

Falling Dominoes: The Impact of the California Consumer Privacy Act of 2018

Insights, Discussion Questions and Action Items

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Chapter One

A Growth-Focused Business Leader Contemplates the Impact of the California Consumer Privacy Act of 2018

The airplane cabin door was now closed. This was always John Horace's favorite time for deep thinking about the big things on his plate. From now until they reached ten thousand feet and the laptop came out, he needed to make some real progress on the date that had been on his mind for weeks: January. 1, 2020.

He appreciated that his colleague had forwarded the [TrustArc webinar link](#), but being on that webinar made it real. The California Consumer Privacy Act (CCPA), which was passed in late June 2018, would become the toughest consumer privacy law in the U.S. in fewer than 450 days ... and counting. It would provide California consumers broad rights about how their data could be collected, used, and sold or disclosed, and therefore significantly change the data management practices of companies that serve them. It would also significantly broaden the definition of "personal information." For John's company Winco (and many others), this was a real game-changer.

The dominoes had been falling for a while – Yahoo, eBay, Equifax, Target, Heartland Payment Systems, TJX, Uber, JP Morgan Chase, Home Depot and even the U.S. Office of Personnel Management among the headliners. He cringed when he thought of the market valuation, and terminations, that resulted from those events. Some of the specific events from this year that had caught John's attention were:



- The Cambridge Analytica and Facebook missteps, where Cambridge Analytica gained access to private information of more than 87 million Facebook users.
- The embarrassing testimony on Capitol Hill by Facebook CEO Mark Zuckerberg, which reinforced that the people on the Congressional committee did not understand technology very well.
- The European Union's General Data Protection Regulation (GDPR) that went into effect in late May 2018, which provided data protection and privacy for all individuals within the European Union (EU) and addressed data export outside the EU.
- Zuckerberg's testimony in front of European Parliament, where the meeting format provided the opportunity to avoid any real substance.

And now the CCPA. This was all in addition to all the cyber activity, hacking and threats on the upcoming elections. The pace and stakes in this game of dominoes had both increased rapidly.

As a revenue-side executive at Winco, a small- to medium-sized business-services enterprise (SME), John had always prided himself for being plugged into the external factors that affect his business. He was growth oriented and focused on driving business results and increasing the value of the business. But this California law had come on very quickly. Apparently the alternative floated as a November ballot proposal was far tougher, so a hard deadline drove the rapid pace. Regardless, John would have to define his new reality and position his business to deal with it. In addition, he wanted to look to the future and anticipate the next dominoes likely to fall in response to the CCPA.

There was a light *ping*, breaking John's concentration. A soft voice came over the PA system. "This is your captain speaking. We are seventh in line for take-off, so we'll be on the runway a little longer than anticipated."

More time than usual before the laptop could come out for the "real" work, John thought. He pulled out his leather jotter and pen to write some notes. The executive team was meeting tomorrow morning, and he needed to prepare for a focused discussion.

The [TrustArc webinar](#) and [Daniel Solove's TeachPrivacy](#) resources were helpful in laying out the specifics of the CCPA, and its comparisons to the GDPR, in plain English. He would rely on his compliance and regulatory resources for all the specifics, but he had to focus on anticipating the impact of the regulation, rather than the regulation itself. It would not be helpful to get wrapped around the axle at this point on the details since many provisions would change. Many things would have to be worked out over the coming 450 days, but the big-picture stuff would lead to changes in the external reality facing his business, and he was determined to position the business to succeed in the new reality.

The CCPA was clear on applicability: a business that receives, directly or indirectly, the personal information from California residents would need to hit only one of the following criteria to fall under the law:

1. Businesses with annual revenue of at least \$25 million
2. An entity that receives the personal information of 50,000 or more California consumers, households, or devices.
3. Businesses that generate most of their annual revenue from selling personal information about California consumers.

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The CCPA didn't apply to Winco now, but John knew it probably would at some point. But as he thought about it, he realized applicability probably didn't really matter. Even if the CCPA never directly applied to Winco, the external reality for his business would change because of the regulation, so he and his team better anticipate and adjust.

I expect that the CCPA will be much more impactful than GDPR. The California market is so significant that many more companies will need to make changes to comply or face increased risk, he thought to himself. This would change the game for his current clients, his potential clients, and, ultimately, consumers. No, it didn't matter if CCPA directly applied to Winco — the impact of the law would still change his external reality in major ways.

