

JMBM

Jeffer Mangels
Butler & Mitchell LLP

jmbm.com

California Consumer Privacy Act of 2018

Michael A. Gold

Jeffer Mangels Butler & Mitchell LLP

Co-Chair, Cybersecurity and Privacy Group

MGGold@jmbm.com

Michael A. Gold

2



Partner
Co-Chair, Cybersecurity
and Privacy Group
Direct: 310.201.3529
MGold@jmbm.com

Michael is co-chair of the JMBM Cybersecurity and Privacy Group. He counsels clients in a wide variety of matters, including privacy law compliance (including GDPR and the California Consumer Privacy Act of 2018), data breach responses and investigations, crisis management, development of computer-based information retention systems, forensic investigations of computer systems, and computer and internet privacy matters.

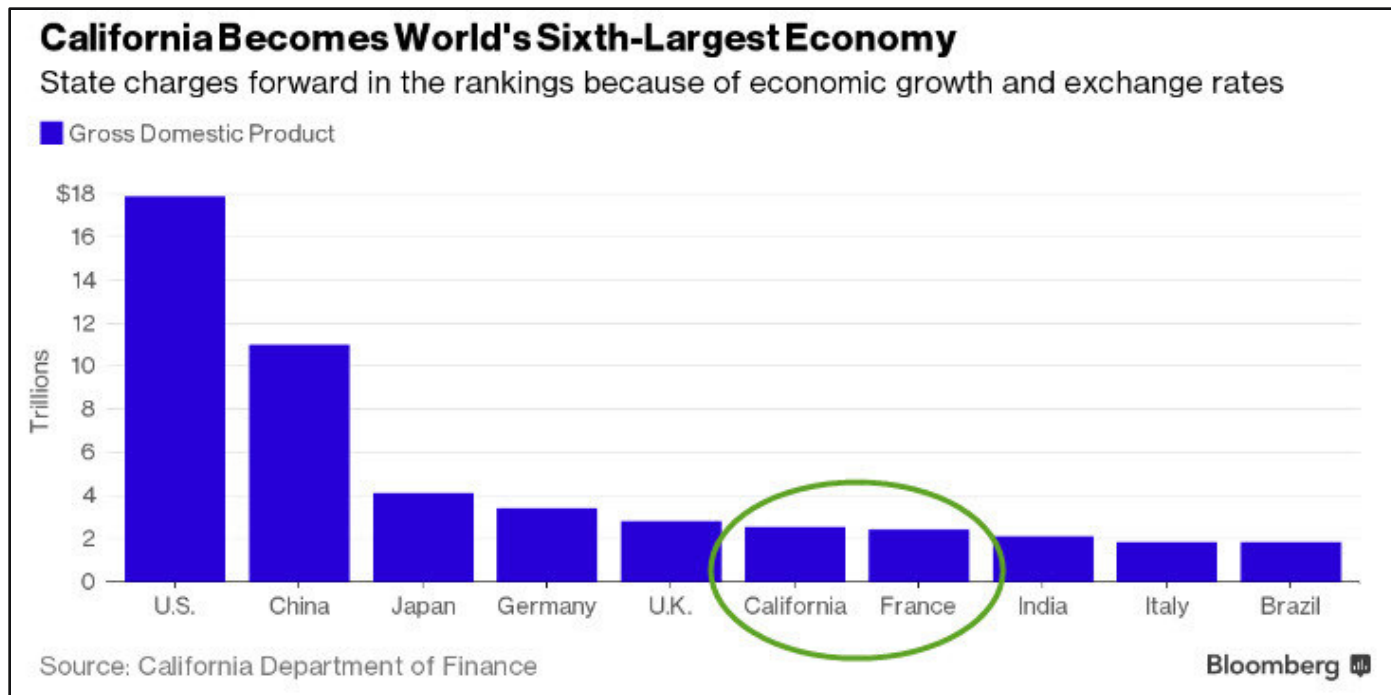
Michael also assists clients in developing and implementing information management and governance best practices and developing policies and compliance structures for protecting personal and company information. He was named one of the "Top 20 Cyber – Artificial Intelligence Lawyers" by the *Daily Journal* (2018), one of the "Most Influential Lawyers: Digital Media and E-Commerce Law" by the *Los Angeles Business Journal*, and has been designated a "Top Rated Lawyer in Technology Law" by Martindale Hubbell. He is the author of the upcoming Bloomberg BNA portfolio *Enterprise Cybersecurity Governance*, and co-author of the Bloomberg BNA Portfolio *Records Retention for Enterprise Knowledge Management*.

California Consumer Privacy Act of 2018

3

What is the CCPA?

- The most comprehensive consumer privacy law enacted to date in the United States



California Consumer Privacy Act of 2018

4

What are its salient points?

