

Privacy - Pandemic and Endemic

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What to Learn & Take Away

- ① In this summary session the recent updates, challenges and realities of data privacy around Information Governance during and post Pandemic will be shared. Topics will include
- ① The latest Privacy regulatory landscape, fines, penalties and outcomes
- ① Privacy realities that vendors and suppliers help and hinder – privacy as competition
- ① Privacy remains a key leverage pillar supporting your Information Governance program & Where to start

Privacy Landscape

The latest Privacy regulatory landscape, fines, penalties and outcomes

Why is Privacy Important?



Regulatory requirements at the international, national, state, and local levels are increasing



Failure to comply can lead to fines, penalties, and litigation






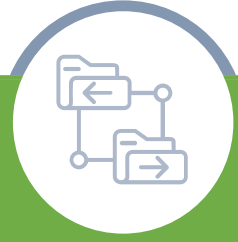

We need to embrace the value of protecting the personal data of our own employees, as well as those with whom we do business



It's the right thing to do & ever more - (GDPR, CPRA etc.) it's a Must Do

EU & California: Your Privacy Rights

Data Subject / Consumer Rights

 <p>Erasure</p>	 <p>Consent</p>	 <p>Access</p>	 <p>Portability</p>	 <p>Correction</p>
<p>You have the right to have your data deleted.</p>	<p>You must be informed in clear and plain language. If the controller is relying on your consent, you have the right to withdraw your consent.</p>	<p>You have the right to know what data has been collected about you and how it's been processed.</p>	<p>You have the right to transfer your data from one processing system into another.</p>	<p>You have the right to make changes to inaccurate data.</p>

[EU GDPR Data Protection/Privacy Regulation](#) May 25 2018
 California [CCPA](#) July 1 2020, to be replaced by [CPRA](#) Jan 1 2023

Since 2020...

- ① 2019 – 2020 \$7B Globally in Privacy fines
- ① 2020 – 2021 GDPR Fines & Totals significantly increase
 - 113 % Violations
 - 124 % Fine Growth