He started making some notes on his jotter, capturing the major impacts the CCPA would likely have on Winco:

- internal – UX impacts, workflow changes, software changes, testing, audits, friction costs, new processes to manage, compliance, etc.
- competitive environment
- clients and consumers
- supplier and vendor partners
- ecosystem changes
- other regulatory changes
- more

They were now finally in flight, so his “deep thinking” time was short, and he needed to focus on specific questions for his executive team meeting tomorrow. He had learned from his FocalPoint business performance coach to use a series of questions, rather than statements, to drive team discussions, and tomorrow will be no exception. To keep a crisp discussion, he typically would cover only two or three impact items and go deep, but with a time limit. He looked back at his notes and circled three terms to focus on: competitive environment, clients and consumers, and supplier and vendor partners. He paused for a moment and then wrote down some questions:

1. Based on what we have observed from competitors and potential competitors in response to GDPR and the other info privacy and security dominoes that have fallen, how do we expect the **competitive environment** to change over the next 450 days leading into Jan. 1, 2020, and beyond?
2. How do we anticipate our **user and consumer expectations** to change because of the changes in the regulatory and privacy environment, and the resulting changes made by companies in response?
3. How do we anticipate our **suppliers and vendor partners** will be affected by the CCPA and any other external event, and how will that impact our product line, our service and support, and our operations? What gaps or exposure should we plan for?

There is much more they need to get on the table and collaborate on, but he often made the mistake of trying to tackle too much at one meeting. Besides, they would need to think and discuss these three questions many more times as Jan. 1, 2020, approached. *We need progress, not perfection,* John thought.

The two-ding signal indicated they were at laptop altitude, so he needed to shift gears, but his subconscious mind kept wondering: *What else should I be thinking about on this topic?*

Chapter Two

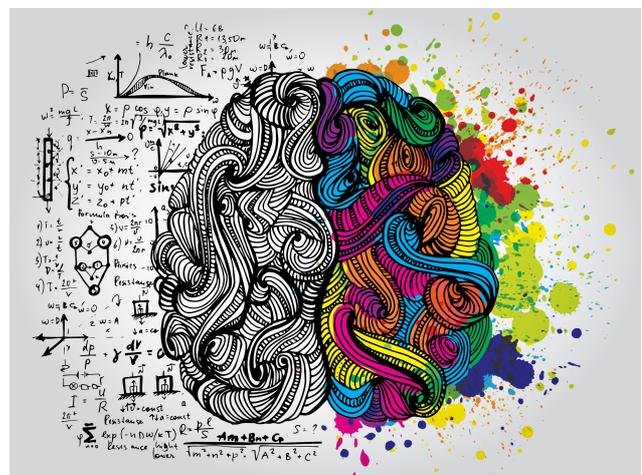
The Dominoes Continue

Please, anything but regulations. John wished the “figure it out” part of his brain could focus on more energizing stuff. Stuff like commercializing new products and services, strategies to increase their share of customer wallet, customer-specific sales strategies, or options to add value and differentiate from competition. *Any* topic other than anticipating how his external market reality would change due to information privacy regulations. The privacy dominoes had been falling, and now the question was “what’s next?”

At Winco, John’s focus on business results and increasing value also helped reduce risk. He had to figure out how his enterprise would effectively handle the CCPA.

John needed to clear his head. He walked to the coffee shop on the corner for a large dark roast. The executive team had met that morning to discuss the recently passed CCPA and why it mattered to them. They had less than 450 days until the law went into effect on Jan. 1, 2020, so they didn’t have much time to identify, plan, implement, and effectively execute on significant change like they usually did.

The questions John had written on the flight had prompted a lively discussion, but this was only a first step. The executive team would revisit those three questions about competitive environment, clients and consumers, and supplier and vendor partners many times over the next 450 days. During the meeting, John had noted specific action items and assigned each one to the responsible executive with completion dates for follow-up. He only had one action item himself, but it was a biggie – given CCPA and the Jan. 1, 2020–effective date, what should Winco anticipate to be the next information privacy dominoes likely to fall?



Anxious to get started, John began to define his task, making some notes on his jotter:

- The CCPA will apply only to California consumers, but handling personal data by state is complex, so most firms will probably design for the most demanding condition. Major global companies reacted similarly to the GDPR.
- California tends to lead the way on regulation. Other states or even federal lawmakers or agencies follow with similar laws. For example: email spam.

