Seyfarth

Changes Coming to the California Consumer Privacy Act (CCPA): What You Need to Know

Kathleen McConnell
Yana Komsitsky
Vincent Smolczynski
Danny Riley

November 19, 2025

Seyfarth Shaw LLP

Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Speakers

Kathleen McConnell
Partner
San Francisco

Yana Komsitsky
Senior Counsel
Los Angeles

Vincent Smolczynski
Counsel
Charlotte

Danny Riley
Associate
Chicago

Agenda

1 | Compliance Timeline & General Updates

2 | Automated Decision-Making Technology ("ADMT")

3 | Risk Assessments

4 | Cybersecurity Audit Requirements

5 | CCPA and CIPA Consent Management Updates

6 | Preparing Your Business for the Future

Compliance Timeline

2025

- **Preparation**
  - Identify processing activities and tools that may trigger Risk Assessment or ADMT obligations.
  - Begin drafting Pre-use Notices for ADMT if applicable.
  - Map data flows and sensitive PI for risk assessment readiness.

2026

- **General Updates in Effect**
- **Risk Assessment (RA) Implementation**
  - Begin conducting RAs before starting new processing activities.
  - Implement processes for ongoing RA updates and documentation.
  - Begin internal planning for cybersecurity audit requirements.

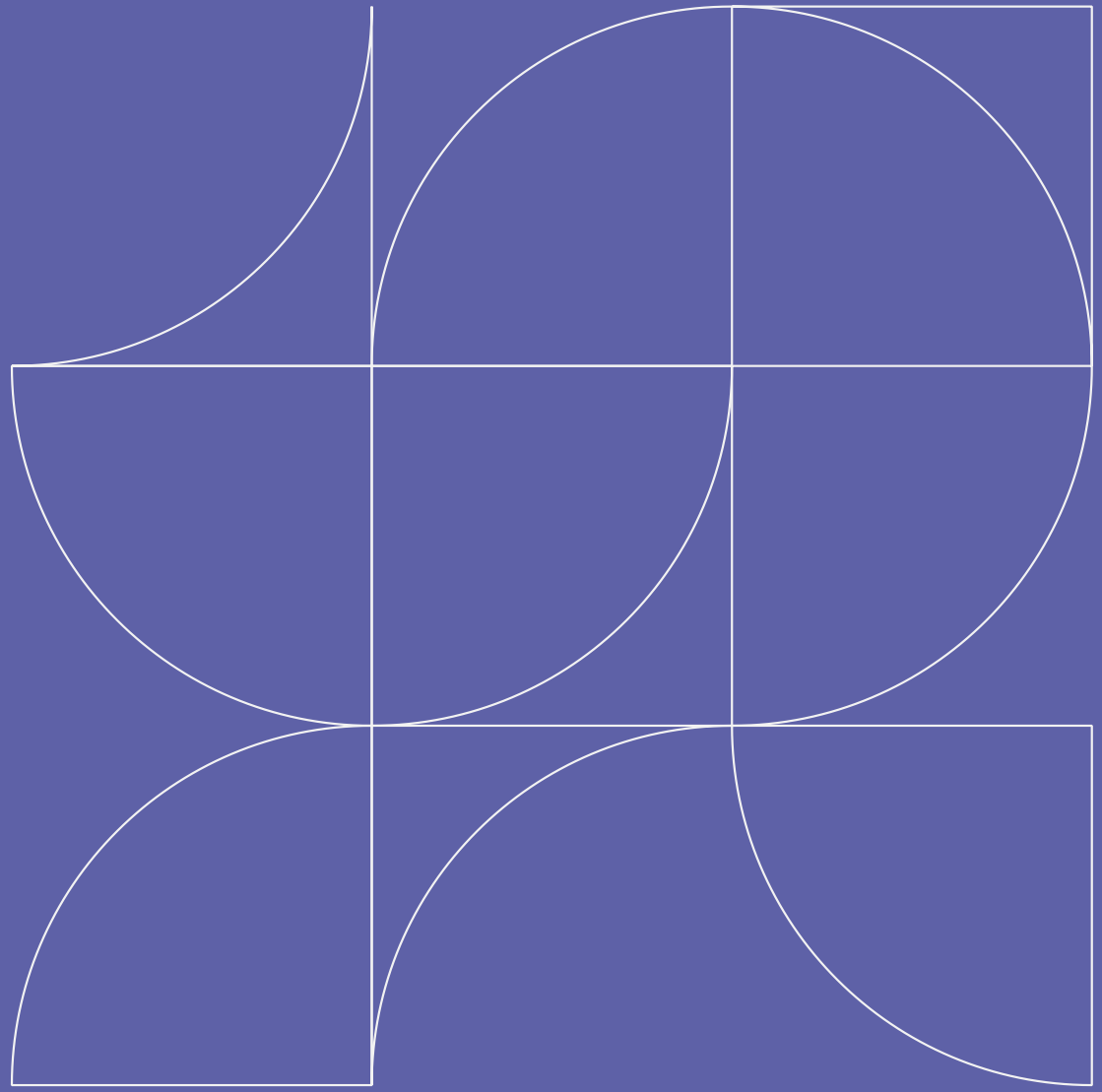
2027

- **ADMT Enforcement**
  - Comply with ADMT regulations: Pre-use Notices, opt-out rights, and access rights.
  - Complete Risk Assessments for preexisting processing by **Dec 31, 2027**.
  - Prepare for first cybersecurity audit if revenue > $100M.

2028 and Beyond

- **Ongoing Compliance**
  - Submit Risk Assessment summary to CPPA by **April 1, 2028**.
  - Businesses > $100M revenue: complete first cybersecurity audit by **April 1, 2028**.
  - Continue annual certifications and audits per tiered schedule.

