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As Rigorous Consumer Privacy Laws Loom, The Majority Of Businesses May Be Unprepared

Businesses aren't ready for the nation's strictest data privacy law, which takes effect Jan. 1 in California.

An **International Association of Privacy Professionals** survey, released in April, determined that on a scale of 0 to 10, organizations' preparedness for the **California Consumer Protection Act (CCPA)** was about 4.75. "Most organizations are more unprepared than ready to implement what has been heralded as the most comprehensive privacy law in the U.S. ever," the study says.

Passed last summer, the law will force massive changes in the collection, storage and management of the personally identifiable information of California's 40 million residents. Consumers, for their part, will gain additional power to access their personal information, delete it or opt out, and businesses must respond to requests within 45 days.



The impact of the CCPA will extend beyond the state's borders. Companies that collect personal information online from the state's consumers, no matter where the business is located, may be affected.

The law, therefore, "is likely to capture almost any company that conducts business (even B2B) online, has an app or even in many cases merely has a commercial website," the *National Law Review* reports.

"There's a huge amount of work to be done," says **Mari-Anne Kehler**, partner and CMO at **Green Hasson Janks** of Los Angeles (FY17 net revenue of \$30 million). She notes that while publicly available information is not included and nonprofits are exempt, the law is complex and rigorous.

The law applies to for-profit entities that both collect and process the personal information of California residents and do business in the state.

Additionally, only one of the following criteria must be met:

- Has annual gross revenues in excess of \$25 million
- Obtains for commercial purposes, sells or shares the personal information of more than 50,000 households, devices or California residents
- Derives at least 50% of its annual revenue by selling the personal information of California residents.

Accounting firms are well positioned to help clients understand and implement the sweeping legislation, which is expected to set the tone for other states as consumers demand stronger protections. Green Hasson Janks, which has large technology, entertainment and media practices, has developed a roadmap for clients who may face the burden of compliance (graphic, page 3). “Working with a business advisor who is well versed on it is the way to go,” Kehler says.



Firms are wise to examine their own practices as well. Currently, Pasadena, Calif.-based **KROST** (FY18 net revenue of \$33.8 million) is conferring with attorneys and doing its due diligence to make plans for compliance and implementation, “but the requirements remain unclear,” says marketing director **Bethany Wolfe**.

Kehler says the policies in place at GHJ are already “overly rigorous,” but she says the firm is reviewing its opt-out processes, the frequency of offering the option and the level of transparency. She does not anticipate a huge impact on the

firm, mainly because the business model is based on relationships rather than mass marketing.

According to **Hogan Lovells**, a law firm with offices in Washington, D.C., and London, businesses that use consumer data for analytics, profiling, advertising and other money-making activities will face big challenges, “particularly as the compliance requirements are not easily gleaned from the statutory language.”

For example, a company will be subject to the CCPA if it does any business in California and has an app or website that is accessed by more than 50,000 unique users or visitors annually. Hogan Lovells says that threshold could be met with just 137 unique visitors from California per day. CCPA is being called the U.S. version of GDPR – the European Union’s General Data Protection Regulation. GDPR went into effect last year and applies to all businesses that process data of EU citizens. CCPA is narrower in scope but the penalties, which take effect July 1, 2020 are more formidable. The law calls for maximum civil fines of \$2,500 per violation and \$7,500 for each “intentional” violation, and may prompt a wave of class actions.

CCPA’s broad definition of personal information is another part of the challenge. “In addition to including all information relating to or that could be linked (directly or indirectly) to an individual, the

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CCPA also considers identifiers such as IP addresses, browsing history and ‘information regarding a consumer’s interaction with an Internet website, application or advertisement’ to be personal information," the *National Law Review* states.

Given the low level of readiness, businesses are being advised to act now, even if it’s unclear where they stand. Understand the data being collected and how it fits into the law’s definition of personal information, how it is gathered, stored and with whom it is shared.

Kehler says the entire lifecycle of data management and database administration should be reviewed, including privacy notices, opt-in and opt-out language, procedures to comply quickly to consumer requests and training on new requirements. “All these processes need to be examined and potentially revamped.” Businesses that rely on data collection may have to rethink their entire strategy around

acquiring and retaining customers. “It’s a little mind-blowing.”

In May, New York Sen. **Kevin Thomas** introduced The New York Privacy Act bill that would give residents more control over their data than in any other state.

With it, New York will be poised to become the next battleground in the fight for state privacy laws. The New York Privacy Act bears some similarity to the California law. Like the CCPA, it would allow people to find out what data companies are collecting on them, see who they’re sharing that data with, request that it be corrected or deleted, and avoid having their data shared with or sold to third parties altogether.



CHECKLIST

Effective January 2020, California Consumer Privacy Act (CCPA) will apply to all businesses that collect or sell personal information of CA residents.

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 Determine if the CCPA applies to your business
 - » Meeting the criteria
 - » Examine exclusions

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 Identify, map and inventory the collection and sale of CA residents' personal information linked to a consumer or household
 - » Examine the scope of data under the CCPA
 - » Exclusions apply including publicly available data or records

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 Update processes for collecting and organizing information
 - » Revise your privacy policy, security practices and procedures
 - » Revise website and digital platforms
 - » Review and update disclosures and notices
 - » Review and update service provider agreements

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 Create a process to comply with CCPA consumer updates
 - » Respond to CA residents' requests to exercise CCPA rights
 - » Comply with opt-in and opt-out requests
 - » Create and maintain an incident response plan

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 Provide training for employees on the CCPA's consumer rights
 - » Ensure proper handling of consumer inquiries regarding new rights
 - » Direct consumers to exercise their rights

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According to *Wired*, the New York bill, as it's currently written, departs from the California model in significant ways. While the California law leaves enforcement to the state's attorney general, the New York Privacy Act would give New Yorkers the right to sue companies directly over privacy violations, possibly setting up a barrage of individual lawsuits. Industry groups vehemently opposed a similar provision – also known as a private right of action – in California, and they succeeded in driving it out of the bill when it was finally signed into law last year. The New York bill would apply to companies of any size. ■IPA

