

*The Impact of the GDPR on
US Companies & Cross-Border
Data Management*

*Aalto University, HAIC Talk
February 4, 2020*



Professor Jordan L. Fischer, Esq.



Wait, privacy is a “thing”?!



Does the US
have a
fundamental
right to privacy?

NO



Is there
national federal
privacy
legislation in
the US?

NO



Does the US
constitution
mention
"privacy"?

NO



Brief History of US Privacy Law

1970s: Fair Credit Reporting Act & other financial regulations

1990s: Telecommunications Regulation, GLBA, & COPPA

2010s: Growing role for Federal Trade Commission

1974: The Privacy Act of 1974

2000s: PATRIOT Act and HIPAA

2015: Safe Harbor Provisions invalidated



**EXTRATERRITORIAL IMPACT
(ARTICLE 3)**



Personal data is more than just a Social Security number?



Before GDPR:

General definition of “personal information”

An individual’s first name or first initial & last name



- Social Security Number;
- Driver license number or state identification card number;
- Account number or credit card number or debit card number in combination with any required security code, access code or password.

GDPR Definitions (Art. 4):

“personal data”

any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;



After GDPR:

General definition of “personal information”

States expanded definition of “personal information” to include:

- Login Credentials;
- Biometric Data;
- Online Identifiers; etc.

I don't understand: my supply chain matters for my privacy compliance?



Written by Daniel J. Solove

Illustrated by Ryan Beckwith

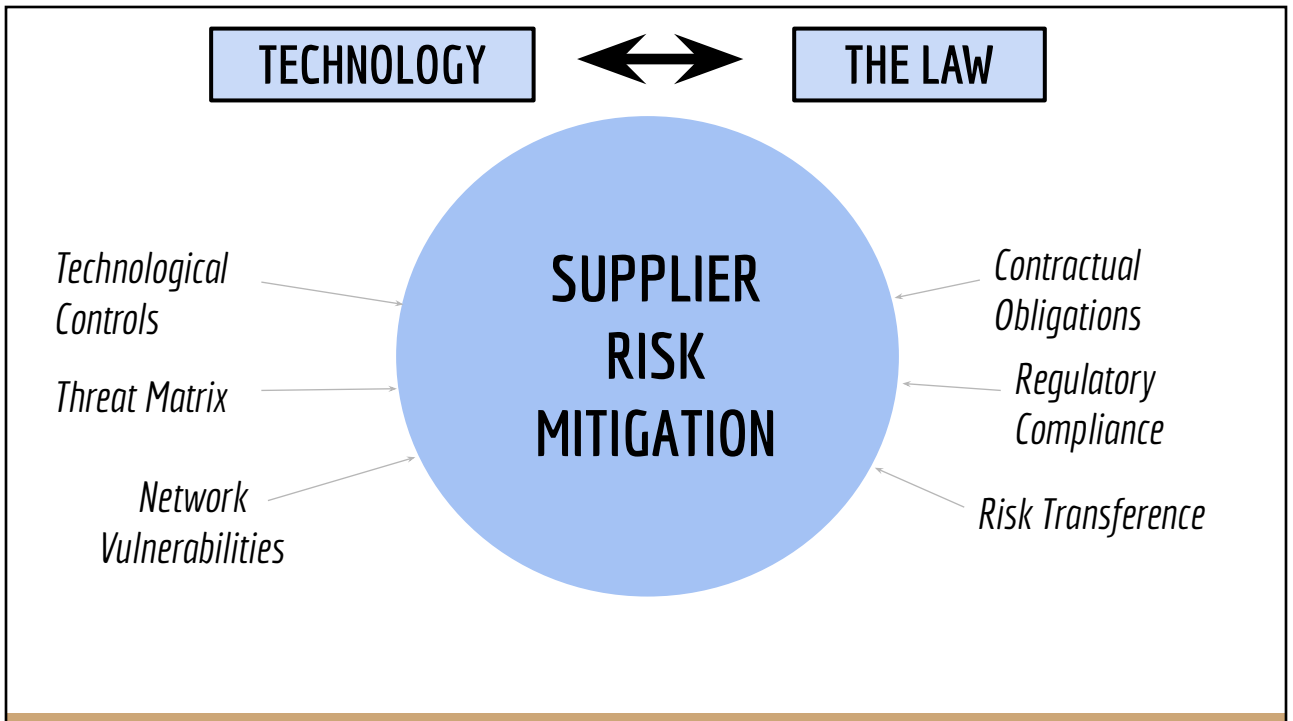
For personal use only. Please ask us for permission for other uses.



What do these companies all have in common?

1. Target
2. Quest Diagnostics
3. American Medical Collection Agency (AMCA)
4. Evite
5. US Customs & Borders Protection
6. Facebook
7. Uber
8. Slack
9. Yves Rocher
10. Instagram
11. UNIQLO

And, the list keeps growing . . .



I can be fined for privacy?



FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

FTC's \$5 billion Facebook settlement: Record-breaking and history-making

By: Lesley Fair | Jul 24, 2019 8:52AM





FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

FTC's \$5 billion Facebook settlement: Record-breaking and history-making

By: Lesley Fair | Jul 24, 2019 8:52AM

Google and YouTube Will Pay Record \$170 Million for Alleged Violations of Children's Privacy Law

FTC, New York Attorney General allege YouTube channels collected kids' personal information without parental consent



FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

FTC Announces Settlements with Four Companies Related to Allegations they Deceived Consumers over Participation in the EU-U.S. Privacy Shield

Alleged Violations of Children's Privacy Law

FTC, New York Attorney General allege YouTube channels collected kids' personal information without parental consent



Wait, we can have privacy regulations too?!



