

THIRTIETH ANNUAL CORPORATE COUNSEL SYMPOSIUM WEDNESDAY, NOVEMBER 6, 2019



# Surfin' CCPA: Riding the Wave of the California Consumer Privacy Act

Timothy Nagle	U.S. Bank National Association Senior Vice President, Associate General Counsel and Chief Privacy Officer Minneapolis, Minnesota
Kathryn Wood	DecoPac, Inc. In-House Counsel Anoka, Minnesota
Robert Cattanach	Dorsey & Whitney LLP Partner Minneapolis, Minnesota cattanach.robert@dorsey.com (612) 340-2873
Joseph Lynyak	Dorsey & Whitney LLP Partner Washington, DC Iynyak.joseph@dorsey.com (202) 442-3515
Jamie Nafziger	Dorsey & Whitney LLP Partner Minneapolis, Minnesota nafziger.jamie@dorsey.com (612) 343-7922

## Handouts

1. PowerPoint Presentation

## **Resources available on Dorsey.com**

 Dorsey & Whitney LLP eUpdate: Breathing Room? California Legislature Passes Two Major Amendments to California Consumer Privacy Act (CCPA) (September 16, 2019)
Link: <a href="https://www.dorsey.com/newsresources/publications/client-alerts/2019/09/california-legislature-passes-two-major-amendments">https://www.dorsey.com/newsresources/publications/client-alerts/2019/09/california-legislature-passes-two-major-amendments</a>

 Dorsey & Whitney LLP eUpdate: CCPA Requires "Reasonable Security": but You Can't have Reasonable Security Without Proper Vulnerability Management (September 12, 2019)
Link: <a href="https://www.dorsey.com/newsresources/publications/client-alerts/2019/09/ccpa-requires-reasonable-security">https://www.dorsey.com/newsresources/publications/client-alerts/2019/09/ccpa-requires-reasonable-security</a>

Materials are Available on <u>www.dorsey.com</u> at

https://www.dorsey.com/newsresources/events/event/2019/11/corporate-counsel-symposium-2019-materials

© 2019 Dorsey & Whitney LLP. All Rights Reserved. These materials are intended for general information purposes only and should not be construed as legal advice or legal opinions on any specific facts or circumstances. An attorney-client relationship is not created or continued by reading these materials.





Dorsey & Whitney LLP eUpdate: AB 25 Passes the California Assembly – and Excludes Employee Information from Coverage under the California Consumer Privacy Act (May 31, 2019) Link: https://www.dorsey.com/newsresources/publications/client-alerts/2019/05/ab-25-passes-the-california-

LINK: https://www.dorsey.com/newsresources/publications/client-alerts/2019/05/ab-25-passes-the-californ assembly

Dorsey & Whitney LLP eUpdate: National Financial Institutions—Developing A Project Plan To Comply With The California Consumer Privacy Act (June 28, 2019)

Link: https://www.dorsey.com/newsresources/publications/client-alerts/2019/06/national-financial-institutions-ccpa

Dorsey & Whitney LLP eUpdate: Nevada's New Privacy Law – Beating California in the Backstretch, (June 7, 2019)

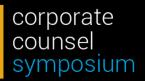
Link: https://www.dorsey.com/newsresources/publications/client-alerts/2019/06/nevadas-new-privacy-law

## **Dorsey Blogs**

**TMCA Blog** at <u>https://thetmca.com/</u> for legal developments in the world of Trademarks, Copyrights, Advertising.

**Computer Fraud / Data Protection Blog** at <u>https://computerfraud.us/</u> for cutting edge legal issues relating to trends in cybercrime, protection of computer data, data breaches and more.

Visit **Dorsey.com** to check out Dorsey's **Online Screening Tool** to determine your compliance status with California's Consumer Privacy Act (CCPA). To launch Dorsey's **Online Screening Tool** go to: <u>https://www.dorsey.com/services/ccpa</u>