General Updates

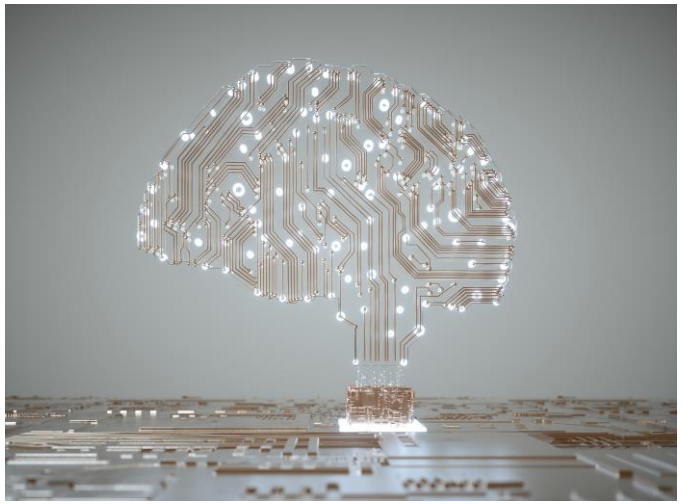


General Updates *Effective 2026*

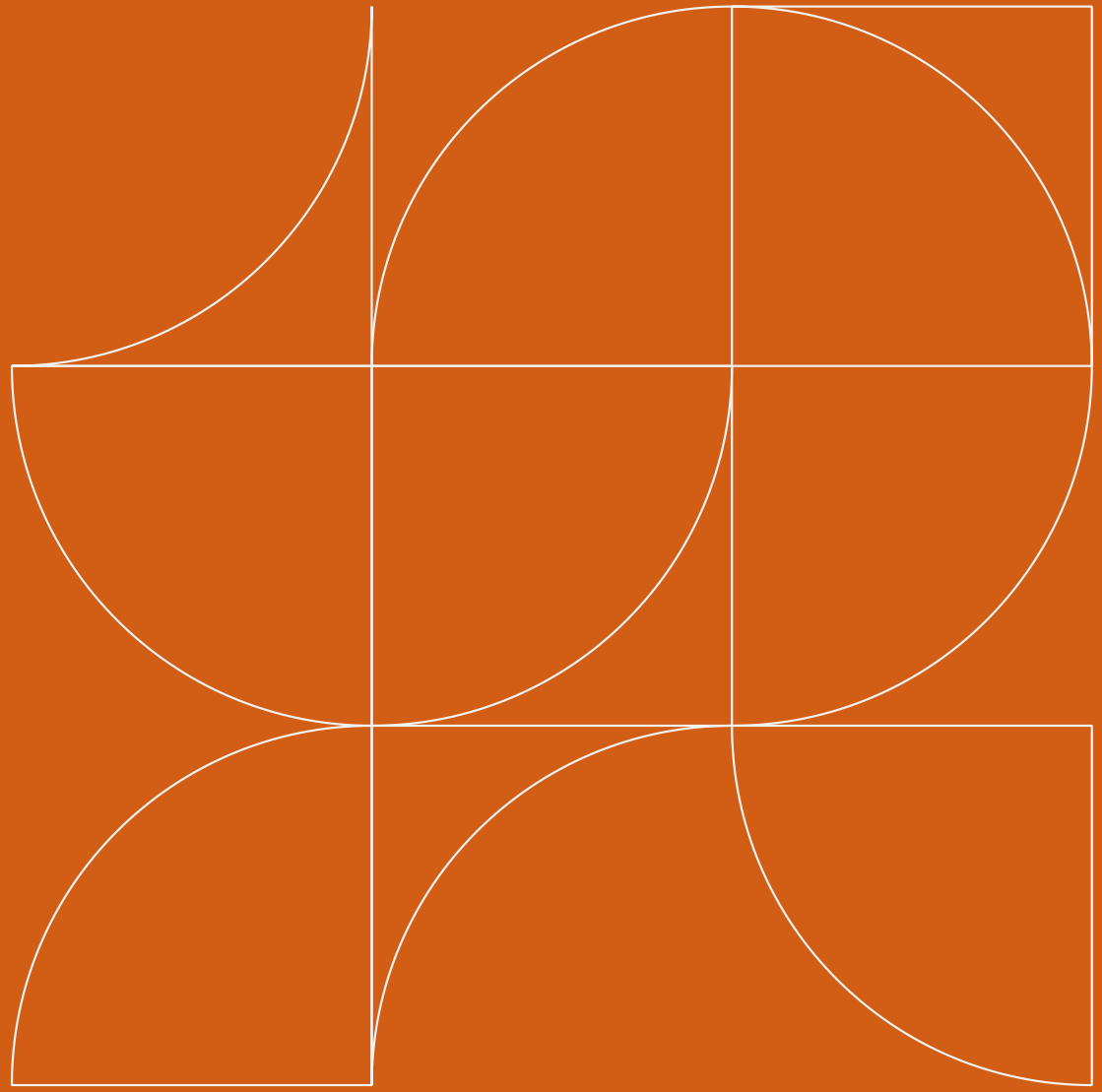
- **Privacy Policies**
  - *Disclosures to Service Providers & Contractors*
- **Access Requests**
  - *Date range for request*
- **Mobile Apps**
  - *Link to privacy policy required*
- **Financial Incentives**
  - *Symmetry required; may not default to opt in*
- **Connected Devices Opt-Out Timing**
  - *Same manner as collection; before or at collection*

General Updates *Effective 2026*

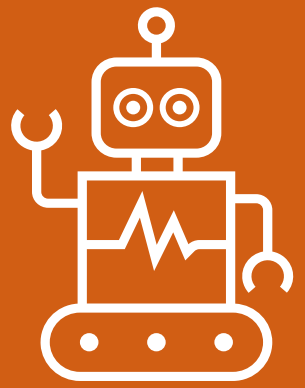
- **Sensitive Data Defined**
  - *Neural data; actual knowledge under 16; content of messages unless intended recipient*
- **Insurance Companies**
  - *Partial exemption limited to data governed by insurance code*
- **Opt-Out Confirmation; GPC Signals; Consent Management**
  - *Confirmation of opt-out; symmetry required; x-out not sufficient for consent (see Section 5, below)*



Automated Decision-Making Technology (“ADMT”)



ADMT: The Basics



What is ADMT?

ADMT refers to any technology that processes personal information ("PI") and uses computation to substantially replace human decision-making.

- To "substantially replace human decision-making" is to use a technological output to make a decision without human involvement.

When is the Use of ADMT Covered by the Regulations?

When ADMT is used to make significant decisions concerning a consumer.

- A "significant decision" is a decision that results in the provision or denial of various services or opportunities including employment, insurance, housing, education, and financial services.

These regulations will be enforced beginning January 1, 2027.

ADMT: Transparency

Pre-Use Notice Requirement

Businesses must give consumer a clear notice before using ADMT to make significant decisions about them.

