



# New Era for US Privacy Laws: California and More

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# GDPR's influence ripples around the world

New and stronger laws: Argentina, Brazil, South Korea, California, Africa

PEREIRA NETO | MACEDO

*Translation by Ronaldo Lemos, Daniel Douek, Sofia Lima Franco, Ramon Alberto dos Santos and Natalia Langenegger, Lawyers at Pereira Neto | Macedo Advogados ([www.pnm.adv.br](http://www.pnm.adv.br)). Final version, after presidential vetoes*

Law No. 13,709, of August 14, 2018 -  
Provides for the protection of personal data  
and changes Law No. 12,965, of April 23,  
2014 (the "Brazilian Internet Law").

The NATIONAL CONGRESS decrees:

CHAPTER I  
PRELIMINARY PROVISIONS



California  
LEGISLATIVE INFORMATION

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CIVIL CODE - CIV

DIVISION 3. OBLIGATIONS [1427 - 3273] ( Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14. )

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273] ( Part 4 enacted 1872. )

TITLE 1.81.5. California Consumer Privacy Act of 2018 [1798.100 - 1798.199] ( Title 1.81.5 added by Stats. 2018, Ch. 55, Sec. 3. )

**1798.100.** (a) A consumer shall have the right to request that a business that collects a consumer's personal information disclose to the consumer the categories of personal information that the business has collected from the consumer and the categories of sources from which the business collected the personal information.  
(b) A business that collects a consumer's personal information shall, at or before the point of collection, inform consumers as to the categories of personal information that the business has collected from the consumer and the categories of sources from which the business collected the personal information. A business shall not collect additional categories of personal information or use personal information collected for a purpose other than that stated at the time of collection.  
(c) A business shall provide the information specified in subdivision (a) to a consumer only upon receipt of a verifiable consumer request from the consumer.  
(d) A business that receives a verifiable consumer request from a consumer to access personal information shall promptly take steps to comply with the request. The information may be delivered by mail or electronically, and if provided electronically, the information shall be in a portable and, to the extent technically feasible, in a readily accessible format that is commonly used by consumers for electronic information exchange.



# GDPR's influence ripples around the world

GDPR interacts with Council of Europe Convention attracting signatures and ratifications from countries outside Europe



**COUNCIL OF EUROPE**

Treaty Office

Non-Members of Council of Europe										
	Signature	Ratification	Entry into Force	Notes	R.	D.	A.	T.	C.	O.
Argentina		25/02/2019 a	01/06/2019							
Burkina Faso				4						
Cabo Verde		19/06/2018 a	01/10/2018							
Mauritius		17/06/2016 a	01/10/2016							
Mexico		28/06/2018 a	01/10/2018							
Morocco		28/05/2019 a	01/09/2019							
Senegal		25/08/2016 a	01/12/2016							
Tunisia		18/07/2017 a	01/11/2017							
Uruguay		10/04/2013 a	01/08/2013							

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## Bundeskartellamt prohibits Facebook from combining user data from different sources

**Date of issue:** 07.02.2019

### Bundeskartellamt imposes far-reaching restrictions



(© peshkova/Fotolia.com)

The Bundeskartellamt has imposed on Facebook far-reaching restrictions in the processing of user data.

According to Facebook's terms and conditions users have so far only been able to use the social network under the precondition that Facebook can collect user data also outside of the Facebook website in the internet or on smartphone apps and assign these data to the user's Facebook account. All data collected on the Facebook website, by Facebook-owned services such as e.g. WhatsApp and Instagram and on third party websites can be combined and assigned to the Facebook user account.



NEWS

# CNIL fines Google €50 million – the biggest GDPR fine so far

Google says it will appeal. **Mark Sherwood-Edwards** of This is DPO explains the decision, and why the “one-stop-shop mechanism” could not be used.

On 21 January, the CNIL (France’s DPA) fined Google €50 million for breaches of the GDPR. The amount of the fine is unlikely to worry Google unduly (it was fined €4.3 billion by the EU Commission in July 2018 for abuse of its dominant position in relation to the Android system – Google is appealing.) but the fine shows that things are hotting up for companies that use mobile phones as platforms from which to gather and exploit personal data.

