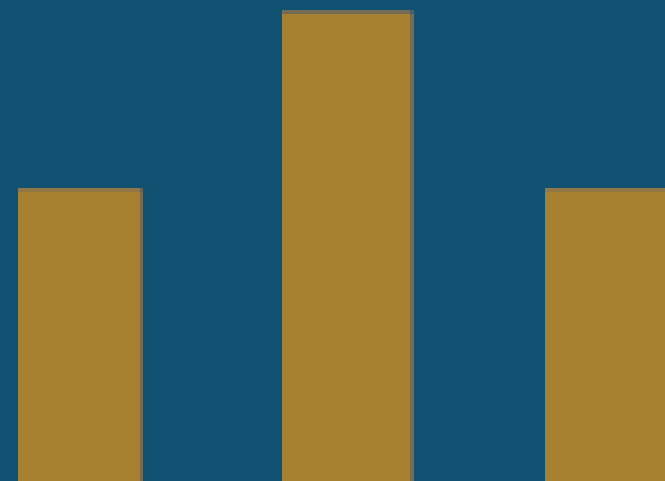




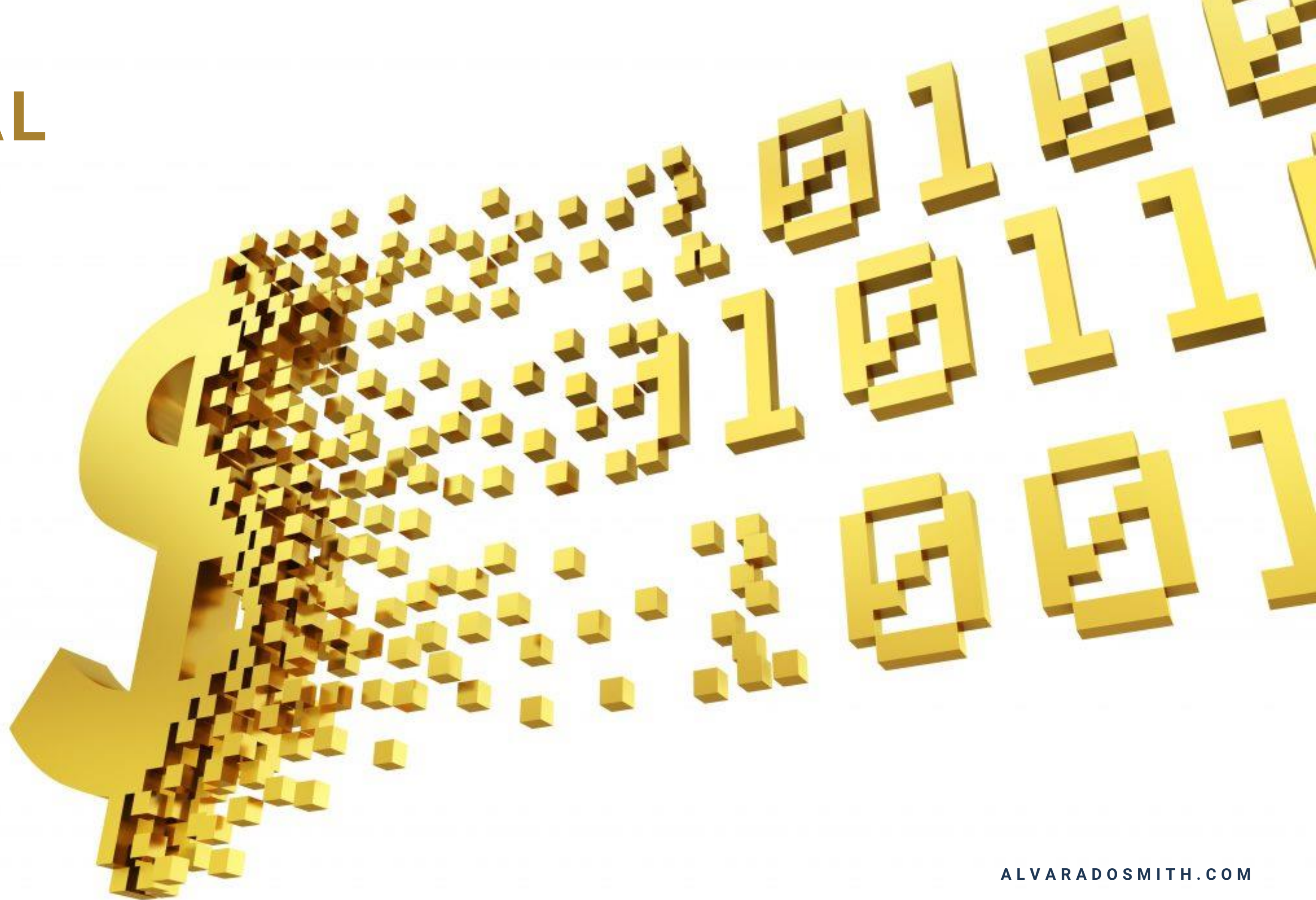
EXCELLENCE IN PRACTICE. DIVERSITY IN PEOPLE.

