

Are You Prepared for the California Consumer Privacy Act?

Jeffrey M. Goldman – Pepper Hamilton LLP
Sharon R. Klein – Pepper Hamilton LLP
Alex Nisenbaum – Pepper Hamilton LLP

Pepper Hamilton LLP
Attorneys at Law

September 7, 2018

Jeffrey M. Goldman

Partner | Trial and Dispute Resolution Practice Group

949.567.3547

goldmanj@pepperlaw.com

- ▶ Concentrates his practice in trial and dispute resolution, labor and employment matters (including wage and hour actions), consumer remedy matters (including several Consumer Legal Remedy Act and Unfair Competition Law disputes in a variety of fields), intellectual property matters, and class actions
- ▶ Represents clients in labor and employment matters in a variety of fields, including construction, retail/fashion, medical device companies, and professional recruiting companies. He has also represented companies and individuals ranging from *Fortune* 500 entities to small business owners.
- ▶ Has tried cases in California's federal and state courts, including both jury and bench trials.



Sharon R. Klein (CIPP/US)

Partner | Health Sciences Group

Chair | Privacy, Security and Data Protection Practice
949.567.3506

kleins@pepperlaw.com

- ▶ Advises businesses on planning, drafting and implementing privacy, security and data protection policies and “best practices”, compliance with applicable laws, regulations and rules, and crisis management and litigation strategies for non-compliance.
- ▶ Represents health care industry clients in the licensing of information technology and medical devices
- ▶ Certified as an information privacy professional by the International Association of Privacy Professionals (IAPP).
- ▶ Frequent writer and presenter on privacy, security and data protection matters.



Alex C. Nisenbaum (CIPP/US, CIPP/E)

Associate | Health Sciences Group

Privacy, Security and Data Protection Practice

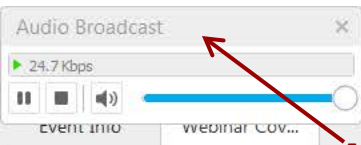
949.567.3511

nisenbaum@pepperlaw.com

- ▶ Practice is focused on technology and intellectual property transactional matters, including drafting and negotiating agreements involving software licensing, software as a service (SaaS), software and mobile application development, information technology and business process outsourcing, telecommunications, data licensing, copyright and trademark licensing, and professional services.
- ▶ Also advises clients on data privacy and information security laws and regulations, including HIPAA, GDPR, Gramm-Leach-Bliley, and state data protection and breach notification requirements.



Audio



Audio should stream automatically on entry through your computer speakers

A screenshot of the Cisco Webex meeting interface. The top bar includes 'Participant Event Help' and icons for 'Participants', 'Chat', and 'Q&A'. The main area is a large video feed, currently blank. The right sidebar shows the 'Participants' list with 'Brian Dolan (Host)' and 'Webinar Guest (me)'. Below that is the 'Q&A' section with a dropdown menu set to 'All (0)'. At the bottom, there is an 'Ask' menu set to 'All Panelists' and a 'Send' button. A red arrow from the text above points to the volume slider in the top-left corner of the interface.

Audio

Cisco WebEx Event Center

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Event Info

Webinar Cov... x



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Audio Connection x

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[Test computer audio](#)

Participants

Speaking:

Panelists: 1

Brian Dolan (Host)

Attendees:

Webinar Guest (me)



Q&A

All (0)

Ask: All Panelists

Select a panelist in the Ask menu first and then type your question here. There is a 256-character limit.