A Pre-Use Notice must:

- Explain **why** the business is using ADMT
- Describe **how** the ADMT will affect the consumer
- Be easy to find, readable, and understandable
- Be provided before the consumer interacts with the ADMT system
- Inform the consumer of their right to opt-out

Businesses may use a consolidated notice if multiple ADMT tools serve similar purposes.

ADMT: Consumer Rights

Consumer's Right to Access ADMT

Consumers have the right to understand how ADMT was used to make a decision about them.

- When a consumer submits an access request, businesses must provide:
  - The specific purpose for which ADMT was used
  - How the ADMT processed the consumer's PI
  - The ADMT's output and how it was used to make a significant decision regarding the consumer
  - That the business is prohibited from retaliating against the consumer for exercising this right

ADMT: Consumer Rights

Consumer’s Right to Opt-Out of ADMT

Consumers may choose not to have ADMT used to make significant decisions about them.

Businesses must:

- Clearly inform consumers of this right in the Pre-Use Notice
- Offer **two or more** easy-to-use opt-out methods
- Make the opt-out process simple, accessible, and aligned with how the business interacts with consumers
- Honor the opt-out quickly and notify any service providers who also use the ADMT system

ADMT: Consumer Rights

Exceptions to the Opt-Out Consumer Right

In certain situations, businesses **do not** need to offer an opt-out:

- When consumers can appeal the ADMT decision to a qualified human reviewer
- When ADMT is used for admission, acceptance, or hiring decisions
- When ADMT is used to assign work or determine compensation

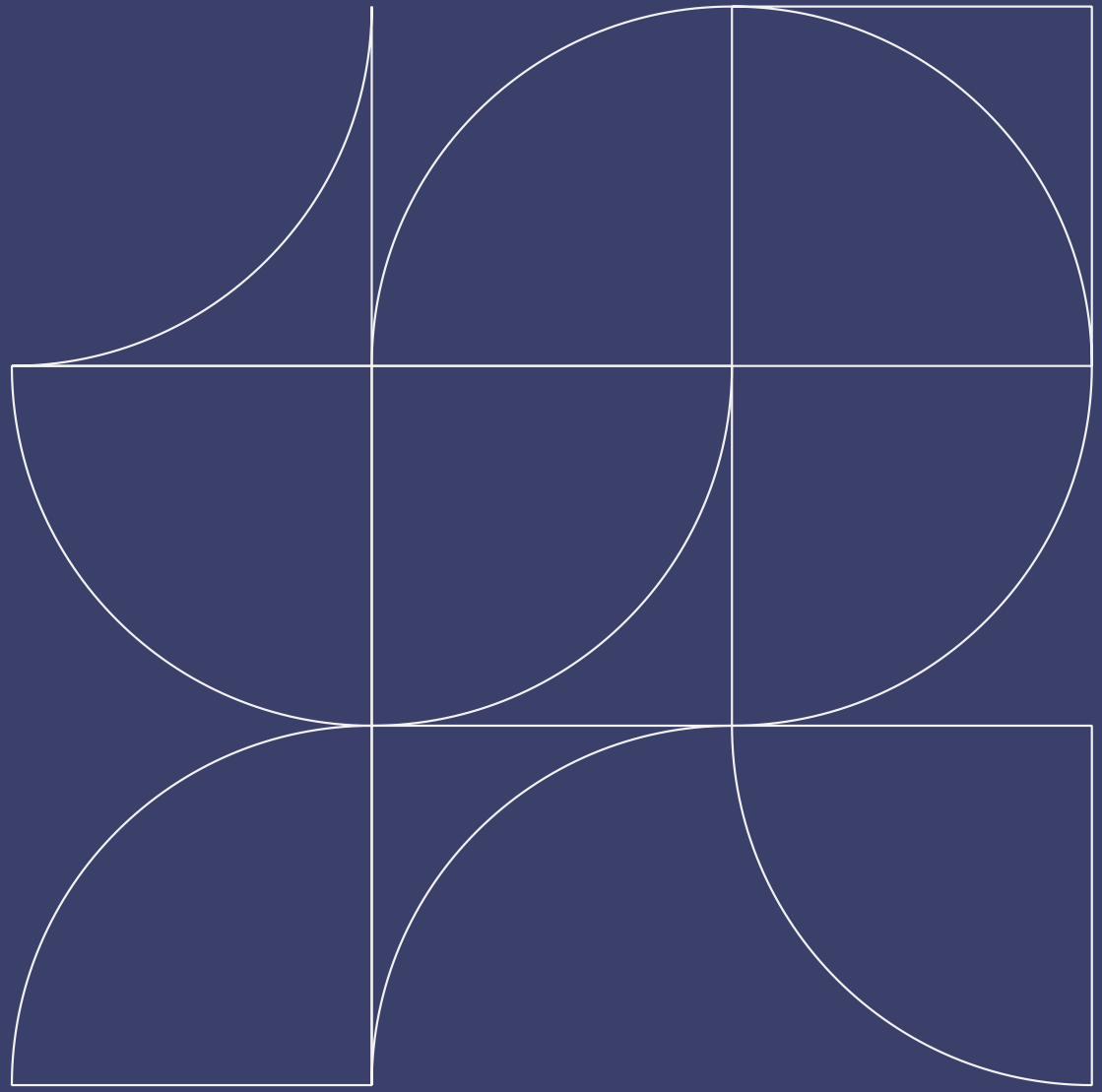
Even when an opt-out isn't required, other ADMT obligations still apply, including Pre-Use Notices, access rights, anti-retaliation rules, and Risk Assessment requirements.

ADMT: How to Prepare

How Should Businesses Prepare?

- **Identify ADMT Uses:** Map tools that automate or influence significant decisions.
- **Prepare ADMT Notices:** Draft Pre-Use Notices explaining each ADMT use and its impact.
- **Update DSAR Processes:** Incorporate ADMT access requests and response workflows.
- **Review Vendor Tools:** Confirm whether third-party AI tools function as ADMT and revise contracts accordingly.
- **Strengthen Governance:** Integrate ADMT obligations into existing AI and privacy programs.
- **Assess ADMT Risks:** Evaluate ADMT systems through Risk Assessments starting in **2026**.

Risk Assessment Obligation: starts January 1, 2026*



Risk Assessments: Required if processing presents *significant risk* to consumer privacy

What processing presents a *Significant Risk*?

