



# Global Data Protection Legislation and the Effects of COVID-19

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May 21, 2020

**This presentation is intended for informational purposes only and does not constitute legal advice.**

# Welcome and Agenda

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- **COVID-19 Related Updates**
  - Employees; Proposed Federal Legislation; EU/EDPB Guidance
- **State Privacy Legislation Update**
- **CCPA Compliance and Regulatory Activities**
  - CPRA and CCPA Regulations
- **GDPR and EU Privacy Activities**
  - ePrivacy
  - Consent and Cookies Guidelines
  - *Schrems II*
- **Global Data Protection Current Events in 2020**
  - Developments in Asia, Brazil, India and Beyond

# Speakers



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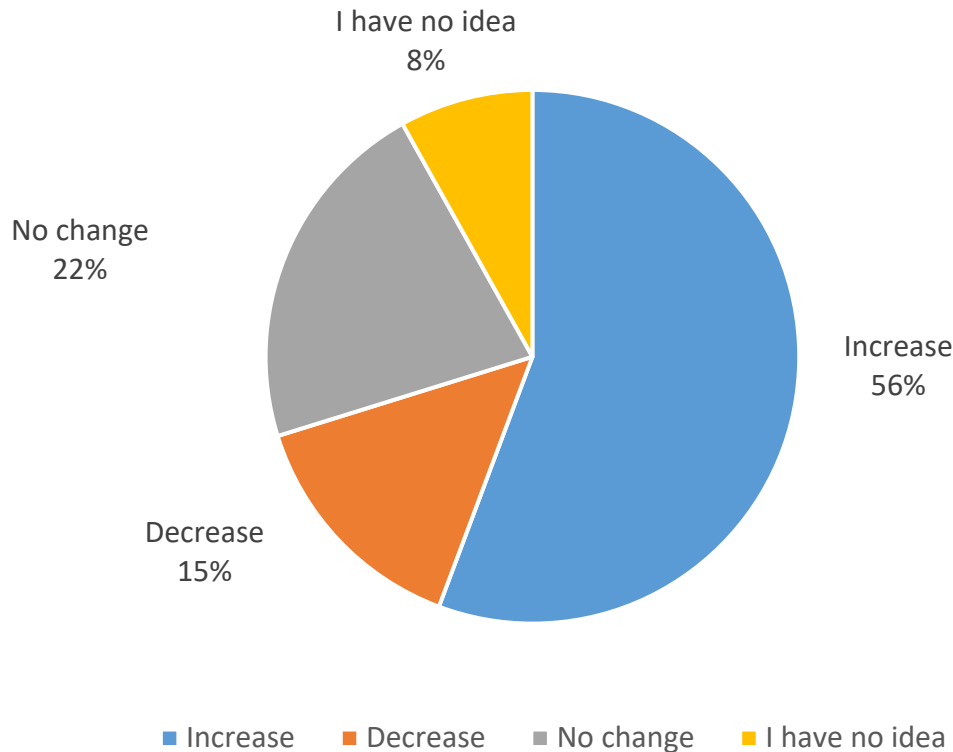
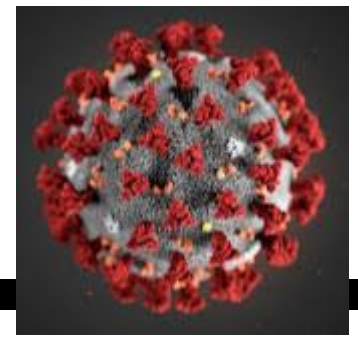
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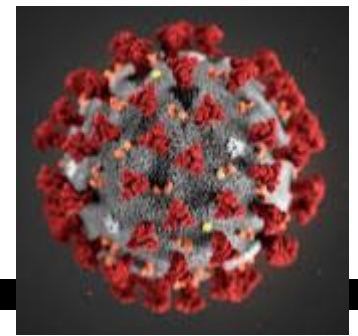
# **COVID-19 Related Updates**