# THE CALIFORNIA CONSUMER PRIVACY ACT (CCPA): REGULATING THE DATA GOLD RUSH

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MARCH 23, 2020



# DIGITAL GOLD







# CLE AGENDA

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- **CCPA Overview**
- **Who It Protects? Who It Regulates?**
- **What Information Is Protected? What Information Is Excluded?**
- **How Do Businesses Comply with the CCPA?**
- **Enforcement**
- **Q&A**

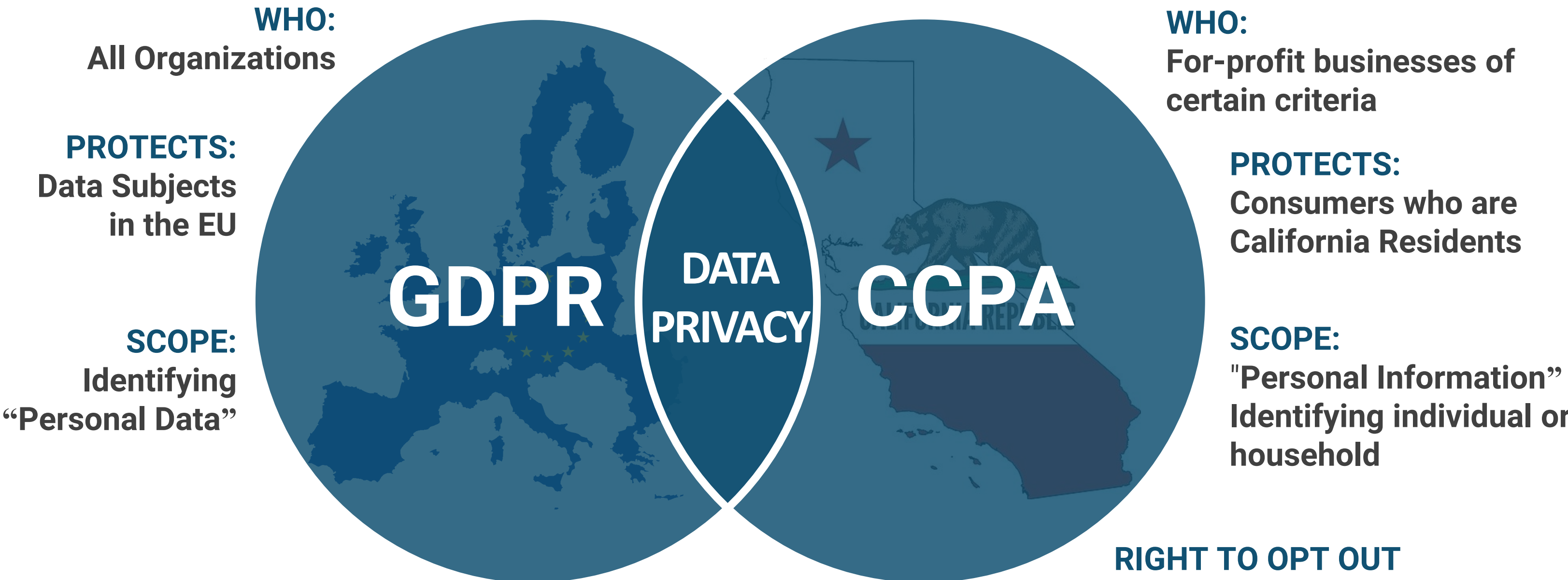
# IN A NUT SHELL...

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- The bill was passed and signed into law, on June 28, 2018, to amend the California Civil Code. **Draft regulations were released on October 10, 2019 and have been revised on February 10, 2020 and March 11, 2020.**
- **Effective January 1, 2020.**
- Aims to protect customer's personal data by regulating how companies gather, share, or utilize that information.
- Gives consumers the right to know, the right to delete, the right to opt out and the right to non-discrimination.
- **Enforcement will start on July 1, 2020** by the CA Attorney General.
- Violations will result in heavy fines.

