

LEGAL AND PRIVACY

What all luxury brands should know about California's new consumer privacy law

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Get ready to halt practices that are likely to violate the California Consumer Privacy Act that kicks in Jan. 1. Image credit: California attorney general's office

By MICKEY ALAM KHAN

The period for public comment will end this week, but many marketers are still in the dark about the most stringent state privacy law set to go into effect Jan. 1 in the United States.

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Despite two rounds of amendments by the California legislature, the California Consumer Privacy Act ("CCPA") remains a somewhat bare-bones statute, according commentary from law firm Debevoise & Plimpton. The regulations would put meat on the bones.

"[The regulations] will provide important details on how, exactly, companies are supposed to provide consumer notifications," the law firm stated. "They also spell out how companies should respond to verifiable consumer requests' for access to their data, respond to consumer requests for data deletion, and provide Do Not Sell' options for consumers looking to avoid third-party use of their data.

"Verification of the identities of consumers who submit such requests is also addressed in the draft regulations."

Luxury brands and retailers will now have to contend with California's consumer privacy regulation in addition to the European Union's GDPR and Canada's data privacy law, titled [the Personal Information Protection and Electronic Documents Act \(PIPEDA\)](#).

Alongside California, other U.S. states have their own privacy regulation: Colorado with its Protections for Consumer Data Privacy law and Vermont's data broker law. But these two states do not contribute as much to luxury marketers' bottom lines as California does, with its Silicon Valley wealth, Hollywood celebrities and industrial clout.

Each privacy law empowers consumers with more control of their data now in the hands of marketers with whom they do or do not do business.

First European, then Canadian, now Californian

Marketers have been filing their feedback with [California attorney general Xavier Becerra's office](#). And some

companies, trying to head off any complications, have already gotten compliance planning underway.

For example, software giant Microsoft this month said it will voluntarily extend CCPA's "core rights" to all U.S. consumers.

"This "everyone's a Californian" approach prioritizes the operational simplicity and consumer trust benefits of treating everyone alike," [Debevoise & Plimpton](#) stated. "It also anticipates possible adoption of CCPA-like laws in other states or at the federal level."

CCPA is particularly challenging for digital media and advertising companies, although it will affect most companies since they have content to engage shoppers online and collect data to better profile customers for marketing.

Lobbies are stepping in to help.

The Interactive Advertising Bureau has developed a CCPA [Compliance Framework for Publishers and Technology Companies](#).

The Digital Advertising Alliance too calls for Web and app publishers to display a CCPA-mandated text link and a unique icon to California users on their digital properties. Clicking on the link will direct users to publisher information and options, including access to the CCPA opt-out tool if third parties collect and sell data from the property.

But what effect will California's new consumer privacy law have on luxury marketers with operations in that state and those who sell to California residents? And what if other states copy California, as is likely, and introduce similar regulations that run ahead of U.S. federal law in consumer privacy? How will these regulations affect luxury marketers' operations and marketing?

We turned to three experts to shed some light on those areas: Michael J. Becker, managing partner of [Identity Praxis](#); Milton Springut, partner at [Springut Law](#); and Rania V. Sedhom, managing partner of [Sedhom Law Group](#). Here is what they had to say:

How is CCPA going to affect marketers, especially luxury marketers, given that California is a huge market for luxury and has the most number of billionaires along with New York?

Michael J. Becker, Identity Praxis: CCPA is a powerful piece of legislation.

For luxury marketers, it will have short-term, mid-term and long-term impacts.

In the short-term, business not just the marketing team but the entire business must put in place new governance, data management processes, employee education and, in most cases, information technology to meet the regulations. If they do not, they face regulatory fines and loss of industry reputation and perception.

In the mid-term, luxury brands will need to figure out what they stand for. Are they interested in being of service to the connected individual, or do they wish to treat the connected individual as a means to an end to achieve their commercial goals?

In the long term, luxury and non-luxury marketers need to accept the movement, the ideology, that is behind CCPA that is, the recognition that people, aka human beings, individuals, data subjects, customer, etc., have a human right to their identity and personal information, that they have a right to their digital sovereignty.

As a point of reference, the other two ideologies are data discovery "he who finds, mines and refines the data owns it" and social engineering, which implies "system actors will use data to engineer and influence people's behavior to adhere to their desired social or cultural mores."

Milton Springut, Springut Law: Everyone who runs a Web site and maintains a customer database, which is most marketers, will be affected.

Like many legal requirements, if you know what you are doing, it is easy and does not have a major effect on the business. But if you don't, then it is easy to get tripped up.

Rania V. Sedhom, Sedhom Law Group: The CCPA is likened to the GDPR. Luxury marketers who already underwent a change in marketing practices in the E.U. will face similar limitations in California.

California puts privacy in control of the consumer and mandates that marketers change their practices to conform to

the law and the privacy preferences of California consumers.

