



Handling Consumer Rights Requests in 2023

Thursday, 8/September/2022

10:00-11:00 PST

13:00-14:00 EST

19:00-20:00 CEST

Welcome and Introductions

Panelists



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Changes in General Handling Practices

- Authentication Requirements
- Authorized Agent Rules
- Response Timing

Authentication Requests

- CA
 - Businesses must verify that the person making a request to delete is the consumer about whom the business has personal information.
 - Businesses may need to ask you for additional information for verification purposes. If the business asks for personal information to verify your identity, it can only use that information for this verification purpose.
- CO
 - Use commercially reasonable efforts to authenticate all requests
 - May request additional info to authenticate
- VA
 - Use commercially reasonable efforts to authenticate all requests
 - May request additional info to authenticate
- UT
 - Use commercially reasonable efforts to authenticate all requests
 - Need not comply with requests if can't authenticate, but may request additional info to authenticate
- CT
 - Use commercially reasonable efforts to authenticate everything except Opt-Out requests
 - MAY deny any opt out request if there is a good faith reason to believe it is fraudulent



Authorized Agents CA & CT Only

- California
 - May submit for: access, deletion, correction, opt out of sale and (maybe with future regs) opt out of targeted advertising
 - Must be registered with the state
 - May respond to the consumer instead of the agent
 - Not required to use the authorized agent's platform
- Connecticut
 - May submit for: opt out of sale, opt out of targeted advertising, and opt out of profiling/automated decision making
 - Do not have to be registered with the state
 - Statute unclear on whether you can respond to consumer instead of agent
 - Not required to use the authorized agent's platform
 - May be done via link or browser setting



Timing All 5 States

- General Rule: 45 days
 - CA - 15 for opt out of sale
 - CT - 15 days for consent withdrawal
 - UT - doesn't apply if can't authenticate and suspects request is fraudulent
- Option to extend by an additional 45 days
 - Must give notice to consumer
 - Must explain reason for delay
- Appeal
 - Colorado: 45 days, possible 60-day extension
 - Virginia & Connecticut : 60 days



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Changes in Requests and Request Responses

- Deletion
- Correction
- Opt Out of Sale
- Opt Out of Targeted Advertising
- Opt Out of Profiling

delete

Deletion Requests*

- CO: delete PI regarding the consumer
- CT: delete the PI provided by or collected about the consumer
- VA, UT: delete the info *provided by the consumer*
- If collected from someone other than consumer:
 - Option 1: Delete and retain a record of the deletion request and the minimum data necessary to ensure the consumer's personal data remains deleted from the business's records
 - Do not use retained data for any other purpose
 - Option 2: Opt the consumer out of the processing of such personal data for any purpose except for those exempted

delete

CA Deletion Request Response Process

- Verify the request
- Delete the consumer's personal information from your records
- Direct service providers or contractors to delete the consumer's personal information from their records
- Notify third parties to whom you sold or with whom you shared the PI to delete
- May keep a record of the request to prevent the PI from being sold, for compliance, or other purposes allowed under CCPA

delete

California Deletion Request Exceptions

- Complete the transaction
- Fulfill the terms of a written warranty or product recall
- Provide a good or service requested by the consumer, or reasonably anticipated by the consumer within the context of an ongoing relationship
- Perform a contract between the business and the consumer
- Help to ensure security and integrity
- Debug to identify and repair errors that impair existing intended functionality
- Exercise free speech or another right provided for by law.
- Engage in public or peer-reviewed scientific, historical, or statistical research if the consumer has provided informed consent
- To enable solely internal uses, reasonably aligned with expectations and compatible with the context
- Comply with a legal obligation