# COVID-19 – Survey Results



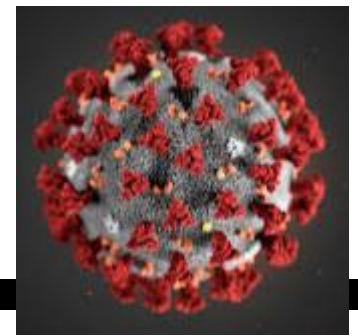
78% expect COVID-19 will have an impact on privacy requests

# COVID-19 – Employees



- **Temperature Checks and the CCPA:** Recall that employee biometric-related information constitutes “PI” under the CCPA. Whereas a limited exemption exists in relation to employees through Dec. 31, 2019 for many of the CCPA’s obligations, **privacy notices** are not exempt.
  - So, **if collected by the employer**, in-scope businesses should consider and review whether body temperature or medical info collection or other health-related inquiries posed to employees are covered in CCPA-aligned privacy notices provided to California employees/applicants/contractors **at or before** the point of *online or offline* PI collection.
  - *Cf.* Belgian and Dutch SAs, who have raised the possibility that some temperature checks could fall outside the scope of the GDPR if/when designed to exclude automated means, such as when merely read off a thermometer and not stored. No EU SA consensus re: temp screenings.

# COVID-19 – Federal Legislation



- COVID-19 Consumer Data Protection Act of 2020 (GOP Sens)
- Public Health Emergency Privacy Act (Dem. Sens. and Reps.)
  - Bills to enact protection for data collected to track and prevent the spread of the novel coronavirus.
    - Both bills require, in relation to the subject COVID-19 data, data minimization; purpose limitation; no collection or sharing without revocable “affirmative express consent” for COVID tracing; transparent policies; & security descriptions.
  - CCDPA only covers private entities, and applies to data elements such as geolocation, health data, and unique IDs during the HHS-declared health emergency. Preempts other privacy laws in relation to COVID-19 data, even post-emergency (e.g., CCPA wouldn’t apply to COVID tracing data).
  - PHEPA applies to gov’t and private entities. **NO fed/state law preemption.**

# COVID-19 – EDPB and GDPR

- **Major Considerations:**

- Employee monitoring, health surveys, and returning to work;
- Use of contact-tracing apps for detection and prevention (PbyD!);
- Data re-use by health, scientific and governmental purposes;
- Updating privacy notices, establishing business continuity plans, and securing remote/teleworking;
- Documenting emergency actions and updating ROPAs, DPIAs (*prior to PD or SPD collection*), and LIAs accordingly, to name a few.

- › [EDPB Letter concerning the European Commission's draft Guidance on apps supporting the fight against the COVID-19 pandemic – 14/04/2020](#)

- › [Mandate on the processing of health data for research purposes in the context of the COVID-19 outbreak – 07/04/2020](#)

- › [Mandate on geolocation and other tracing tools in the context of the COVID-19 outbreak – 07/04/2020](#)