- Selling or sharing Personal Information (PI).
- Processing Sensitive PI (SPI)
  - except for pay, benefits, work authorization, accommodations, wage reporting.
- Using ADMT for a "significant decision."
- Using automated processing to profile, based on:
  - Systematic observation of an educational/job applicant, student, employee or independent contractor.
  - Presence in a sensitive location.
- Processing PI to train an ADMT for a significant decision on a consumer; or to train facial-recognition, emotion-recognition, or other technology that verifies identity or profiles.

Risk Assessments: Examples

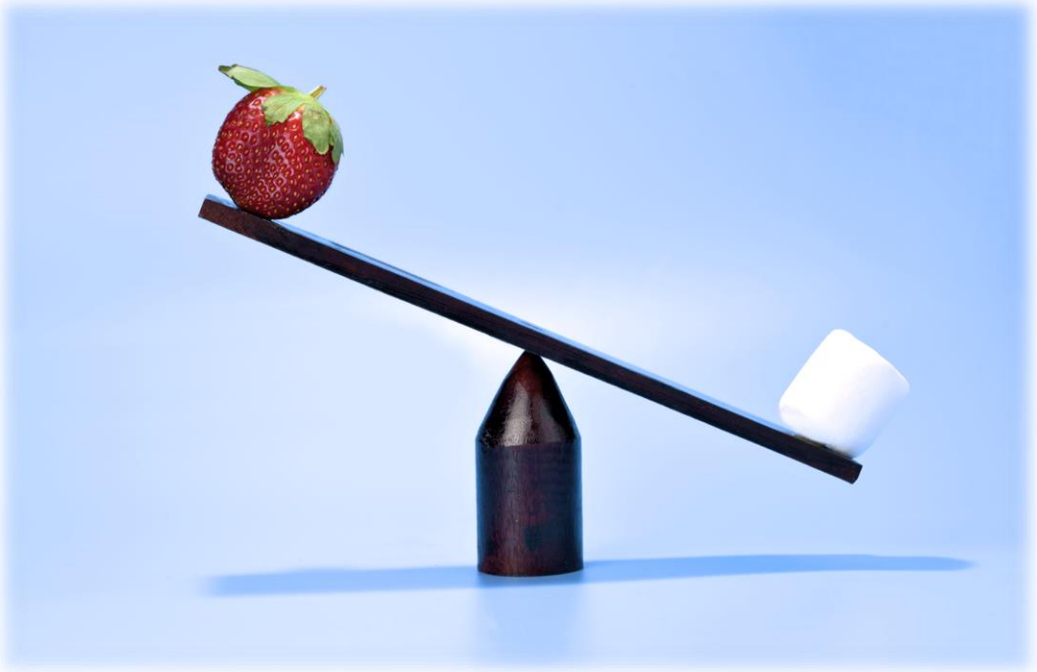
Example Scenarios in the Regulations

Scenario	Why RA Required
A business will use emotion-recognition technology without human involvement to make hiring decisions	This is ADMT for a significant decision concerning a consumer
A dating app will disclose precise geolocation, ethnicity, and medical info individuals provide in dating profiles to a third-party analytics service provider	This is SPI processing
A budgeting app will display ads for payday loans on different websites based on evaluation of financial info consumers entered	This is Sharing of PI
A tech company will train its facial recognition technology on consumer photos	This is using PI to train ADMT

Risk Assessments: A Balancing of Interests

What are the Goals of a Risk Assessment?

The goal of a Risk Assessment is to **restrict or prohibit processing** if the risks to consumers' privacy outweigh the benefits of the processing to the consumer, the business, other stakeholders, and the public.



Risk Assessments: Content Requirements

What Must the Report Cover?

- Processing purpose – must not be generic.
  - ✗ : “security purposes” or “service improvement”
  - ✓ : “decreasing wait time when processing rights requests”
- Categories of PI/SPI to be processed.
- Operational requirements to be identified/documented:
  - Planned method for processing and sources of PI
  - How long PI will be retained or criteria to be used to determine retention
  - Method of interacting with consumers and purpose of same
  - Approximate number of consumers
  - What disclosures are made concerning processing
  - Names or categories of third parties and the purposes of disclosure to them

Risk Assessments: Content Requirements

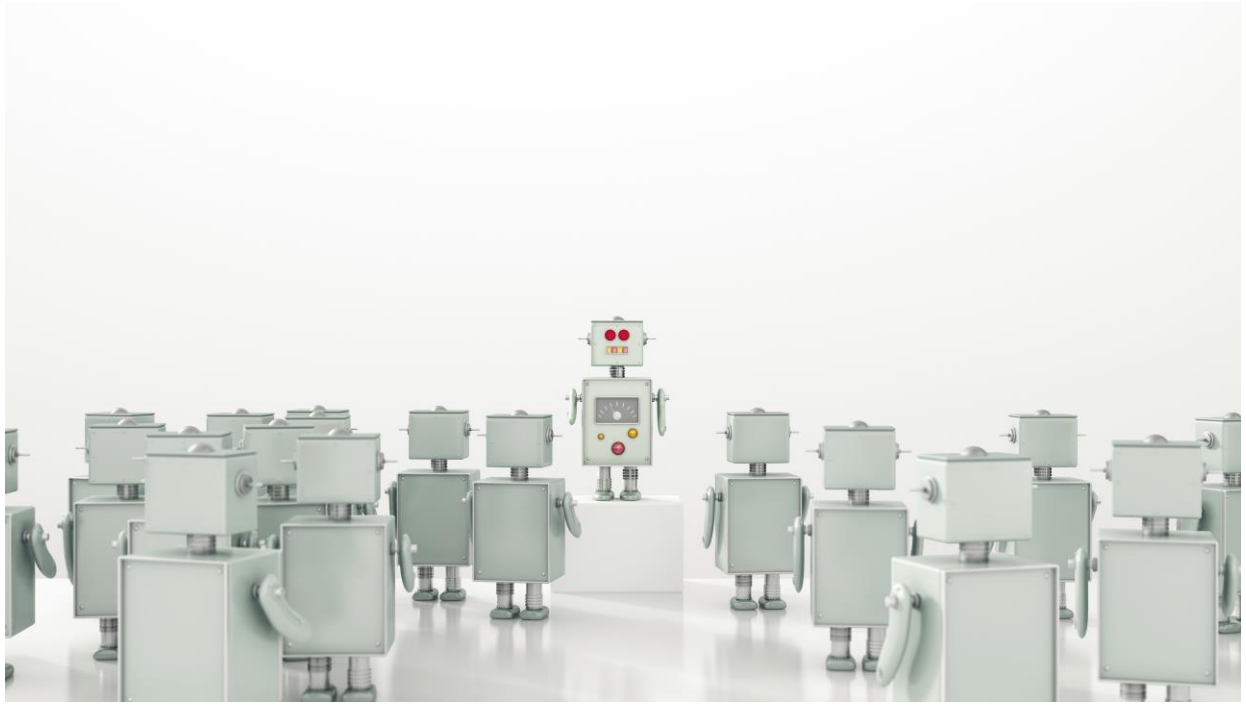
Cont'd: What Must the Report Cover?