How many users were affected in total? The CNIL’s notice doesn’t say,

collecting this amount of personal data to this amount of granularity (and the CNIL made the point that Google has over 20 different services collecting personal data, and a virtually unlimited ability to combine this data) then, according to the CNIL, you are under an obligation to make sure that you are really upfront and clear about how you are planning to use the data you collect: there will be little tolerance for error. Equally, you have to make sure you are rigorous in your compliance with the GDPR’s obligations.

Against this background, the CNIL

documentation meant that the consent was, by definition, not informed.

6. The nature of consent as a lawful basis meant that it had to be specific to the purpose the data was going to be used for, and therefore each purpose required its own dedicated consents (ie. if there are ten purposes, then ten consents are required). Google had obtained the consents *en bloc*: therefore, by definition, they were not specific and therefore not valid.

On the facts, none of the CNIL’s

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**NEWS**

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- 11 - CNIL fines Google €50 million

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- 24 - Data protection bills in Kenya, Uganda, Tanzania and Zambia

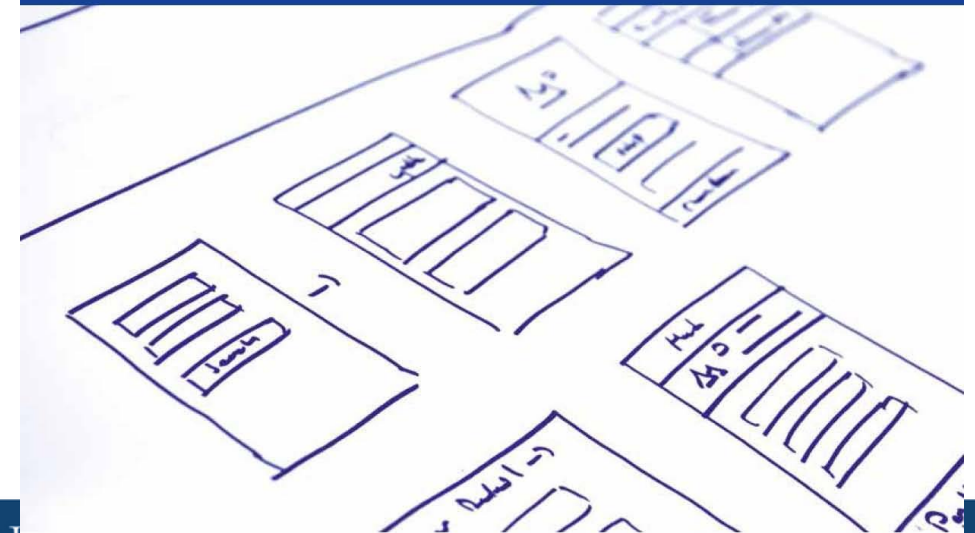
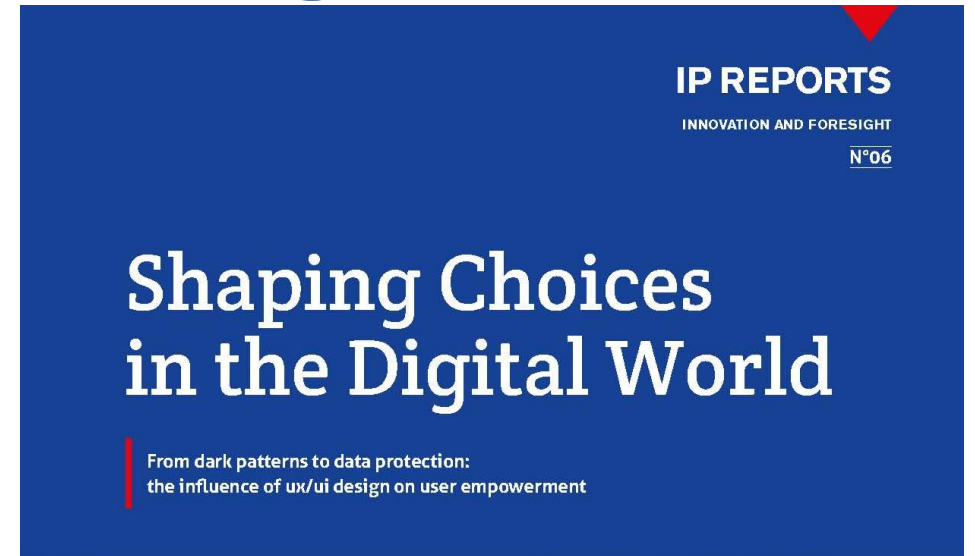
**NEWS IN BRIEF**