delete

More General Limits

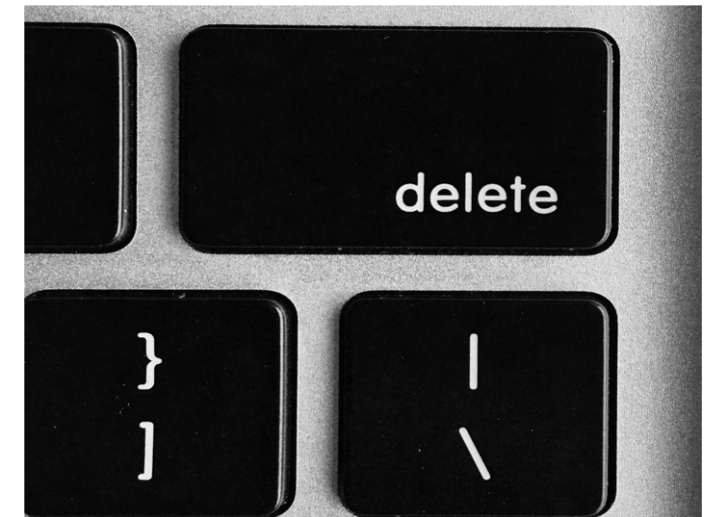
- Comply with laws or regulations
- Comply with civil, criminal or regulatory investigations
- Defend legal claims
- Provide a good or service requested by the consumer
- Fulfill a contract
- Fulfill a written warranty
- Enter a contract
- Lifesaving measures
- Protect against or respond to security threats
- Engage in public or peer-reviewed research
- Under oversight of a review board that considers privacy concerns
- Shall not adversely affects the rights or freedoms of any person
- Internal Uses
 - to develop, improve, or repair products or services
 - effectuate a recall
 - identify and repair technical errors that impair existing or intended functionality
 - perform internal operations that are reasonably aligned with the expectations of the consumer

Right to Delete - Sample 1

Consumer Request: Delete My Information

We have completed deleting your personal information as you requested. We have also directed our service providers to delete your information.

We may still have some of your information in our back-up systems. That information will be deleted during our regular archive removal process, as allowed under the law. Privacy laws require us to keep a record of processing your deletion request, so we will maintain our record of your request but will not use the information for any other purpose.



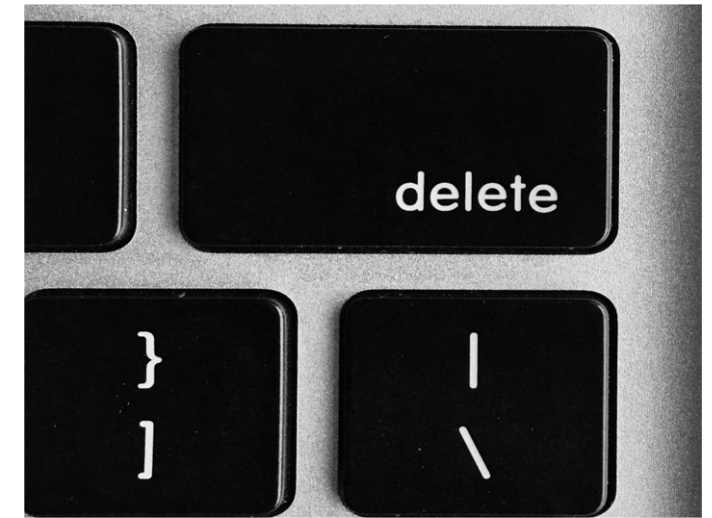
Right to Delete - Sample 2

Consumer Request: Delete My Information (Colorado)

We have completed the deletion of your personal information, with the exception of that information required to perform our contract with you and detect security incidents. This data is exempted from privacy law deletion requirements and has been retained.

We have also directed our service providers to delete your information. The law requires us to keep a record of processing your deletion request, so we will maintain our record of your request but will not use the request information for any other purpose.

If you have any questions about the way we have handled your deletion request, please contact our consumer privacy team at [insert email]. If you would like to appeal our decision, you can submit your appeal at this link [insert link]. You will enter this ticket number [insert ticket number], your name, and the reason you would like us to reconsider your deletion request. Our privacy response team will review your request and send a response to you at this email address within 45 days.