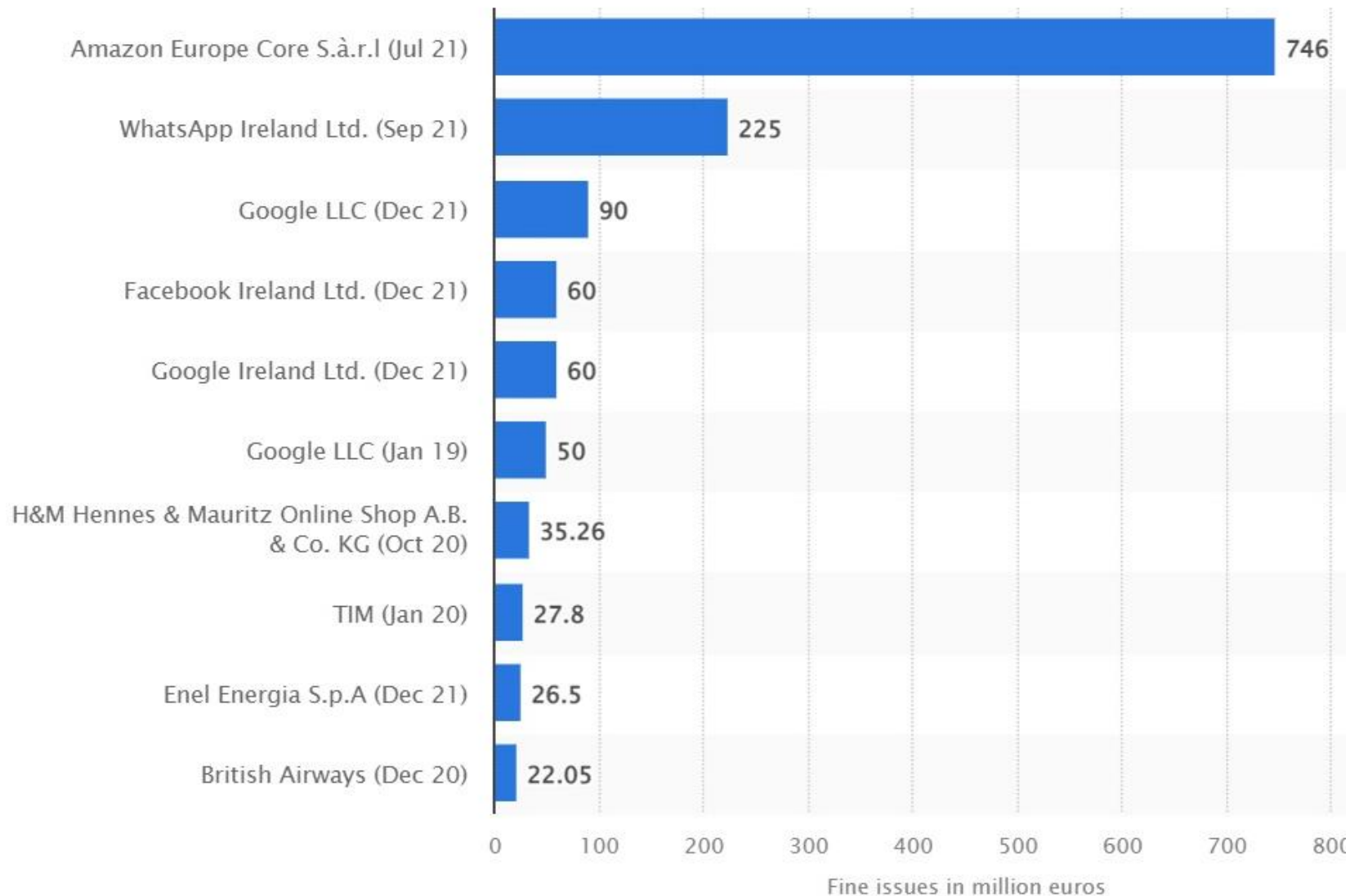
Into 2022+

- DLA Piper summarize EU data protection fines approach \$1.8B so far
- IAPP in this year's Data Privacy Day (Jan 28) forecast
 - By 2023 65% of the World's Population
 - Up from 10% in 2020