- 8 - 59,000 data breaches reported across Europe
- 18 - Mutual EU-Japan adequacy
- 18 - EU-US Privacy Shield continues
- 23 - Facebook accused of “exploitative abuse”
- 26 - EDPB adopts more DPIA lists
- 26 - Singapore’s DPA issues large fines
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- 27 - EU Advocate General: Right to be Forgotten is limited to EU
- 27 - Doctor has ‘Right to be Forgotten’

# CNIL campaigning on Design and UX

Perception of fairness to customers,  
employees, the media, and social media

[https://linc.cnil.fr/sites/default/files/atoms/files/cnil\\_ip\\_report\\_06\\_shaping\\_choices\\_in\\_the\\_digital\\_world.pdf](https://linc.cnil.fr/sites/default/files/atoms/files/cnil_ip_report_06_shaping_choices_in_the_digital_world.pdf)



# GDPR related risks for organisations

DPA warning

DPA audit

DPA fine directly  
or through the courts

DPA order to cease  
processing

Collective action by  
consumers or employees



**GARANTE  
PER LA PROTEZIONE  
DEI DATI PERSONALI**

SERVIZIO RELAZIONI ESTERNE E MEDIA

PRESS RELEASE: Rome, 28 June 2019

## **CAMBRIDGE ANALYTICA: FACEBOOK FINED 1 MILLION EURO BY THE ITALIAN DPA**

The Italian DPA (Garante per la protezione dei dati personali) fined Facebook 1 million Euro on account of breaches committed within the framework of the ‘Cambridge Analytica’ case – the latter being the company that had accessed data on 87 million users via a psychological testing app and had used such data to try and influence the US presidential elections in 2016.

The fine was imposed on the basis of the former Privacy Code; it follows up to the decision issued by the Garante in January this year to ban Facebook from further processing the data related to Italian users.

The Garante could establish that 57 Italians had downloaded the Thisisyourdigitallife app via Facebook’s login function; thanks to the sharing of data relating to ‘friends’ enabled by that function, the app had subsequently acquired data relating to additional 214,077 Italian users who had not downloaded the app in question, had not been informed of the sharing of their data and had not given their consent to such sharing. Accordingly, the Garante had found that Facebook had disclosed the data to the Thisisyourdigitallife app in breach of privacy legislation. However, the data had not been transmitted to Cambridge Analytica.

Facebook had been served by the Garante in March this year with a notice of commission of

# NOT YOUR PUPPETS: AN UPDATE ON THE EUROCONSUMERS CLASS ACTION AGAINST FACEBOOK

## WHAT SUPPORT HAS THERE BEEN FOR THE CAMPAIGN IN THE COUNTRIES WHERE IT IS ACTIVE?

At the moment about 75,000 Facebook users have joined our four class actions – more than 25,000 both in Belgium and Spain, over 17,000 in Italy and almost 5,000 in Portugal. In the websites of Test-Achats, OCU, Altroconsumo and Deco Proteste you can see the number growing with a counter at these respective pages:

**Test A-chats, Belgium:** <https://www.test-achats.be/actions-collectives/facebook>

**OCU, Spain:** <https://www.ocu.org/especiales/misdatossonmios/>

**Altroconsumo, Italy:** <https://www.altroconsumo.it/azioni-collettive/facebook>

**DECO Proteste, Portugal:** <https://www.deco.proteste.pt/aco-es-coletivas/os-meus-dados-sao-meus>

We are satisfied with the response so far, but we also know that we need to grow our support in this battle. The more consumers we represent, the stronger our voice will be. That's why we plan to launch further conventional and non-conventional communication activities, from September onwards, to reach a larger number of consumers. We feel a heavy responsibility on our shoulders, being very aware – as Facebook should be – that the tools at our disposal for the protection of consumer rights have now become – as it is clear in this case – a key vehicle to enforce citizens' fundamental rights within digital platforms. We feel that our role, as organisations representing the consumer movement, is expanding and evolving. We won't accept that the technology we created to expand our freedom evolves into a system that coerces and controls us. It is not real innovation if it does not bring benefits to the end consumers, to citizens, to the people!

