



PROGRAM MATERIALS
Program #3001
February 28, 2020

Benchmarking compliance with the CCPA

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Benchmarking Compliance with the California Consumer Privacy Act

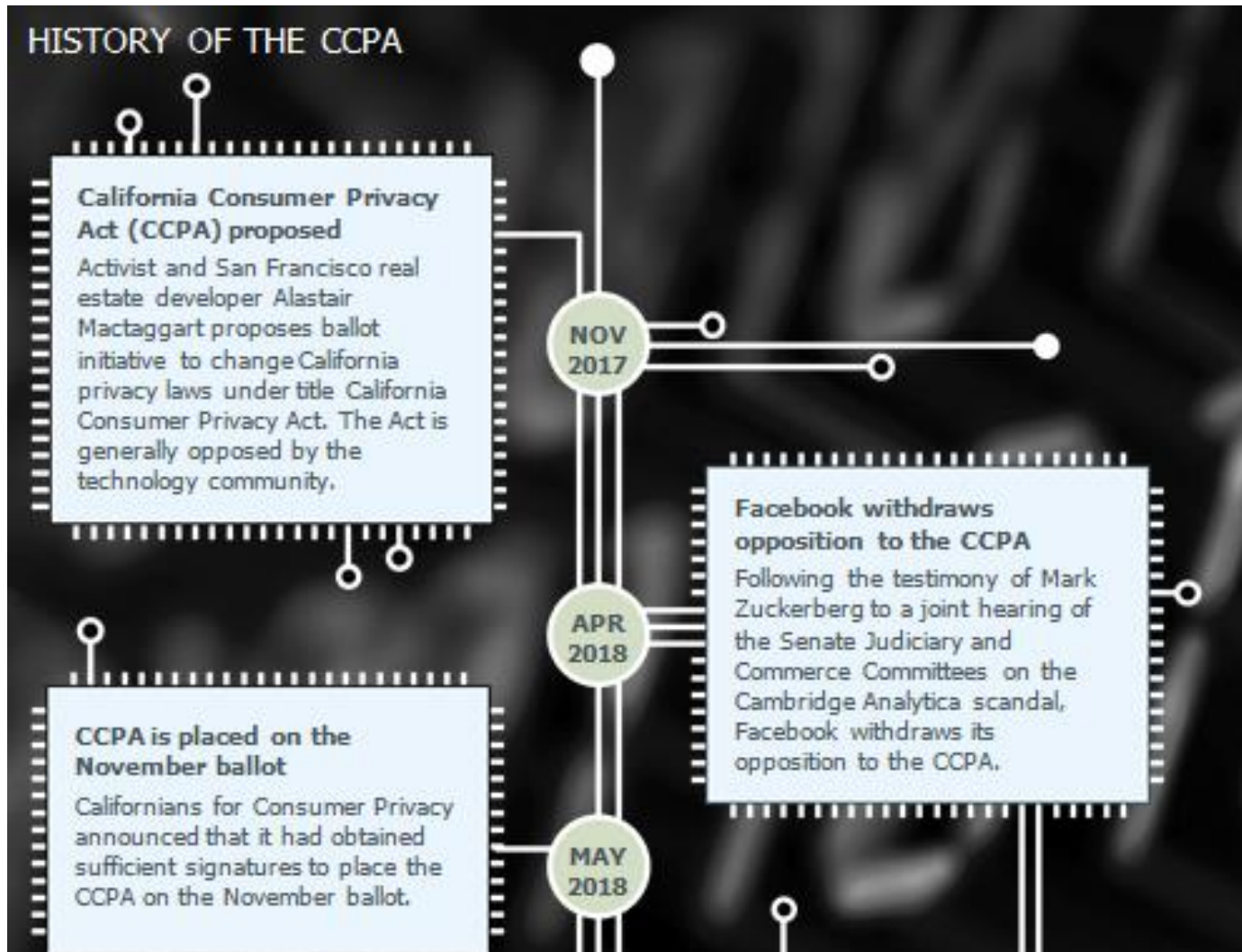
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bclplaw.com

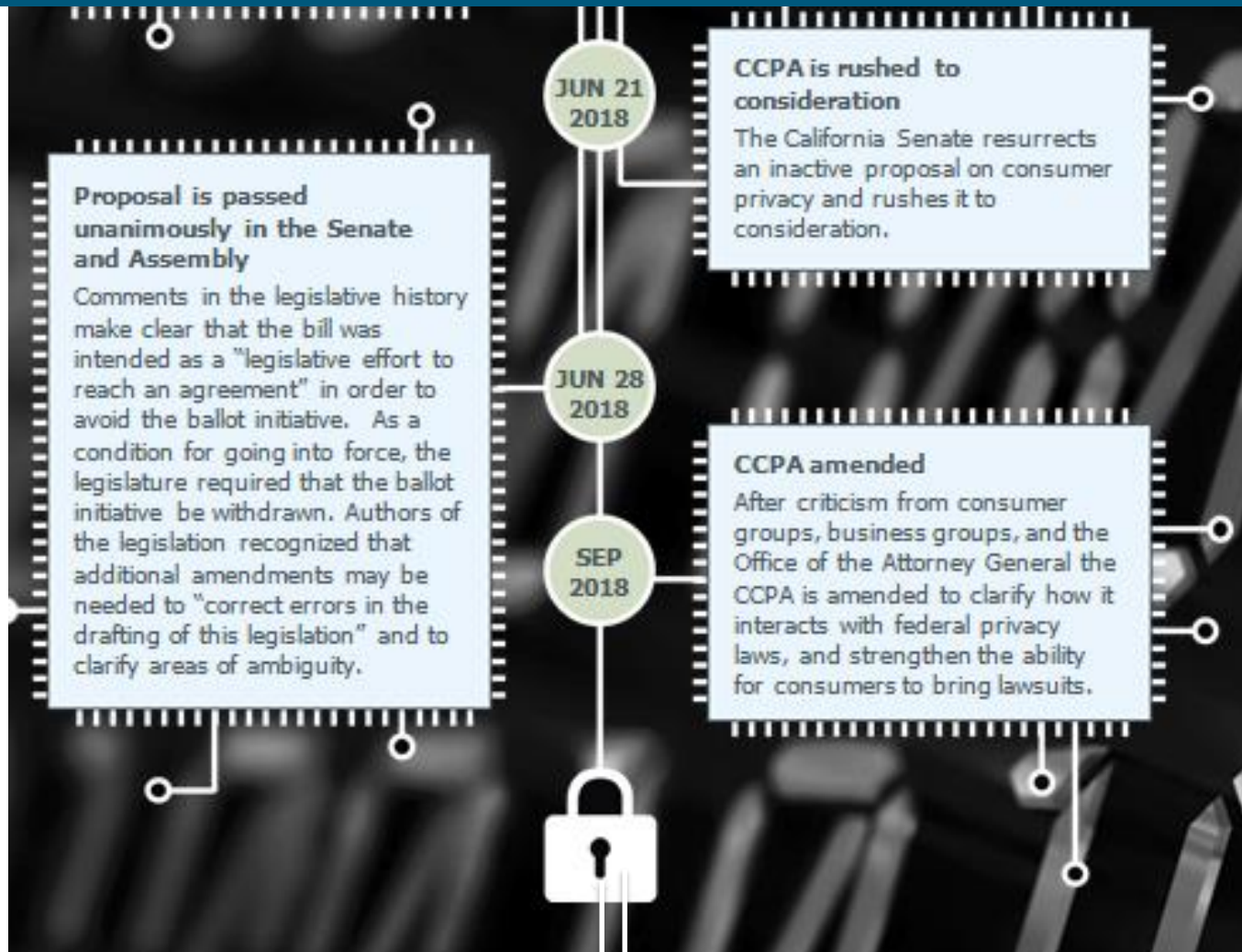
Agenda

1. A brief history of the CCPA
2. Scope of the CCPA
3. Overview of CCPA compliance programs
4. Benchmarking compliance concerning:
 - Privacy Notices
 - Data Subject Requests
 - Sale of Personal Information
 - Cookie Banner and Cookie Policy

A brief history



A brief history



A brief history

CCPA amended

Sept. 2019:

- AB 25 delays some rights as to employees
- AB 874 modifies definition of personal information.
- AB 1146 exempts motor vehicle records
- AB 1202 requires registration of data brokers
- AB 1355 modifies financial incentive exception; delays some rights as to business contacts
- AB 1564 scales back methods of submitting data subject requests for eCommerce only businesses

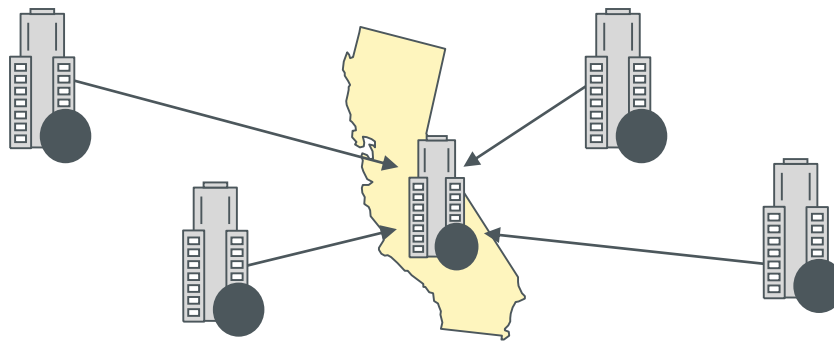
Attorney General Proposed Regulations

October 11, 2019

- No exemptions for adTech
- No clarification concerning the extent to which cookies are / are not personal information.
- No clarifications concerning the implications of the CCPA on behavioral advertising

Scope of the CCPA

- Applies extraterritorially to all entities that do “business in the state.”



- Exempts some small businesses, such that it only applies if:

<p>50,000</p> <p>Buys, sells or shares personal information of 50,000 consumers or devices</p>	<p>\$25m+</p> <p>Gross revenue is greater than \$25 Million</p>	<p>50%</p> <p>Derives 50% of its annual revenue from sharing personal information</p>
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Scope of the CCPA – Effective Dates

January 1, 2020	Date most provisions became law, and plaintiffs could begin to seek money for data breaches
July 1, 2020	Date the Attorney General can first bring enforcement actions.
January 1, 2021	Date all CCPA provisions apply to employees, independent contractors, and business contact information.

Scope of CCPA – What is “Personal Information”?

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

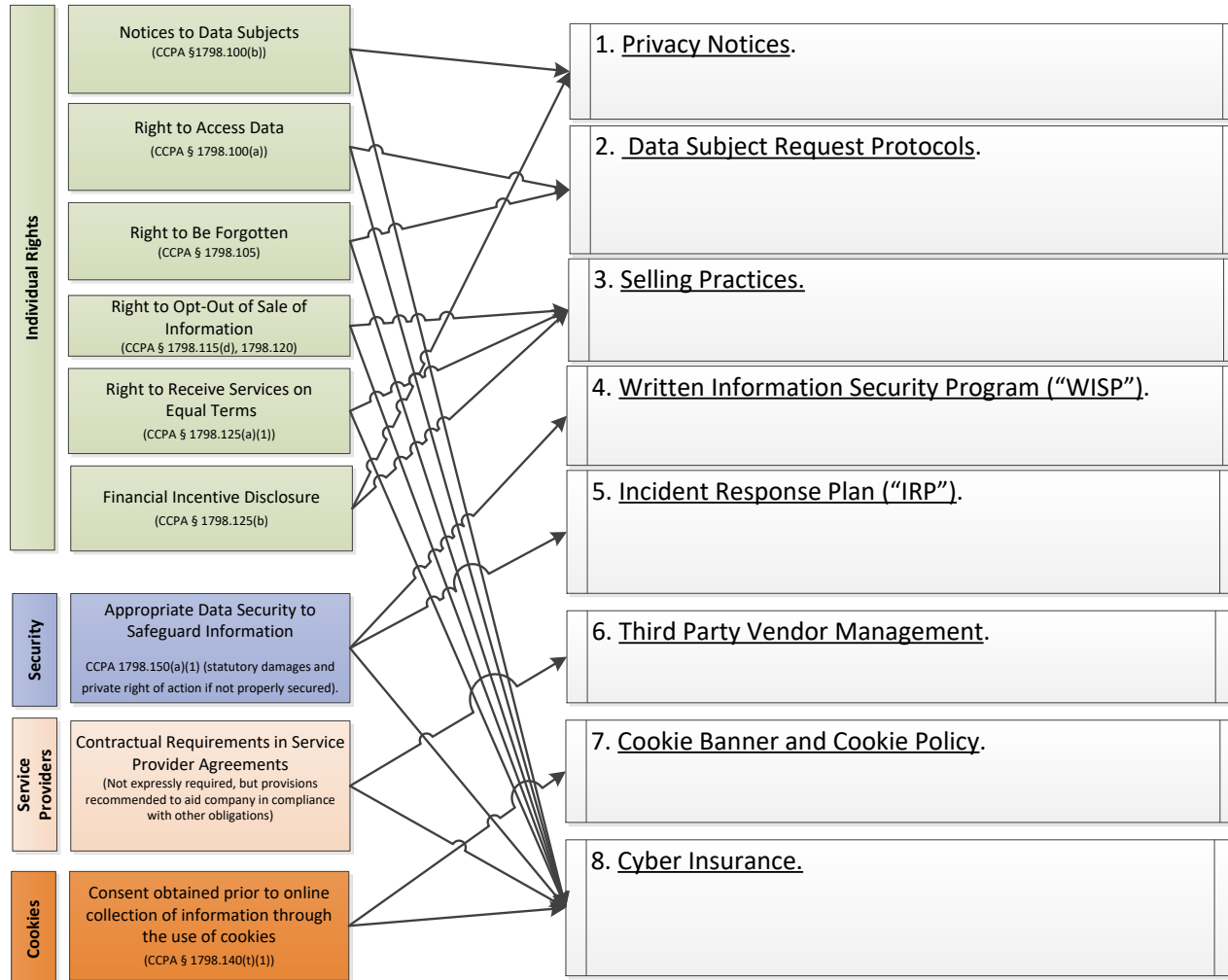
Personal information includes, but is not limited to, the following:

(A) Identifiers such as a real name, alias, postal address, unique personal identifier, online identifier, Internet Protocol address, email address, account name, social security number, driver’s license number, passport number, or other similar identifiers... (on and on) CCPA 1798.140(o)(1)

