

# ACC Charlotte Chapter The Jeopardy of the CCPA

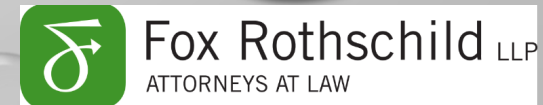
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Scope Out	PI in the Sky	Sharing is Caring	You're Always Right	Do Tell
<u>\$200</u>	<u>\$200</u>	<u>\$200</u>	<u>\$200</u>	<u>\$200</u>
<u>\$400</u>	<u>\$400</u>	<u>\$400</u>	<u>\$400</u>	<u>\$400</u>
<u>\$600</u>	<u>\$600</u>	<u>\$600</u>	<u>\$600</u>	<u>\$600</u>
<u>\$800</u>	<u>\$800</u>	<u>\$800</u>	<u>\$800</u>	<u>\$800</u>

If you do not have any physical presence in California you would be subject to CCPA if you are deemed to be doing this

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\$200	\$200	\$200	\$200	\$200
\$400	\$400	\$400	\$400	\$400
\$600	\$600	\$600	\$600	\$600
\$800	\$800	\$800	\$800	\$800



What is “doing business in  
California”?


# “Doing Business in California”

- Headquarters are in California
- Employees in California
- Entity incorporated in California
- California ‘foreign entity’
- Out of state with sales/transactions into California

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You are a “business” under CCPA if you “buy, sell, share, and/or receive the personal information of at least 50,000” of these, per year

Scope Out	PI in the Sky	Sharing is Caring	You're Always Right	Do Tell
\$300	\$300	\$300	\$300	\$300
\$400	\$400	\$400	\$400	\$400
\$500	\$500	\$500	\$500	\$500
\$600	\$600	\$600	\$600	\$600

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What are “consumers, households or devices”?



## Nearly a quarter of US households own a smart speaker, according to Nielsen

By Micah Singleton | @MicahSingleton | Sep 30, 2018, 10:00am EDT

Theverge.com 9.3.18

## Almost 3 in 4 Broadband Households Own a Connected Entertainment Device

<https://www.securitysales.com/> 1.29.19

## 10 Smart Home Devices You Should Know About

Smarthome.com 4.24.19

Newzoo: Smartphone users will top 3 billion in 2018, hit 3.8 billion by 2021

Venturebeat 9.11.18





# CCPA Scope

- at least **\$25,000,000 in annual gross revenues;**
- buy, sell, share, and/or receive the personal information of at least **50,000 California consumers, households or devices, per year; or**
- derive at least **50% of your annual revenue from selling California consumers' personal information**


# CCPA Scope

- You collect **California consumers' personal information** (or such information is collected on your behalf)
- You **determine the purposes and means of processing** California consumers' personal information
- You **control or are controlled by an entity** that meets the above criteria **and share common branding** with that entity

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# CCPA does not apply to these organizations who are subject to GDPR

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\$800	\$800	\$800	\$800	\$800

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# What are “most Non Profit Organizations”?

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# PI IN THE SKY 400

**This ad thinks you're male,  
work in media,  
and cut the cable cord.**

LIKELY WORK EMAIL

LIKELY SOCIAL MEDIA

LIKELY CREDIT CARD

LIKELY SMART HOME DEVICES

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\$400	\$400	\$400	\$400	\$400
\$500	\$500	\$500	\$500	\$500
\$600	\$600	\$600	\$600	\$600

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(FROM: S. THOMPSON "THESE ADS THINK THEY KNOW YOU" NYTIMES.COM 4.30.19)

What is “Inferences drawn from  
any of the information identified in this subdivision”

## Other types of Personal Information:

- unique personal identifier
- online identifier
- Internet Protocol address,
- browse and search history
- purchase history or tendencies
- interactions with ads and apps
- email address
- audio, electronic, visual, thermal, olfactory, or similar information.

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# Developers

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The Census Bureau has begun rolling out our datasets via APIs. Check out our [Discovery Tool](#). Sign up for our [newsletter](#) to get the latest updates and newest dataset addition. We also invite you to make requests for features / data via our [forum](#).

