



Presentation Takeaways

Thank you for joining IAB's Privacy Law Essentials for Digital Advertising virtual course. We've captured some key takeaways from the presentation to better prepare you for new and forthcoming changes to privacy laws in the U.S.

It is important that organizations fully understand the legal and business implications of 5 new and forthcoming U.S. state privacy laws in 2023 (in California, Virginia, Colorado, Connecticut and Utah), as well as significant legal developments occurring in the EU pursuant to the General Data Protection Regulation.

The California Privacy Rights Act (CPRA)

- The CPRA amends the CCPA and is considered the most comprehensive state privacy law in the U.S.
- The law creates the California Privacy Protection Agency (CPPA) for enforcing the CPRA and adds additional consumer rights.
 - Opt-out of "sharing" for "cross-context behavioral advertising"
 - Opt-out of certain uses of "sensitive PI"
 - Right to correction
 - Removes the 30-day "cure period" for administrative enforcement and retains the private right of action for data breaches.
- The law applies to two categories of entities: "businesses" and "service providers/ contractors." It generally requires an opt-out for "sales" "shares" and certain uses of "sensitive personal information" but does require opt-in consent for certain instances involving children under 13, financial incentives, and where information collected is not "reasonably necessary and proportionate."
- **Global Privacy Control (GPC)** is a browser-based setting that communicates to websites that the user wishes to opt-out of "sales" automatically (i.e., without clicking on a DNS link).
- The IAB has updated the Limited Service Provider Agreement (LSPA) to create the Multi-State Privacy Agreement (MSPA). To register and find out more, visit <https://www.iabprivacy.com/>

Presentation Takeaways

The Other States (Virginia, Colorado, Connecticut and Utah)

- The privacy laws in these four states establish new data protection regulations for businesses. They borrow heavily from the CPRA but use the terms "controller" and "processor" instead of "business" and "service provider."
- All four laws require opt-outs for "sales" "targeted advertising". CO, CT, and VA require opt-in consent for use of "sensitive PI" (UT is opt-out). Three revisions of the [draft regulations](#) for CPA have been released.
- The scope and exceptions to "sales" under these four laws are similar to CPRA, except that "sales" under the VA and UT are limited to disclosures for monetary consideration only.
- Virginia, Colorado, and Connecticut require an opt-out of profiling but only where that profiling is "in furtherance of decisions that produce legal or similarly significant effects concerning the consumer."
- **Article:** [Tracking the Past and Future of Interest-Based Advertising](#).

General Data Protection Regulation Act (GDPR)

- The GDPR has a private right of action and hefty administrative fines, much higher than U.S. privacy laws.
- It requires opt-in consent for use of cookies/pixels/SDKs, and private rights of action, with respect to digital advertising.
- Controller v. Processor
 - A controller determines the "purpose and means" of processing, either alone or done jointly with other controllers (i.e., "joint controllers").
 - A processor processes personal data on behalf of the controller.
- [The IAB Europe Transparency and Consent Framework \(TCF\)](#) is a cross-industry effort that helps companies comply with the GDPR's transparency and legal basis requirements.
- The GDPR requires that personal data cannot be imported from the EEA to a third country (i.e., a country outside of the EEA) unless there is an appropriate data transfer mechanism or the country provides "adequate protection." The U.S. is not on that list.
- Appropriate data transfer mechanisms include Model Contracts and Binding Corporate Rules. UK ICO has stated that consent must be obtained for "behavioral advertising" and profiling; which implies very limited room for "legitimate interests." ([Source](#))
- The Belgian DPA stated that reliance on legitimate interests for personalized ads or profiling under the IAB Europe TCF was invalid (under appeal). ([Source](#))



PRIVACY LAW ESSENTIALS FOR DIGITAL ADVERTISING PROFESSIONALS

Presentation Takeaways

Opt-Out/In Rights (Summary)