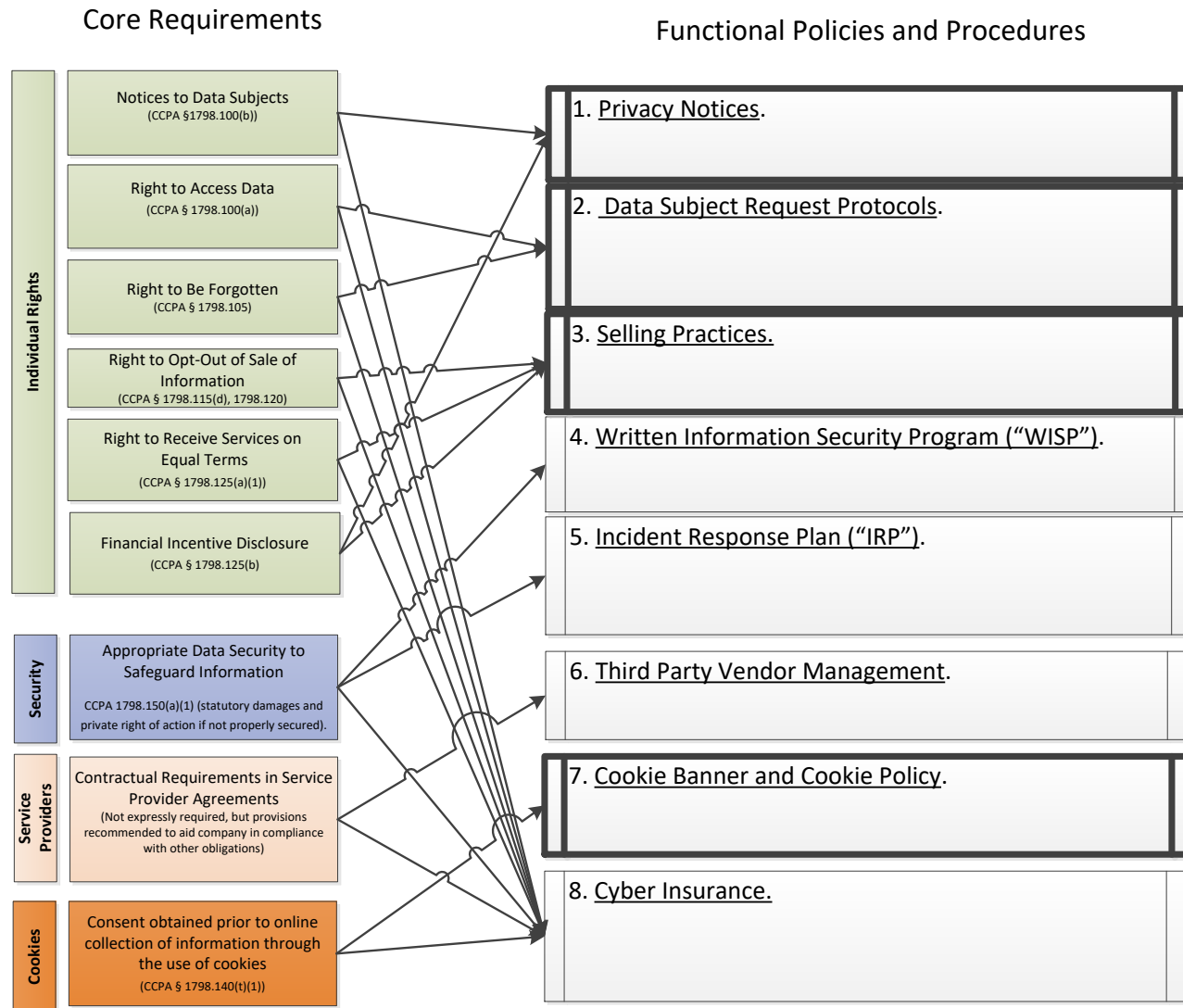
CCPA compliance programs

Core Requirements

Functional Policies and Procedures



CCPA compliance program (outward facing components in bold)

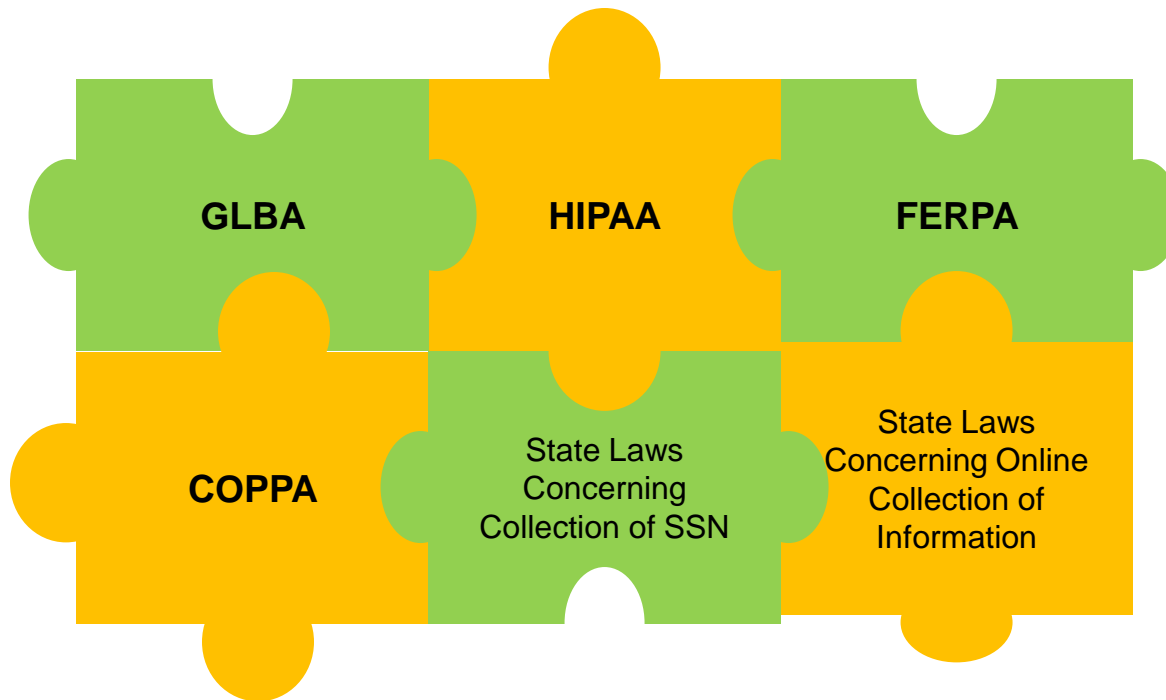


Benchmarking Analysis

- BCLP randomly sampled 10% of the Fortune 500 (the “Sample Population”).
- Clients of BCLP’s Data Privacy and Security practice accounted for 4% of the Sample Population.
- The outward facing privacy representations and practices of the Sample Population were examined on January 2, 2020. Subsequent analysis (not discussed in this PPT) was done in February of 2020 to identify any significant changes.
- In situations in which a company had more than one online presence or online notice, the “online” privacy notice (if one was so described) was reviewed.

Privacy Notices (background)

There were several laws in the United States that required companies to provide an information notice or a privacy policy:



Privacy Notices (background)

How did the CCPA change existing law?

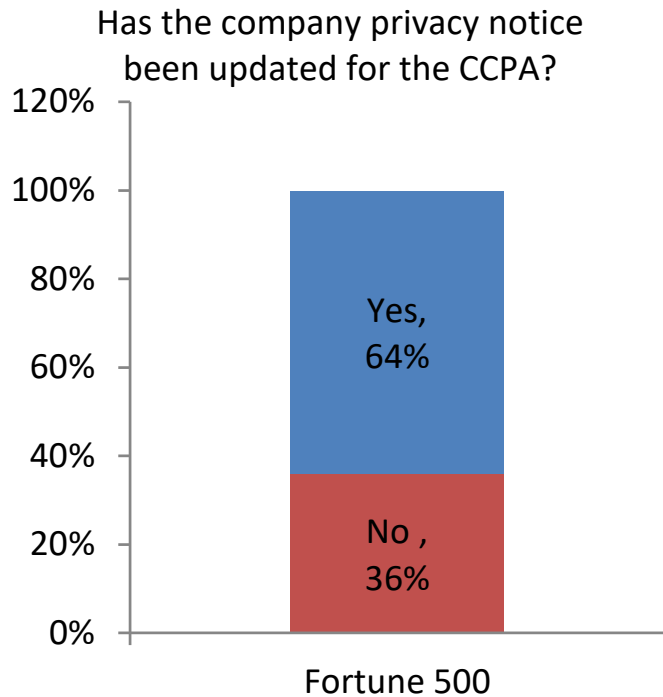
	US federal laws	Most US state laws	GDPR	CCPA
BUSINESS REQUIREMENTS				
Applies to a broad range of companies and not limited to distinct industries e.g. finance	x	x	✓	✓
Applies to the collection of personal information online and offline	◇	x	✓	✓
Provide detailed information on how they use and process the personal information they collect	◇	x	✓	✓
Notify individuals about a right to access information they hold about them	◇	x	✓	✓
Notify individuals about a right to have their information deleted	◇	x	✓	✓
Include a 'Do not sell my personal information' link on websites and privacy notices	x	x	x	✓
Describe by "enumerated category" the information that they share with service providers	x	x	x	✓
Describe by "enumerated category" the information that they share with service providers	x	x	x	✓

Privacy Notices (background)

Summary of CCPA requirements / best practices:

- Update privacy notice to include rights of Californians to access their personal information and delete their personal information.
- Disclose whether the company collects 13 specific data categories called the “enumerated categories.”