[Read More](#)

<https://www.census.gov/developers/>

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\$700	\$700	\$700	\$700	\$700
\$800	\$800	\$800	\$800	\$800

What is “publicly available information”?


# Publicly Available Information

- Lawfully made available from federal, state, or local government records
- But NOT:
  - Biometric information collected without knowledge;
  - Data used for an incompatible purpose; or
  - Consumer information that is de-identified / aggregated

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John Doe, an employee in your Sacramento office wants a copy of his HR file. This CCPA proposed amendment supports an answer of “No, Thank you”

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What is “AB 25”?

# AB 25

## Excludes

- Employees
- Job applicants
- Contractors and agents

From the definition of “consumer”




# AB 25 (As amended)

- Disclosure requirement
- Sunset 2021
- Some access requirements already under California labor laws
- Only information collected from a person by a business in the course of the person acting as a job applicant / employee

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An online loan provider covered under GLBA has these obligations under CCPA regarding the leads it generates on social media.

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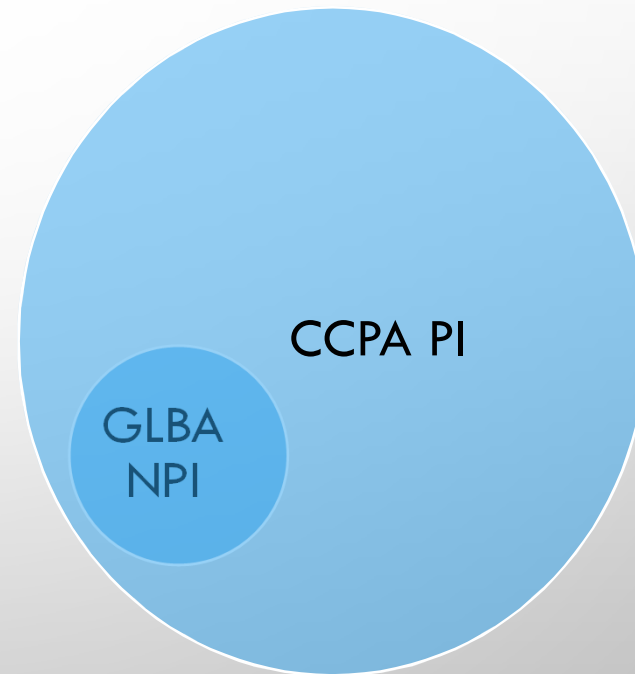
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What are “all obligations under the CCPA”

# GLBA Entities

- Out: Non-Public Information (NPI) under GLBA
- In: Everything else (clickstream, lead generation)