Send

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Q&A

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Participants

Speaking:

- Panelists: 1
 - Brian Dolan (Host)
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Q&A

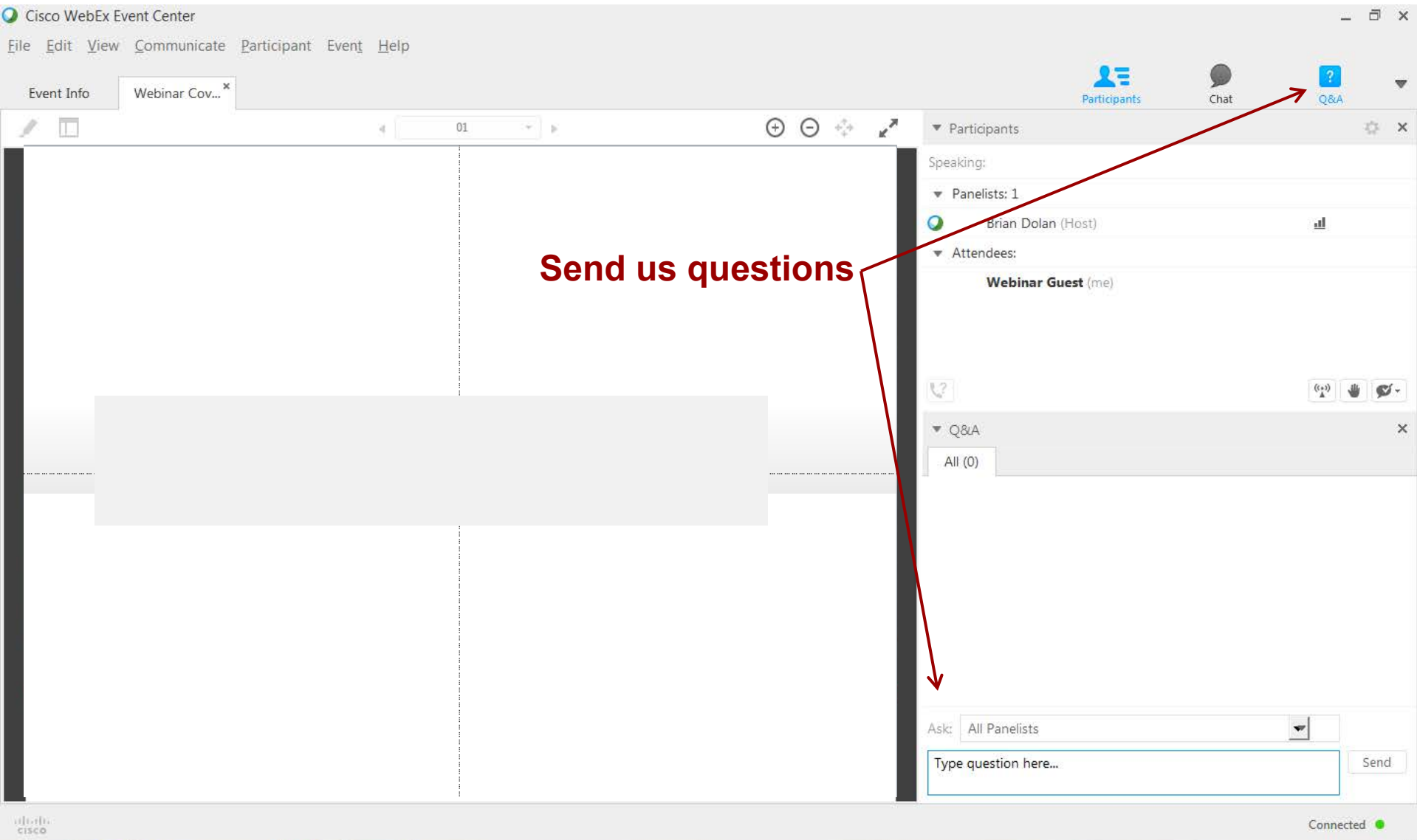
All (0)

Ask: All Panelists

Type question here...

Send

Connected



Send us questions

We will be starting at 1:00pm ET. There is currently no audio until we start.

Topics

- ▶ Background
- ▶ Broad Reach
- ▶ GDPR California Style?
- ▶ Consumer Rights and Disclosure
- ▶ Private Rights of Action; Litigation and Enforcement
- ▶ Change on the Horizon
- ▶ Practical Takeaways

Background

California Consumer Privacy Act of 2018/AB 375 (CCPA) signed into law on June 28, 2018 - a few days after it was introduced in the CA legislature.