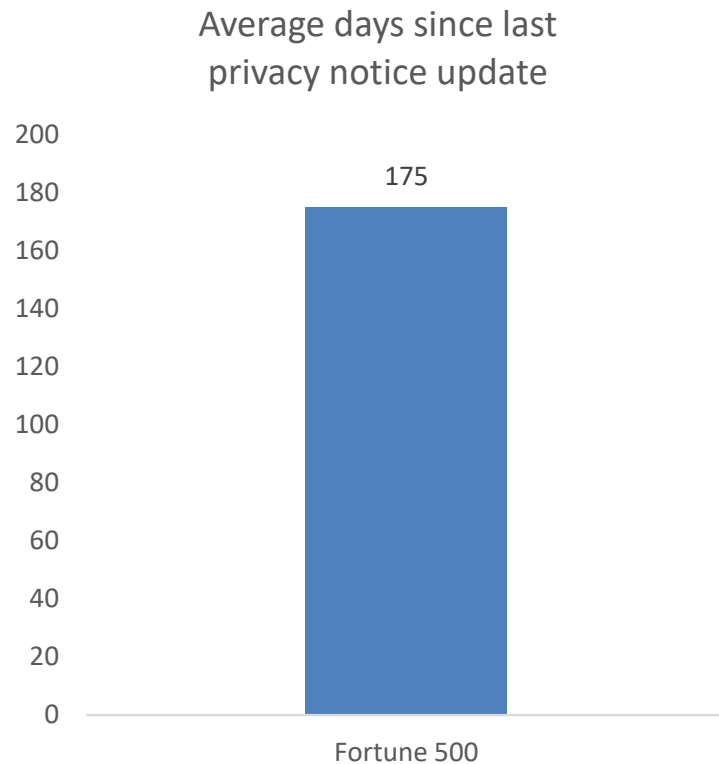
Privacy Notices (benchmarking)



The majority of companies updated their privacy notices for the CCPA.

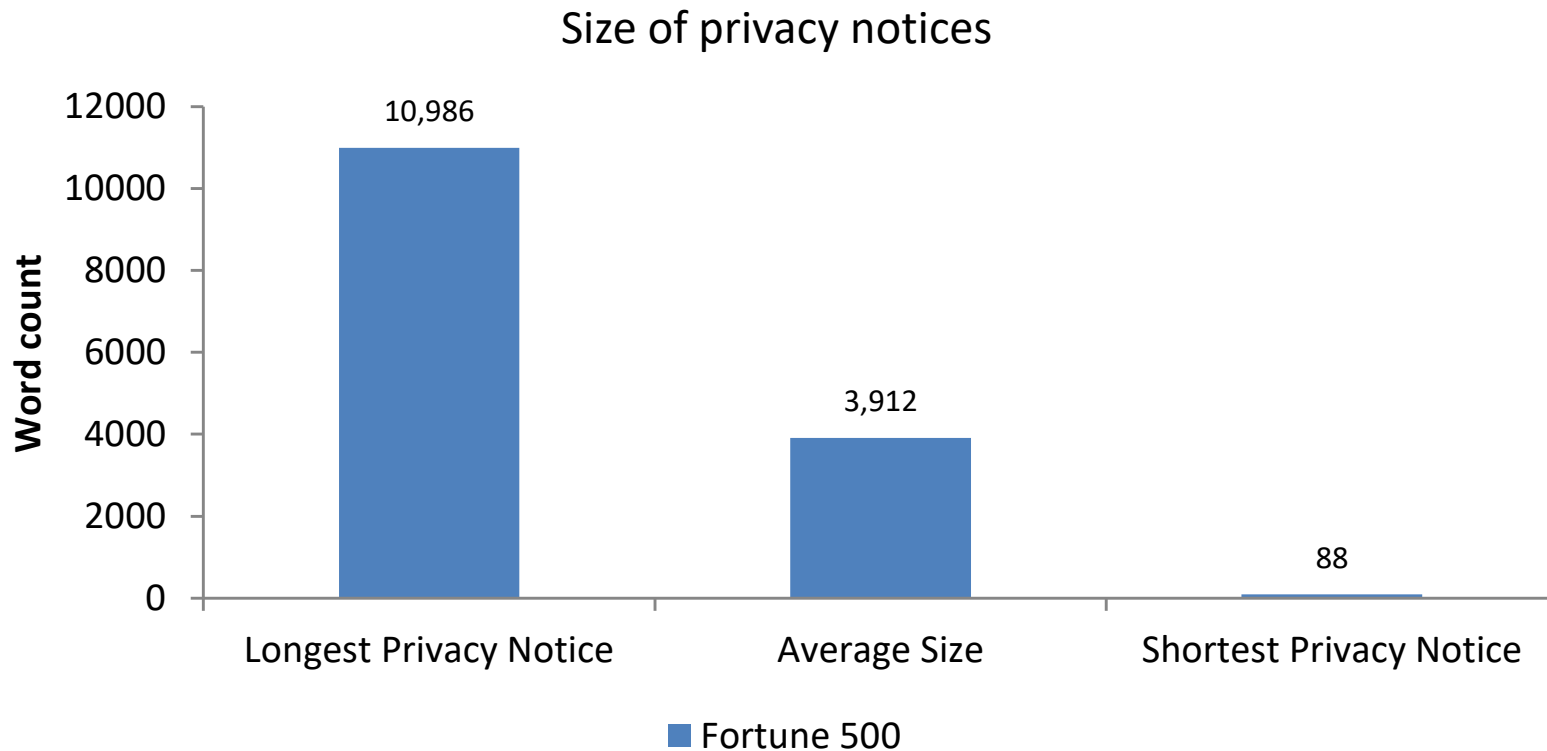
Privacy Notices (benchmarking)

Benchmarking age of privacy notices



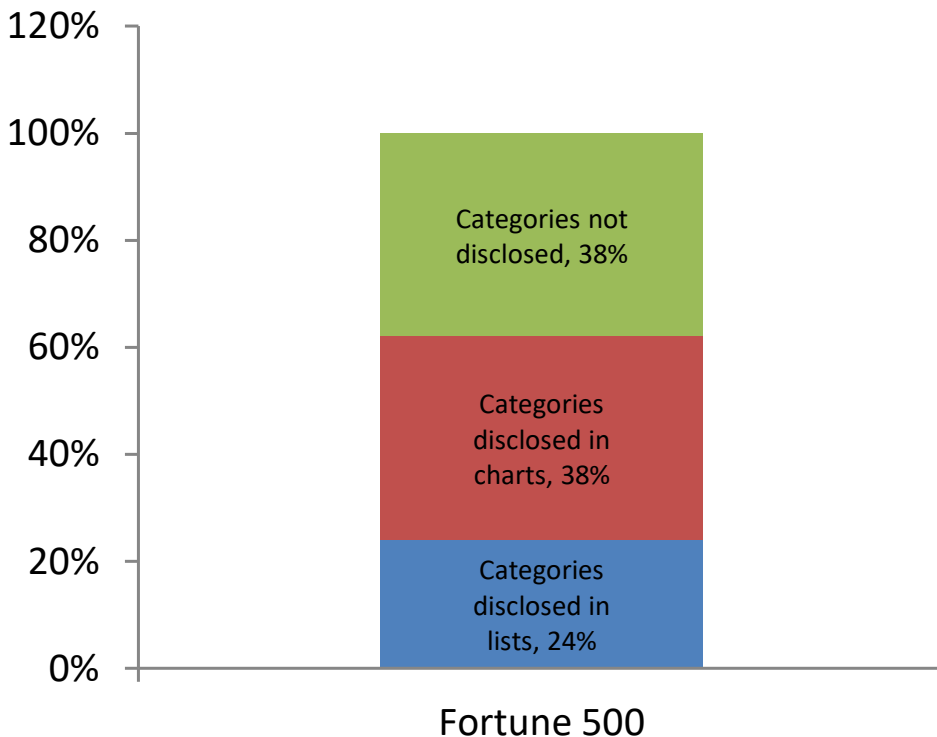
Privacy notices are, on average, less than six months old.