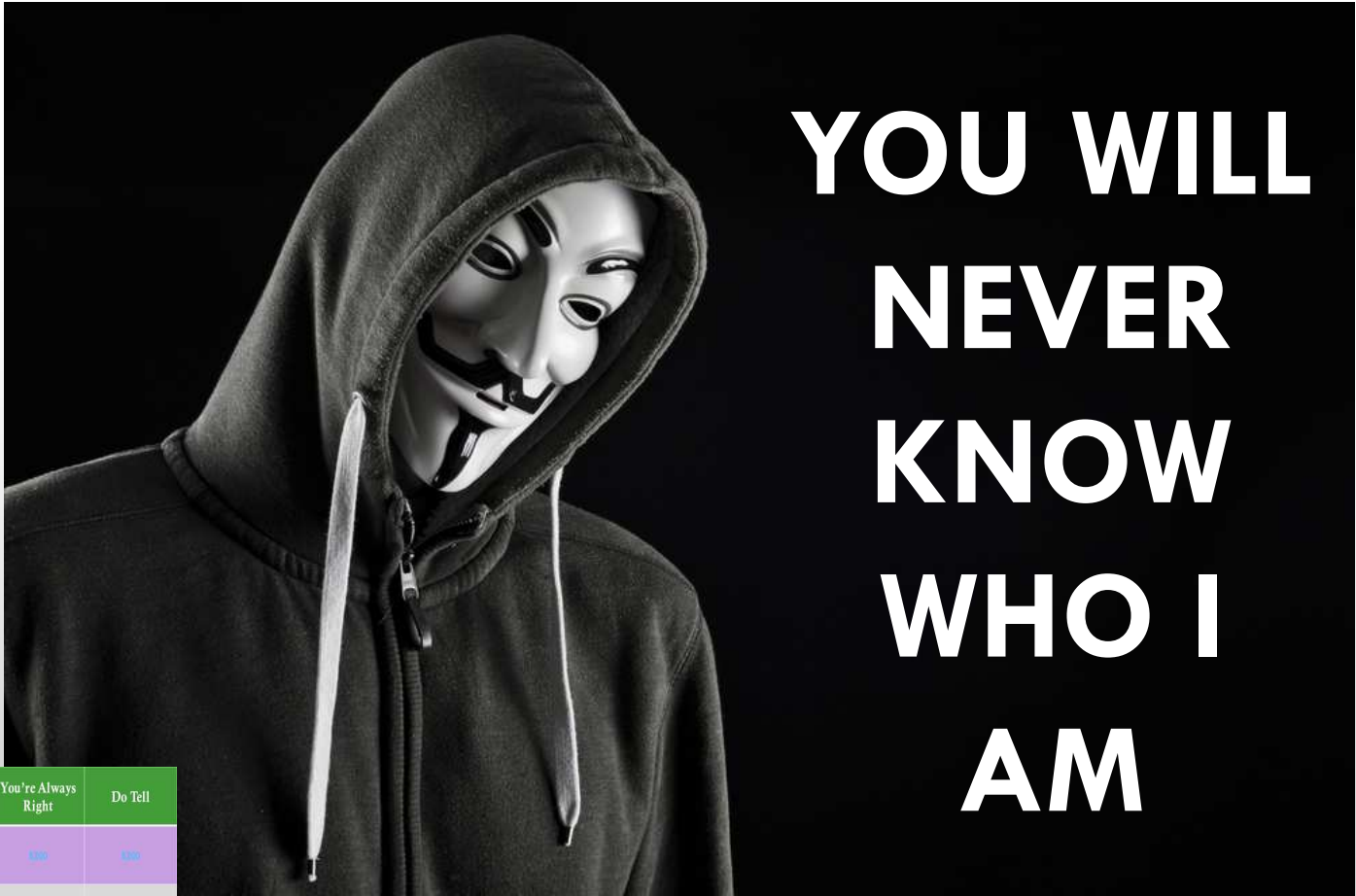


# Health Information

- Out:
  - Protected Health Information (“PHI”) under HIPAA
  - Information under the Confidentiality of Medical Information Act
- In:
  - HIPAA entity’s non-PHI information (lead generation, marketing)
  - De-identified PHI
  - Health information of a non-HIPAA entity

BUT: No “special category” status

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\$200	\$200	\$200	\$200	\$200
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\$800	\$800	\$800	\$800	\$800



What are “None”?

## De-Identified Data (1)

- De-identified data is out of scope for CCPA
- Definition of de-identified is different than GDPR
- Definition may change through amendment

## De-Identified Data (2)

CCPA	GDPR
<p>Information that cannot <b>reasonably</b> identify, relate to, <b>describe, be capable of being associated with, or be linked, directly or indirectly</b>, to a particular consumer</p>	<p>Information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is <b>not or no longer identifiable</b></p>

## De-identified Data (3)


CCPA	GDPR
Implement <b>technical safeguards</b> that prohibit re-identification	Account must be taken of “ <b>all</b> ” <b>the means “likely reasonably” to be used for identification</b> by the controller and third parties, paying special attention to <b>what has lately become, in the current state of technology “likely reasonably”</b> (given the increase in computational power and tools available).
Implement <b>business processes</b> that specifically <b>prohibit re-identification</b>	
Implement <b>business processes</b> to <b>prevent inadvertent release of de-identified information</b>	
Make <b>no attempt to re-identify the information</b>	

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If you are under this age, the CCPA opt-out requirement flips to an “Opt-In”

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What is “16”?