Why? To head off ballot initiative and public attention on privacy issues.

- Cambridge Analytica
- Data Breaches
- GDPR
- ▶ Ballot initiative was previously slated to appear on the November ballot.
- ▶ Effective January 1, 2020
 - SB 1121 Amendments – AG Rule deadline July 1, 2020
- ▶ Long-arm jurisdiction: “doing business” does not necessarily mean physically located in California.
- ▶ By the IAPP’s estimate, the Act could apply to more than 500,000 businesses in the US alone; more if analyzed beyond the US.

Broad Reach

Businesses

- ▶ Applies to any **business** that **collects or sells personal information** from or about **consumers**.
- ▶ **Business:** “A sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners” that
 - Has gross annual revenues in excess of \$25M;
 - Annually buys, sells, or receives or shares for commercial purposes, personal information of 50K + consumers, households, or devices; and/or
 - Derives 50% + of its annual income from selling consumers’ personal information

Broad Reach

“Collect” or “Sell”

- ▶ **Collect:** Buying, renting, gathering, obtaining, receiving, or accessing any personal information pertaining to a consumer by any means.
- ▶ **Sell:** 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 the business to another business or a third party for monetary or other valuable consideration.

Broad Reach

Exceptions to Definition of Sell

- ▶ Excludes disclosures:
 - At direction of consumer;
 - To inform another business the consumer has opted out of the sale of their information;
 - Sharing with a service provider if the service provider's use of the personal information are restricted; and
 - As part of merger, acquisition, bankruptcy, or other transaction in which a third party assumes control of all or part of the business.

Broad Reach

Personal Information

- ▶ “Personal information” means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household
 - Far broader than typical US law (GDPR-esqe)
- ▶ Classics such as contact information, IP address, biometric information, geolocation data plus:
 - “Commercial information” including purchase records and consuming histories or tendencies
 - “Internet or other electronic network activity information”
 - “Audio, electronic, visual, thermal, olfactory, or similar information”
 - “Professional or employment-related information”
 - “Inferences drawn” from any personal information

Broad Reach

Personal Information

▶ Excludes:

- Publicly available information (limited in scope to government records)
- Protected Health Information (HIPAA)
- Clinical trial information subject to the Common Rule
- Sale of personal information to or from consumer reporting agency
- Nonpublic personal information (GLBA)
 - Exception does not apply to private right of action (SB 1121)
- Information subject to Driver's Privacy Protection Act
 - Exception does not apply to private right of action (SB 1121)

Broad Reach

Consumers

- ▶ “Consumer” = California resident
- ▶ Could apply to information collected from California resident inside or outside California, unless “every aspect of the commercial conduct (relating to the consumers personal information) takes place wholly outside of California
- ▶ Includes employees, students, tenants, customers...

GDPR California Style?

Topic	CCPA	GDPR
Personal Information	Broad: “information that identifies, relates to, describes or is capable of being associated with, or could reasonably be linked...with consumer or household.	Broad: “any information relation to an identified or identifiable natural person.”
Application	Applies to any business that collects or sells personal information from or about consumers and which meets certain thresholds	Natural or legal persons and public authorities that process personal data of data subjects within the EU, regardless of whether processing takes place in the EU
Private Right of Action?	Private right of action. California Attorney General enforcement.	Data subjects may bring complaints to relevant data processing authority. Enforceable by each EU member state data protection agency(ies)
Monetary Penalty	Private Actions: Statutory damages \$100 and \$750 per violation, or actual damages (if greater) AG: \$2,500 per violation; \$7,500 per intentional violation	Up to €20,000,000 or 4% of global revenues for previous year, whichever is greater, depending upon violation
Supply chain / vendor compliance	Businesses will need to ensure contracts restrict use, that vendors provide assistance with exercise of rights and that vendors use reasonable security	Requires a written contract with each “subprocessor” setting forth specific requirements

Consumer Rights

- ▶ The Act establishes the following rights for Consumers:
 - The right to know what personal information is being collected (both by category and specifically)
 - The right to know whether personal information is sold or disclosed and to whom
 - The right to access personal information
 - The right to say “no” to the sale of personal information
 - The right to delete personal information
- ▶ CCPA Prohibits discrimination against consumers who exercise their rights
- ▶ 45 days to respond to consumer requests.
 - Must be free of charge;
 - Must cover the preceding 12-month period.