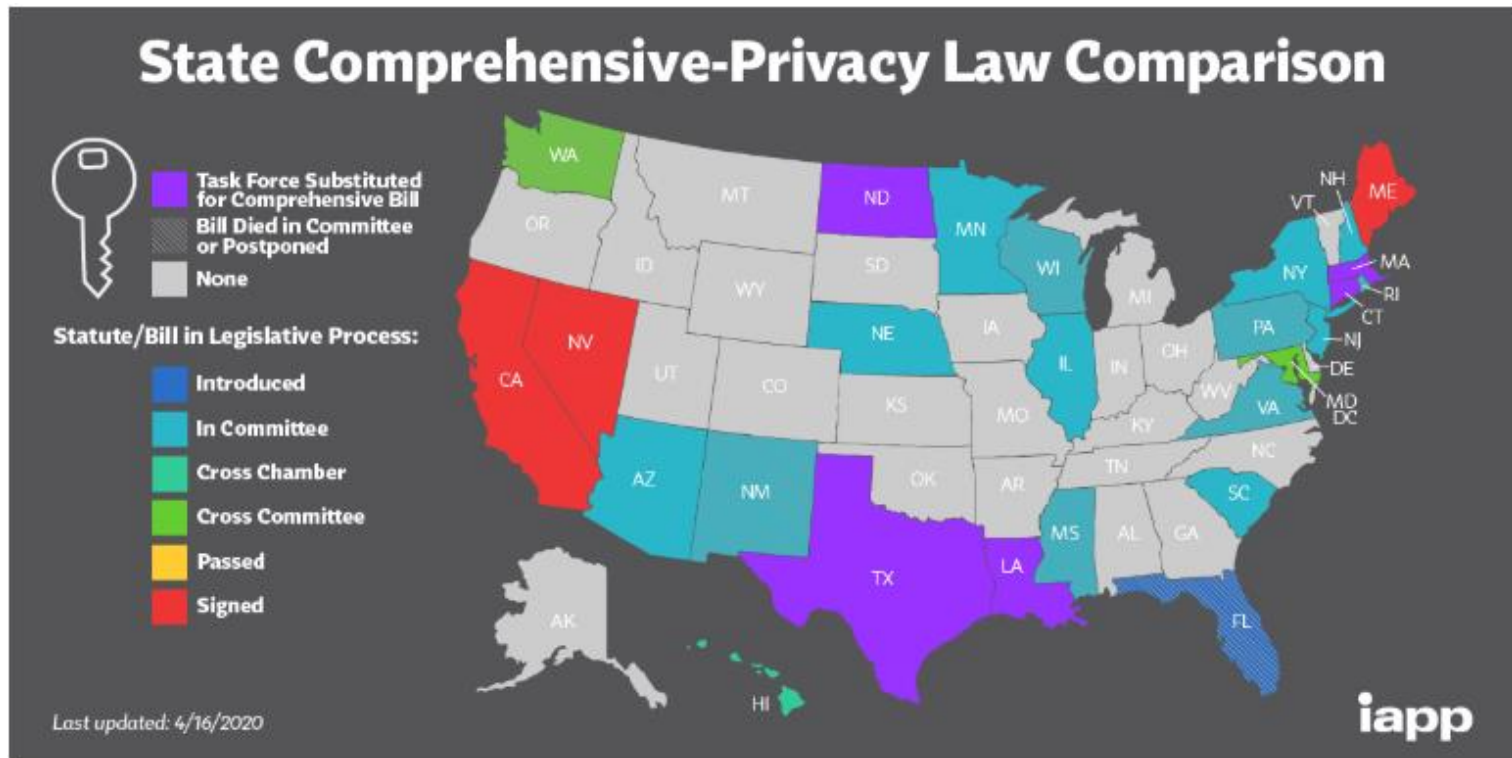
- › [Statement on the processing of personal data in the context of the COVID-19 outbreak – 19/03/2020](#)