## Under 16 Opt-In

- 13 – 16 → Opt In
- Under 13 → Opt in by the parent
- Cannot willfully disregard the age

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If you are a service provider for a “business” under CCPA, you are required to take these actions

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\$400	\$400	\$400	\$400	\$400
\$600	\$600	\$600	\$600	\$600
\$800	\$800	\$800	\$800	\$800

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What is “Process the information only for the specific purpose of performing the services, or as otherwise permitted by this title”?

# Amend your Art 28 DPA

- Must Enter into an agreement with the “business”
  - Use only for the provision of the services
  - Not sell
  - Certify that will comply
- Allow compliance with consumer rights under CCPA
- Facilitate opt outs

## ...and some Controller/controller agreements too

- Some CCPA Service Providers might be GDPR Data Controllers
- “Business purpose” is broader than Art 28 and includes:
  - security incidents / fraud / debugging/ quality control
  - short term use
  - advertising, marketing, analytics
  - internal research
- CCPA imposes requirements on “third parties” as well

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In an M&A deal, you do not need to give an opt-out of sharing information unless the target wants to do this

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\$800	\$800	\$800	\$800	\$800





What is “use the information differently than it was used before”?

# Sharing Information – M&A


- CCPA (Merger, Acquisition OR bankruptcy):
  - Consistent with the purpose → No Opt Out
  - Materially inconsistent with the promises → Opt Out
- GDPR
  - Bankruptcy + consistent / inconsistent -> likely need consent (Opt In)
  - Asset deal + consistent / inconsistent -> likely need consent (Opt In)
  - Merger + consistent -> No opt out
  - Merger + inconsistent -> Opt In.



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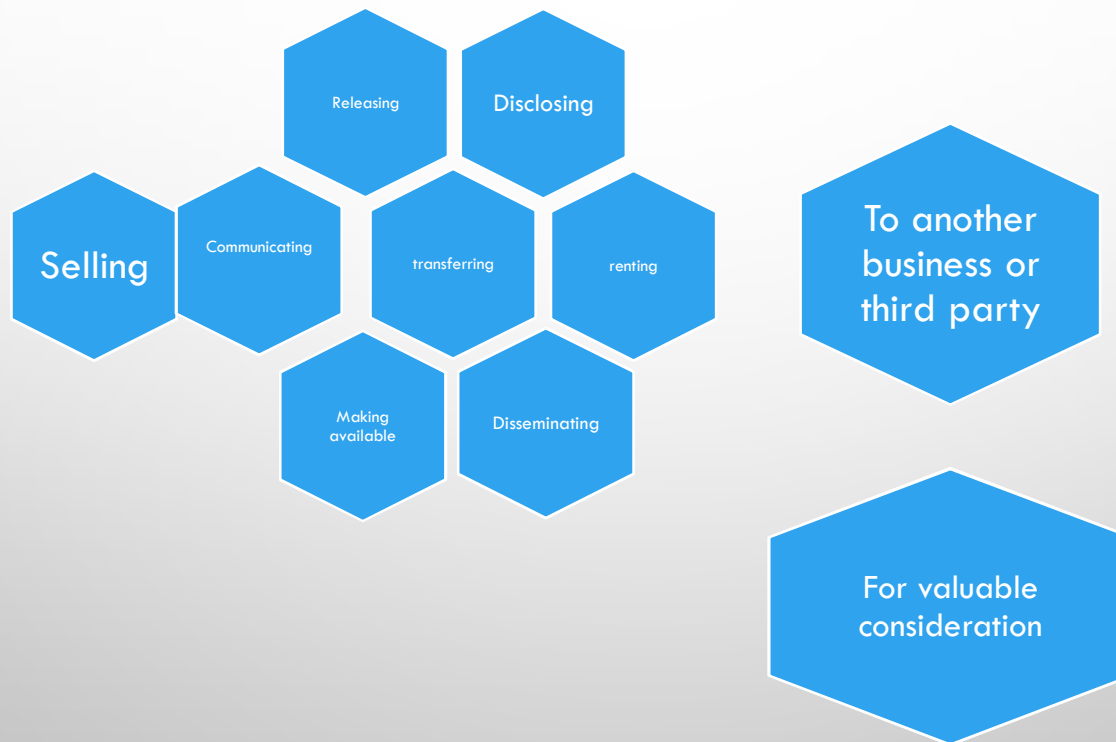
Bake, closeout and garage are all types of this action that requires you to give an Opt-Out under CCPA

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\$500	\$500	\$500	\$500	\$500
\$600	\$600	\$600	\$600	\$600



What is a “Sale”?