Rights	CPRA	VCDPA	CPA	CTDPA	UCPA
Do Not "Sell"	Opt Out Transfer or making available of PI to a 3P for monetary or other valuable consideration	Opt Out Exchange of PI for monetary consideration by the controller to a 3P	Opt Out Exchange of PI for monetary or other valuable consideration by a controller to a 3P	Opt Out Exchange of PI for monetary consideration or other valuable consideration by the controller to a 3P	Opt Out Exchange of PI for monetary consideration by the controller to a 3P
Do Not "Share"/Opt-out of "Targeted Advertising"	Opt Out Transfer or making available of PI to a 3P for "cross-context behavioral advertising" whether or not for valuable consideration	Opt Out Any processing of PI for purposes of displaying targeted ads based on activity across the web.	Opt Out Any processing of PI for purposes of displaying targeted ads based on activity across the web.	Opt Out Any processing of PI for purposes of displaying targeted ads based on activity across the web.	Opt Out Any processing of PI for purposes of displaying targeted ads based on activity across the web.
Do Not Use "Sensitive PI"	Opt Out Limit use of consumer's sensitive PI to the use necessary to perform the services reasonably expected by a consumer	Opt In Refrain from processing sensitive data without consent	Opt In Refrain from processing sensitive data without consent	Opt In Refrain from processing sensitive data without consent	Opt Out Right to opt-out of processing sensitive PI (opt-in if sensitive data of a known child < 13)
Do Not Use "Automated Decision-Making"/Profiling	Opt Out Use of automated decision-making technology, including profiling (pursuant to regulations)	Opt Out Profiling in furtherance of decisions that produce legal or similarly significant effects concerning the consumer	Opt Out Profiling in furtherance of decisions that produce legal or similarly significant effects concerning a consumer	Opt Out Profiling in furtherance of decisions that produce legal or similarly significant effects concerning a consumer	N/A No specific requirement applicable to automatic profiling

Note: Opt-in consent is needed for any processing of PI relating to a **child known to be under 13** under **VCDPA, CTDPA, and CPA**, and **opt-in consent** is needed for **sales / sharing** of PI relating to a **child known to be under 16** under **CPRA**. **UCPA** limits the requirement to processing sensitive data of a child known to be under 13.



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State Level Comparison Summary

	California California Consumer Privacy Act, as amended by CPRA	Virginia Virginia Consumer Data Protection Act (VCDPA)	Colorado Colorado Privacy Act (CPA)	Connecticut An Act Concerning Personal Data Privacy and Online Monitoring	Utah Utah Consumer Privacy Act (UCPA)
Effective Date	January 1, 2023	January 1, 2023	July 1, 2023	July 1, 2023	December 31, 2023
In-scope data	B2C / B2B / HR	B2C	B2C	B2C	B2C
Consumer Rights	✓ Know / Access Correction / Deletion	✓ Know / Access Correction / Deletion	✓ Know / Access Correction / Deletion	✓ Know / Access Correction / Deletion	✓ Know / Access Deletion
Opt-in Consent	✓ To sell or “share” personal information of minors under age 16	✓ To process sensitive data (i.e., precise geolocation, genetic or biometric data, race, ethnicity, religious beliefs, health, sexual orientation, citizenship, immigration)	✓ To process sensitive data (racial or ethnic origin, religious beliefs, citizenship, genetic or biometric data)	✓ To process sensitive data (i.e., precise geolocation, genetic or biometric data, race, ethnicity, religious beliefs, health, etc., children's' data)	✓ Required only where processing involves sensitive data of a known child under 13
Limit Sensitive Data Processing/Use	✓ Sensitive data includes precise geolocation; contents of mail, email, texts	N/A (see above)	N/A (see above)	N/A (see above)	✓ Must provide opt out from such processing
Opt-Out of Sales/ Sharing/Targeted Ads	✓	✓	✓	✓	✓
Global Privacy Control	✓	N/A	✓ By July 1, 2024	✓ By January 1, 2025	N/A
Vendor Contract Requirements	✓ Very proscriptive	✓	✓	✓	✓



Key Dates:

- **California**
 - CPRA Regulations will be finalized in Winter- Spring 2023.
 - CPRA Administrative enforcement begins July 1, 2023.
- **Virginia**
 - Went into effect January 1, 2023.
- **Colorado**
 - Goes into effect July 1, 2023.
 - Requires "controllers" to use a GPC-type mechanism (to be further expanded upon by the Colorado AG) by July 1, 2024.
- **Connecticut**
 - Goes into effect July 1, 2023.
- **Utah**
 - Goes into effect on December 31, 2023.

THANK YOU!



Thank you to our sponsor Perkins Coie and our speakers Meredith Halama and Katie Cramer. Please feel free to reach out with any questions.

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