



## Session 2: GDPR, CCPA & More

Round-up of State, Federal & International Privacy Rules

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# Agenda

- EU General Data Protection Regulation (GDPR)
- California Consumer Privacy Act of 2018 (CCPA)
- Where is this going? Pending Privacy Legislation
- What does this mean to you?
  - Lawyers & their clients
  - Vendors & their customers
  - SMB's
  - The Key: Information Governance
- Impact of Privacy on Litigation & eDiscovery
- Wrap-up & Questions





# GDPR

- Replaced Directive 95/46/EC to embody “Privacy as a fundamental Human Right”
- Effective 25 May 2018
- Protects “natural persons” as “Data Subjects”
- Defines discrete “Data Subject Rights”
- Applies to EU Establishments, those marketing to EU data subjects and those who process data pertaining to EU data subjects.
- Regulates based on 7 principles:
  - Lawfulness, fairness and transparency
  - Purpose limitation
  - Data minimisation
  - Accuracy
  - Storage limitation
  - Integrity and confidentiality (Security)
  - Accountability



# CCPA

- Enacted to avoid California Constitutional Amendment by Referendum
- Designed to embody California Constitutional Right to Privacy
- Protects “Consumers” - Individuals, Households & Devices
- Consumers can restrict sale of their data - sale is defined broadly
- Creates private right of action, with supporting statutory damages

# A Few Key Differences

CCPA = GDPR “Lite” or “Opt-in” GDPR

- GDPR

Must have a legal justification for processing personal data before collection.

Data Subject must give clear consent (opt-in) for transfers to other data controllers for their use

Businesses have an affirmative mandate to observe data subject rights.

- CCPA

Only establishes the rights of consumers; no justification required for data collection.

Must provide notice to transfer or sell the data, but consumers may opt-out of the sale.

Consumers must provide a “verified request” before business must take action.

# Pending Legislation

- Washington State Privacy Act
- Intel Proposed Privacy Bill
- Privacy Bill of Rights Act
- Others...

# Common Themes

- Individual Rights
- Transparency: Privacy Policies & Notices
- Collection & Purpose Limitations
- Consent (Opt-in vs. Opt-out)
- Quality
- Privacy Program Management (PIAs, DPIAs)
- Security for Privacy
- Data Breach Readiness & Response

# Practical Considerations

- Lawyers & Clients
- Vendors & Customers
- SMBs



# Impact on eDiscovery

- Preservation & Legal hold
- Creates targeted collection motive
- Consent issues
- Duty to identify & protect PI and SPI
- Increased diligence for project management

# Wrap up

Materials available for download:

<https://thesedonaconference.org/ipro2019>

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