□ Scope and Effect

- Protects “personal information” (PI) of California consumers (i.e., residents)
- Effective January 1, 2020 — Enforcement starts July 1, 2020
- Requires compliance with a 12-month “look back” period.

□ Enforcement

- Enforced by the California Attorney General (AG).
 - The AG may seek \$2,500 per violation for negligent violations, and \$7,500 per violation for intentional violations.
- Private rights of action for consumers if PI compromised as a result of a data breach.
 - Statutory damages in a consumer’s civil suit limited to greater of \$100 - \$750 per consumer per incident, and actual damages.

California Consumer Privacy Act of 2018

5

What are its salient points? (cont.)

□ Disclosure is key

- Data transfers with vendors and other third parties must be tracked and disclosed.
- Detailed requirements for privacy policies

□ Exemptions

- Some B2B PI is exempt (expires 1/1/2021).
- Employee PI is exempt (expires 1/1/2021).
- De-identified data is exempt in most circumstances.

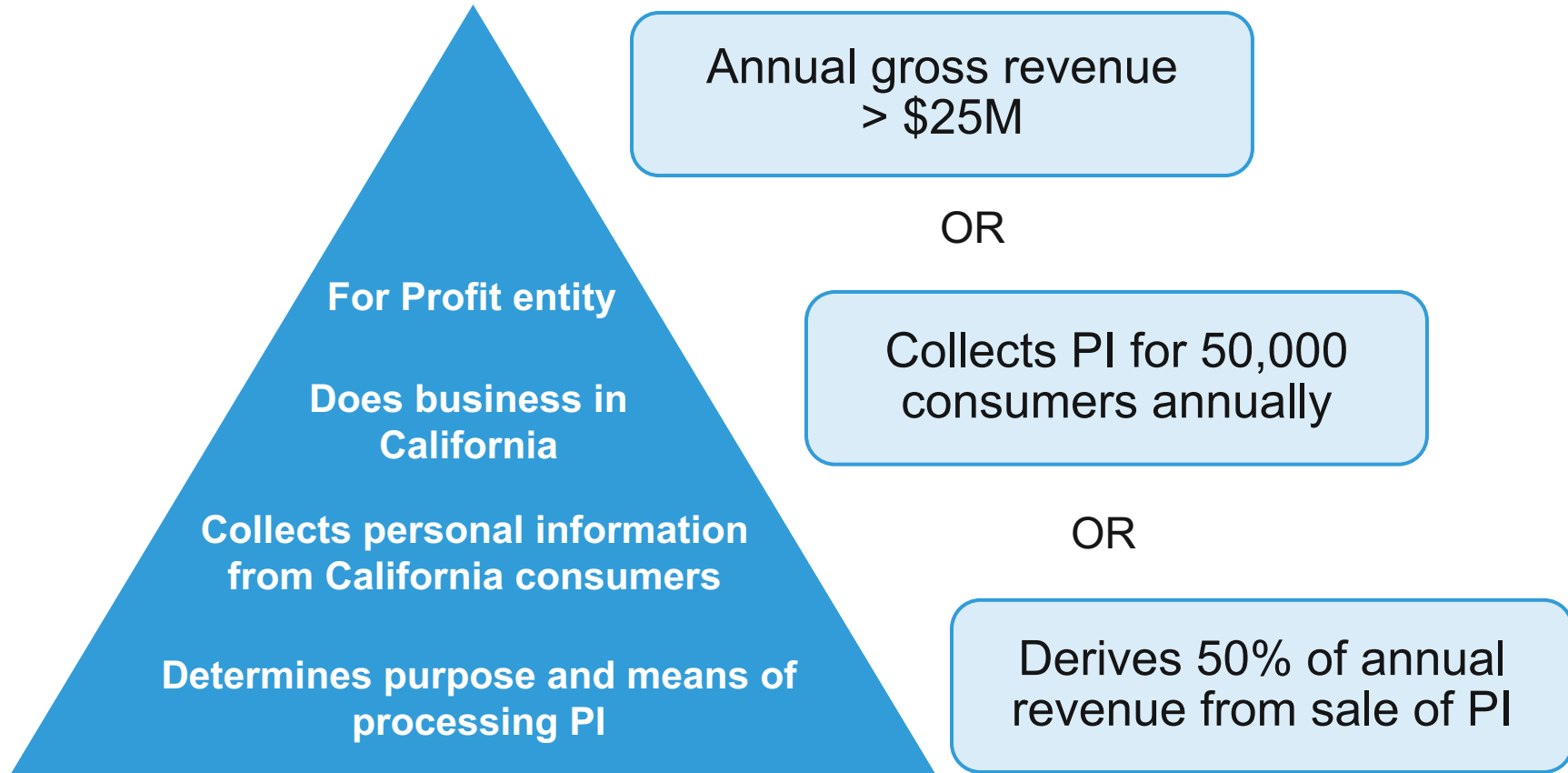
□ AG Regulations

- The AG issued proposed CCPA regulations that will go into effect on January 1, 2020 – the regulations are extensive, burdensome, and ambiguous.