# A Sale Under the CCPA Is:



# Sale (1)

Action	CCPA	GDPR
Sale	Opt Out	Opt In (consent)
At the consumer's direction	No opt out	Opt out (withdraw consent at any time)
Security incidents / fraud / debugging/ quality control (by Service Provider)	No opt out	Opt out if rights outweigh the legitimate interest of business
Short term use (by Service Provider)	No opt out	Opt out (consent/legit interest test)


## Sale (2)

Action	CCPA	GDPR
Advertising, marketing, analytics (by Service Provider)	No opt out	Opt out (consent/legit interest test)
Internal research (by Service Provider)	No opt out	Opt out (legit interest test)
M&A / Bankruptcy	Opt out (unless use for an incompatible purpose )	Opt In (unless merger + compatible use)
Communicating an opt-out preference	No opt out	No opt out

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When you disclose personal information to a third party, the third party may further disclose this information only if this happens

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\$600	\$600	\$600	\$600	\$600
\$700	\$700	\$700	\$700	\$700
\$800	\$800	\$800	\$800	\$800

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What is “Providing explicit notice + Opt Out”?

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“I've always wanted to be somebody, but I see now I should have been more specific.”

- Lily Tomlin

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What are “specific pieces of personal information”?

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# Your privacy notice needs to include these three separate lists

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\$800	\$800	\$800	\$800	\$800

What are: “Categories of information collected;  
Categories of information disclosed; and Categories  
of information sold”?

## Privacy Notice – Requirements (1)

CCPA	GDPR
	Contact information of controller and controller representative
	Contact details of DPO
Categories of personal information collected in past 12 months	Categories of personal data
Categories of personal information sold in past 12 months	
Categories of personal information disclosed for business purpose in past 12 months	
Purposes for which will be used	Purposes of the processing; <b>legal basis of the processing</b>

## Privacy Notice – Requirements (2)

CCPA	GDPR
Categories of sources from which collected	Source of the data <b>legitimate interest of the controller or a third party</b>
Categories of third parties to whom sold, by category of information sold to each	recipients or categories of recipients of the personal data
	<b>purpose and legal basis of sharing</b> with third parties
	<b>cross border transfer</b> and appropriate or suitable safeguards for the transfer and how to access them.
	<b>period for which data will be stored</b> or criteria to determine it

# Privacy Notice – Requirements (3)

CCPA	GDPR
	Is the provision of the data a <b>contractual or legal requirement</b> and consequences of failure to provide the information
	<b>automated decision making</b>
<b>Financial incentives</b> (notice + material terms)	
Description of consumer rights + method of exercise	Data subject rights
<ul style="list-style-type: none"> <li>• Access</li> </ul>	<ul style="list-style-type: none"> <li>• Access</li> </ul>
	<ul style="list-style-type: none"> <li>• <b>Rectification</b></li> </ul>
<ul style="list-style-type: none"> <li>• Deletion</li> </ul>	<ul style="list-style-type: none"> <li>• Deletion</li> </ul>




## Privacy Notice – Requirements (4)

CCPA	GDPR
	<ul style="list-style-type: none"><li>• Restriction of Processing</li></ul>
	<ul style="list-style-type: none"><li>• Data Portability</li></ul>
<ul style="list-style-type: none"><li>• Opt-out</li></ul>	
	<ul style="list-style-type: none"><li>• Right to Object</li></ul>
<ul style="list-style-type: none"><li>• No discrimination</li></ul>	
	<ul style="list-style-type: none"><li>• Right to lodge a complaint with the supervisory authority</li></ul>

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Under CCPA, you are allowed to charge a different price or rate, or provide a different level or quality of goods or services if this happens

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\$600	\$600	\$600	\$600	\$600
\$800	\$800	\$800	\$800	\$800

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What is “that the value is reasonably related to the value provided [to the consumer] by the consumer’s information”?