- The CCPA could add pressure to pursue a national regulation, especially after the criticisms intensified when the GDPR went into effect in May. There is no comprehensive federal information privacy regulation in the U.S.
- There had been significant global criticism of the U.S. sector-based privacy approach (regulations by industry sector such as health care, financial services, and education) in reaction to the Facebook missteps.
- Articles in the *Washington Post* over the summer and fall of 2018 reported the White House held numerous meetings with interested parties on all sides of the issue about what a national regulation may look like. Three objectives were frequently mentioned:
 - Avoid a situation where various states follow California with their own laws creating a complex business environment
 - Interest in being less aggressive than the GDPR by recognizing the benefits of data
 - Desire for a federal law that would preempt state law

*This reminds me of when the Obama administration tried to get out ahead of the information privacy challenge with the [Consumer Privacy Bill of Rights in 2012](#), John thought. In retrospect this bill would have been extremely helpful, but the timing was simply off. Now, with the GDPR and CCPA making a huge impact in 2018, and of course the Facebook missteps, things were different. John thought about how the November 2018 mid-term elections and the unpredictability of the Trump administration would make it difficult for Congress to prioritize and pass national information-privacy regulation. *The window of opportunity appeared to open with GDPR, CCPA and other factors, but the 2020 presidential election and the actual effective date of CCPA could combine to close it again*, John thought.*

Because of the real prospect of a national privacy regulation, John was suddenly excited to discuss his action item with the executive team. He wrote down a series of questions to pose to his coworkers:

1. Based on what we can observe in reaction to GDPR and now CCPA, how should we connect the dots to help our business anticipate the next dominoes to fall?
2. How will the next series of dominoes impact Winco? How will they impact clients, suppliers, competition, product, user experience, etc.?
3. Based on this anticipated impact and what we know now, what immediate actions should we take to position ourselves to make fact-based decisions about an uncertain future event?

This discussion could go off the rails quickly given the uncertainty involved, so John would have to keep his facilitation skills on point. The goal was to get the team looking from the outside in by gathering more “dots” that can be connected, or disregarded, later. *Just the external facts at this point*, John mused. The executive team knew the outside-in drill for the fun stuff like competitive analysis, product positioning and strategy, and distribution channel strategy, but this regulatory stuff would require some new thinking and some new resources. As John began writing down more action items, he thought, *Time to raise our game*.

Chapter Three

Threat or Opportunity? Do Upcoming Changes in Your External Market Position You to Raise Your Game?

John settled into his seat on the regional train out of D.C.'s Union Station, plugged in his iPad, and connected to the train's Wi-Fi. He looked around to make sure he had his water bottle, headphones, and a pen and leather jotter pad handy. Then he placed some files and reading materials on the seat next to him to discourage folks boarding at later stops from sitting there. All set.

He only had a few hours to begin outlining a presentation for the board meeting coming up in three weeks. The board would need to discuss the impact of the CCPA, and they'd be looking to him for actionable recommendations. John also wanted the board to understand that significant executive team focus was now on regulations rather than on competition, technology, and clients, where the team was most effective and comfortable.

It was always tough to keep up with technology advances, and things got significantly more complex when clients made technology investments at different times. But lately, his executive team had been consumed by regulations rather than technology. Change was already happening, with more coming quickly.



As John opened the bag of roasted almonds he had brought on the train to snack on, the nutrition label on the bag caught his eye. It sparked a thought. He recalled a privacy nutrition label that Carnegie Mellon University had conceptualized in the late 2000s. The label was modeled after the familiar FDA version. The concept never took off for privacy, but it was a creative attempt to differentiate, and the label might spark a few ideas among his team. John desperately wanted to come up with something other than a boring “legalese” response.

At each stop, the northbound train began to fill up. The seat next to him would probably not stay empty much longer, so he needed to focus on coming up with his major message points and recommendations for the board. He wrote down some things to focus on:

- The dominoes that are known and have fallen
- The dominoes that are not yet known and have not yet fallen
- Competitive reactions that are known and anticipated
- User and consumer expectations that are known to have changed and that are expected
- Supplier partner changes that are known and anticipated

Then he wrote “threat or opportunity?” and circled it.

John preferred to view changes in the external environment as opportunities. He had a methodology and set of tools that have served him well over the years, and he followed a fact-based approach. Regulations, however, were uncharted territory. John was energized by growth and development, not compliance and legal.

Then, he remembered a [*Forbes* article by Dan Gingiss on the best and worst after GDPR](#), and started searching for it on his iPad. The article highlighted four companies that positively handled GDPR requirements and four that negatively handled them.

John wrote down a sentence from the article that particularly stood out to him: “But some companies were more creative, indicating that the Marketing department had as much to say about privacy requirements as the Legal department.” Then he paused and, farther down the page, wrote another sentence from the article: “Every communication with a customer is an opportunity to create a positive customer experience. With a little effort, it is even possible to turn legal disclosures into an experience.”

Four companies stood out: Ticketmaster, an events ticketing company; Buffer, a social media publishing app; Podcast Movement, the definitive networking group for podcasters; and Union Metrics, a social intelligence company. Each company had used brief, clear, and friendly language to explain the privacy changes. In addition, Ticketmaster had turned the update into a marketing campaign, Buffer sent the email from “Joel from Buffer,” Podcast Movement had as strong “bottom line” ending statement, and Union Metrics used an attention-grabbing subject line.