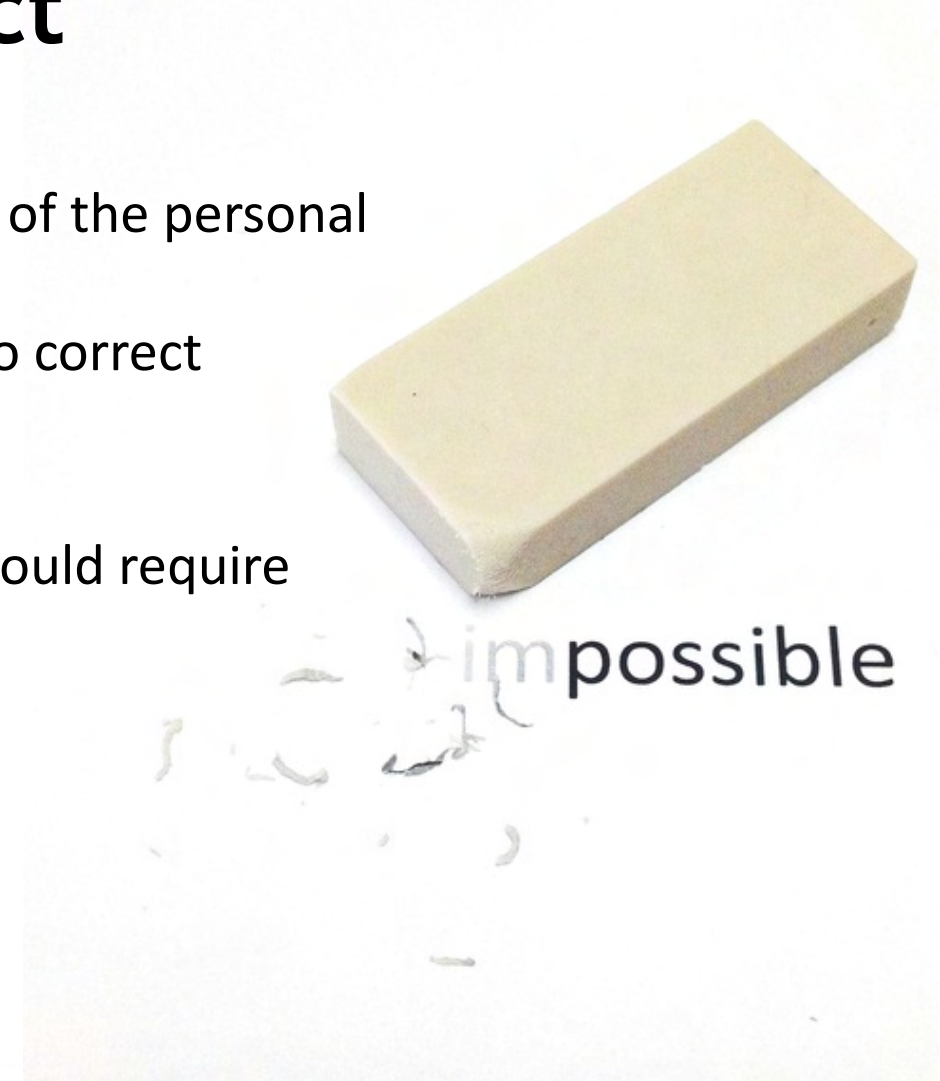


New Rights

- Correction
- Opt Out x3
- Limit use of Sensitive PI

Right to Correct

- Correct inaccuracies “taking into account the nature of the personal data and the purposes of the processing”
- CPRA: must use “commercially reasonable efforts” to correct inaccurate information
- CA regulations:
 - Exceptions for requests that are impossible or would require disproportionate effort
 - Resolving concerns re accuracy
 - Fraud prevention
 - Addendum for health information
- [Offer not valid in Utah]



Right to Correct - CA Sample

- Consumer Request: Correct My Information. You are sending me notices addressed to “Jaime Smith. The correct spelling is Jayme.”
- Possible Responses:
 - Thank you for submitting your name correction. That change has been made in our systems and should be reflected in your online account.
 - We have received and reviewed your request. At this time, we are making a note in our records that you have indicated the incorrect name is attached to your file. Because your work identification documents for your I-9 use the spelling “Jaime,” we are unable to change the spelling of your official in your personnel file in order to comply with legal obligations. We have, however, marked “Jayme” as your preferred name.”



Right to Opt Out - Part 1

Sales

- (Almost) nothing new
- State definitions: exchange of personal data for...
 - CA/CO/CT: monetary **OR** other valuable consideration
 - UT/VA: monetary consideration
- States other than CA don't mandate a "Do Not Sell" link



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Right to Opt Out - Part 2

Targeted Advertising

- (Known as “sharing” / “cross-context behavioral advertising” in CA)
- “Displaying advertisements to a consumer where the advertisement is selected based on personal data obtained from that consumer's activities over time and across nonaffiliated websites or online applications to predict such consumer's preferences or interests”
- Exceptions:
 - Ads based on activities within a controller’s websites/apps
 - Ads based on current context
 - Ads in response to a consumer’s request for information or feedback
 - Processing personal data solely to measure or report advertising frequency, performance, or reach



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Right to Opt Out - Part 3

Profiling

- Any form of automated processing of personal data to evaluate, analyze, or predict information about an individual
- Opt-out right limited
 - CO/CT/VA: Only for profiling “in furtherance of decisions that produce legal or similarly significant effects concerning a consumer”
- CA details TBD by CPPA regulation
- [Offer not valid in Utah]