# IN A NUT SHELL...

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# THE CCPA GIVES CALIFORNIANS THE RIGHT TO:

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Know what  
personal  
information is  
being collected

Access the  
personal  
information that  
is collected, and  
request it be  
deleted

Know  
whether their  
personal  
information is  
being shared,  
and if so, with  
whom

Opt-out of the  
sale of their  
personal  
information

Have equal  
service and  
price,  
whether or  
not they  
choose to  
exercise their  
privacy rights



# WHICH BUSINESSES ARE REGULATED?

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The CCPA only applies to for-profit companies that meet any one of the following requirements:

- Businesses that earn \$25,000,000 or more a year in revenue
- Businesses that has the personal data of 50,000 or more consumers, which it annually uses for commercial purposes
- Business that earns 50% or more of its annual revenue from selling consumer personal information

Applies to any companies that are controlled by a covered business and shares common branding such as a shared name, service mark, or trademark with a covered business. **See Cal. Civ. Code §1798.130(c).**

# WHO IS PROTECTED?

## “Consumers” are considered:

- The CCPA applies to businesses that collect personal information of “consumers.” The Act defines a “consumer” as “a natural person who is a California resident.

- 1) “Consumers” are: People in the state other than for a transitory purpose’; or
- 2) domiciled in California but outside the State for a temporary or transitory purpose.





# WHAT INFORMATION IS PROTECTED?

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## **Personal information means:**

“information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.

**Code § 1798.140(o)(1)**

# WHAT INFORMATION IS PROTECTED?

- **IDENTIFIERS** such as real name, postal address, IP address, email address, account name, social security number, driver's license number, passport number or other similar identifiers
- **INTERNET OR OTHER ELECTRONIC NETWORK ACTIVITY** Information such as browsing history, search history, and information regarding a consumer's interactions online
- **GEOLOCATION DATA**
- **COMMERCIAL INFORMATION**, including records of personal property, products, or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies
- **BIOMETRIC INFORMATION**
- **CHARACTERISTICS** of protected classifications under federal or California law
- **PROFESSIONAL OR EMPLOYMENT RELATED INFORMATION**
- **EDUCATIONAL INFORMATION**
- **AUDIO, ELECTRONIC, VISUAL, THERMAL, OLFACTORY, OR SIMILAR INFORMATION**
- **INFERENCES** drawn from any of the protected information to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, preferences, predispositions, behavior, attitudes, intelligence, abilities and aptitudes.



# WHAT INFORMATION IS EXCLUDED?

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- **De-identified Data:** “information that cannot reasonably identify, relate to, describe, be capable of being associated with a particular consumer.”
- **Aggregated Consumer Information:** “information that relates to a group or category of consumers, from which individual consumer identities have been removed.
- **Certain Publicly Available Information:** information is used for purposes compatible with the purposes for which data is “maintained and made available” to the public.
- **Research in the Public Interest:** research with personal information.
- **Sharing with Service Provider Personal Information for “Business Purpose”:** two criteria must be present.

# HOW DO BUSINESSES COMPLY WITH THE CCPA?

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**Provide Notice at or Before Data Collection**

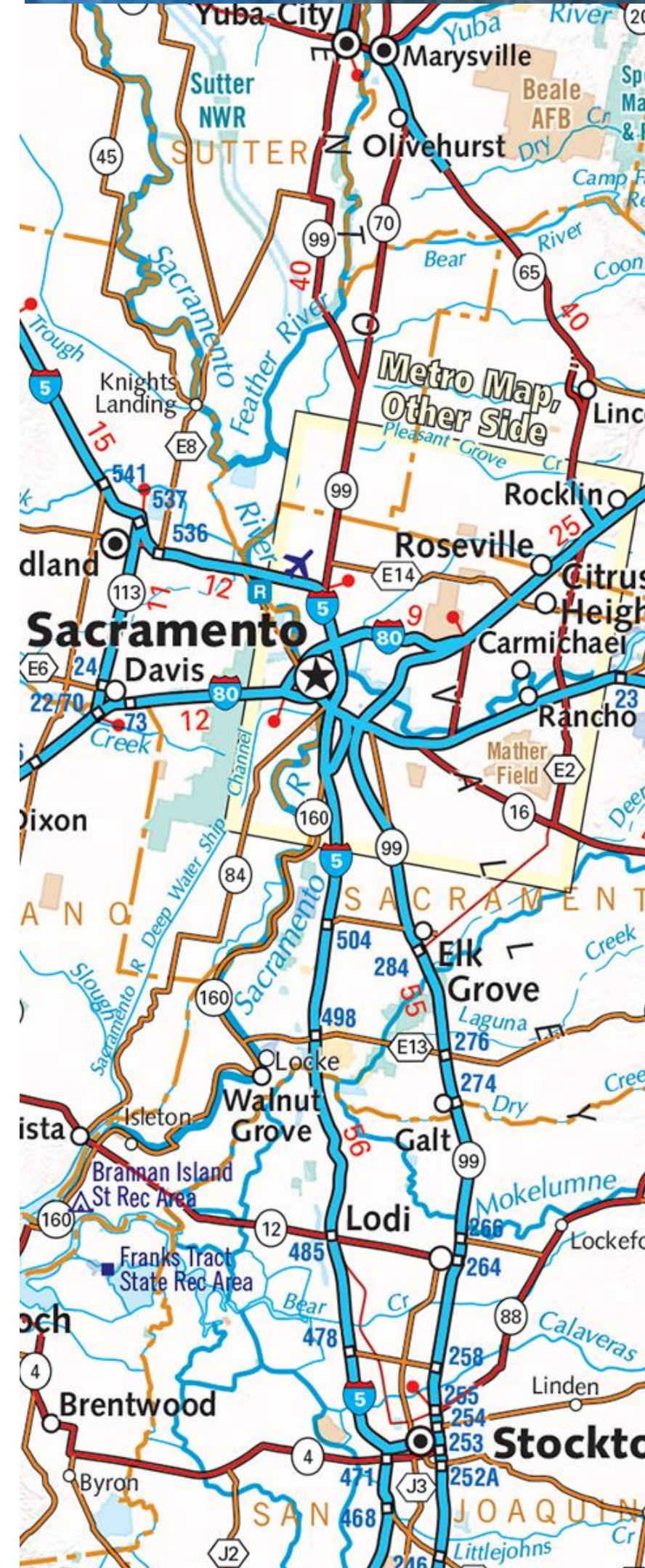
**Create Procedures for Consumers to Opt-Out**

