

# Privacy Day Session #1

## United States Privacy Update

October 19, 2022

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# Road Map

California Developments

New States on the Horizon

Federal Privacy on the Way?



# California Developments

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# CCPA and CPRA – 2023 Effectiveness

- Data Minimization
  - Average consumer expectation
- Ease of Use
- Sensitive Information Changes
- Employee Information
- Data Subject Rights Changes
  - Right to Access, Deletion, and Correction
  - Opt-Out
  - Objections



**CALIFORNIA REPUBLIC**

# CCPA and CPRA – Enforcement

- \$2,500 per violation
- Up to \$7,500 per intentional violation
- \$7,500 for violations (even unintentional) of privacy rights of minors.
- Enhanced Private Right of Action
- New Enforcement Agency



**CPPA**

# First Civil Penalties – CCPA Cookie Sale Violations

- Sephora - \$1.2M Settlement
- First instance of CCPA enforcement in the law's over four-year history
- Opt-Out Violations
- “[S]trong message to businesses that are still failing to comply with California’s consumer privacy law.”





# New States On the Horizon

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# Countdown to Privacy

State Law	Countdown	Effective Date
California Privacy Rights Act	<u>T-Minus 2.5 Months</u>	January 1, 2023
Virginia Consumer Data Protection Act	<u>T-Minus 2.5 Months</u>	January 1, 2023
Colorado Privacy Act	<u>T-Minus 9.5 Months</u>	July 1, 2023
Connecticut Act Concerning Personal Data Privacy and Online Monitoring	<u>T-Minus 9.5 Months</u>	July 1, 2023
Utah Consumer Privacy Act	<u>T-Minus 14.5 Months</u>	December 31, 2023

# Scope and Applicability

State	Gross Revenue	Processing of Personal Information (State Residents)	Sale of Personal Information
California	OVER \$25 million (aggregate)	Buying, selling, or sharing 100,000 or more California consumers' personal information	50% of gross revenue (aggregate) from selling California consumers' personal information
Colorado	N/A	Processing 100,000 or more Colorado consumers' personal information	25,000 Colorado consumers and receiving <b>any</b> profit
Virginia	N/A	Processing 100,000 or more Virginia consumers' personal information	25,000 Virginia consumers and deriving 50% of gross revenue (aggregate) from selling
Connecticut	N/A	Processed 100,000 or more Connecticut consumer' personal information	25,000 Connecticut consumers and deriving 25% of gross revenue (aggregate) from selling
Utah	<b><u>REQUIREMENT:</u></b> \$25,000,000 or more	Processing 100,000 or more Utah consumers' personal information	25,000 Utah consumers and deriving 50% of gross revenue (aggregate) from selling

# Data Subject Rights

## Informed

- CA, CO, VA, UT, CT

## Access

- CA, CO, VA, UT, CT

## Correction

- CA, CO, VA, UT, CT

## Deletion

- CA, CO, VA, UT, CT

## Data Portability

- CA, CO, VA, UT, CT

## Opt-Outs

- Of Automated Profiling
  - CO, VA, CT
- Targeted Advertising
  - CO, VA, UT, CT
- Selling or Sharing
  - CA, CO, VA, UT, CT

## Sensitive Data

Opt-In Consent

- Colorado
- Virginia
- Connecticut

Strong Opt-Out

- Utah

Limited Opt-Out

- California

# Key Business Considerations

- Internal and External Policies
- Safeguards and Security Measures
- Procedures for Consumer Rights
- Opt-Out Mechanisms
- Opt-In Mechanisms
- Data Mapping
- Data Minimization and Retention
- Risk Assessments and Audits
- Vendor Management and Contracts

# Contracting Under New State Laws

- Processing Instructions
- Security and Data Breach Notice
- Audits and Record of Data Processing
- Confidentiality (Processor and Personnel)
- Deletion or Return of Personal Data
- Subprocessor / Service Providers
- Data Subject Rights



# Federal Privacy On the Way?

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# Federal Action and Inaction

- American Data Privacy & Protection Act
  - Formally proposed May 2022
  - Key Support Pulled September 2022
  - DOA
- FTC Announced Rulemaking
  - "Commercial Surveillance"
  - Data Minimization



# What to Expect From a Federal Law

Sensitive Data  
Category

Consumer Rights

Children's  
Personal  
Information

Large Data Holders

Balanced  
Security

Preemption?