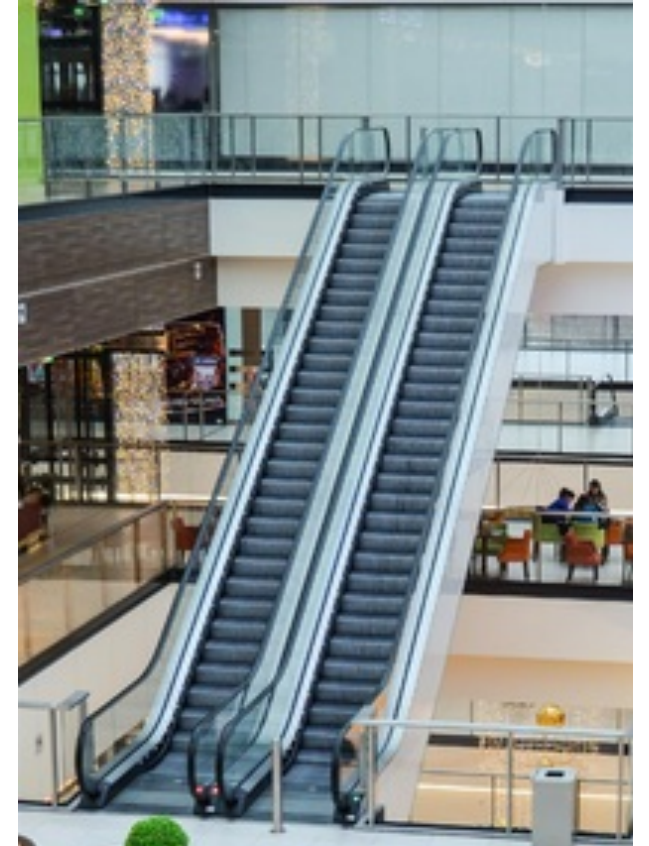


New Considerations

- Appeals
- Sensitive PI
- Global Privacy Control

Right to Appeal

- CO, CT, and VA provide the right to appeal decisions regarding consumer requests
- Within same organization
- Prominently displayed / easy to exercise
- If denied again, have to include information about how to contact state AG
- Operational issues:
 - How to treat partial denials
 - How to link appeal to substantive request in ticketing system



CO, CT, VA Appeals Process

- Conspicuously available
- Must be as easy to use as the process for submitting a request
- VA & CT:
 - Similar to the process for initiating requests
 - Controller must act on the appeal within 60 days
 - Include action taken or not taken
 - Include explanation of reason for decision
 - No extensions
 - Provide consumer with mechanism for contacting the AG if the appeal is denied
- CO:
 - Controller must act on the appeal within 45 days
 - May extend 60 additional days
 - Must tell consumer how to contact the AG if they have concerns about the appeal result

Right to Delete - Appeal Sample

Consumer Request: Delete My Information (CO), Response: Denied

We have received your appeal of our decision not to delete your information. After a review by our Appeals Team, we have determined that we cannot delete your information because it is necessary for us to perform our contract with you. We cannot provide the contracted services without your personal information.

If you wish to contact the State Attorney General regarding your request and our denial of your appeal, you may do so using the below contact information:

Office of the Attorney General

Colorado Department of Law

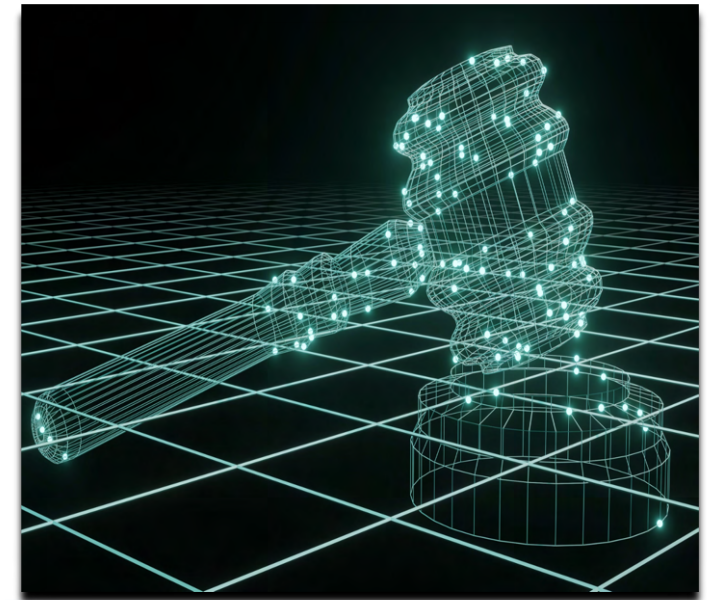
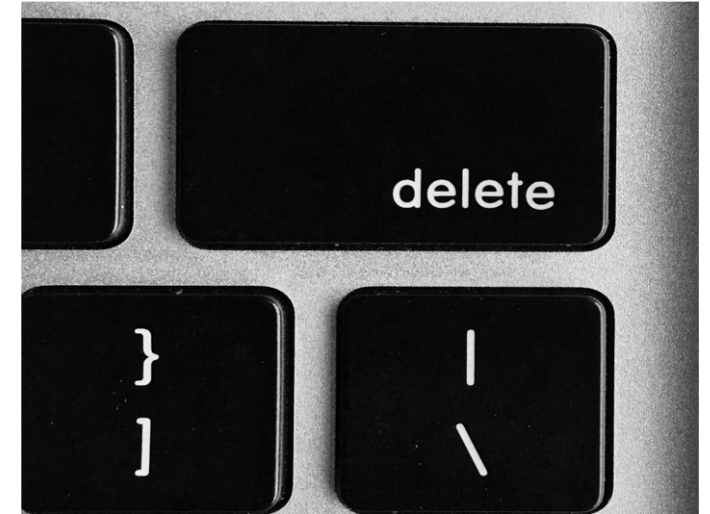
Ralph L. Carr Judicial Building

1300 Broadway, 10th Floor

Denver, CO 80203

(720) 508-6000

Online at: <https://coag.gov/about-us/contact-colorado-office-attorney-general/>



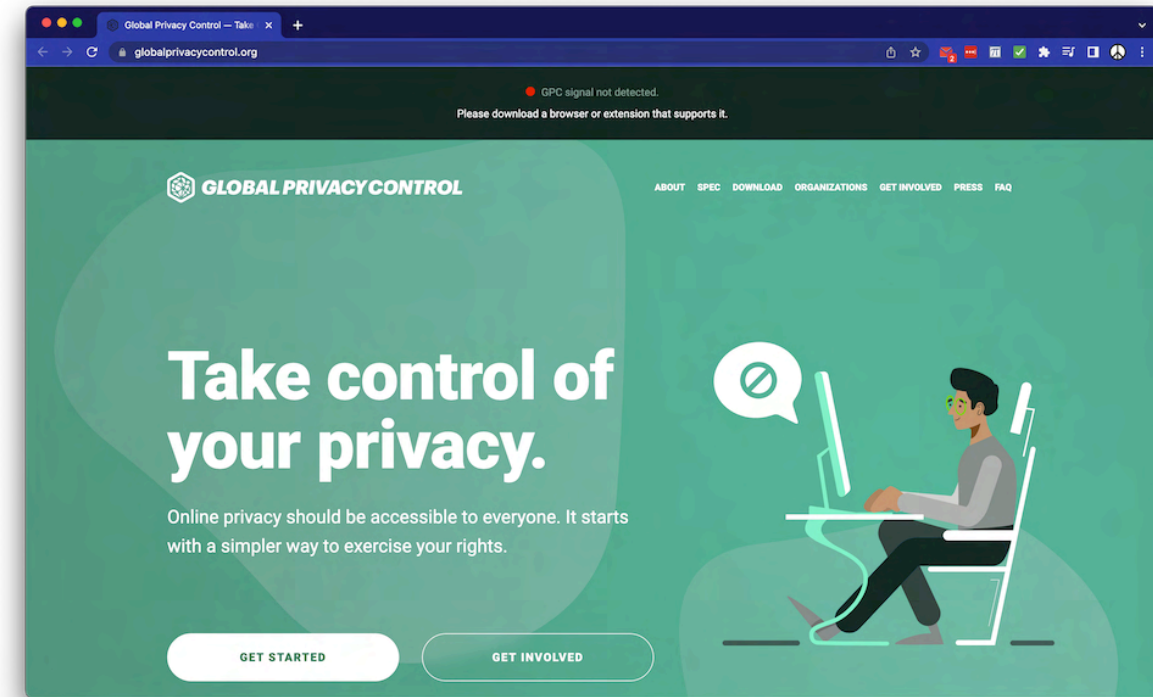
Right to Limit Use of Sensitive PI

- California-only (but beware opt-in requirement in other states)
- Limit use of sensitive PI to what is necessary and “reasonably expected by an average consumer” OR certain business purposes
- Sensitive PI in CA:
 - Government ID numbers (SSN, passport, etc)
 - Login info with password
 - Precise geolocation (1,850 feet)
 - Race, ethnicity, religion, union membership
 - Contents of communications
 - Genetic, biometric, and health data
 - Sex life and sexual orientation