**Respond to Consumer Requests for Information**

**Deletion of Personal Information**

**Disclose Financial Incentives**

**Maintain Records**





# PROVIDING NOTICE AND DISCLOSURE TO CONSUMERS AND PRIVACY POLICY

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- Business must have **internal and external notice policies and disclose** to consumers whether the business collects and sells personal data and provide a description of the categories of information as well as disclosure of those **third parties** receiving personal information through a “sale.”
- Business must have a **Privacy Policy** to describe all the purposes or uses of personal information collected, individual’s rights and the means to exercise those rights.
- Privacy policy must be **updated** every 12 months.

# CONSUMER OPT-OUT OPTION

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- **The Right to Opt-Out:** Consumer shall have the right, at any time, to direct a business that sells personal information about the consumer to third parties not to sell the consumer's personal information.
- Must have a “**Do Not Sell My Personal Information**” button on home page.
- Business must respect the consumer's decision to opt out for at least 12 months before “requesting that the consumer authorize the sale of the consumer's personal information.”
- Consumers that are minors have to **Opt-In**.



# RESPOND TO “VERIFIED CONSUMER REQUEST” FOR ACCESS TO INFORMATION

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- **Business must designate two methods for submitting requests:**
  - Toll-free number
  - Website
- **Access to personal information must be provided to consumer in 45 days, covers 12 months prior to request, and must include:**
  - Description of categories of personal information collected.
  - Sources of the data.
  - Whether data was shared for a business purpose or sold.
  - Categories of third parties receiving data.

# CONSUMERS RIGHT TO DELETION OF PERSONAL INFORMATION

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- **Verifiable consumer request is required.**
- **Delete the consumer's personal information from records.**
- **Direct Service Providers to delete the consumer's personal information from records or client could face liability for conduct of service provider.**
- **Exceptions to Requirement to Delete Personal Information:**
  - Complete a transaction
  - Detect or respond to security incidents or illegal activity
  - Compatible with the purposes for which it was originally gathered
  - Compliance and legal obligations



# ENFORCEMENT AND PENALTIES OF CCPA

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- **30-Day Waiting Period to Cure Any Violation** – written notice required for AG lawsuit.
- **Potential Government Fines for AG Civil Lawsuits Depends on Whether Conduct is Intentional.**
  - Fines are “Per Violation” – hard to know what this means.
- **Consumer Actual and Statutory Damages** – whichever is greater.
- **Limited Private Right of Action**



# HOW CAN WE HELP CLIENTS PREPARE FOR CCPA CHALLENGES?

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- **Help clients determine if CCPA applies to their business.**
- **Advise clients on CCPA compliance and consumer rights with training or presentations.**
- **Advise on whether certain data collection scenarios would violate CCPA.**
- **Revise clients' Privacy Policy (both internal and external) and prepare agreements with vendors and service providers.**
- **Assist clients with Data Inventory and Mapping to know what data is collected and for what purposes it is used.**



# QUESTIONS?



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