# **State Privacy Legislation Update**

# State Privacy Legislative Efforts

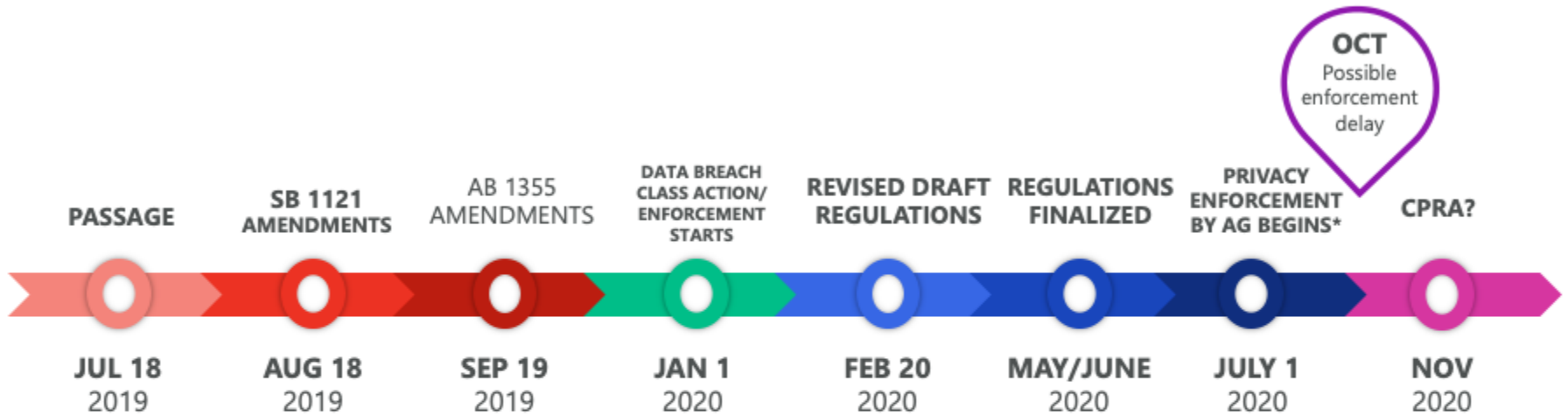


Source: IAPP, <https://iapp.org/resources/article/state-comparison-table/>



# **CCPA Compliance and Regulatory Activities**

# CCPA TIMELINE



“CCPA has been in effect since January 1, 2020. We're committed to enforcing the law starting July 1,” an advisor to Becerra said.



# California Attorney General Latest Amendments & Reporting



## REPORTING

*"Disclose the information compiled within their privacy policy or posted on their website and accessible from a link included in their privacy policy."*

"The most significant change to the requirements under Section 999.317(g) is the modification that applies to businesses that **buy, sell or use for commercial purposes the personal information of 10 million or more consumers** within a single calendar year."\*

- Median or mean days to respond to requests
- Number and type complied with in whole, in part or denied
- By type: delete, opt-out, right to know



\*Source: "CCPA proposed modified regs 2.0 issued in Calif", IAPP, Jim Halpert, Tracy Shapiro, Lael Bellamy, CIPP/US, Elaine Critides

# What is the CPRA?

- CPRA expands upon the privacy protections introduced by CCPA
- Creates new rights allowing consumers to stop businesses from using sensitive personal information
- Safeguards children's privacy by tripling fines
- Extends the exemption for employment data
- Establishes the California Privacy Protection Agency

# Is it on the ballot?

This new ballot initiative has until **June 25, 2020**, to get at least 623,212 signatures verified by state and county officials, waiting on additional signatures to secure a spot in the general elections.



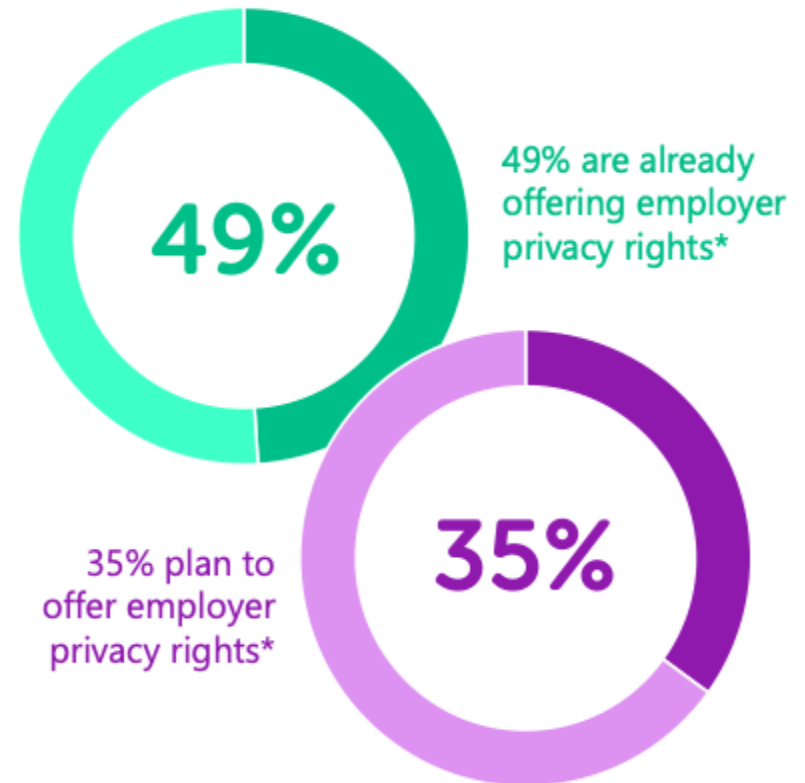
**READ MORE**  
[Insights.Truyo.com](https://insights.truyo.com)