- Operational requirements (continued):
  - For ADMT: logic including assumptions or limitations and output and how it will be used to make a significant decision
  - Benefit and negative impacts, including sources and causes
    - e.g., unauthorized use, discrimination, impairing control, economic harms, creating opportunity for harm, reputational, psychological
  - Any safeguards to be used to address negative impacts
    - e.g., encryption, access controls, network monitoring, experts
  - Decision on processing – will you do it anyway?
  - Identify the individuals who provided the info, except legal counsel
  - Date of review and approval
  - Names/positions of approvers
    - must include individual with authority over processing

Risk Assessments: Additional requirements for businesses training ADMT

If The Business is Training ADMT

- If making ADMT available to another business to make a significant decision concerning a consumer, you must provide to that recipient-business **all facts available** that are necessary for the recipient-business **to conduct its own risk assessment.**



Risk Assessments: Timing and Frequency Requirements

When and How Often?

- **Before** new activity with "significant risk".
- Any preexisting activity requires Risk Assessment by **December 31, 2027**.
- Review/update at least **once every 3 years** for accuracy.
- Update whenever there is a **material change** to the processing, as soon as feasibly possible, but no later than **45 calendar days** from the date of the material change**.**
- **Retention**: RAs must be retained for as long as the processing continues or for 5 years after the Assessment, whichever later.

Risk Assessments: Submission to CPPA via CPPA website

Submission Requirements

- For RAs conducted in 2026 and 2027, submit no later than April 1, 2028.
- For those conducted after 2027, submit no later than April 1 in following year. (2028 assessments in 2029, etc.).

Assessment Year	Submission Deadline
2026 - 2027	April 1, 2028
2028 onward	April 1 of the next year

- Time period covered by the RA Report
- Number of assessments conducted/updated per activity.
- What categories of PI/SPI were processed.

Risk Assessments: Submission to CPPA via CPPA website (Continued)

Cont'd: Submission Requirements

- Attestation under penalty of perjury: *“I attest that the business has conducted a risk assessment for the processing activities set forth in California Code of Regulations, Title 11, section 7150, subsection (b), during the time period covered by this submission, and that I meet the requirements of section 7157, subsection (c)."*

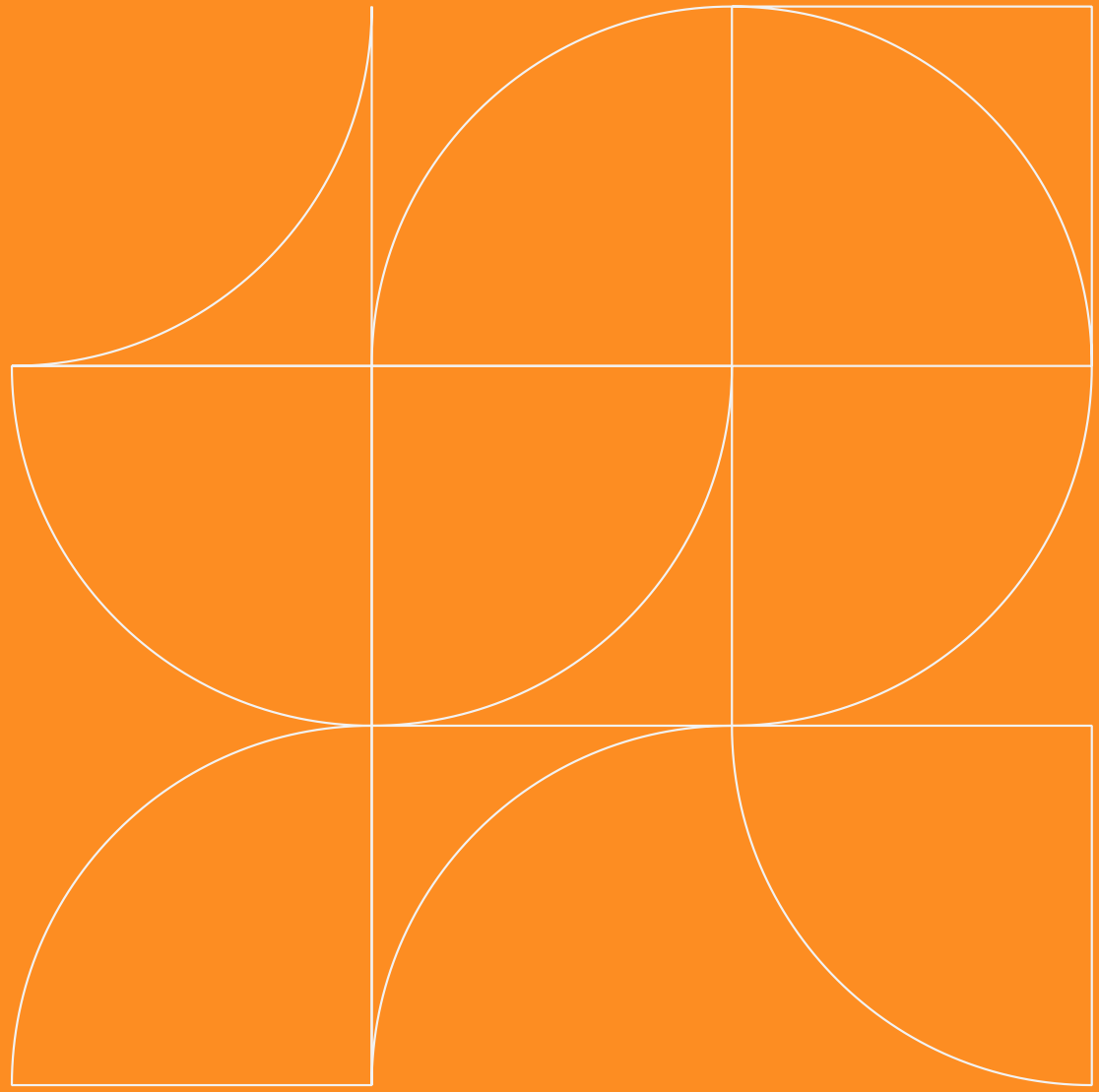
- Name and title of person submitting:
  - member of **executive management team**
  - **directly responsible** for risk assessment compliance
  - has **sufficient knowledge** to provide accurate information
  - has the authority to submit to the CPPA.
- The CPPA or the AG may require a Report at any time (which must then be submitted within 30 calendar days).