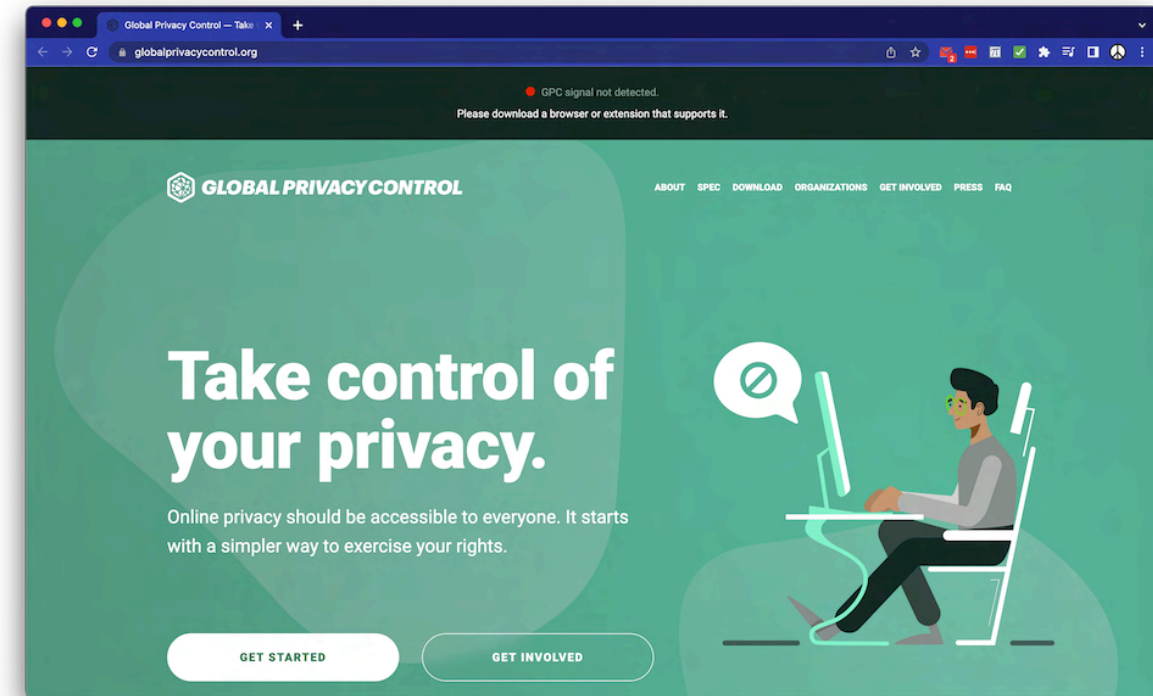
Global Privacy Control

- Browser or browser extension
- One-time choice
- Signal sent to every website visited
- Questions:
 - Only GPC, or others too?
 - What does it opt users out of?
 - Does it need to be actively enabled?
 - How to ask users to opt back in?
 - Conflict with loyalty programs etc?
 - Required by CPRA?



Global Privacy Control: Enforcement

- Sephora settled with CA AG for \$1.2M
- Alleged violations included:
 - 3rd-party trackers = sale
 - Missing Do Not Sell link
 - Ignoring GPC signals
- CA treats GPC as mandatory
- Colorado:
 - AG must issue regulations re universal opt-out method by July 2023
 - Mandatory starting July 2024



Takeaways

- Determine which states' laws apply
- Decide whether to take a state-by-state or universal approach
 - Even within a universal approach, ensure you account for state-specific requirements such as contact information for the correct AG in an appeal situation
- Work with your team to ensure technical operations are ready
 - Global Privacy Controls
 - Cookie Controls
 - Siloing based on privacy requests
- Communicate changes to your employees
- Update your internal Privacy Policy, not just your Notice
- Use your Policy to TRAIN your employees
 - For California, training is a legal requirement for anyone who handles privacy requests



Questions and Answers

Panelists



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