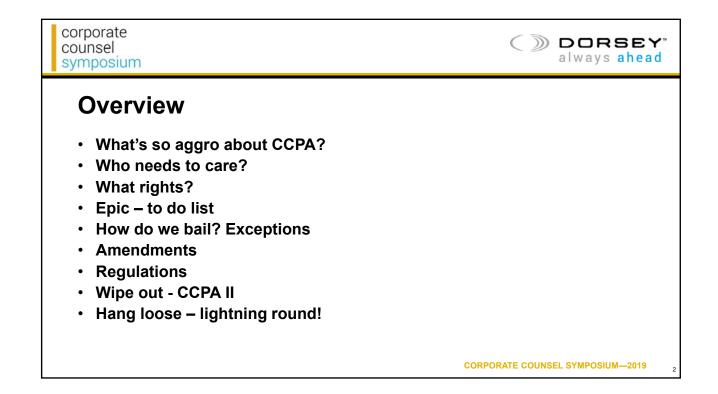
# Surfin' CCPA: Riding the Wave of the California Consumer Privacy Act

Timothy Nagle, Senior Vice President, Associate General Counsel and Chief Privacy Officer, U.S. Bank National Association

Kathryn Wood, In-House Counsel, DecoPac, Inc.

Robert Cattanach, Joseph Lynyak and Jamie Nafziger, Dorsey & Whitney LLP

Wednesday, November 6, 2019

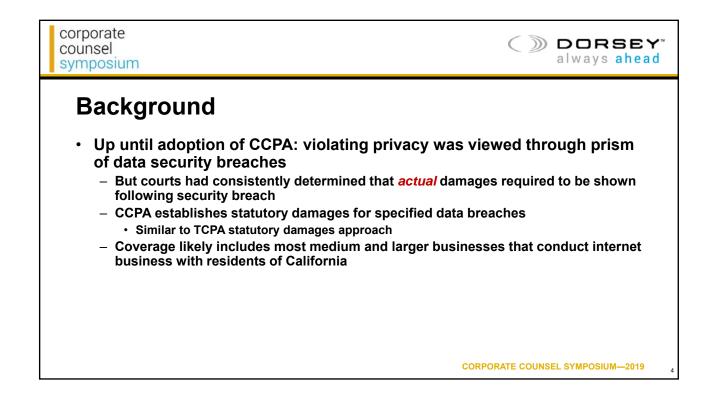




## Initial Question: Why Do We Care?

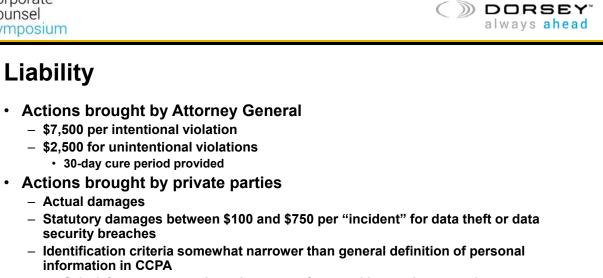
- It's the Statutory Damages and Coverage!!!!
  - Unlike other state privacy laws CCPA now includes statutory damages for certain data breaches
  - California takes broad view of jurisdiction for any non-California company that does virtually any amount of business with California residents
    - Internet business counts
  - Non-California businesses will have to adopt a project plan approach to compliance when CCPA becomes effective

```
CORPORATE COUNSEL SYMPOSIUM—2019
```



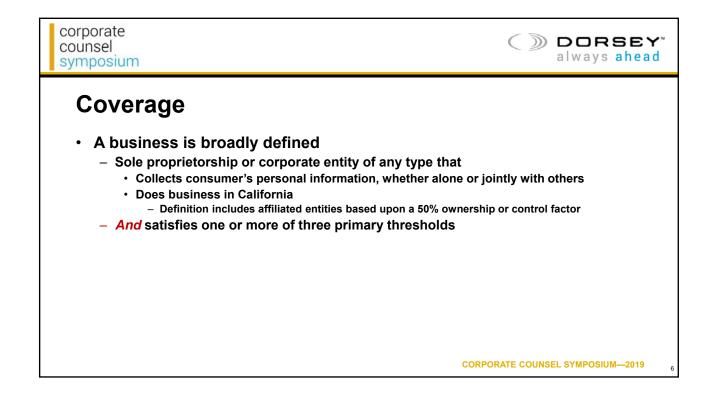
#### corporate counsel symposium

٠



· Sole defense appears to be maintenance of reasonable security protocols - How standards will be determined is unclear

```
CORPORATE COUNSEL SYMPOSIUM-2019
```