**Questions?**



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# Privacy Day Session #2

## International Data Protection Legal Update

October 19, 2022

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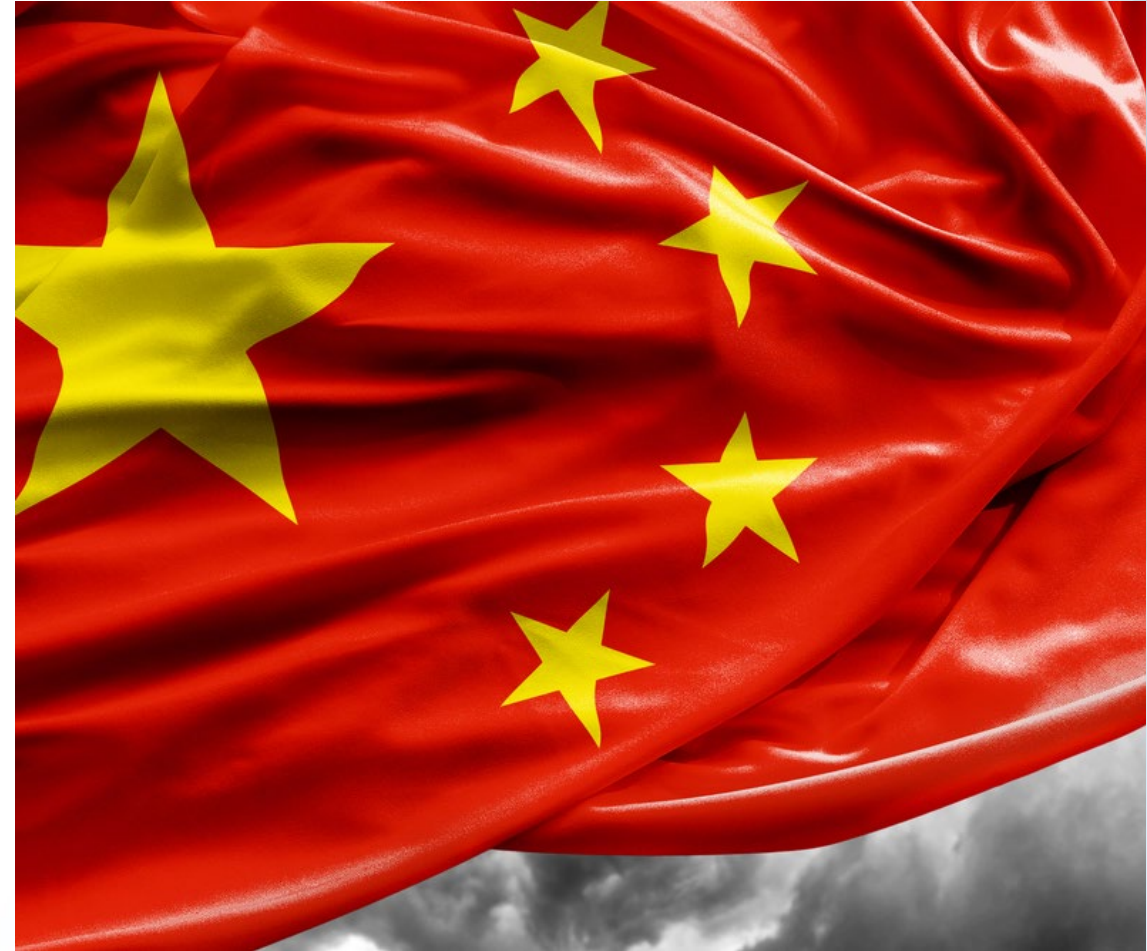
# China's PIPL and Data Transfer Mechanism

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# Personal Information Protection Law (PIPL)

