

## What the CCPA Is and Is Not

Protection is essential in all walks of life. For someone's health, car and home there's insurance. But what about their privacy and the security of knowing their data and information is safely owned by no one but themselves? Unfortunately, in 2020, this is not the case for consumers. People and businesses must continually watch for breaches, e.g., the Equifax in September 2017 of nearly 150 million people, and other data collection practices that could potentially land a company in hot water or put a consumer in a vulnerable position.

The topic of data protection was the key focus of a recent NACM webinar, "The California Consumer Privacy Act," presented by Christopher Ng, Esq. and Missy Griffin, Esq., with Gibbs Giden LLP in Los Angeles. Ng and Griffin represent suppliers and others in the credit industry by drafting terms and conditions and working through disputes and payments issues.

While the new California Consumer Privacy Act (CCPA) seems fairly straight forward on the surface, similar statutes always have ambiguity. Ng likened the CCPA to the Americans with Disabilities Act, which on the surface is straight forward, but thousands of cases have been brought within the last 10 years.

The webinar highlighted main points of the CCPA, which went into effect Jan. 1, 2020. One of the first key takeaways is knowing there is a lot of information on the internet—4.1 billion internet users worldwide and five billion Google searches per day—because people freely and willingly put data out there, such as social media profiles. But there is also data over the internet that is unwillingly/unknowingly available.

The CCPA is not the first of its kind—California has three other laws in place to protect online users. There's the Online Privacy Protection Act, which Griffin said is often cited as the broadest privacy law in the U.S. This act applies to commercial sites only. It is designed to clearly and easily announce privacy policies like the cookies popup on a website. The second is Privacy Rights for California Minors in the Digital World, which prohibits certain ads on sites for minors. Both of these carry a \$2,500 per violation fine. The third California law is Shine the Light, which covers selling information to third parties. This has a \$500 per violation fine or \$3,000, if found to be willful.

The European Union was one of the first to take action with the General Data Protection Regulation, which is similar to the CCPA. The real push for the California law was the Cambridge Analytica breach where consumer information from Facebook was sold to a company that used the information to create a physiological profile for political gain.

The CCPA "creates new consumer rights relating to the access to, deletion of, and sharing of personal information that is collected by businesses," said California Attorney General Xavier Becerra.

One of the biggest questions about the CCPA is to whom who does it apply? Any business that collects or processes personal information of consumers and meets at least one of these requirements: earns \$25 million or more per year in revenue; buys, sells or receives personal information of 50 thousand or more consumers, households or devices for commercial purposes; or derives 50% or more of annual revenue from selling consumer information is affected. Most businesses fall into the first category, said Ng.

The word consumer is throughout the law, but it's not a typical definition, said Griffin. "Consumer, when I hear the word, it's an individual going on Amazon and making a purchase." The CCPA defines the word consumer in a broader sense, and it does apply in the business-to-business context, noted the speakers. "If a business collects any personal information from an individual from another business, the CCPA applies," Griffin continued. Some examples of this include information on a credit application—birth date, names, address, etc.—and a personal guarantee.

Consumers have the right to know if their personal information is collected and for what purpose. This includes names, addresses, email address, Social Security numbers, etc. Businesses must comply with the right to knowledge within 45 days or are allowed to extend the request from the consumer once by 45 days as long as the extension is done within the first 45 days.

Consumers also have the right to have personal information deleted unless the personal information is still needed for a specific purpose such as completing a transaction or to comply with a legal obligation. Consumers cannot be discriminated against for exercising their rights under the CCPA, which includes denying goods or services, charging different rates or providing varying levels of service.

One of the biggest hurdles for businesses is how to comply with the CCPA. Internally, businesses need to define how their privacy policy will be managed and who is managing it. Externally, businesses need to describe what information is collected, and they must define how they will respond to consumer CCPA requests. While it went into effect Jan. 1 2020, strict enforcement will likely follow after a six-month grace period to allow businesses to comply, according to the webinar.

-Michael Miller, managing editor

*Ng and Chris Ring of NACM's Secured Transaction Services will be presenting a session on disadvantaged business enterprises at NACM's 124th annual Credit Congress and Expo in Las Vegas this June.*