CCPA Rights vs. GDPR Rights

CCPA	GDPR
Right to be informed of the types of information collected and the purposes for collection.	Right to be informed of the types of information collected and the purposes for collection.
Right to be informed of the categories and to access specific pieces of information collected, the purposes for data collection, and third parties with whom the data has been shared	Right to access to a copy of the personal data collected and other information about processing
No equivalent right	Right to correct / rectify information collected
Consumer must have the right to prohibit of the sale of their personal information	<ul style="list-style-type: none"> • Right to “restrict” processing • Right to “object” to processing
Right to have personal information deleted	Right to have personal information deleted
No equivalent right	Right not to be subject to a decision based solely on “automatic” or profiling-based processing
Companies must not discriminate against a consumer in price or services/goods offered as a result of consumer exercising their rights	No equivalent right

Transparency and Disclosure

- ▶ Requires certain disclosures and consumer-facing privacy policies (e.g., websites) to:
 - Inform consumers about rights
 - Categories of personal information collected and sold
 - Categories of third parties with whom personal information is shared
 - Any financial incentives offered by the company

Private Rights of Action; Litigation and Enforcement

Litigation Impact: Individual or Class Actions

- ▶ The Act allows consumers to bring private individual or class actions if unauthorized access (*i.e.*, a data breach) occurs as a result of a business' violation.
 - May recover \$100 to \$750 per violation or actual damages, whichever is higher;
 - Courts may consider several factors to assess statutory damages; can fashion circumstance-specific remedies.
- ▶ Limits / Procedures:
 - Consumer must provide the business with notice of violation and 30-day opportunity to “cure” (unless claim is for injunctive relief or actual damages);
 - Consumers must notify the California AG before initiating any private action. AG may choose to prevent the action or prosecute an action and seek civil penalties.

Attorney General's role

- ▶ If the California AG decides to pursue a case, civil penalties rise up to \$7,500 per violation.
 - Recent proposed amendment changes this to \$2,500 per violation, or \$7,500 for each intentional violation.
- ▶ The AG is not simply a gatekeeper; businesses and other third parties may seek AG's guidance on how to comply with the Act.
 - Compliance with this guidance likely a factor in the determination of consumer or AG civil actions.

Change on the Horizon

- ▶ Passed in 2 days – Errors/contradictions/open questions
- ▶ Industry Commentary
 - California Chamber of Commerce letter
 - Response letter from ACLU
 - California Attorney General critique
- ▶ Amendments/Efforts to Amend
 - SB 1121- passed by legislature August 31, 2018
 - SB 456
 - AB 1680

Practical Takeaways

- ▶ Over the next year, businesses should:
 - Inventory the consumer-related personal information they collect and use;
 - Update policies and procedures to comply with consumers' individual rights;
 - Analyze all third-party contracts and amend them to prohibit the sale of personal information;
 - Update systems and databases to comply with expanded individual rights (and respond to requests), such as amendment, deletion and accounting of disclosures;
 - Conduct employee training on data security, new consumer rights, and the handling of requests; and
 - Monitor all developments relating to the CCPA.

Questions & Answers

For more information, visit

www.pepperlaw.com

Sharon R. Klein

kleins@pepperlaw.com | 949.567.3506

Jeffrey M. Goldman

goldmanj@pepperlaw.com | 949.567.3547

Alex C. Nisenbaum

nisenbauma@pepperlaw.com | 949.567.3511