

# Navigating Critical Components of Any Privacy Program

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# Agenda

- Compliance with State Privacy Laws – Navigating CCPA and More
- Sensitive Personal Information
- Data Protection Impact Assessment
- Data Deletion



# Compliance with State Privacy Laws – Navigating CCPA and More

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Where is all began: California Consumer Privacy Act

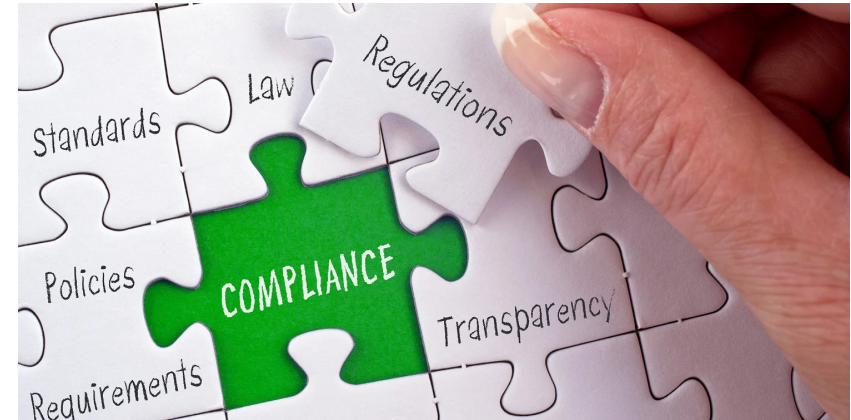
- Where do we stand?
- What can we predict?
- Procedural developments



# Compliance with State Privacy Laws – Navigating CCPA and More

## Enforcement in 2023

- Virginia
- Connecticut
- Colorado
- Utah



# Compliance with State Privacy Laws – Navigating CCPA and More

## Looking ahead

- Nevada
- Washington
- Florida
- Oregon
- Texas
- Montana
- Delaware
- Iowa
- Tennessee
- Indiana

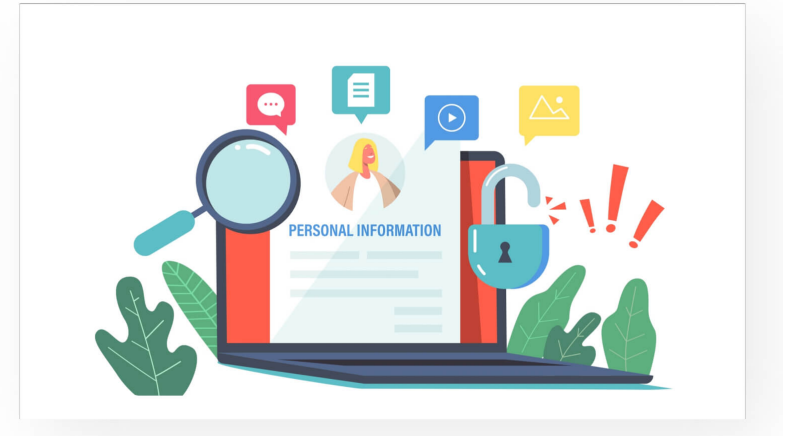


# Sensitive Personal Information

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## Spotlight on particular types of SPI

- Health/medical/genetic/biometric data
- Demographic data
  - Race/ethnicity/religious/sexual orientation
- Children/teen/student data
- Government identifiers
  - Financial data/immigration/citizenship information
- Precise geolocation
- Employment information/private communications/reading history



# Sensitive Personal Information

## Case Study #1: Advertising Pharma/Healthcare

- Privacy laws/recent enforcement on using health SPI (health PI) for targeted advertising
  - Critique: websites/apps in health space engaging in interest based advertising without consent/authorization
- **But change is hard.**
  - Misunderstanding as to what is SPI
  - Most SPI is not sourced with consent
  - Partners and industry practices vary widely
  - Business interests also factor into positions

# Sensitive Personal Information

Case Study #2: Kids privacy is a high priority.

*Amazon to Pay \$25 Million to Settle Children's Privacy Charges*

**TikTok to be fined for breaching children's privacy in EU**

**'Fortnite' maker Epic settles child privacy case, agrees to make refunds**

**Xbox COPPA violations cost Microsoft \$20 million in FTC settlement**

# Sensitive Personal Information

## Practical tips

- Short term and long term plans
- Cataloging your data
- Competitive benchmarking
- Explore emerging alternatives to SPI
- Mitigation measures in the meantime

## CFPB

- Outline of proposals for a Consumer Reporting Rulemaking
- Considers classifying any report that included payment history, income, or criminal records as a consumer report covered by the FCRA
- Income information could only be sold with a permissible purpose (i.e., income information could not be used for marketing)
- Outline considers whether aggregated or household data should also be considered a consumer report