Privacy Notices (benchmarking)



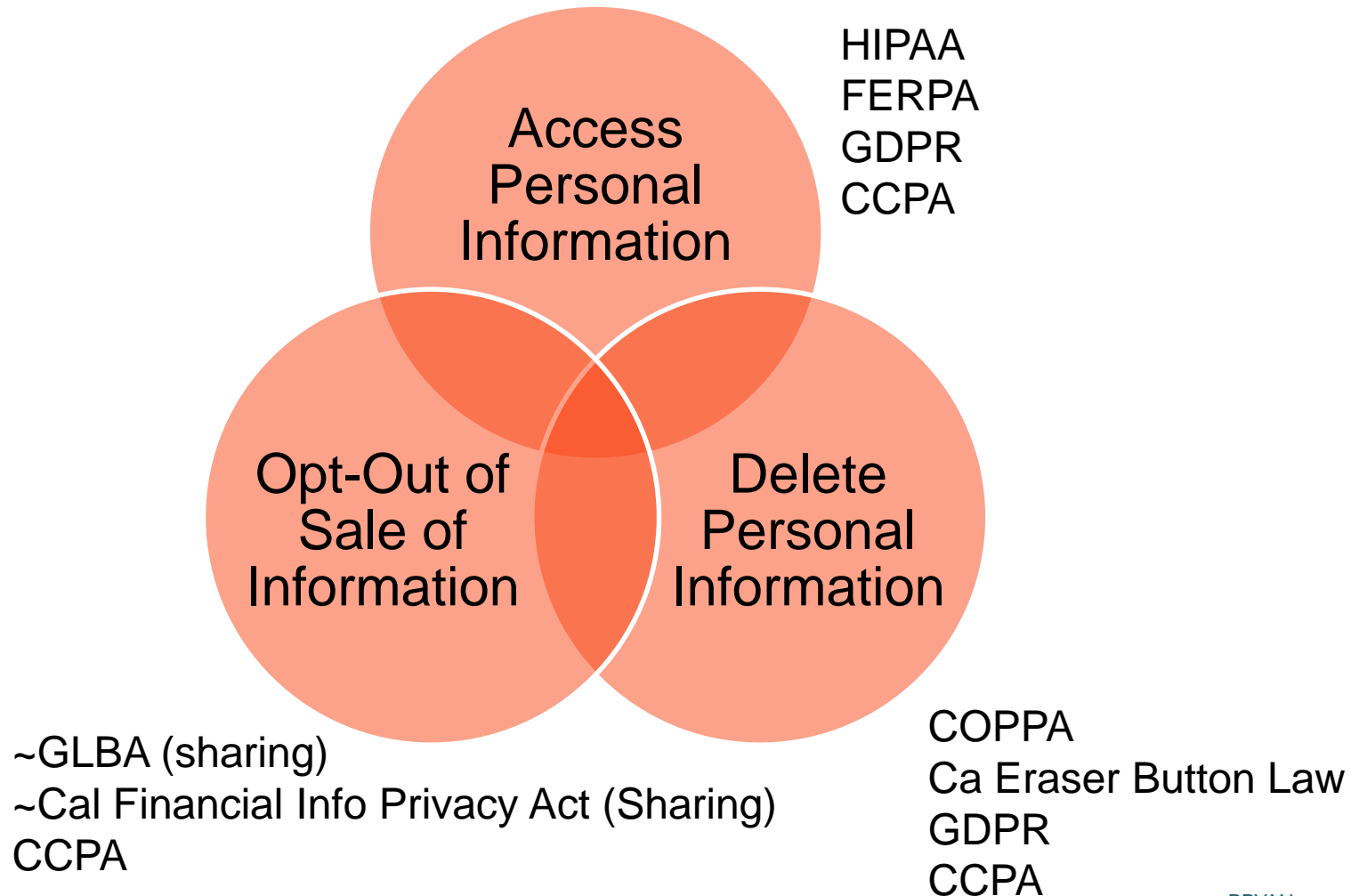
Privacy Notices (benchmarking)

Disclosure by "enumerated category"



Privacy notices that reference enumerated categories are predominantly using tables to convey information.

Data Subject Requests (Background)

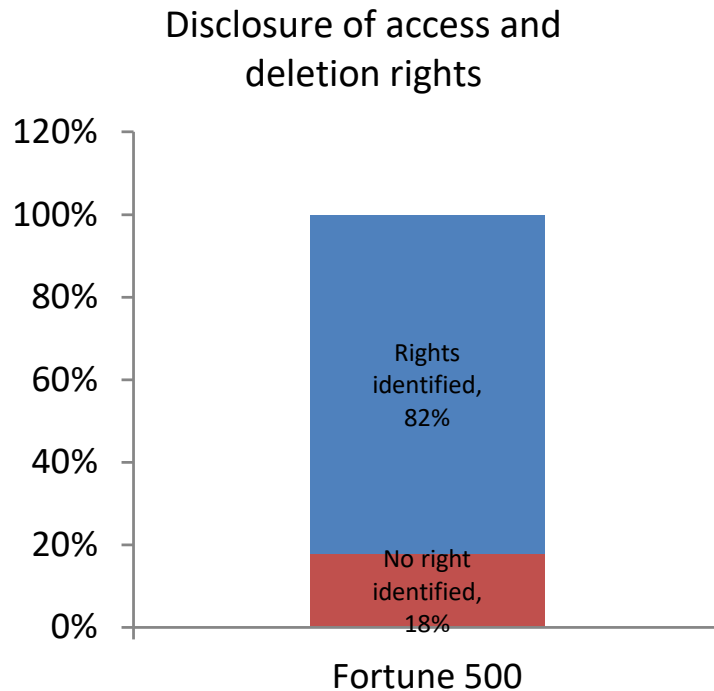


Data Subject Requests

Summary of CCPA requirements / best practices:

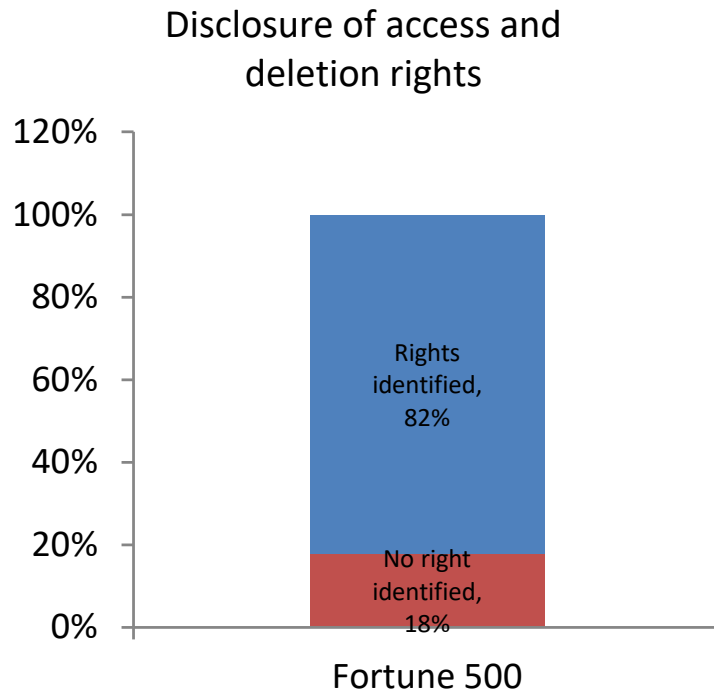
- Offer Californians the ability to access their personal information
- Offer Californians the ability to delete their personal information.
- If a company sells personal information, offer Californians the ability to opt out of that sale.
- For most companies, include a toll free number to submit a request and an email address (or online portal)

Data Subject Request (Benchmarking)



Most companies offer access and deletion rights.

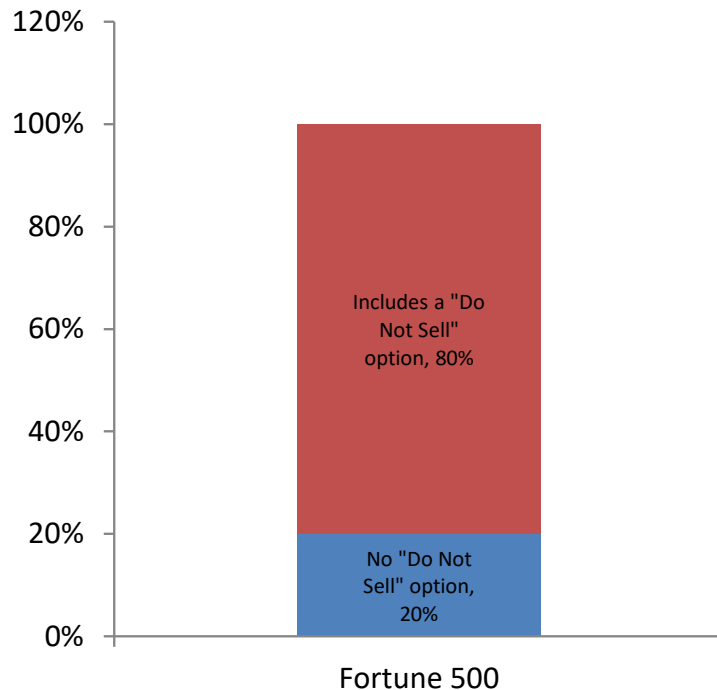
Data Subject Request (Benchmarking)



Most companies offer access and deletion rights.

