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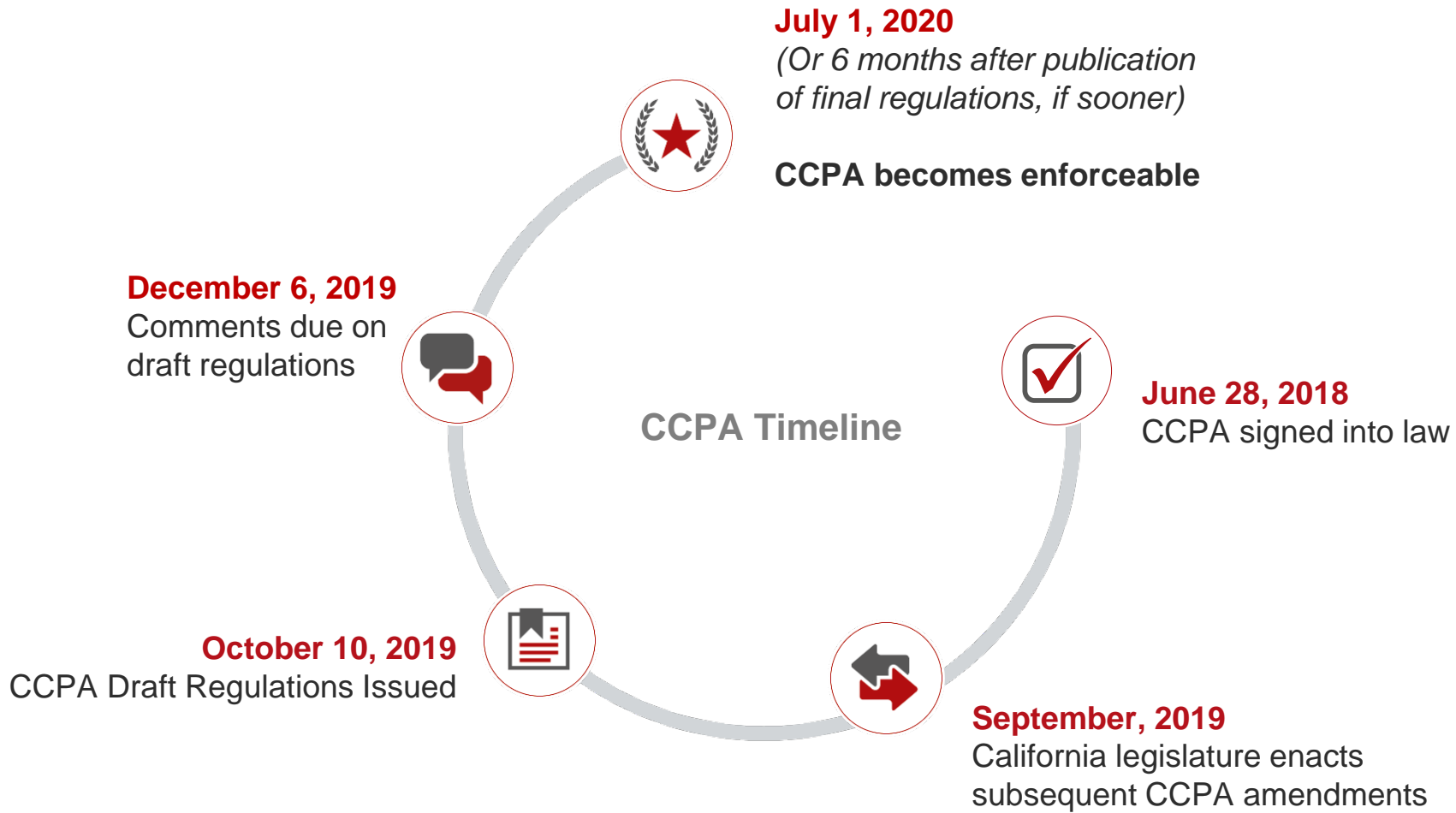
The CCPA & Other Developments Shaping the Landscape

CCPA – What It Is

- Latest and most impactful privacy law in the US
 - Far reaching
 - Broad scope
 - Very broad definitions
- Only impacts covered “*businesses*” — but the bar is low
- New rights for individuals
- New obligations on businesses
- New data security implications (and private right of action)
- Broad enforcement by State AG
- **Some** similarities with Europe’s GDPR



Timing



Reach & Scope: “Business”

- For profit entities
- Doing business in California
- Collecting personal information about consumers
- Determining the means of processing
- One of the following:
 - A. Annual gross revenues over \$25MM
 - B. Exchanging personal information of 50k or more consumers OR
 - C. 50% or more of annual revenue from selling personal information
- Entity that is parent/in common control with a business is also implicated

Reach & Scope: “Personal Information”

- **Any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, a particular consumer or household.**
- Plus a long list of examples.
- Excludes “publicly available information”—information from public government records, so long as that information is used consistently with its original purpose.