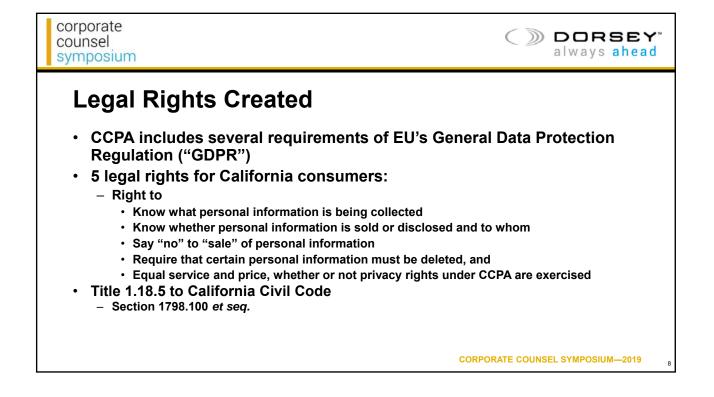




## Coverage

- Business thresholds
  - Annual gross revenues in excess of \$25,000,000
  - Alone or in combination with others, business annually buys, receives for business' commercial purposes, sells, or shares for commercial purposes, alone or in combination, personal information of 50,000 or more consumers, households, or devices, or
  - Derives 50 percent or more of annual revenues from selling consumers' personal information
- Question: Are these thresholds based upon California-related business or U.S or global business operations?
  - Probably global (or at least, national) revenue
  - Other two categories unclear

Note: Affiliated companies that are controlled and have same branding are aggregated for coverage purposes



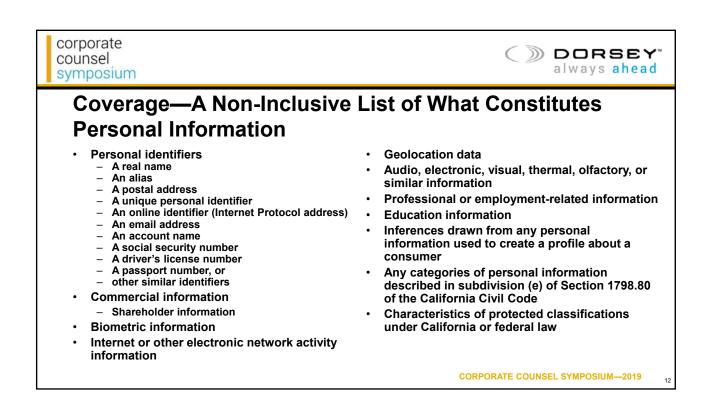
corporate counsel symposium		( ) DORSEY always ahead		
Risk-Based Approach – To Do List				
Security operations improvements in anticipation of class actions	Security policies and execution	Opt-out/opt-in planning (buttons, separate websites/apps)		
Children under 16	Data mapping	Update privacy policy for website/apps; include Nevada		
CORPORATE COUNSEL SYMPOSIUM—2019				

corporate counsel symposium		C DORSEY <sup>™</sup> always ahead	
Risk-Based Approach – To Do List (Part 2)			
Employee privacy policy	Vendor agreements	Plan/develop technology and procedures re access requests	
Plan/develop technology and procedures re deletion requests	Employee/contractor training	Cyber insurance review	
CORPORATE COUNSEL SYMPOSIUM—2019			