## GLOBAL TABLE OF COUNTRIES WITH DATA PRIVACY LAWS (AS KNOWN AT 31 JANUARY 2019)

Jurisdiction	Key Law <sup>0</sup>	From <sup>1</sup>	Latest <sup>2</sup>	Region <sup>3</sup>	Member <sup>4</sup>	Sector <sup>5</sup>	Agreements <sup>6</sup>	DPA <sup>7</sup>	DPA Associations <sup>8</sup>
Abu Dhabi Global Market	ADGM Data Protection Regs (under Abu Dhabi Law 4/2013)	2015	2015	Mid East	–	Pri	[Not-UN]	Registrar	GPEN; CoE108CC(C)
Albania	Act on the Protection of Personal Data	1999	2014	Europe (O)	CoE	Both	ICCPR+OP; CoE108(RP)	Commissioner for Personal Data Protection (Komisionerin per Mbrojtjen e te Dhenave Personale)	ICDPPC; EDPA; AFADPP; GPEN; CoE108CC(C)
Algeria	Law18-07 on the protection of individuals in the processing of personal data	2018	2018	Africa	AU;	Both	ICCPR + OP	Not yet appointed (Autorite Nationale de Protection des Données à Caractère Personnel)	-
Andorra	Law on the protection of personal data	2003	2003	Europe (O)	CoE	Both	ICCPR+OP; GDPR(Adq); CoE108(RP); CoE108+(S)	Data Protection Agency (Agència Andorrana de Protecció de Dades)	ICDPPC; EDPA; AFADPP; CoE108CC(C)
Angola	Lei da Protecção de Dados Pessoais	2011	2011	Africa	AU; SADC; ECCAS	Both	ICCPR+OP;	Agência da Protecção de Dados	-

0 **Key Law column** = name of current key law (Earlier key laws may have had different names)

1 **From column:** Year = year of original data privacy law enacted, for either private or public sector; might not be year of current law

2 **Latest column:** Year = year of last significant version of law (amendment or replacement) known; 'NYIF' = not yet in force, where bringing into force is delayed more than two years; 'E' = current official reform Bill, not yet enacted, and year.

3 **Region column:** 'Europe (EU)' = current European Union member states; 'Europe (O)' = other European states (including EEA); other regions are self-explanatory

4 **Member column:** listing means country is a member of regional grouping relevant to data privacy (plus '(A)' for Associate members) – **APEC** = Asia Pacific Economic Cooperation; **OECD** = Organisation for Economic Cooperation and Development; **ASEAN** = Association of South East Asian Nations; **AU** = African Union; **ECOWAS** = Economic Community of West Africa = East African Community; **SADC** = Southern African Development Community; **ECCAS** = Economic Community of Central African States; **CEMAC** = Communauté économique et financière de l'Afrique centrale; **CARICOM** = Caribbean Community; **Mercosur** = trade bloc of five S American states; **OECS** = Organisation of Eastern Caribbean States; **UKOT** = UK Overseas Territories

5 **Sector column:** 'Pri' = covers private sector only; 'Pub' = covers public sector only; both = covers both sectors

6 **International Agreements column** covers the following agreements between countries, each of which involves legal obligations (for APEC Framework and OECD Guidelines, see as all Members have the same non-binding commitments). **No entry means country has taken no action.**

(i) **European Union General Data Protection Regulation** = GDPR, plus one of: M = country is an EU member state; AQ = country's protection of personal data has been held 'adequate' by the EU under GDPR or 1995 Directive; EEA = country is a member of the European Economic Area; OCT = Overseas Countries and Territories status; EUT = part of territory of an EU member state

(ii) **Council of Europe Convention 108** = CoE108 (means has ratified Treaty 108) plus one of: RP = has ratified Additional Protocol; SP = has signed but not ratified Additional Protocol; RC\* = UK has ratified CoE108 on behalf of sub-jurisdiction; (AC)= non-European state has acceded to CoE108; (IA) = non-European state invited to accede to CoE108; (R) = ratified

(iii) **Council of Europe Convention 108+** (Treaty 223) = CoE 108+ plus either (S) = signed or (R) = ratified.

