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BETTER REPRESENTATION

Client Alert–CCPA

On January 1, 2020, provisions of the California Consumer Privacy Act ("CCPA") will go into effect, imposing some of the most restrictive data privacy laws yet developed. Wherever your company is located, these laws will affect you if your company, or a company you control or are controlled by and share a common brand with, meets several criteria. These are: it collects personal information of any California residents, it determines how and why that personal information is processed, and it:

1. has $25 million or more in annual gross revenue wherever derived; **or**
2. possesses the personal information of more than 50,000 California residents, households, or devices; **or**
3. earns more than half of its annual revenue selling personal information of California residents.

Tracking user interaction with your company's website constitutes the collection of "personal information" for purposes of the law. Each device that a consumer uses to access your site (smartphone, laptop, desktop) constitutes a separate "device" for determining application of the law.

Why is a California law relevant to my business?

Just as the global reach of the Internet and supply chains required some businesses outside the European Economic Area to comply with the General Data Protection Regulations ("GDPR"), which went into effect in May of 2018, the ubiquity of e-commerce and data tracking means that numerous businesses outside of California that do business in that state will be impacted by this law. If you meet the above criteria, the CCPA will likely expand the definition of "personal information" for which you are responsible to include browser history, professional information, and geolocation data. Among other things, it will also provide individuals with the right to demand access to or the deletion of their personal information that your company has collected, as well as the right to opt out of a "sale" of their personal information to another entity.

If CCPA is applicable to your business, and even if you are already in compliance with GDPR, you will likely need to update privacy policies and notices, revise agreements with third-party processors, and reconfigure the manner in which you collect and organize data from and about consumers. These changes require some lead time. You have six months. Start now.

Even if your business falls outside the reach of CCPA, you still should take note of its scope. The CCPA reflects a broad data privacy trend. Expect to see references to CCPA in contracts and in the privacy policies of your social networks. Anticipate that other states — including Massachusetts, which has pending bills on this subject — will also be expanding the definition of "personal information" and mandating increased transparency and consumer access to electronically-provided information.

If you have questions about the applicability of CCPA, need your privacy policies updated, or would like to proactively update your administrative and technical safeguards to anticipate the next wave of data privacy regulations, please contact Lauren C. Ostberg (lostberg@bulkley.com), James C. Duda (jduda@bulkley.com), or Scott W. Foster (sfoster@bulkley.com), who lead Bulkley Richardson's Cyberscurity Practice Group.