# **CCPA Compliance Journeys**

- U.S. Bank
- DecoPac

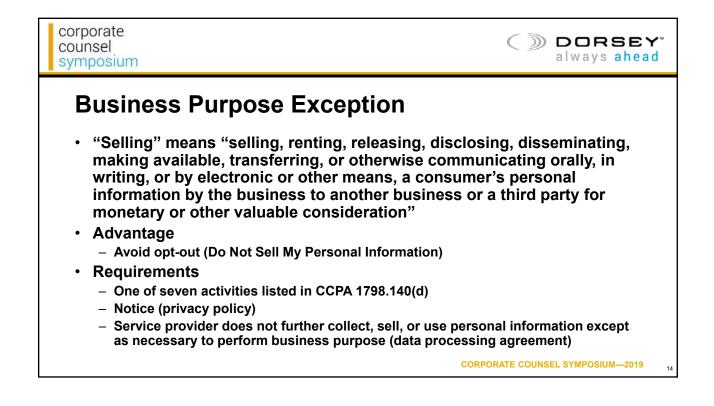




Code) - Health Care Providers

**Partial Exemptions** 

Scope of partial exemptions remain to be interpreted by California AG ٠

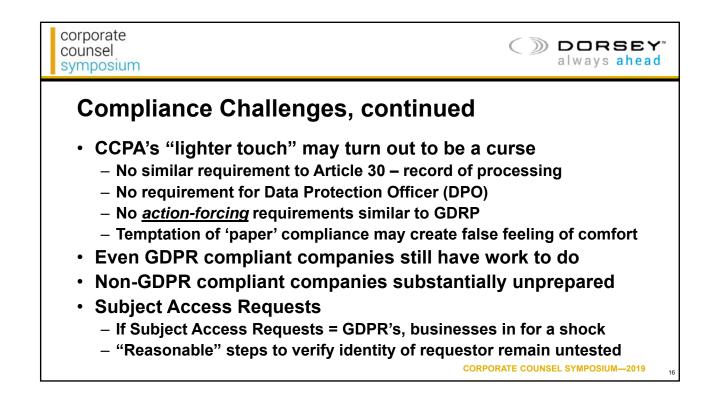


corporate counsel symposium



# **Compliance Challenges**

Discussion





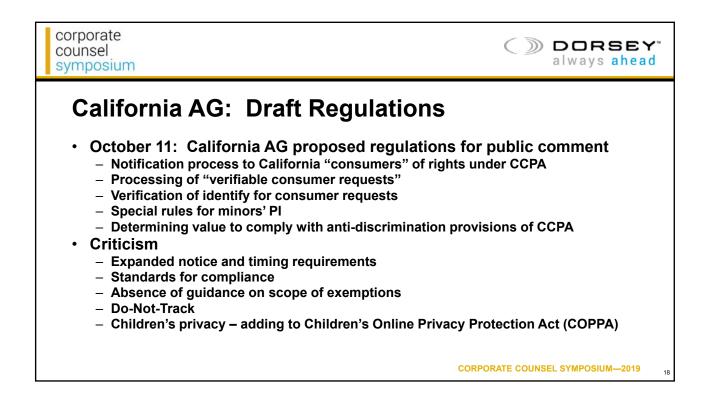
## **October 2019 Amendments**

### Business-to-Business

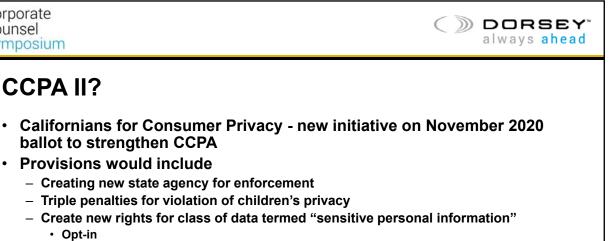
- Delay implementation of some provisions for one year
- · Only as to due diligence regarding, or providing or receiving product or service
- Not advertising
- · Still subject to right to opt-out and price discrimination restrictions
- Still subject to private right of action

### Employment

- Delay implementation of some provisions for one year
- Still need to give privacy notice
- Still subject to private right of action
- Data broker



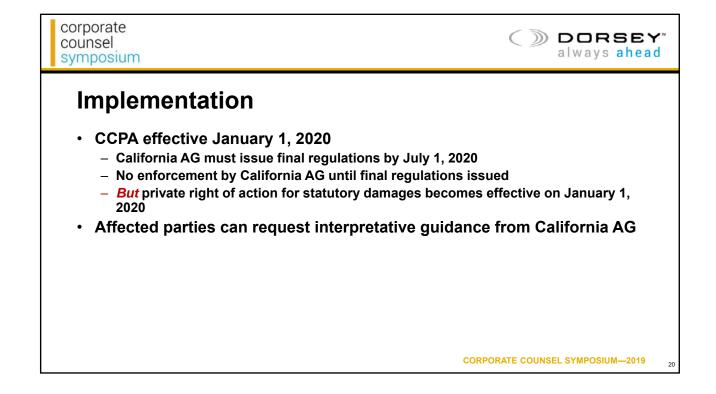
CCPA II?



- Require expanded business disclosures for uses of and retention of PI
- Disclose information from over 12 months back
- Disclose if profiling

Opt-in

- · Financial, insurance, health care, housing, education admissions, denial of employment
- Definition of household
- 100,000 instead of 50,000





# Lightning Round – Gnarly!

- Ambiguities
- Federal law
- Preemption
- Other states to watch
- Tips