(iv) **African Union Convention** = AUConv plus either (S) = signed or (R) = ratified.

(v) **ECOWAS Act** = country is required to comply with the additional data protection Act to the ECOWAS Treaty, 2010.

(vi) **APEC-CBPRs (Cross-Border Privacy Rules system)** = APEC-CBPRs, plus either (S) = has agreed to participate (but no AA appointed), or (AA) = is participating (AA appointed)

(vii) **UN International Convention on Civil & Political Rights** = ICCPR = ratified ICCPR (unless (S) = signed); +OP = ratified 1st Optional Protocol; [Not-UN] = not UN member

7 **DPA column** = DPAs are named plus 'Not yet appointed' if not; or 'None' = no specialised data protection authority

8 **DPA Associations column:** inclusion means 'DPA is a member of the named association of DPAs/PEAs; except (O) = Observer status only; **ICDPPC** = International Conference of Data Protection Authorities; **GPEN** = Global Privacy Enforcement Network; **AFADPP** = Association of Francophone Data Protection Authorities; **APPA** = Asia-Pacific Privacy Authorities; **RedIPD** = RED Iberoamericana de Protección de Datos; **CEEDPA** = Central European Data Protection Authorities; **NDPA** = Nordic Data Protection Authorities; **EDPA** = European Data Protection Authorities; **BIIDPA** = British, Irish and Islands Data Protection Authorities; **CTN** = Common Thread Network (anglophone Commonwealth of Nations); **RAPDP** = Réseau Africain sur la Protection des Données (African Personal Data Protection Network); **GCBCEA** = Global Cross Border Enforcement Cooperation Arrangement; **GPEN-A** = GPEN Alert member; **RNDF** = Réseau des Nations du Nord (Network of Data Protection Authorities in Eastern Partnership Countries member; **CoE108CC** = Council of Europe Convention 108 Consultative Committee member; **except** = not member

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1987

INTERNATIONAL REPORT

PRIVACY LAWS & BUSINESS  
DATA PROTECTION & PRIVACY INFORMATION WORLDWIDESUPPLEMENT: TABLE OF PRIVACY LAWS  
AND BILLS WORLDWIDEGlobal Tables of Data  
Privacy Laws and Bills  
6th Edition February 2019By Graham Greenleaf, Professor of Law & Information Systems,  
University of New South Wales, Australia.

This update to the Tables is explained and analysed in my articles 'Global data privacy laws 2019: 132 national laws, and many bills', 'Global data privacy laws 2019: New eras for international agreements' and 'Global data privacy authorities (DPAs) 2019', published in *Privacy Laws & Business International Report*, issues 157 and 158. Further background is in my 'Sheherezade and the 101 data privacy laws: Origins, significance and global trajectories'. Copies of

all legislation listed in this Table are in the National Data Privacy Legislation database<sup>2</sup>, part of the free access Global Data Protection, Privacy & Surveillance Law Library, located on the World Legal Information Institute (WorldLI), or will be located there as updating resources permit. The data in the Tables and articles are as known to the author at 31 December 2018.

These Tables have been cited by various international bodies as the most authoritative assessment of the global tally of countries with data privacy laws. For example:

- The European Commission *Exchanging and Protecting Personal Data in a Globalised World* (Communication from the Commission to the European Parliament and the Council), 10 January 2017, COM(2017);
- European Data Protection Supervisor (EDPS);
- UN Special Rapporteur on the Right of Privacy;
- The Council of Europe; and
- UNCTAD.

February 2019

Supplement to PL&B  
International Report 157

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## AI-powered Onfido one of first selected for the ICO's Sandbox

Onfido, an identity verification company, will research how to identify and mitigate algorithmic bias in machine learning models used for remote biometric identification. By **Ali Vaziri** of Lewis Silkin LLP.