Reach & Scope: “Selling”

- **“Sell,” “selling,” “sale,” or “sold”**: 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.
- **Exceptions:**
 - Disclosure directed by the consumer
 - Sharing to alert third parties that consumer has opted out
 - Service providers
 - Merger, acquisition, bankruptcy etc.

New Rights

➤ Familiar concepts, novel requirements:

1. Right to Know what Personal Information is Collected about and with whom it is Shared
2. Right to Access Personal Information
3. Right to Deletion of Personal Information
4. Right to Opt-Out of “Sale” of Personal Information
5. Right to Not Be Discriminated Against for Exercising CCPA Rights

CCPA – What It Isn't

It's not GDPR:

- Transparency
- Access
- Deletion
- Opt-out of “sale” of personal information
- Service Providers vs Third Parties
- Exemptions
 - Selective: B2B and employees
 - Wholesale: GLBA, HIPAA, FCRA

What To Do Next...

- Data mapping – leverage record of processing
- Gap analysis
- Security
 - Proving measures are reasonable
 - IR readiness, specific to California notification and unique “cure” procedure
- Analyze your “sale” position or prepare “Do Not Sell” options
- Consider whether anti-discrimination issue applies to your consumer practices

- California rights requests
 - Make data subject access plan: Review GDPR process (starting point only)
 - Toll free number and web form
 - Who will you verify and how? What “specific pieces” will be provided?
 - Data subject deletion analysis (apply exemptions)
 - Track requests from day one
- Jan. 1, 2020 and update again in April/May 2020
 - External privacy policies
 - California-specific workforce notices

What If You Get It Wrong?

- State AG:
 - \$2,500 per non-intentional violation
 - \$7,500 per intentional violation
- Private right of action:
 - Security breaches arising from failure to maintain reasonable security
 - The greater of:
 - \$100-\$750 per consumer per incident, and
 - actual damages
- 30 day cure period (assuming curable), in both cases
- Bad publicity, loss of business, etc.

CCPA Copycat Legislation

State	Bill Name(s)	Latest Action	Notice	Access	Rectification	Deletion	Opt-Out	Portability	Discrimination Prohibition	Fiduciary Duty
Nevada	An Act Relating to Internet Privacy	Passed ; Operative on 1 October 2019	X				X			
Maine	An Act to Protect the Privacy of Online Customer Information	Passed ; Operative on 1 July 2020	X				In		X	
Hawaii	Collection of Identifying Information	In Committee	X	X		X	X	X	X	
Illinois	Data Privacy Act / Right To Know Act	In Committee	X	X	X	X	X	X		
Massachusetts	An Act Relative to Consumer Data Privacy	In Committee	X	X		X	X	X	X	
Minnesota	Consumer Rights to Personal Data Processing	In Committee	X	X	X	X	X	X		
New Jersey	An Act Concerning Commercial Internet Websites	In Committee	X	X			X		X	
Pennsylvania	Protecting Consumer Information and Privacy	In Committee	X	X		X	X		X	
Rhode Island	Consumer Privacy Protection Act	In Committee	X	X	X	X	X	X	X	
Washington	Washington Privacy Act	In Committee – Pending Carryover	X	X	X	X	X	X	X	
Connecticut	An Act Concerning Consumer Privacy	Task force substituted for comprehensive bill	—	—	—	—	—	—	—	—
Maryland Mississippi New Mexico New York Texas	Online Consumer Protection Act Mississippi Consumer Privacy Act Consumer Information Privacy Act Texas Consumer Privacy Act	Died in Committee	—	—	—	—	—	—	—	—

US: Proposed Federal Legislation – Examples

Mind Your Own Business Act

- Introduced by Sen. Wyden in October 2019
- Creates a national Do Not Track system that lets consumers stop companies from tracking, sharing or selling their information
- Violations include fines up to 4% of annual revenue and criminal penalties up to 20 years for company executives who lie to the FTC
- No state preemption

Online Privacy Act (HR 4978)

- Introduced by Congresswomen Eshoo and Lofgren in November 2019
- Creates a new independent agency – the Data Privacy Agency (DPA), to issue and enforce privacy regulations
- Establishes individual rights relating to privacy, including the right to access, delete, transfer and correct their personal information
- Violations would be the same under the FTC Act's maximum (\$42,530 per incident)

Privacy Bill of Rights Act (S 1214)

- Introduced by Sen. Markey in April 2019
- Definition of personal information is nearly identical to the CCPA's definition
- Provides individual privacy rights, including the right to access, delete, transfer and correct their personal information
- Violations of the Act would be enforceable by the FTC as unfair and deceptive practices and also grants a private right of action

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