Risk Assessments: Combining with Comparable Requirements

It is Possible to Combine Risk Assessments

- **Similar processing activities** that present **similar risks** to consumers' privacy may be addressed in a single RA.
  - Ex.: Toy store will collect kids' names, addresses and birthdays, to mail a toy coupon, using the same vendor for several mailings across all stores. The toy store must conduct a RA, because it is processing SPI. It may use a single RA as it is collecting the same PI in the same way for the same purpose and there are similar risks to privacy.
- An RA prepared for **another purpose** may be used, provided it meets the requirements.
  - Ex.: A business plans to sell PI and already conducts and RA for another state law. It can use that RA for these purposes, as long as all requirements are met.

Cybersecurity Audit Requirement



Cybersecurity Audit: Who

Who Needs to Complete a Cybersecurity Audit?

Every business whose processing of consumer's PI presents a **significant risk** to consumer security.

- A **significant risk** exists when:
  - 50% or more of a business's annual revenue is derived from selling or sharing consumer's PI, or
  - The business's annual gross revenue exceeds $25 million and
    - The business processed the PI of 250,000 or more consumers, or
    - The business processed the sensitive PI of 50,000 or more consumers.

Cybersecurity Audit: When

When Does the Audit Need to be Completed?

The determination of when businesses are required to complete a cybersecurity audit is dependent on revenue and being implemented in a tiered system.

- Businesses with an annual gross revenue for 2026 of more than **$100 million**, must complete their first cybersecurity audit by **April 1, 2028.**
- Businesses with an annual gross revenue for 2027 **between $50 million and $100 million**, must complete their first cybersecurity audit by **April 1, 2029.**
- Businesses with an annual gross revenue for 2028 **less than $50 million**, must complete their first cybersecurity audit by **April 1, 2030.**

Following April 1, 2030, if a business meets the criteria requiring it to complete an audit (previous slide), the business must complete an audit covering the next 12 months by April 1 of the following year.

Cybersecurity Audit: What

What Needs to be Included in the Audit?

- Details of the business's cybersecurity program.
- An assessment of the business's establishment, implementation, maintenance, and enforcement of its cybersecurity program.
- An assessment of any applicable components as listed in the regulations.
  - Regulations provide eighteen components, most of which have various subsections, and allows the auditor to include additional components if applicable.
    - Example components: authentication; antivirus and antimalware protections; cybersecurity education and training
- Other required reports
  - Regulations provide ten areas the audit must address.
    - Example areas: applicable components assessed; corrections or amendments to prior audits; auditor's information

Cybersecurity Audit: Auditor Required

Interactions with Auditor and Auditor Requirements

Every business required to complete an audit must use a qualified, objective, independent professional who uses accepted procedures and standards.

- May be an internal or external auditor, but internal auditors must follow additional regulations.
- The business must:
  - Provide all information within its possession, custody, or control that is requested by the auditor as relevant to the audit; and
  - Act in good-faith to disclose all relevant facts and not misrepresent relevant facts.
- Auditor must rely primarily upon specific, appropriate evidence rather than assertions or attestations by management.
- Audit report must be provided to an applicable employee of the business.
- Business and auditor must retain all documents relevant to audit for a minimum of five years.

