



# Privacy Update

August 17, 2021

John L. Wood




# Privacy Laws

- ▶ All 50 states have notification laws
- ▶ Federal Specific laws
  - ▶ HIPAA (Medical)
  - ▶ Graham Leach Bliley (Financial)
  - ▶ FTC enforcement
- ▶ GDPR – Effective May 25, 2018
- ▶ State Privacy Laws
  - ▶ California Consumer Privacy Act (CCPA) (Effective January 1, 2020)
  - ▶ Virginia's Consumer Data Protection Act (Effective January 1, 2023)
  - ▶ Colorado Privacy Act (Effective July 1, 2023)
  - ▶ 5 additional states have privacy legislation pending



# GDPR update

- ▶ GDPR covers any business that has an EU citizens data
- ▶ Amazon fined \$883 million.
  - ▶ More than double of all previous GDPR fines
  - ▶ Amazon did not obtain consent before advertising
- ▶ Privacy Shield invalidated
- ▶ Standard Contractual Clauses are required



# California Consumer Privacy Act (CCPA)

- Signed into law on June 28, 2018
- Took affect January 1, 2020
- Key Principle – Users have control over their data
- Damages of \$100 - \$750 per incident available



# CCPA Threshold

- ▶ CCPA applies to businesses that have:
  - ▶ Annual gross revenues in excess of \$25,000,000;
  - ▶ Buys, receives, sells or shares the personal information of 50,000 or more consumers; or
  - ▶ Derives 50 percent or more of its annual revenues from selling consumers' personal information.



# CCPA litigation


- ▶ More than 150 CCPA actions brought already
  - ▶ Source: <https://www.perkinscoie.com/en/ccpa-litigation-tracker.html>
- ▶ ~50 involved data security breaches



# CCPA - Blackbaud

- Blackbaud Inc. provides cloud software to nonprofits
- From February 7, 2020 to May 20, 2020, Blackbaud suffered a ransomware attack. PII was copied from Blackbaud's servers.
- Blackbaud paid the ransom for an assurance that all PII was destroyed.
  - There is no evidence that any PII was disclosed
- 34 Plaintiffs from twenty states filed a class action in South Carolina
- The Plaintiffs are customers of Blackbaud's customers






# CCPA right of action

- ▶ private right of action for actual or statutory damages to “[a]ny consumer whose nonencrypted and nonredacted personal information ... is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of the business's violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information
  - ▶ Cal. Civ. Code 1798.150(a).





# Virginia Consumer Data Protection Action

- ▶ Enacted March 2, 2021
- ▶ Effective as of January 1, 2023
- ▶ Consumer control of data
- ▶ Only applies to consumer data
- ▶ Opt-in for sensitive personal data
  - ▶ Racial or ethnic origin, religious beliefs, mental or physical health diagnosis, sexual orientation, or citizenship or immigration status
- ▶ Business must control or process personal data of at least 100,000 Virginia residents
  - ▶ If 50% of revenue is from selling personal data then only 25,000 Virginia residents required



# VCDPA continued

- Processors comply through their contracts with controllers
- No private right of action
- 30 day cure period
- \$7,500 penalty for each violation



# Colorado Privacy Act

- ▶ Passed July 7, 2021
- ▶ Effective July 1, 2023
- ▶ Consumers control their data
- ▶ Opt-in for sensitive data like VCDPA
- ▶ Same limits as VCDPA (100,000 or more Colorado consumers per year)
- ▶ Privacy notices required
- ▶ No private right of action



# What should a business do?

- Encrypt Data
- Change Your Approach to Personal Information
  - The Consumer owns their data
- Build in consumer rights
  - Right to opt-out
  - Right to be forgotten
  - Right to Access/Portability
- Consider Do Not Sell My Information link
- Encrypt Data