Data Subject Requests (Benchmarking)

Among companies that disclose the sale of information, what percentage offer a "do not sell" option?



Those companies that are disclosing the sale of information are complying with the CCPA's requirement to provide a "Do Not Sell" option.

Data Subject Requests (Benchmarking)

Other data points:

- Most companies complied with the requirement to offer a “toll free” number.
- A large percentage of companies decided to use online request submission pages / tools.
- About 50% of companies retained a third party to host their data subject request page and track incoming requests.

Selling Practices (background)

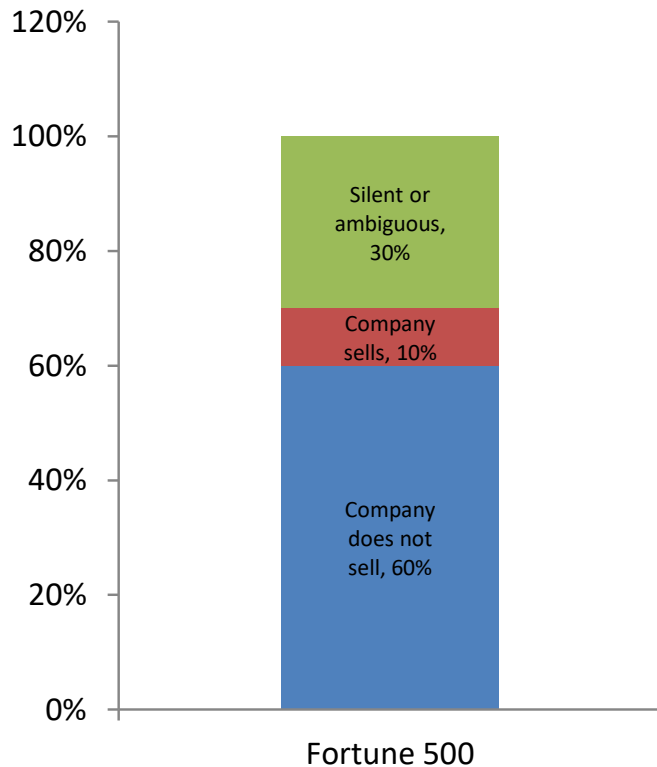
- Under the CCPA a business must disclose whether it sells personal information.
- Selling is broadly defined to include more than just receiving money for information:

(1) [FAQs](#) | “Sell,” “selling,” “sale,” or “sold,” means selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer’s personal information by the business to another business or a third party for monetary or other valuable consideration.

- If data is sold, then the business must:
 - Disclose by “enumerated category” each type of data sold.
 - Post a “Do Not Sell My Personal Information” link on their website and privacy notice.
 - Honor requests for information not to be sold.

Selling Practices (Benchmarking)

Disclosure of sale of personal information

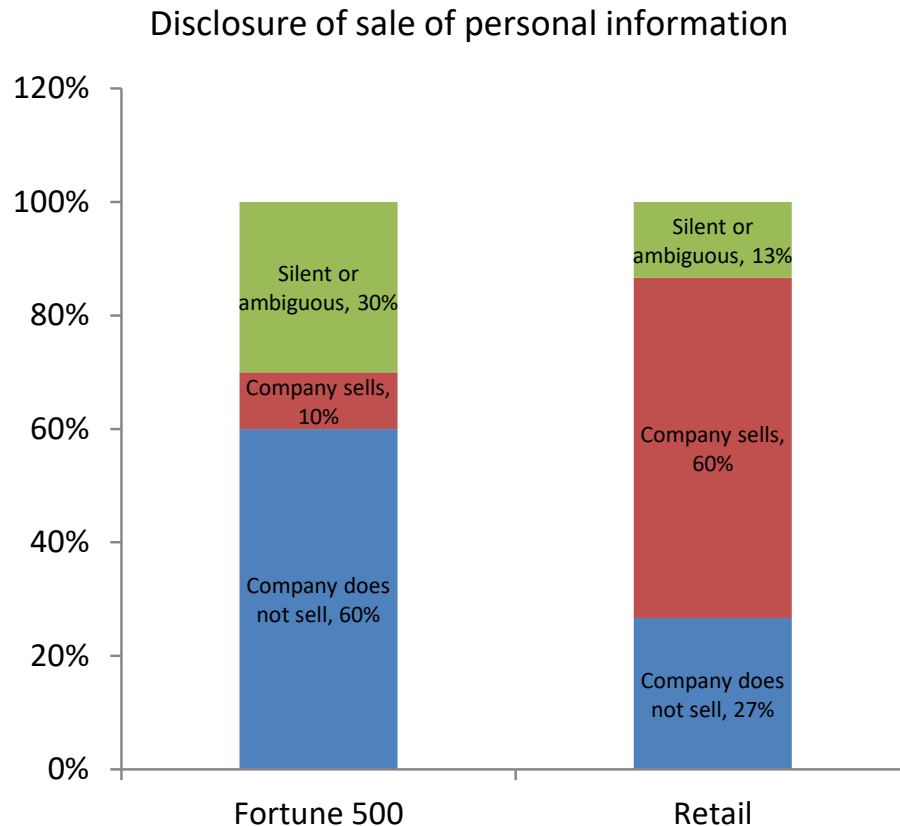


The majority of companies state that they do not sell personal information.

30% of privacy notices are silent or unclear about selling practices.

Selling Practices (Benchmarking)

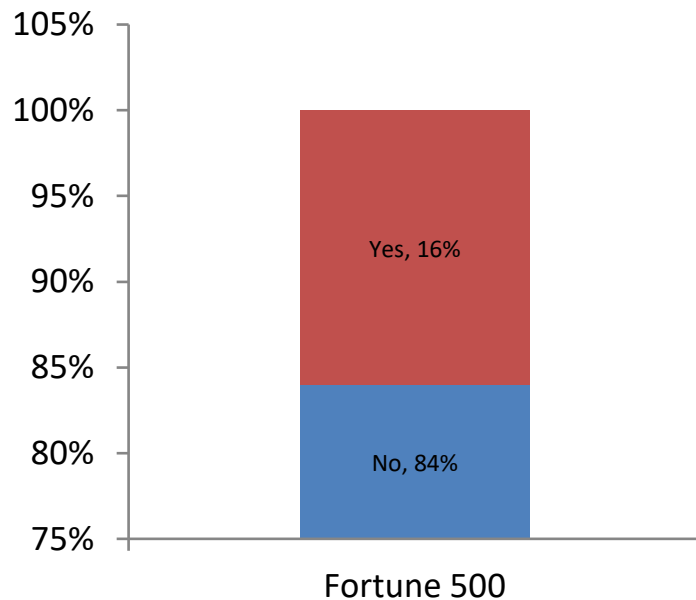
Selling disclosures differ remarkably, however, between and among industries



Retailers that had previously been silent about whether they “sold” information, are now disclosing that they do “sell” as that term is defined under the CCPA, and disclosing at a rate that is 6X that of the Fortune 500.