These four companies saw lemons and made lemonade. They saw the change as an opportunity to engage with users and consumers and make a statement that included the voice of marketing as well as the obligatory voice of legal and compliance. They took the opportunity to be “privacy strong” when their external environment changed.

John was more excited about the board meeting because he finally had some solid alternatives to a legal and compliance response to the regulations. He remembered one more article, which he knew well, and looked it up on his iPad: [“Mind Storming with Brian Tracy” by Paul D. Guyon](#).

Similar to brainstorming with a group, mind storming involves an individual writing their goal in the form of a specific question and then coming up with at least twenty answers to the question. Often, the best answers come toward the end. Working through multiple iterations often results in some awesome options. It takes a lot of focus and mental discipline to come up with at least twenty answers.

John would get the team on a call in the morning to individually mind storm some specific questions. They had used this exercise in the past, but it has been awhile. John made a mental note to reinforce with his team the importance of thinking deeply about a specific question, to go beyond the easy answers on the surface. He would also remind them that once the mind begins churning on a question, answers may come to them later and seemingly out of nowhere, so be ready.

He began to work on three specific questions:

1. What can we do as a business to turn the CCPA and other likely privacy regulations into a marketplace opportunity?
2. What creative approaches could the business provide to deliver a compelling but compliant user experience in how users and consumers interact with us?
3. What can we do as a business to turn this regulatory obligation into a positive customer message?

As the train approached Grand Central in New York, John was optimistic the team would turn the regulatory reality into opportunity for the business. They would build on concepts like the privacy nutritional label and Ticketmaster, Buffer, Podcast Movement, and Union Metrics' strong responses to the GDPR changes. They would mind storm specific approaches based on their market and business.

John made one final note on his jotter: The impact of regulatory reality is OPPORTUNITY.

Discussion Questions and Action Items

Get your business ready for the California Consumer Privacy Act of 2018. With your executive team, discuss the following questions. Then work through the following action items.

Discussion questions

1. Based on what you have observed from competitors and potential competitors in response to GDPR and the other info privacy and security dominoes that have fallen, how do you expect the competitive environment to change over the next 450 days leading into Jan. 1, 2020, and beyond?
2. How do you anticipate your user and consumer expectations to change because of the changes in the regulatory and privacy environment, and the resulting changes made by companies in response?
3. How do you anticipate your suppliers and vendor partners will be affected by the CCPA and any other external event, and how will that impact your product line, your service and support, and your operations? What gaps or exposure should you plan for?
4. Based on what you can observe in reaction to GDPR and now CCPA, how should you connect the dots to help your business anticipate the next dominoes to fall?
5. How will the next series of dominoes impact your company? How will they impact your clients, suppliers, competition, product, user experience, etc.?
6. Based on this anticipated impact and what you know now, what immediate actions should you take to position yourselves to make fact-based decisions about an uncertain future event?
7. What can your business do to turn the CCPA and other likely privacy regulations into a marketplace opportunity?
8. What creative approaches could your business provide to deliver a compelling but compliant user experience when users and consumers interact with you?
9. What can your business do to turn this regulatory obligation into a positive customer message?

Action items

1. Begin the discussion inside your firm – how will your external reality change due to the information privacy dominoes in the 450 days leading up to Jan. 1, 2020?
2. Expand the “outside-in” thinking in your firm to begin collecting more “dots” to connect.
3. Identify new resources to monitor and access to ensure you are positioned to be proactive, rather than reactive, in the coming 450 days.
4. If you need deep expertise on the California Consumer Privacy Act, connect your regulatory and compliance teams with resources and specialists such as [TrustArc](#) and Daniel Solove’s [TeachPrivacy](#).
5. Identify one specific change in your external business environment that may represent both a potential threat and potential opportunity.
 - a. Define a business or operational goal related to the impact of that change.
 - b. Convert that goal into a question. Be specific and time bounded.
 - c. Mind storm a minimum of twenty answers to that question.

About the Author

David J. Dillon, MBA, is the owner of Watney Insights Network, Inc. and a self-proclaimed business performance geek. He specializes in recognizing the intersection of regulations, risks, competition, clients, and other external realities that affect revenue and growth initiatives.

He is also a Certified Business Performance Coach, Certified Information Privacy Technologist (CIPT), Certified Information Privacy Professional (CIPP/US), and Licensed Property & Casualty Insurance Agent.

David believes everyone is capable of raising their game with the help of proven tools, systems and support. Based on that belief, his "why" is to collaborate with others to solve big, meaty challenges so that together we "raise our game" to accomplish meaningful results for success and fulfillment.

To learn more or start a conversation, please contact David by email at ddillon@watneyinsights.com or visit his [website](#).

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