- Closely aligned with the GDPR
  - Lawful Basis Required
  - Personal Information vs. Sensitive Information
  - Data Minimization
  - Consent-Driven
  - Cross-Border Data Transfer Requirements
  - Security Impact Assessments



# Consent as Lawful Basis

Cross-Border Transfer

Third Party Disclosure

Sensitive Personal Information

Minors  
(under the age of 14)

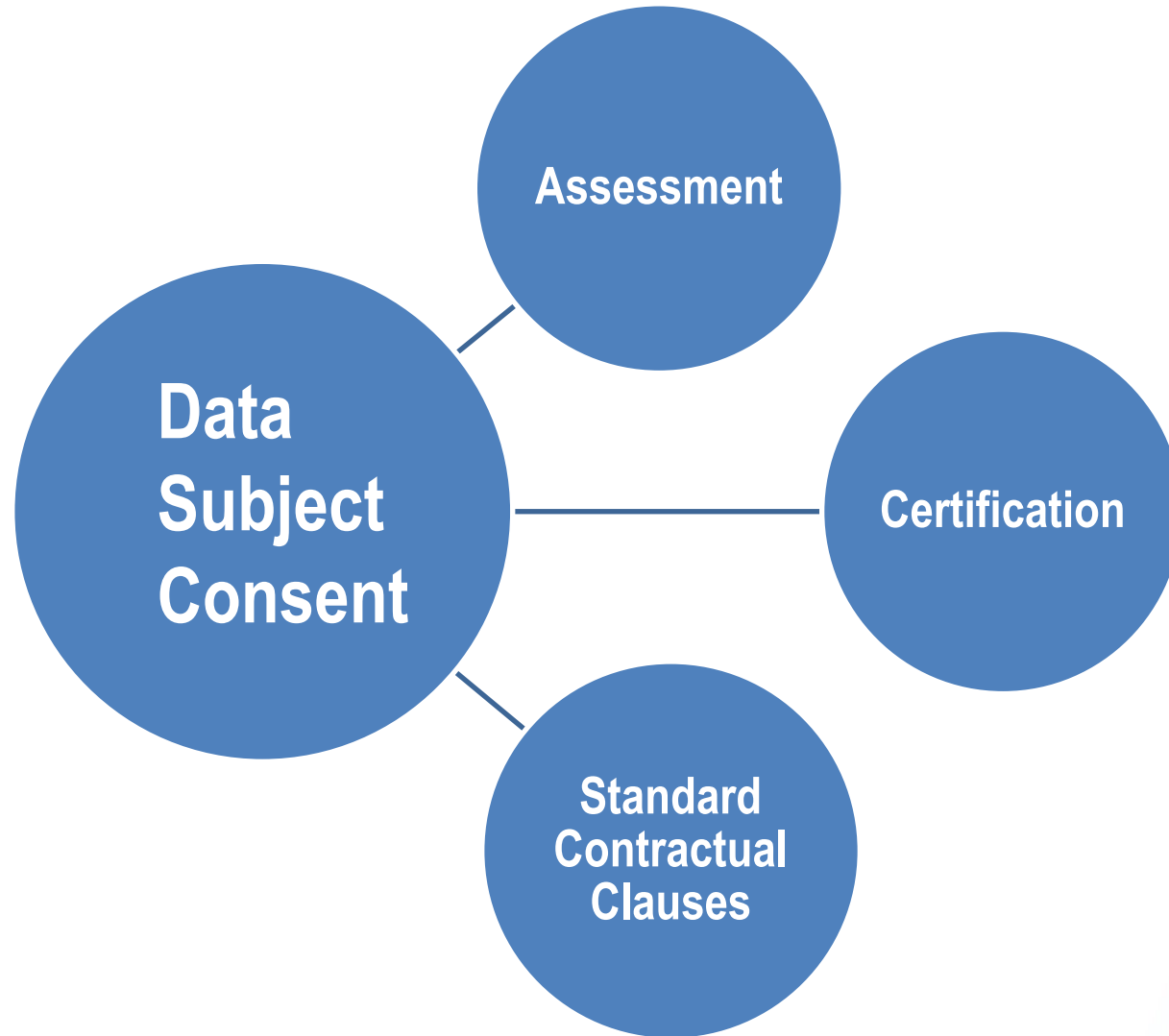
Biometric Information



# China Data Subject Rights – A Comparison

	China	European Union	California	Colorado & Virginia
Informed	✘	✘	✘	✘
Access	✘	✘	✘	✘
Rectification	✘	✘	✘	✘
Erasure	✘	✘	✘	✘
Portability	✘	✘	✘	✘
Object / Withdraw Consent	✘	✘		
Automated Decision Making and Profiling	✘	✘		✘
Selling Opt-Out				✘
Targeted Advertising Opt-Out			✘	✘

# China: Cross-Border Data Transfer Mechanisms



## Commonalities

- Meant to ensure sufficient data protection measures are in place
- Require varying degrees to business-government interaction

# European Union and United Kingdom Updates

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# General Overview

- European Data Protection Board
  - Supplementary Measures
- Standard Contractual Clause Updates
  - European Union
  - United Kingdom
- Increased Government Enforcement
  - Cookies
  - Data Protection and Children



# EU Standard Contractual Clauses

## Module 1

Controller  
transferring to  
Controller

## Module 2

Controller  
transferring to  
Processor

## Module 3

Processor  
transferring  
(Sub)Processor

## Module 4

Processor  
transferring to  
Controller

# New UK Cross-Border Transfer Mechanisms

## International Data Transfer Agreement

- Only UK Personal Data
- Rigid, awkward formatting

## International Data Transfer Addendum

- EU and UK Personal Data
- Akin to current UK SCC Addendum

\*Effective March 21, 2022; grace period until September 21, 2022\*

# Recent Data Protection Authority Actions

- Data Protection Enforcement has Ramped Up
- Focused Enforcement
  - Children's Personal Data Protection
  - Cookies and Deceptive Banners
  - Right to be Forgotten (erasure)
  - Data Minimization

€10mil or 2%  
annual profit

- Controller-Processor Obligations