In the digital economy, identity is the key to unlocking access to services widely relied on in order to participate in society. Since in-person interaction is no longer always required of, or expected by, users, the challenge faced by many online organisations is how to know a person wanting to access their services is who they claim to be, and in a

*Continued on p.3*

## Smart-home study weighs the privacy risks involved

**Martin Kraemer** and **William Seymour** at the University of Oxford report on an ICO-funded research project investigating how 'smart' doesn't have to mean invasive.

Studies and media reports about smart home technologies and smartphone apps show that consumers have little awareness of the information they expose to companies, advertisers, and other cohabitants when they use these services. These thought processes of how devices (and the information economy more generally) work can leave users feeling

*Continued on p.6*

### Future PL&B Events

- Asian data privacy laws, 30 October, Linklaters, London
- New Era for US privacy laws: California and more, 14 November, Latham & Watkins, London.
- Balancing privacy with biometric techniques used in a commercial context, 29 January 2020, Macquarie Group, London.
- PL&B's 33rd Annual International Conference, St. John's College, Cambridge 29 June to 1 July 2020.

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## ICO's Denham: Children's code and Adtech key pieces of work

As the ICO issues its AdTech report, a response to the government's Online Harms paper and prepares the Children's code, the regulator is firing on all cylinders. By **Laura Linkomies**.

Speaking at PL&B's 32nd Annual International Conference on 2 July, Information Commissioner, Elizabeth Denham, said that with the GDPR now in force for more than a year, it is time to talk about what the law means in practice. Denham said that the implementation of the GDPR requires both systemic and structural changes. The session was chaired by Christopher Millard, Professor of Privacy and Information Law at Queen Mary University of London,

*Continued on p.3*

## Real Time Bidding – 'unfair disproportionate, intrusive'

The ICO says stakeholders have six months to review their adtech practices on consent, transparency and accountability. By **Mark Sherwood-Edwards** of This is DPO.

In its recent paper, *Update report into adtech and real time bidding* (20 June 2019), the ICO has set out a biting criticism of how real time bidding (RTB) currently operates in the UK. The phrase *disproportionate, intrusive and unfair* occurs three times, and intrusive on its own is used

an additional three times. The paper is not intended as formal guidance, but it gives a clear sense of direction. The ICO also adds that the issues it raises in this paper are not the only concerns it has with programmatic advertising.<sup>1</sup>

*Continued on p.4*

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# Upcoming Event

**PRIVACY LAWS & BUSINESS**  
DATA PROTECTION & PRIVACY INFORMATION WORLDWIDE

**29  
JAN  
2020**

**EARLY BIRD REGISTRATION  
OPEN UNTIL 29 NOV**

## **Roundtable: Balancing privacy with biometric techniques**

**Macquarie Group  
London**

[privacylaws.com/biometric](https://www.privacylaws.com/biometric)

# My Top 10 - CCPA and GDPR Compared

	GDPR	CCPA
1	Fully in force now	Enforcement from 1 July 2020 (but AG can address activities in previous 6 months) and California AG's draft Regulations to be finalised
2	Most personal data included	More limited in scope. Exemptions for personal data covered by Gramm-Leach-Bliley Act (financial data) and HIPPA and health care providers (health data)
3	Data subject	Resident
4	All organisations	Scope for profit organisations, excluding charities and public sector
5	No threshold	CCPA threshold of \$25 million or receive or share personal information of 50,000 + California residents annually

# My Top 10 - CCPA and GDPR Compared

	GDPR	CCPA
6	Many data subject rights	“Do Not Sell My Personal Information” link required “Sell” broadly defined
7	30 days to respond to an access request	45 days to respond to an access request
8	Fines by national or state DPAs	Fines by California A-G
9	Class/collective action - any violation – unlimited compensation	Private right of action for data breaches if the problem has not been fixed (if “a cure is possible”) Actual damage \$100 - \$750 per consumer per incident
10	Future: EU E-Privacy Regulation and further judgements of the CJEU	Future: Other state privacy laws and possible federal privacy law(s)

# Stewart Dresner

Chief Executive

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