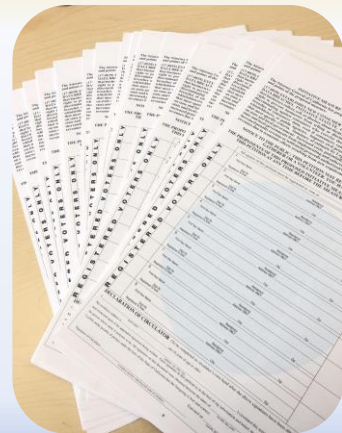
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CCPA TIMELINE

- 11/2015 Start Research
- 11/2017 File Initiative
- Jan-May 2018 Gather Signatures*
- April-June 2018: negotiations with CA Legislature

*Required: 366,000. Obtained: 629,000
[More CA registered voters than inhabitants of WY or VT]



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CALIFORNIA CONSUMER PRIVACY ACT

Opposition Committee*

AT&T	GOOGLE	FACEBOOK	VERIZON	COMCAST
AMAZON	MICROSOFT	UBER	COX	CHARTER

*Representing over \$6 Trillion in Market Cap (Including various association members)

CALIFORNIA CONSUMER PRIVACY ACT

June 28, 2018: AB 375 Passes Unanimously



Assembly 73-0
Senate 36-0





CCPA: Transparency, Control, Accountability

- “Right to Know” what personal information collected
- “Right to Say No” to the sale of your information (opt out)
- Right to have your information kept safe (ID Theft!)

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CCPA Myth: It Came Together in a Week

- In fact, 2 years of research
- Built on work of experts

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Do Not Track—W3C

- 2009 Proposal based on voluntary compliance
- Some honored, but advertising industry resisted
- National experts worked for almost a decade on DNT
- *World-Class Researchers: Chris Soghoian, Dan Kaminsky, Sid Stamm, Ashkan Soltani, Arvind Narayanan, Jonathan Mayer, Lee Tien, Aleecia McDonald, Peter Eckersley and Harlan Yu, Ed Felten, Justin Brookman*

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AB 375: Exact Language from Do Not Track

“Business purpose” means the use of personal information for the business’s or a service provider’s operational purposes, or other notified purposes, provided that the **use of personal information shall be reasonably necessary and proportionate to achieve the** operational **purpose** for which the personal information was collected or processed or for another operational purpose that is compatible with the context in which the personal information was collected. Business purposes are:

- (1) **Auditing related to a current interaction with the consumer and concurrent transactions, including,** but not limited to, **counting ad impressions to unique visitors, verifying positioning and quality of ad impressions, and auditing compliance with this specification and other standards.**
- (2) **Detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity, and prosecuting those responsible for that activity.**
- (3) **Debugging to identify and repair errors that impair existing intended functionality.**
- (4) **Short-term, transient use,** provided the personal information that **is not disclosed to another third party and is not used to build a profile about a consumer or otherwise alter an individual consumer’s experience outside the current interaction,** including, but not limited to, **the contextual customization of ads shown as part of the same interaction.**

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AB 375: Exact Language from Do Not Track

“Third party” means a person who is not any of the following:

...

(2) (A) A person to whom the business discloses a consumer’s personal information for a business purpose pursuant to a written contract, provided that the contract:

(i) Prohibits the person receiving the personal information from:

...

(ii) 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.

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CCPA: Who is Covered?

- Only Big Businesses & Data Brokers
- \$25M Revenue; 50,000 pieces of personal information; data brokers
- 50,000 IP addresses alone:

“A business is not obligated to provide information to the consumer...if the business cannot verify...that the consumer making the request is the consumer about whom the business has collected information...” **NOT Personal Information**

If you’re collecting 50,000 people’s names and credit cards—that’s PI.

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Opt-In vs. Opt-out

- GDPR: 'Notice & Consent' (Opt-in)
- Operational Issues: Pop-ups (Consent Fatigue); Take It or Leave it; Innovation Chill

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CCPA: Opt-In vs. Opt-out

- In US, 1st Amendment Constraints: *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011)
- "A restriction on disclosure is a regulation of speech, and the 'sale' of [information] is simply disclosure for profit..."
- "[I]f the acts of 'disclosing' and 'publishing' information do not constitute speech, it is hard to imagine what does fall within that category..."

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CCPA: Opt-In vs. Opt-out

- Do Not Call Laws—multiple lawsuits
- *Mainstream Marketing Services, Inc v. Federal Trade Commission, [10th Circuit. 2004].*
- “The do-not-call registry prohibits only telemarketing calls aimed at consumers who have **affirmatively indicated** that they do not want to receive such calls and for whom such calls would constitute **an invasion of privacy.**”

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CCPA: Do Not Sell Button = Do Not Track

- “Do Not Sell” Button
- 3rd Party Opt-Out = Easy & Effective!
- Achieves Do Not Track by a different route
- End of Large Companies Tracking You Across Web

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CCPA: Advertising

- CCPA Permits Advertising (but not reselling your info)
- Ads viewed: RTB (“Real Time Bid”) Now vs 2020
- Permits Commerce, Puts Limits on What Happens to Your Personal Information

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CCPA: Additional Rights

- Right to delete information you disclosed/posted
- Increased protection for children: Opt-in age increased from 13 – 16
- Companies can’t discriminate if you say no to the sale of your info

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CCPA: Enforcement

- AG Enforcement of the Act
- Consumer enforcement for *negligent* data breach
- [3 Safe Harbors: Encryption, Redaction, Reasonable Security Procedures]

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CCPA—Changes?

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CCPA in Historical Context

- 1950's: Auto Safety
- 1960's: Smoking/Tobacco
- 1970's: Auto Emissions

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CCPA From Here

California Worldwide Leader in Privacy

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