How is CCPA different from the EU's GDPR and Canada's own privacy regulation and the United States' own federal protections? What's at the core of CCPA?

Michael J. Becker, Identity Praxis: In principle, they are quite similar. They recognize the individual data subject's right to access, objectification, correction, portability and other rights. Regulators will fine organizations for not meeting these rights.

Where they differ, however is in the actual law and what it takes to comply to the law.

For example, GDPR applies to all businesses collecting data on European citizens.

CCPA complies to only those businesses that collect data on 50,000 or more California citizens.

There are other parameters of who must comply, of course. Their individual terms are similar, but different. The fines are different. Who has to comply with the laws are different.

As with many things, the devil is in the details.

It is critical for a business to get legal expert support within each jurisdiction to ensure they not only understand the spirit of the individual regulations, but the specifics for compliance in the region.

Milton Springut, Springut Law: U.S. federal protection is virtually negligible, except in certain industries like healthcare and financial services.

The CCPA and GDPR are broadly similar, but there are some significant differences:

- GDPR has broader territorial reach and covers more businesses, while CCPA exempts many small businesses.
- GDPR covers all personal data, while CCPA is directed to data about consumers, which includes B2B customers.
- Both have disclosure requirements, but each has different details about what must be disclosed.
- CCPA has opt-out rights to sales of personal data to third parties, which the GDPR lacks.
- GDPR provides rights to correct false data, to object to or restrict processing of personal data, and to object to automated decision-making such as profiling. The CCPA lacks these rights.

The Canadian law is also generally similar, but with some differences.

Canadian law applies to all personal information, not just consumer information.

While both have a right of access by an individual to personal information, Canada has a number of exceptions that the CCPA does not allow.

The CCPA provides a broader right to delete personal information. And, the CCPA has a right of data portability, which the Canadian law currently lacks, although there are proposals to add it.

What is clear is the fact that a business that already complies with the E.U. or Canadian regime does not mean it is in compliance with the CCPA, as there are a number of differences.

Rania V. Sedhom, Sedhom Law Group: The CCPA is very similar to the GDPR and the Canadian law.

Essentially, the main requirements are: (1) inform consumers of a company's intent to collect personal information, (2) allow consumers to learn what information is being collected, the source of that information, how it will be used and with whom it will be shared, (3) allow consumers to prevent companies from selling their information to third-parties, (4) allow consumers to order companies to delete information stored about the consumer, and (5) prohibit companies from charging different prices or refusing services if the customer exercised a privacy right.

The main difference amongst the laws is to which companies it applies.

In California, a company must meet certain thresholds before complying with the new privacy rules. It applies to companies with at least \$25 million in revenue, derive at least 50 percent of annual revenue from selling customers' personal information, or that buy, sell or share personal information from at least 50,000 consumers, households or devices.

Jan. 1 is round the corner. What should marketers do to comply with CCPA?

Michael J. Becker, Identity Praxis: First and foremost, they should act now if they have not started already. They should create a multi-disciplinary team that looks at CCPA for every strategic pillar: legal, economic, technical, social, politic.

This group can evaluate not only the effort to comply with CCPA and the risk for not complying with it, but also the opportunities that can be had from complying with it and the future of individual engagement and business models that their business can embrace.

Milton Springut, Springut Law: Consult with someone who knows the requirements well and can bring the company into compliance.

Rania V. Sedhom, Sedhom Law Group: Yes, Jan. 1 is just around the corner. Hopefully, marketers have already taken strides to comply with CCPA.

Here is a cursory list of what needs to be done ASAP. Businesses and marketers should: (1) identify personal data by type and source; (2) if monetizing said data, ensure it is doing so in a manner that does not run afoul of the law; (3) identify one or more individuals who will be in charge of CCPA compliance and make it their priority to, at least quarterly, self-audit data use and storage, (4) train marketers on the CCPA, and (5) advise consumers of their rights under the law.

What are the penalties for non-compliance?

Michael J. Becker, Identity Praxis: There are numerous penalties for non-compliance to CCPA. Fines, loss of customer trust, loss of organizational reputation, missed product and business opportunities and more.

Milton Springut, Springut Law: The CCPA provides for a private claim for damages or statutory damages from \$100 to \$750 per consumer per incident. This is reminiscent of federal statutes like the [text-message-oriented] TCPA that have spawned many consumer class-action suits, so we expect that to happen down the road.

The California attorney general may also seek civil fines of \$2,500 to \$7,500 per violation.

Rania V. Sedhom, Sedhom Law Group: A company can be fined of up to \$2,500 for each unintentional violation and \$7,500 for each intentional violation of the law.

If a company has data breach or theft, the CCPA allows the company to be named in a civil class action by those affected and to pay damages between \$100 and \$750 per affected California resident.

[Please click here to download a PDF copy of the fact sheet for the California Consumer Privacy Act \("CCPA"\)](#)