# Is it going to pass?

- Nobody knows!
- Early polling shows potential support of CPRA if it appears on the ballot
- More will be known once the final version appears and polling is done on a broader basis

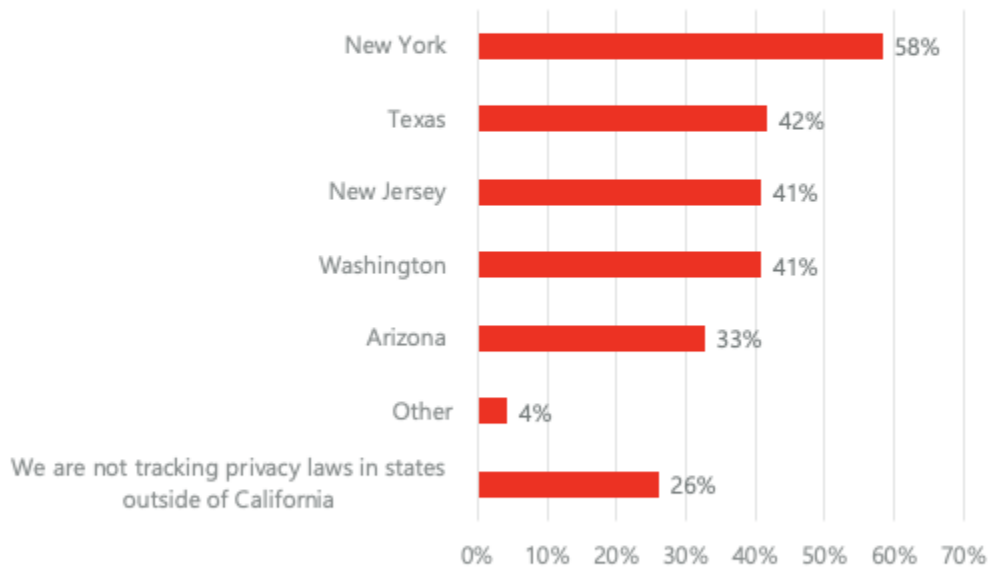
## Best Practice: Be Prepared Now



*\*Truyo, April 2020 Benchmarks on CCPA Privacy Rights Compliance*



# State Privacy Law Tracking



**74% are tracking privacy laws in states other than California\***



*\*Source: "April 2020 Benchmarks on CCPA Compliance", Truyo*



# **GDPR and EU Privacy Activities**

# ePrivacy Regulation



- **Impact:** Increased privacy protection for EEA data when transmitted electronically that is uniformly enforced across EU member states. Will impact most companies as it will apply to digital marketing/cookies.
- **Being Finalized:** Will replace the existing ePrivacy and Electronic Communications Directive 2002/58.
  - Croatian Presidency of the Council of the EU released an updated draft of the Regulation on March 6, 2020. Draft must be agreed upon before Trilogue negotiations can occur.
  - Germany will take over Presidency of the Council from July-December 2020.
- **Grace Period:** Will apply 24 months from the date the Regulation enters into force.
- **Status:** Latest draft introduced the **legitimate interests** ground for setting cookies and similar technologies on end user devices, with caveats .

# EDPB: New Consent Guidelines



- **Updated Guidelines**: Released May 4<sup>th</sup>, updating previous version adopted by the WP29 in April 2018.
- Updates addressed:
  - The validity of consent when interacting with “cookie walls”
  - Conditionality
  - Unambiguous indication of wishes

# Cookie Guidance from SAs



- Themes and Takeaways from cookie audits, guidance and related publications released by:
  - French CNIL
  - Irish DPC
  - Belgian supervisory authority
  - Others

# U.K. Direct Marketing Code



- Not yet finalized, but likely to be influential in relation to individual rights; lead generation; sharing and selling data; online advertising, profiling, data protection by design and default; and marketing through emerging technologies.