- Data Security Obligations

€20mil or 4%  
annual profit

- Data Protection Principles
- Data Subject Rights
- Cross-Border Data Transfer

# Cookies as Identifiers and Obtaining Consent

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# Cookies Overview

First Party vs.  
Third Party

Session vs.  
Persistent



# EU Cookie Requirements

- GDPR and EU Privacy Directive
- Different Buckets of Cookies = Difference Requirements
  - NOT ALL COOKIES BAD FOR YOU
- Prior Consent Needed for Non-Essential Cookies
  - Zero-Load
- Cross Domain Consent Prohibited



# Practical To-Dos

- What Cookies Are In Scope?
  - Categories and Specifics
- Geographic Scope Applicable to YOU
  - GDPR in scope? PIPL in scope?
- Updating Privacy Policies to Incorporate Cookies
- Cookie-Specific Policy
- Implementing Cookie Consent Management Solutions and Platforms
- Implied Consent Banner Language vs. Express Banner Consent Language



# Trans-Atlantic Data Flows – Privacy Shield 2.0



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# Overview

- Announced March 2022
- US Executive Order Announced October 2022
  - Creates the Data Protection Review Court
  - Applies Data Minimization Principles on Intelligence Agencies
- EU Adequacy Decision Forthcoming
  - Expected mid-Spring 2023

# EU-US Data Flows: What Next?

- GDPR Cross-Border Requirements
  - Country determined to have "adequate" safeguards by EU Commission
  - Contractually ensuring appropriate safeguards are in place
- Privacy Shield, Shrems II, and EU Court Concerns
  - FISA Courts and US Intelligence Agencies
- Keep on keeping on with SCCs *or* rely on new mechanism?

# Other Jurisdictions – What to Watch For

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# Overview

- Japan "Act On Protection of Personal Information" (APPI) Amendments
  - Effective April 2022
- South Africa Protection of Personal Information Act (POPIA)
  - Effective 2021
- India Personal Data Protection Bill of 2019
  - Abandoned August 2022





**Questions?**



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***Thank you!***



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