State-by-State Privacy & Security Legislation

States with Pending Legislation (as of 01/15/2020)

1. California
2. Hawaii
3. Illinois
4. Massachusetts
5. Minnesota
6. New Hampshire
7. New Jersey
8. New York
9. Pennsylvania
10. Rhode Island
11. South Carolina
12. Washington
13. Vermont

And, the list keeps growing . . .



State-by-State Privacy & Security Legislation

CYBERSECURITY LAW & STRATEGY | CYBERSECURITY | REGULATION | TECHNOLOGY MEDIA AND TELECOM

GDPR & CCPA Are Just the Beginning

How Middle Market Companies Can Shore Up Their Data Privacy

The most significant overhaul to the EU's data privacy policies in over 20 years, with extraterritorial reach, forced American businesses to remediate, and in some cases, overhaul their data privacy governance programs. But the GDPR was just the beginning. Organizations seeking compliance with the

Washington state lawmakers debut legislation for consumer privacy and facial recognition

BY TAYLOR SOPER on January 13, 2020 at 5:28 pm

CLOUD ACT CONFLICTS WITH GDPR, EDPD SAYS

Lauren Morris | 15 July 2019



State-by-State Privacy & Security Legislation

CYBERSECURITY LAW & STRATEGY | CYBERSECURITY | REGULATION | TECHNOLOGY MEDIA AND TELECOM

GDPR & CCPA Are Just the Beginning

How Middle Market Companies Can Shore Up Their Data Privacy

Republican Bills Would Allow Wisconsin Residents To Block Tech Companies From Collecting Personal Data

Legislation Would Set Fines Up To \$20M For Companies Violating Proposed Data Law

Lauren Morris | 15 July 2019



Overview of the California Consumer Privacy Act

The CCPA applies to the collection of personal information related to a “consumer.”

Personal Information

- “information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly, or indirectly, with a particular consumer or household.” Cal. Civ. Code § 1798.140(o)(1).
- Includes (Cal. Civ. Code § 1798.140 (o)(1)(A)):
 - biometric information,
 - internet network activity,
 - geolocation data,
 - education information, and
 - passport numbers.



Comparing the CCPA to the GDPR



	GDPR	CCPA
Applies to all categories of “personal data”	✓	
Applies to all sizes and types businesses	✓	
Requires a contact between controllers & processors	✓	✓
Requires notice to data subjects of data processing activities	✓	✓
Provides express opt-out for the “sale” of personal data		✓
Requires notification of a data breach	✓	✓

What can we expected in 2020?



Federal Privacy Legislation?



Federal Privacy Legislation?

DATA PROTECTION | NEWS | EMPLOYERS

US Senators Introduce New COPRA Digital Privacy

A National Federal Privacy Law? Check Out COPRA, The Most Comprehensive Privacy Bill Introduced Yet

By [Alysa Zeltzer Hutnik](#) & [Khouryanna DiPrima](#) on December 2, 2019

POSTED IN [CONSUMER ONLINE PRIVACY RIGHT ACT \(COPRA\)](#), [PRIVACY AND INFORMATION SECURITY](#)



Federal Privacy Legislation?

11.26.19

CANTWELL, SENATE DEMOCRATS UNVEIL STRONG ONLINE PRIVACY RIGHTS

NEW CONSUMER RIGHTS GUARANTEED BY STRONG FEDERAL COMPLIANCE AND CONSUMER RIGHT TO SUE; DATA COMPANIES WITH SECURITY BREACHES CAN BE FINED

WASHINGTON, D.C.—Today U.S. Senate Committee on Commerce, Science, and Transportation Ranking Member Maria Cantwell (D-WA) and fellow senior members Senators Brian Schatz (D-HI), Amy Klobuchar (D-MN), and Ed Markey (D-MA) unveiled comprehensive federal online privacy legislation to establish privacy rights, outlaw harmful and deceptive practices, and improve data security safeguards for the [record number of American consumers](#) who now shop or conduct business online.

POSTED IN [CONSUMER ONLINE PRIVACY RIGHT ACT \(COPRA\)](#), [PRIVACY AND INFORMATION SECURITY](#)



GDPR & CCPA Are Just the Beginning

How Middle Market Companies Can Shore Up Their Data Privacy

The most significant overhaul to the EU's data privacy policies in over 20 years, with extraterritorial reach, forced American businesses to remediate, and in some cases, overhaul their data privacy governance programs. But the GDPR was just the beginning. Organizations seeking compliance with the growing number of data privacy regulations will need to remain vigilant, especially for organizations that rely heavily on personal data.

BY KAREN A. SCHULER
SEPTEMBER 2019

Brazil Adopts New Privacy Law Similar to GDPR

Tuesday, August 28, 2018

CLOUD Act conflicts with GDPR, EDPB says

Lauren Morris | 15 July 2019

Anticipating the Next Wave . . .



Recap of Impacts

1. Privacy became a top business concern in the US.
2. Privacy means more than just healthcare and financial information.
3. The Data Supply Chain became a top priority.
4. The FTC is regulating more US company privacy practices.
5. US Regulations are starting to follow the GDPR-trend.



Questions?

Please feel free to contact
Professor Jordan L. Fischer, Esq. at:
jlf324@drexel.edu



Disclaimer: These materials do not constitute legal advice. The speakers do not warrant that the presentations or materials are free of errors, or will continue to be accurate. Opinions expressed are those of the speakers and statements in the presentations and the materials should be verified before relying on them.