Direct marketing

code of practice

Draft code for consultation

# Schrems II CJEU Date Set



- Expected July 16<sup>th</sup>.
- Question of whether the Court will follow the Advocate-General's earlier opinion, or adopt a different interpretation.
- Overview of the major issues raised...





# **Global Data Protection Current Events in 2020**



# Brazil's LGPD (DELAYED?)



- **STATUS**. Votes in the Senate and House of Representatives have effectively postponed the Aug. 2020 start date. New effective date still TBD (e.g., Jan./May/Aug. 2021?). **BUT, new Senate vote...**
- Broad Territorial Scope: Any company that has a branch in Brazil or offers services to the Brazilian market and collects and treats personal data of data subjects located in the country will be subject to the law.
- Fines: 2% of the revenue from Brazil, up to R\$50million per infraction (*approximately \$12M*)
- Registry of Processing Activities: Mandatory for all companies.
- Legal Bases for Processing: Ten legal bases compared to six under GDPR.
- Processing Agreements: No specific contract requirements like Art. 28, GDPR, but processors subject to same principles as controllers.
- DPO: Mandatory for all controllers regardless of size, type or volume of data processed.
- Individual Rights: Data subjects can request data access, correction, deletion & portability. Controllers have 15 days to respond (vs. 30 days under GDPR and 45 under CCPA).

# India's *Draft* Personal Data Protection Bill, 2019

- **In-Committee** – Very broad support, expected to pass in April 2020, put on hold because of COVID, we think it will return when legislator comes back
- **Effective Date:** Final version not issued, draft bill provides companies 18 months from enactment date to come into compliance. **Broad Territorial Scope:** Applies to companies (a) processing data within the territory of India or (b) that have a connection with any business carried on or a connection with any activity involving the profiling of data within the territory of India. Exemptions are more controlled company by company as written.
- **Fines:** Range from 2%-4% of the worldwide turnover or 5-15 crores rupees whichever is higher.
- **Legal Bases for Processing:** Six legal bases, similar to GDPR; separate bases for processing sensitive data.
  - However, trade union memberships, racial or ethnic origin and philosophical beliefs are not considered sensitive personal data.
- **Overlap with GDPR:** Individual rights, breach notification to supervisory authority, definition of personal data, DPIAs, record of processing activities.
- **Localization:** Data fiduciaries (controllers) transferring data outside of India are required to maintain a copy of the data within India.
- **International Transfers:** Subject to adequacy decisions, SCC approved by Authority. Necessity as determined by Authority, data subject's consent. Without modification or safe harbor, this effectively means data can't leave India.



# Singapore – Updates Proposed



- **Personal Data Protection Act Bill 2020**: Updated draft last week unifies earlier versions; stands to become first amendment to the PDPA since its 2012 passage.
- Updates around strengthened accountability, meaningful consent, greater consumer autonomy, and PDPC regulator’s enforcement powers (e.g., higher fines).
- Also updates re: mandatory breach notifications, data portability, and reliance on legitimate interests and business improvement purposes for collection, use and disclosure of personal data where there are wider public or systemic benefits.

# Japan APPI



- In March, the Japanese Cabinet decided on a draft set of amendments to the country's Protection of Personal Information Act ("APPI"). The update would:
  - institute data breach reporting obligations;
  - increase penalties against companies for violations of the PPC regulator's orders;
  - place restrictions on personal data transfers to third parties abroad; and
  - Incorporate new anonymization and pseudonymization requirements.



# Other Global Updates



- **China** has issued clarifications to its Personal Information Security Specification regulations that will take effect on October 1, 2020 (e.g., around definitions of PI and SPI; record-keeping obligations; PI processor contracts and vendor selection; and de-identification guidelines).
- **Pakistan**: The public consultation period for the Personal Data Protection Bill ended last week.
- **Thailand** has proposed a delay the effective date of most provisions in the PDPA until May 2021.



# Questions?

- For More Information, check out:
  - **Truyo Resources page:** <https://truyo.com/resources/>
  - **GT Data Privacy Dish Blog:** <https://www.gtlaw-dataprivacydish.com/>
  - **European Data Protection Board (EDPB):** [https://edpb.europa.eu/edpb\\_en](https://edpb.europa.eu/edpb_en)

