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CCPA vs GDPR

Deja Vu?

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EXECUTIVE SUMMARY

Much has been written about the new California Consumer Privacy Act (CCPA), which came into force on the 1st of January 2020. For various reasons the CCPA has been referred to as the "Californian General Data Protection Regulation" (GDPR), and it's fair to say that there are similarities.

In fact, these similarities enable organisations that have already implemented data protection programs, to meet the requirements of the GDPR in a competitive position in terms of compliance.

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WHY DOES THIS MATTER?

When the GDPR first became law in May 2018, many organisations struggled with implementation, interpretation and debate about applicability. Indeed even now, there is a degree of confusion and uncertainty. However regardless of whether you had to meet the GDPR requirements because your organisation is based within the EU, or you target individuals' within the EU with goods and services, a level of maturity with your data protection program allows you to focus on the differences, rather than meeting all the CCPA requirements from scratch.

A report from AG has estimated the cost of meeting the CCPA compliance requirements at $55 billion. Costs will vary however, depending on the size of the organisation, as highlighted below:

CATEGORY	NO. OF EMPLOYEES	INITIAL COSTS
Smaller Firms	<20	$50,000
Medium Firms	20-100	$100,000
Medium-Large Firms	100-500	$450,000
Large Firms	>500	$2 million

Source: Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations* *

The AG's report expects that 75% of all California businesses will be expected to comply. With this in mind it's also worth considering when does CCPA apply?

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WHEN DOES CCPA APPLY?

WHEN A BUSINESS:

1. Handles personal information* about California residents

*The CCPA defines personal information broadly in terms of (a) types of individuals and (b) types of data elements. First, the term “consumer” refers to, and the CCPA applies to data about, any California resident, which ostensibly includes website visitors, business-to-business (B2B) contacts and (at least for now) employees. It is not limited to business-to-consumer customers that actually purchase goods or services. Second, the data elements that constitute personal information include no sensitive items that historically have been less regulated in the US, such as internet browsing histories, IP addresses, product preferences, purchasing histories, and inferences drawn from any other types of personal information described in the statute, including:

- Identifiers, such as name, address, phone number, email address
- Characteristics of protected classifications under California and federal law
- Commercial information, such as property records, products purchased and other consuming history
- Biometric information
- Internet or other electronic network activity
- Geolocation data
- Olfactory, audio and visual information
- Professional or educational information

2. Determines the purposes and means of processing that personal information

3.Does business in California and meets one of the following threshold requirements:

a. Has annual gross revenues in excess of US$25 million**

** Is the US$25 million annual revenue trigger applicable only to revenue derived from California or globally?

b. Annually handles personal information regarding at least 50,000 consumers, house-holds, or devices***

*** Do the 50,000 devices threshold cover devices of California residents only, or apply more broadly?

c. Derives 50% or more of its annual revenue from selling personal information “service providers”, CCPA does not apply to non-profit organizations.

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ARE THERE ANY EXEMPTIONS?

These include information that is collected and used “wholly outside” of California, subject to other state and federal laws, or sold to or from consumer reporting agencies.

Specifically, the excluded categories of personal information include: Activity Wholly Outside of California.

The CCPA does not apply to conduct that takes place wholly outside of California, although it is unclear how such an exemption will apply in practice. The statute provides that this exemption applies if:

- The business collects information while the consumer is outside of California
- No part of the sale of the consumer’s personal information occurs in California
- No personal information collected while the consumer is in California is sold

The exemptions above and the applicability of other US data protection laws are nuanced and should be considered carefully.

THE BIGGER PICTURE

Whether an organisation has to meet the CCPA requirement from a scoping or legal perspective may not be the only reason for complying with CCPA.

It's worth considering the financial benefits of doing business in the state of California!

If the state –with its 39.5 million people – was an independent country, it would have the fifth largest economy in the world, according to federal figures – just surpassing the United Kingdom, which has a population of 65.6 million.

California's economy of $2.7 trillion sits behind the United States, China, Japan and Germany. California's large economy is attributed to its thriving tech sector and Hollywood, according to the Associated Press. It has 12% of the U.S. population, but has contributed 16% of total job growth between 2012 and 2017. California's gross domestic product also went up by $127 billion from 2016 to 2017, helping to give it a push to reach the fifth spot.

Compelling reasons for meeting the data protection requirements, in order to access the market opportunity above.

DEJA VU

As I began to write this piece, it was with a sense of Déjà Vu of the implementation of the GDPR. Where organisations tend to fixate on the letter of the law, forgetting the reasons for meeting the principals of the regulation and the commercial advantages that this can bring.

In summary, focus on what the differences are in your current stance, so as to close the gap. Use specialist tech vendors and software suppliers with a track record of working in data protection, and if possible, the GDPR as well. Try to focus on leveraging your advantage, so as not to fall into the same traps of the early days of the GDPR.

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