California Consumer Privacy Act of 2018

6

Who must comply?



California Consumer Privacy Act of 2018

7

What is “personal Information” under the Act?

Identifiers	<ul style="list-style-type: none">•Name, address, email, phone, ssn, license	Geolocation Data	<ul style="list-style-type: none">•GPS coordinates, location history
Protected Classes	<ul style="list-style-type: none">•Race, gender, sexual orientation, religion	Sensory Data	<ul style="list-style-type: none">•Audio, electronic, visual, thermal, olfactory
Commercial Information	<ul style="list-style-type: none">•Records of personal property, purchasing or consuming histories or tendencies	Professional Data	<ul style="list-style-type: none">•Professional and employment-related; CV, employment history
Biometric Information	<ul style="list-style-type: none">•Fingerprints, retina scans, face prints	Education Information	<ul style="list-style-type: none">•Education background, grades, scores•Not publicly available
Internet Activity	<ul style="list-style-type: none">•Browsing history, search history, consumer’s website interactions	Inferences from any of the above	<ul style="list-style-type: none">•Reflecting preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, aptitudes.

California Consumer Privacy Act of 2018

8

What “new” rights does the Act confer?



Right of Access



Right to Deletion



Right of Disclosure



Right to Opt-Out
(Opt-In for Minors)



Right to Non-Discrimination

California Consumer Privacy Act of 2018

9

What “new” rights does the Act confer? (continued)

- Privacy policy must disclose:
 - ▣ What PI is collected?
 - ▣ How is it used?
 - ▣ With whom is it shared?
 - ▣ Is any PI sold?
 - ▣ The consumer’s rights and how to exercise them
- Must be updated every 12 months

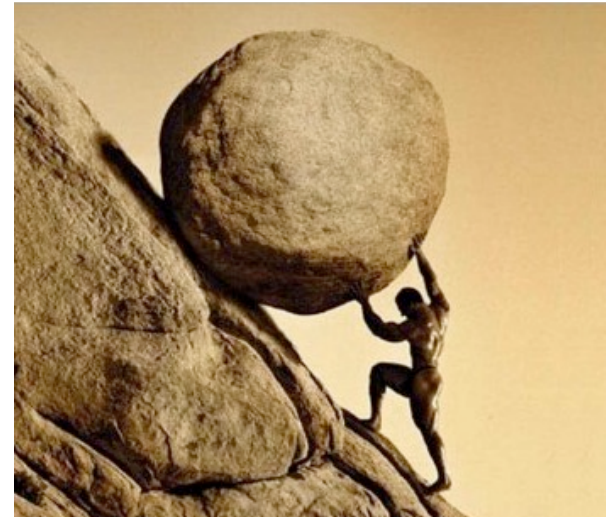


California Consumer Privacy Act of 2018

10

The likely impact:

- The Act affects companies worldwide if they collect California consumers' PI
 - ▣ But extraterritorial enforcement is an open issue ...
- Other states will adopt similar laws (like Nevada and New York)
 - ▣ Federal Government should eventually create a national consumer privacy law
- These laws will cause even more “*compliance fatigue*.”
- CCPA may spawn significant regulatory enforcement and consumer lawsuits.



California Consumer Privacy Act of 2018

11

And recently...

- Several organizations and Congress have proposed national laws
 - U.S. Chamber of Commerce lobbied Congress for federal legislation that would preempt the CCPA and other similar state laws.
 - The Internet Association and The Interactive Advertising Bureau called for federal laws.
 - None of the proposals have gained any traction yet.

- Alastair Mactaggart, who prompted enactment of the CCPA, has proposed a California ballot measure for 2020
 - The California Privacy Rights and Enforcement Act of 2020 (<https://www.caprivacy.org/CPREA2020>)
 - If passed, it will restore all of the provisions that were amended out of the Act, add new provisions that will create major obstacles to the sale and transfer of personal information, and will impose crushing burdens on digital advertisers.

California Consumer Privacy Act of 2018

12

What should companies do now?

- ❑ Adopt a proactive compliance framework and associated policies that will withstand consumer lawyer and regulatory scrutiny.
- ❑ Establish workable protocols and processes to address consumer requests under the Act.
- ❑ Determine how to comprehensively and efficiently identify consumer information across all company systems.
- ❑ Make sure consumer data is effectively mapped and that the mapping covers the 12-month “look back” period.
- ❑ Last but not least - determine who should be in charge.