# Data Protection Impact Assessments

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- What DPIAs are and where and when they are required
  - States that require DPIAs **as of 2023**:
    - Virginia
    - Colorado
    - Connecticut
- Laws passed in 2023 (MT, TN, TX, IN, OR) also require DPIAs



# Data Protection Impact Assessments

**Triggers** include selling or sharing PI, processing SPI, ADM, and anything with “significant risk” or “heightened risk” to consumers’ privacy or security

## Required elements

- Colorado: provide a “genuine, thoughtful” analysis
- Clear description of the in-scope processing activity
- Types and sources of personal data
- Technical details of processing
- Number and categories of individuals (“scale and scope”)
- Purpose(s) of the processing activity
- Individual risks and mitigations (e.g., technical measures, policies, training)
- Benefits to individuals
- List of internal and external stakeholders who were consulted

# DPIA Takeaways

## Legal

- Thresholds are low – prioritize by risk
- Have a plan to protect confidentiality and attorney-client privilege

## Process

- A DPIA is a team effort
  - Build the right one, and find a champion

## Technology

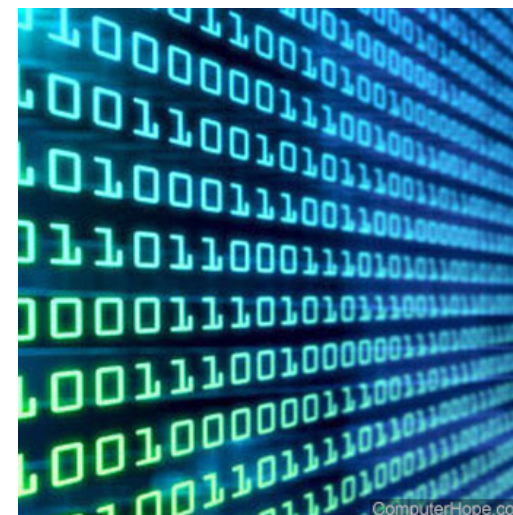
- Technology **can't** write a DPIA
- Technology **can** make DPIAs more sustainable and help track action plans

# Data Deletion

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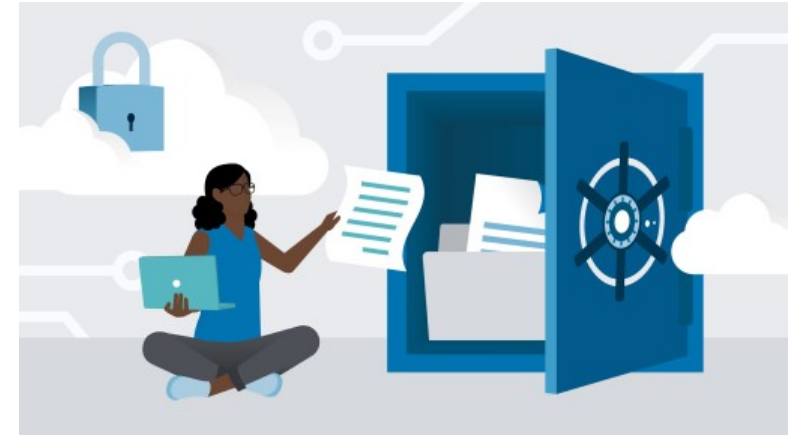
## Right to delete

- Current state and federal laws
- Personal data covered
  - In CA and Utah, consumers can request that personal data collected from them be deleted
  - In CO, CT, and VA, consumers can request that all personal data about them, whether it was obtained directly from them or from another source, be deleted
- Third parties
  - CA and WA specifically require that companies notify service providers, contractors, and third parties with whom they have shared covered data about the deletion request



# Data Deletion

- Exceptions to deletion requirement
- Develop a retention policy
  - Map your data
  - Identify any legal obligations
  - Create a data retention schedule



# Data Deletion

- Processing deletion requests
  - Verify consumer's identity
  - Locate consumer's personal data
  - Determine whether an exception applies to data
  - If no exception applies, ensure you can delete data
  - Identify whether there are service providers or third parties with whom you have shared the data that must be informed of the deletion request
  - Fulfill request
- Communicating with consumers

# CA Delete Act

- Passed by CA Legislature and awaiting signature from Governor
- By 1/1/26 would require consumers to have an accessible mechanism through which they can make a single deletion request that would cover all data brokers
- Data brokers would have to access the mechanism every 45 days and delete all information about the consumer, and would be prohibited from sharing or selling new information about that consumer
- Data brokers would be required to obtain an audit every 3 years





**QUESTIONS?**

# THANK YOU!



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