Selling Practices (Benchmarking)

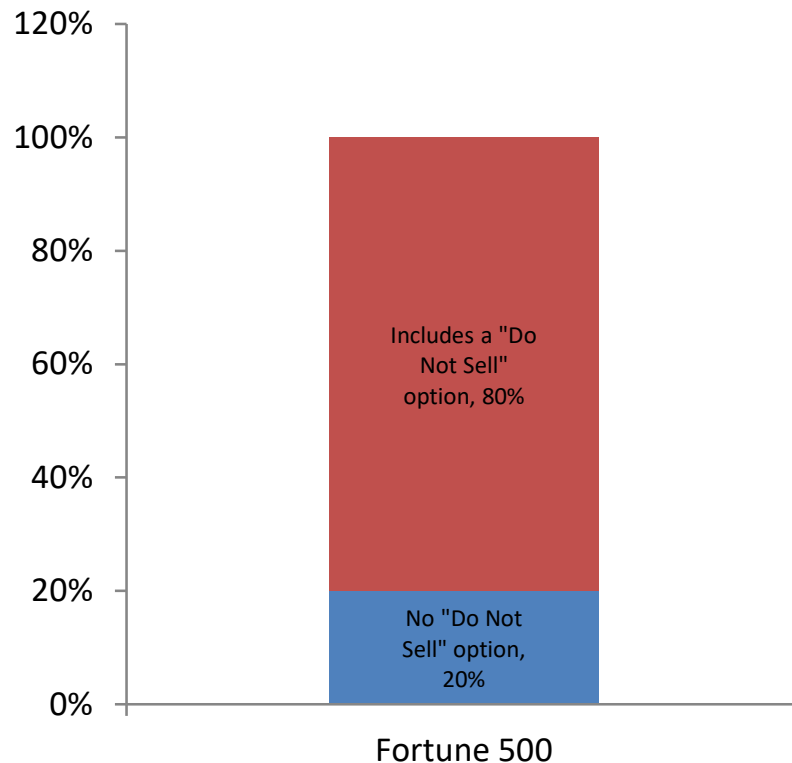
Is a "do not sell" option provided by the company (e.g., on website, privacy notice, or otherwise)?



The vast majority of privacy notices do not include a "Do Not Sell" option.

Selling Practices (Benchmarking)

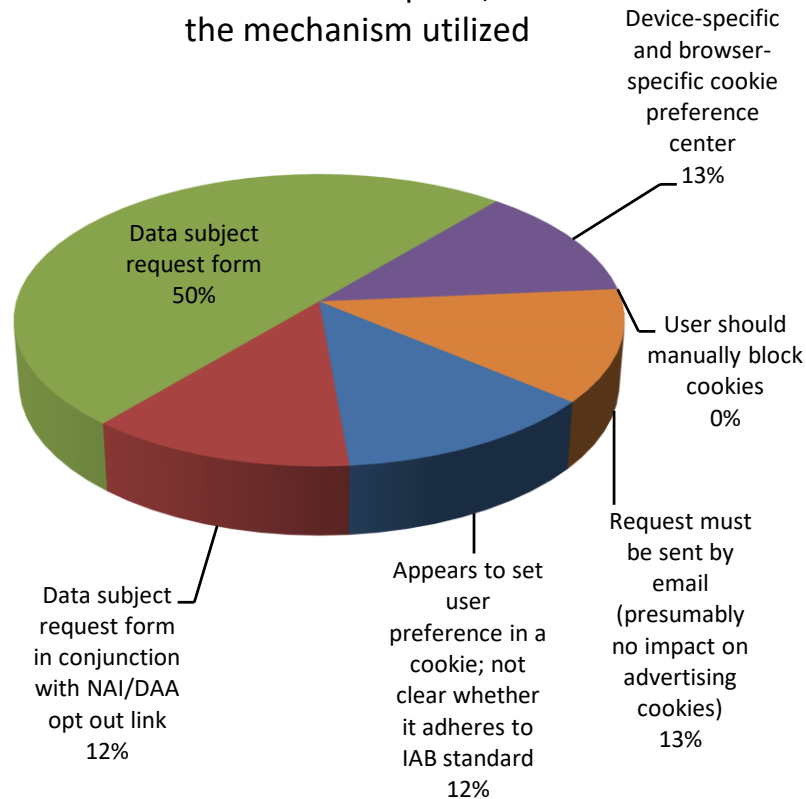
Among companies that disclose the sale of information, what percentage offer a "do not sell" option?



Even among companies that say they "Sell" information including the Do Not Sell link is not uniform.

Selling Practices (Benchmarking)

Among companies that offer a do not sell option, the mechanism utilized



No single standard has emerged for effectuating a “Do Not Sell request.”

Selling Practices (Benchmarking)

Other observations:

- There is not a perfect correlation between companies that disclose the sale of personal information, and those that include a “Do Not Sell My Personal Information” link.
- Some companies disclose the sale of information and do not include the link.
- Other companies disclose that they do not sell personal information, but do include the link.
- Some companies are “geofencing” their Do Not Sell My Personal Information link.

Cookie Notice and Cookie Policy

(1) [FAQs](#) "Sell," "selling," "sale," or "sold," means selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer's personal information by the business to another business or a third party for monetary or other valuable consideration.

Cookie Notice and Cookie Policy

Third party advertising cookies, tags, and pixels form the core of modern online behavioral advertising and are deployed by media publishers, and advertisers alike:

The image shows two browser windows illustrating cookie notices. The left window is on toyota.com and displays a notice for 'Cookies in use' with a list of cookies. The right window is on reviewjournal.com and displays a similar notice with a detailed view of a specific cookie.

toyota.com Cookies in use:

- demdex.net
- dpm.demdex.net
- doubleclick.net
 - IDE

Name	Value
Name	IDE
Content	i-wYT2B7U9h5uKWMdrZ1KW600F/borF5noLu1LE29
Domain	.doubleclick.net
Path	/
Send for	Any kind of connection
Created	Monday, October 21, 2019 at 4:44:43 PM
Expires	Wednesday, October 20, 2021 at 4:44:43 PM

reviewjournal.com Cookies in use:

- doubleclick.net
 - DSID
 - IDE
- facebook.com
- www.facebook.com

Name	Value
Name	IDE
Content	i-wYT2B7U9h5uKWMdrZ1KW600F/borF5noLu1LE29
Domain	.doubleclick.net
Path	/
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Cookie Notice and Cookie Policy (Benchmarking)

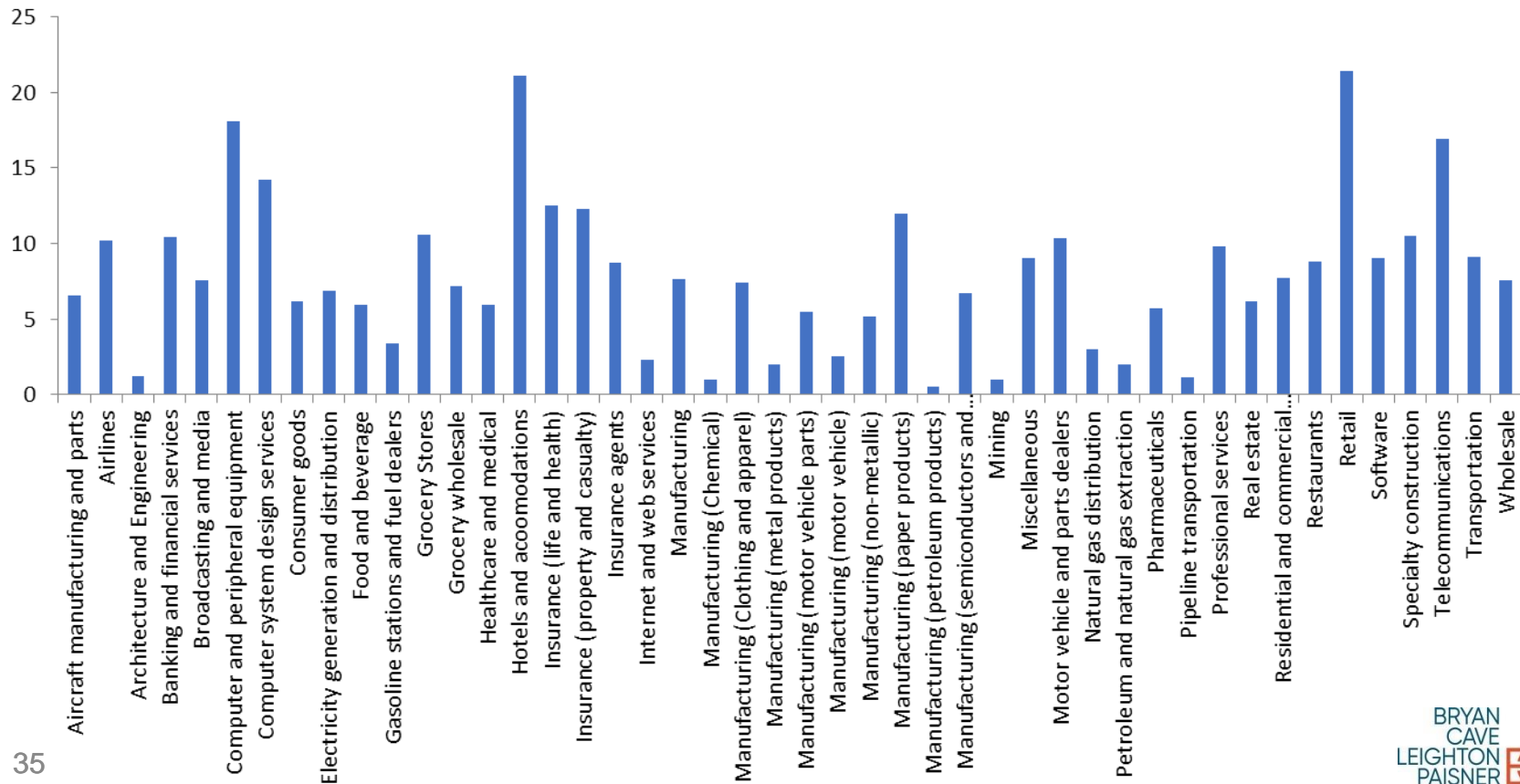
Use of advertising cookies varies greatly among the Fortune 500