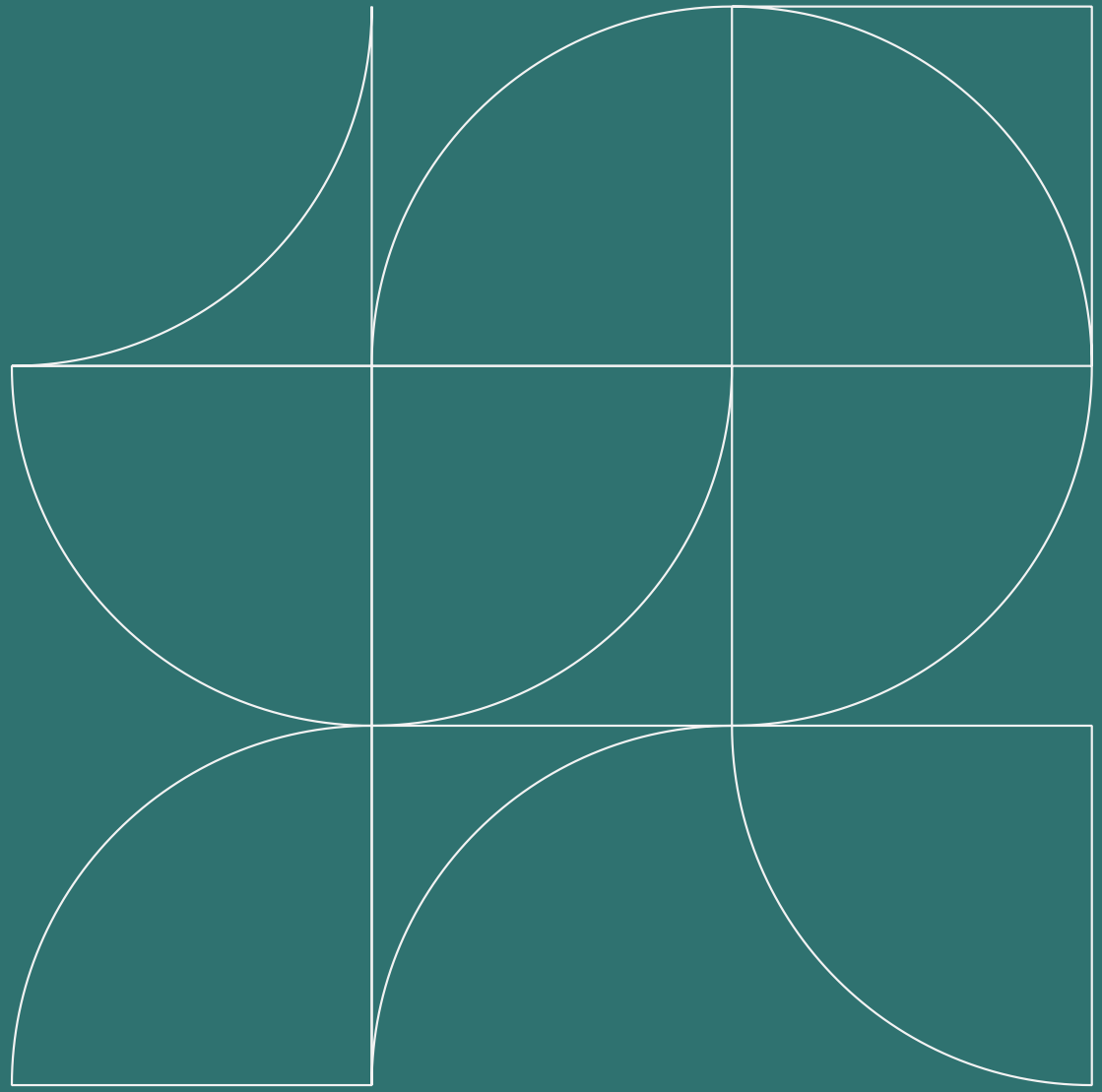
Cybersecurity Audit

Certification of Completion

Each year that a business is required to complete a cybersecurity audit, it must submit a written certification of completion to the Agency no later than April 1.

- Certification must be submitted by an applicable employee of the business who is directly responsible for audit compliance, has sufficient knowledge of the audit, and has authority to submit the certification.
- Certification must be submitted through the Agency's website and include the following:
  - Business's name and point of contact
  - Statement that the business has completed the audit
  - The time period covered by the audit
  - Electronically signed attestation of the form statement
  - The name and business title of the person submitting the certification, and the date of the certification

CCPA and CIPA Consent Management Updates



Website Tracking Technology

- What can cookies, pixels, web beacons, etc., do?
  - Collect; Track & Follow; Contribute to Profiles; Reflect Video Viewing Activity
  - Necessary / Performance / Functional / Targeting & Advertising
  - Can Facilitate:
    - Cross-contextual behavioral advertising
    - Selling and sharing
- Chatbots (live and automatic/AI)
  - Recordings
  - 3rd party data sharing
  - Use of information collected through Chatbot
- Doxxing/Deanonymization
- Session Replay
- Search Functionality

Background: CIPA

- Massive increase in lawsuits under the California Invasion of Privacy Act.
  - Any company with a website can be a target.
  - Claims target the operations of cookies, pixels, chatbots, pen registers and tracking software.
  - Liability up to $5,000 per violation.
- Thousands of lawsuits filed, and demand letters served in California within the last several years.
- Similar claims in other states, including Florida, Illinois, New York, and Pennsylvania.
- Based on penal code sections developed with telephone and telegraph communications in mind.
- Illegal to intentionally record or eavesdrop on communications without the consent of all parties.
  - Includes anyone who aids or abets

CCPA and Other State Level Data Privacy Laws

- Numerous states with state level privacy laws, including California, Colorado, Connecticut, Delaware, Iowa, Indiana, Kentucky, Maryland, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, Oregon, Rhode Island, Tennessee, Texas, Utah and Virginia.
- No private right of action under the CCPA/CPRA, but enforcement actions may be brought by the California Attorney General or the California Privacy Protection Agency.
- Multiple enforcement actions ranging up to $1.5 million.

CCPA Consent Management Regulation Amendments & Related / Do Not Sell Enforcement Activity

Opt-Out Confirmation Display

- The California Privacy Protection Agency (tasked with enforcing the CCPA along with the California AG's office) has issued only two enforcement advisories to date, one of which addresses consent / cookie management in connection with "dark patterns" (CCPA Enforcement Advisory No. 2024-02).
- 2026 Regulation Amendments are consistent with the enforcement advisory
- State enforcement agencies are increasingly active
- September 2025: California, Colorado and Connecticut enforcement authorities announced a joint investigative privacy sweep relating to Do Not Sell / Global Privacy Opt-Out / Consent Management matters
- 2026 Regs require a means for consumers to confirm opt-out has been processed (including for GPC signals) – *e.g.*, by display on a website of "Opt-Out Request Honored"

Consent Under the CCPA

- "Dark Patterns" – means a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice, as further defined by regulation.

- Consent – freely given, specific, informed and unambiguous.
  - Consent obtained through dark patterns is not "consent."

- How to Avoid:
  - Easy to understand
  - Straightforward
  - No technical or legal jargon
  - Symmetrical Choices for user to say "yes" or "no"
    - Both in difficulty and in time required

Dark Patterns Guidance

Examples of Prohibited Dark Patterns

The updated CCPA regulations provide examples of several practices that may constitute prohibited dark patterns, including:

- Requiring more steps to opt-out of the sale or sharing of personal information than to opt-in;
- Making a “yes” button more prominent than a “no” button (e.g., through sizing or color selection);
- Treating the act of closing or navigating away from a pop-up as a valid form of consumer consent without the consumer first affirmatively selecting “I accept” or an equivalent;
- Selecting by default, or featuring more prominently, the option to participate in a financial incentive program than the option not to; and
- Creating a false sense of urgency that pressures consumers into quickly making a decision about the scope of their consent.

Decisions Regarding Website Tracking Technologies

- Courts are becoming savvier when evaluating the factual bases of plaintiffs' claims under CIPA.
- *Heiting v. HP, Inc.* (Cal. Sup. Ct. 2024)
  - Dismissed "trap and trace" complaint without leave to amend.
  - Judges aren't buying plaintiffs' attempts to apply CIPA statutory scheme to these technologies.
- *Ramos v. The Gap, Inc.* (N.D. Cal 2025) - dismiss w/o leave
  - Dismissed Sec. 631(a) complaint re: marketing email tracking; Sec.631(a) does not apply to internet comms. or cover data such as URLs and device information.
- Tester Plaintiffs – some decisions have determined that professional "tester" plaintiffs lack standing to bring CIPA claim –*i.e.*, lack an expectation of privacy.
- *Palacios v. Fandom, Inc.* (Cal. Sup. Ct. 2025) - decision notes district courts would "benefit from appellate guidance."