# Financial incentives

- Requires opt-in after full disclosure
- Cannot be unjust, unreasonable, coercive, or usurious
- May offer financial incentives, including payments as compensation
- May also offer a different price, rate, level, or quality of goods or services to the consumer if that price or difference is directly related to the value provided to the consumer by the consumer's data

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This new addition to CCPA-compliant websites will provide individuals with an easy way to opt-out of the sale of their information

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What is “the Do Not Sell my Information Button”?


# Do Not Sell My Information

- a clear and conspicuous link on website
- must not require a consumer to create an account in order to opt-out
- respect a consumer's opt-out for at least 12 months before requesting that the consumer authorize the sale of the consumer's personal information

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If you receive an access request on July 2, 2020,  
you need to provide information dating back to  
this date

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\$300	\$300	\$300	\$300	\$300
\$400	\$400	\$400	\$400	\$400
\$600	\$600	\$600	\$600	\$600
\$800	\$800	\$800	\$800	\$800





What is “July 3, 2019”?

## Right of Access (1)

CCPA	GDPR
Specific pieces of personal information	Copies of personal data
Categories of personal information collected about the consumer in 12 preceding months	Categories of personal data processed at any time
Categories of personal information the business sold in the 12 preceding months	
Categories of personal information the business disclosed for a business purpose in the 12 preceding months	

## Right of Access (2)

CCPA	GDPR
The categories of sources	Sources of personal data
The business or commercial purpose for collecting or selling personal information	Purpose of the processing
<b>Categories of third parties</b> the business disclosed personal information to	Recipients / categories of recipients
	<b>Data retention</b>
	<b>Correction / erasure</b>
	<b>Complaint</b>
	<b>Automated decision making</b>
	<b>Cross border transfer</b>

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In the 2000 Christopher Nolan movie, “Memento”, the main character suffers from a condition that would make him less likely to exercise this right under CCPA

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What is “the right of deletion / erasure”?

# Right of Erasure - Triggers

CCPA	GDPR
Collected from the consumer	Personal data concerning him or her
Verifiable consumer request	Verifiable request
Direct service providers to delete	Require data processor to erase; inform controllers if data made public
No legal basis required	<b>Legal basis</b>
	<ul style="list-style-type: none"> <li>• No longer necessary for the purpose</li> </ul>
	<ul style="list-style-type: none"> <li>• Consent is withdrawn</li> </ul>
	<ul style="list-style-type: none"> <li>• Object to the processing</li> </ul>
	<ul style="list-style-type: none"> <li>• Unlawfully processed</li> </ul>
	<ul style="list-style-type: none"> <li>• Compliance with EU legal obligation</li> </ul>
	<ul style="list-style-type: none"> <li>• Information society services for kids</li> </ul>

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What is “an internal use that is reasonably aligned with the expectations of the consumer based on the consumer’s relationship with the business”?



# Right of Erasure – Exceptions

CCPA	GDPR
complete a transaction	Necessary for the purpose
provide a good or service requested by the consumer	
perform a contract between the business and the consumer	
free speech or another legal right	freedom of expression and information
comply with the California Electronic Communications Privacy Act	compliance with EU legal obligation under Union or Member State law
comply with a legal obligation	
	for the establishment, exercise or defense of <b>legal claims</b>

# RIGHT OF ERASURE – EXCEPTIONS

CCPA	GDPR
engage in research in the public interest	task carried out in the public interest / official authority public interest in the area of public health archiving purposes in the public interest, scientific or historical research purposes or statistical purposes
detect security incidents, protect against malicious, deceptive, fraudulent or illegal activity	
debug to identify and repair functionality errors	
internally in a lawful manner compatible with the context in which the consumer provided it	
solely internal uses aligned with the consumer's expectations	

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# Questions?

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