Greatest Quantity	Smallest Quantity	Average Quantity
40	0	8.1

Cookie Notice and Cookie Policy (Benchmarking)

Use of advertising cookies varies greatly between and among industries:

Average quantity of adertising cookies deployed by industry among the Fortune 500



Cookie Notice and Cookie Policy (Benchmarking)

Examples on the low and high end of the risk spectrum:

Option 1:
Stop Deploying all
Non-Service Provider Cookies
to All Users
[LOWEST RISK]

Pros:

- Full compliance with EU (GDPR and ePrivacy).
- Full compliance with CCPA.
- No need to post "Do Not Sell" link.
- Can solicit consumer for consent at anytime.
- Would mean that no cookies attach to California users regardless of what IP address they use (e.g., whether the yare traveling).

Option 16:
Concede Sale of Information
Provide Do Not Sell Link That Goes to a
DSR Form that Does Not Stop AdTech
[GREATEST RISK]

Pros:

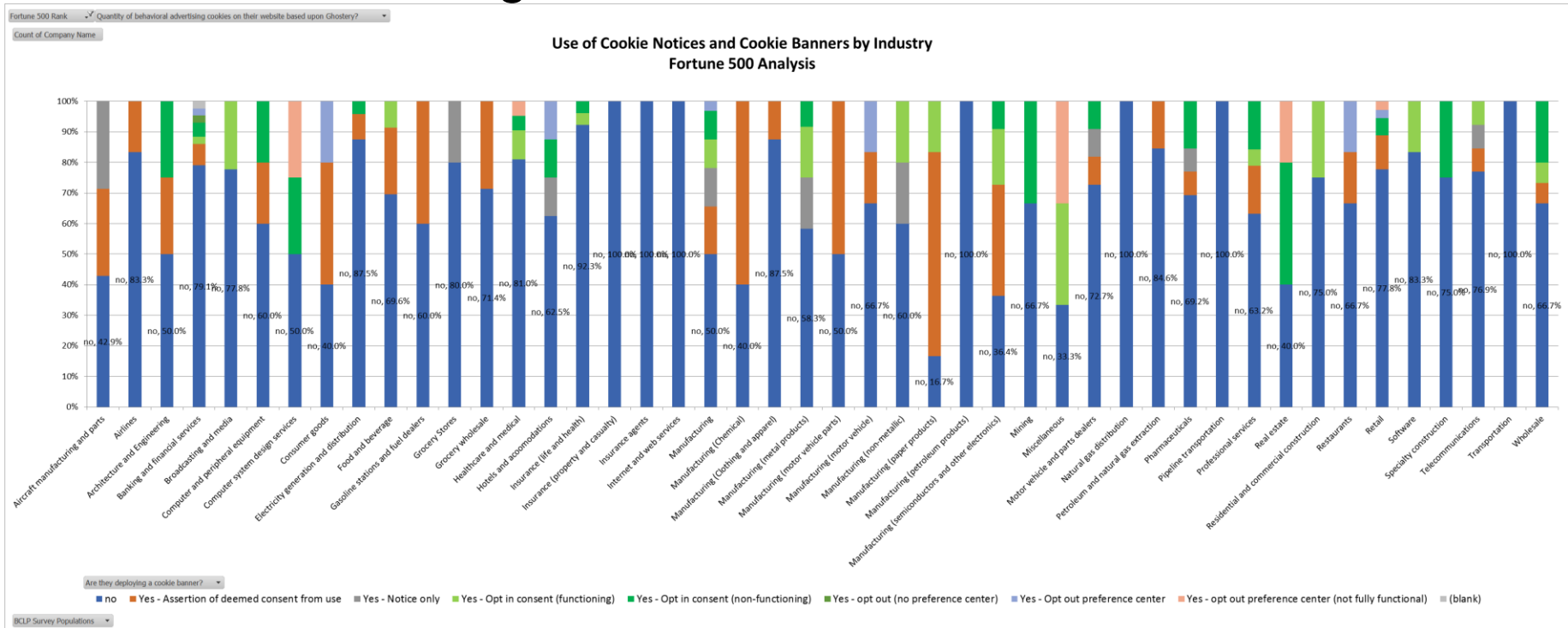
- Potential appearance of compliance by putting the "Do Not Sell" link on website.
- In some industries (e.g., Retail) adding the "Do Not Sell" link may be the majority position.

Cons:

- Admission that adTech cookies constitute the "sale" of information.
- Arguably violates the CCPA by failing to effectuate opt-out request in relation to cookies.
- Potential class action deception arguments within California based upon an

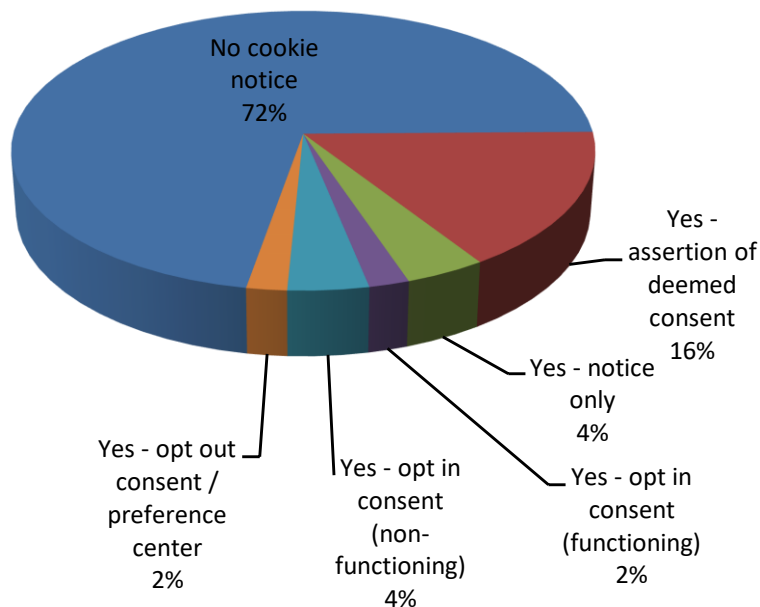
Cookie Notice and Cookie Policy (Benchmarking)

Use of a cookie notice, and the type of cookie notice used, also appears to be impacted heavily by differing standards between and among industries:



Cookie Notice and Cookie Policy (Benchmarking)

Deployment of cookie notice on homepage



Most companies are not deploying a cookie notice or banner.

Those that do are split in terms of whether to use an opt-in, notice, or deemed consent banner.

Biographies



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David Zetoony is the leader of the firm's global data privacy and security practice. He has extensive experience advising clients on how to comply with state and federal privacy, security, and advertising laws, representing clients before the Federal Trade Commission, and defending national class actions. He has assisted hundreds of companies in responding to data security incidents and breaches, and has represented human resource management companies, financial institutions, facial recognition companies, and consumer tracking companies before the Federal Trade Commission on issues involving data security and data privacy.