CIPA & Potential Legislative Action

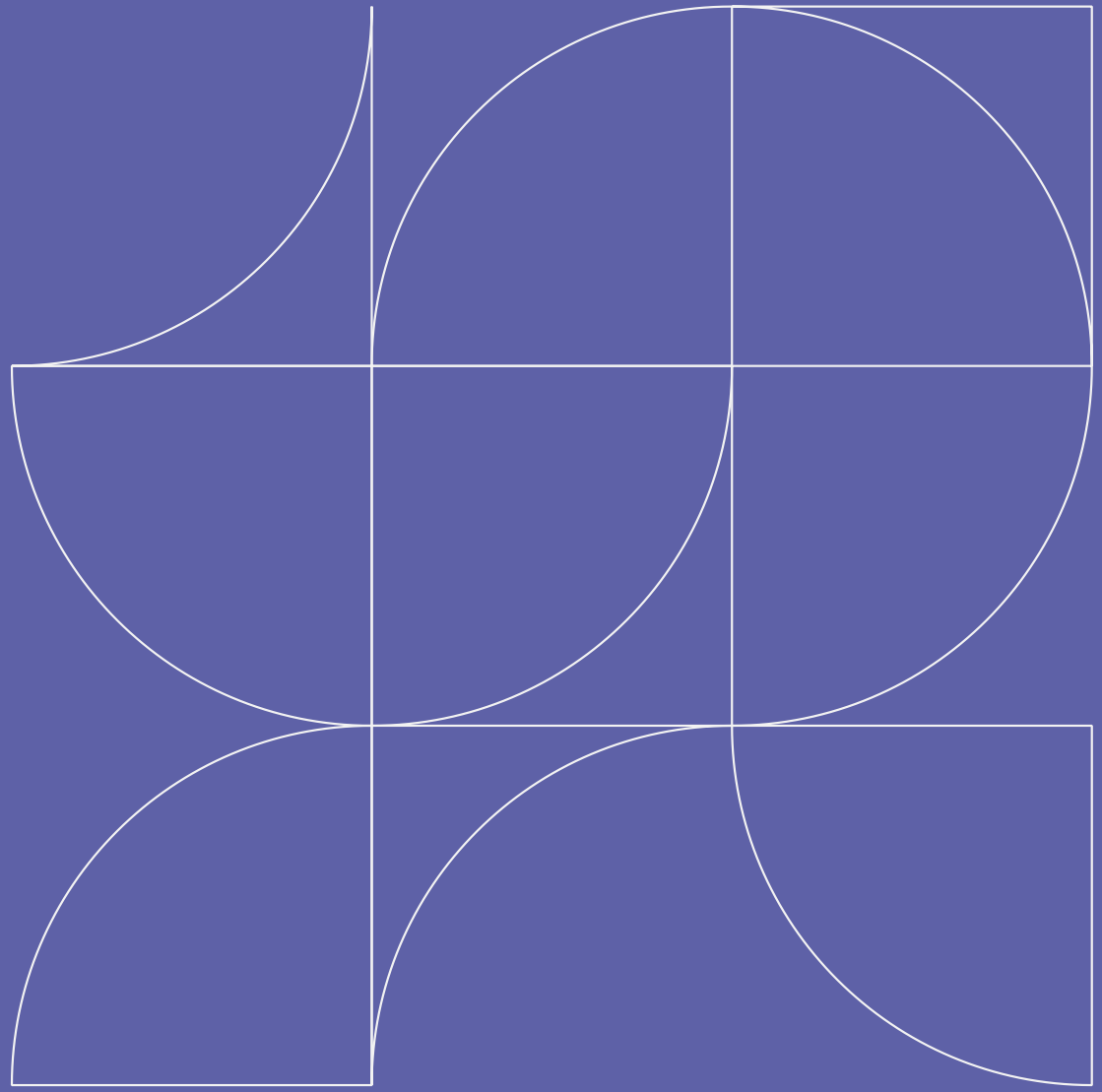
California Senate Bill 690

- Increasing pressure on the legislature to address the uncertainty and potential exposure relating to CIPA led to the introduction of a bill this past legislative session
  - The legislation would have potentially curbed exposure under CIPA by adding an exception to the statute which would have had the effect of permitting use off tracking technologies for "commercial business purposes."
- SB 690 has since stalled out.
- Renewed call for legislative action: See *Doe v. Eating Recovery Center*, N.D. Cal (Oct. 17, 2025)

Practical Considerations

- **Cookie Banner Considerations:**
  - Do you have one in place?
  - What type of management options do you want to provide?
  - What cookies and pixels are operating on each and every page of the website?
  - At what point does the transmission take place?
  - Do your privacy notices and policies fully and accurately disclose your operative cookies, pixels, and any other third-party data sales/sharing?
- **Chatbot Considerations:**
  - What disclosures do you have in place, both in the
    - Chatbot and in any related privacy policy?
  - Hosted by a third party?
- **Opt-Out Considerations:**
  - Tested; functioning; global (GPC)?

Preparing Your Business for the Future



Action Items & Considerations

Priority Actions for 2025–2026

- ✓ **Build a Unified AI & Data Inventory**
  - Map all AI, ADMT, profiling, cookies/trackers, and high-risk processing across the organization.
- ✓ **Implement a Global Risk & Governance Framework**
  - Stand up processes for AI tool/ADMT reviews, privacy risk assessments, cybersecurity controls, cookie/consent compliance, and shadow-AI management.
- ✓ **Modernize Notices, Consent & DSAR Workflows**
  - Update global privacy notices, cookie banners, ADMT/AI transparency, opt-out rights, and human-review appeal pathways.
- ✓ **Ensure Policies Match Actual System Behavior**
  - Validate that AI tools, website cookies/trackers, and DSAR workflows operate exactly as described in notices, banners, and internal policies.

thank you

For more information please contact:

Kathleen McConnell
Email: kmcconnell@seyfarth.com
Phone: (415) 544-1062

Yana Komsitsky
Email: ykomsitsky@seyfarth.com
Phone: (310) 201-5242

Vincent Smolczynski
Email: vsmolczynski@seyfarth.com
Phone: (704) 925-6043

Danny Riley
Email: driley@seyfarth.com
Phone: (312) 460-5310