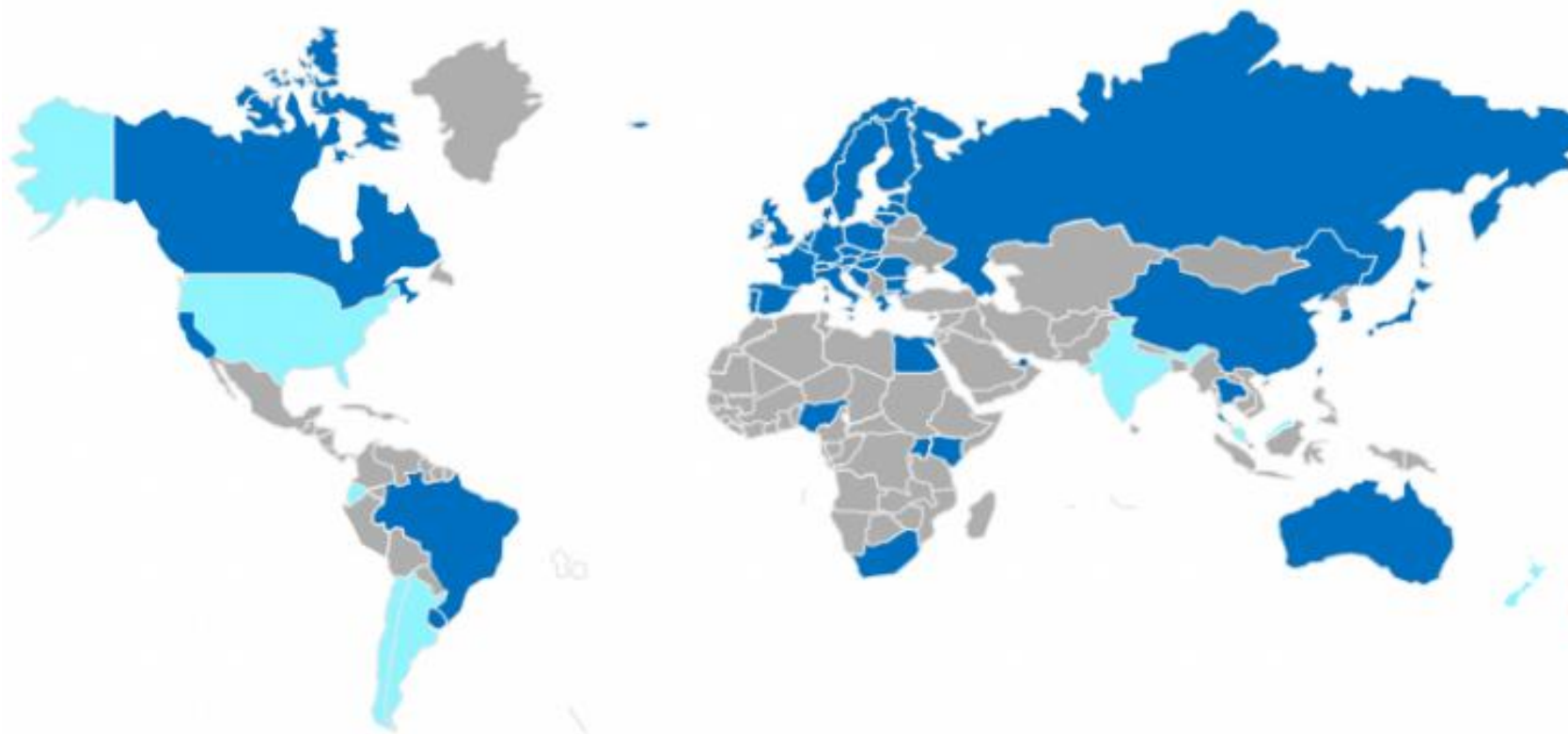
2022 Largest Privacy Fines

- ① Amazon — €746 million (\$877 million)
- ② WhatsApp — €225 million (\$255 million)
- ③ Google Ireland — €90 million (\$102 million)
- ④ Facebook — €60 million (\$68 million)
- ⑤ Google LLC — €60 million (\$68 million)
- ⑥ Google — €50 million (\$56.6 million)

Largest GDPR Fines so Far 2022



Regulatory Landscape



● Regulation in place / due to come into force

- | | | | |
|--------------|-------------|-------------|-----------|
| Australia | Brazil | California | Canada |
| China | Egypt | EU | Japan |
| Kenya | Nigeria | Russia | Singapore |
| South Africa | South Korea | Switzerland | Thailand |
| | Uganda | Uruguay | |

● Regulation under discussion

- | | | | |
|-----------|-------------|---------|-------|
| Argentina | Chile | Ecuador | India |
| Malaysia | New Zealand | USA | |

Post-Schrems II – Privacy Shield Invalidated, new SCC's

[Link](#)

China

- CSK cyber security law
- Data Security Law ("DSL") , June 2021
- Personal Information Protection Law ("PIPL") , August 2021
 - “Entrusted party” = GDPR Data Processor
 - Extra territorial
 - Lawful basis – No legitimate interest but adds non-consent basis
 - Portability – need to satisfy Cyberspace Administration of China conditions
 - Notable clauses – Defining SPD to include Financial and Location Tracking; Need consent for SPD separate from other PD
 - Fines up to 50M RMB / 7.7M USD or 5% of Prev Year Revenue

US Data Protection Agency?

The New Yorker senator said that she would introduce legislation to create a new Data Protection Agency.

“there's an imbalance between the rights of users and those who control our data.” **“Lawlessness in the data privacy space,”** she writes, “can give rise to new, unexpected forms of injustice.”

Gillibrand cites the Equifax breach as a prime example, saying that the company's **failure to properly safeguard the data** allowed hackers to make off with so much information. And yet, she says, the company “has faced few consequences and little accountability for what happened.”

Apple CEO Tim Cook has called for the US to adopt GDPR-style data privacy rules in the US, as has the House Energy and Commerce Committee.



Senator Kirsten Gillibrand calls for an EU-style Data Protection Agency, Feb. 13 2020.

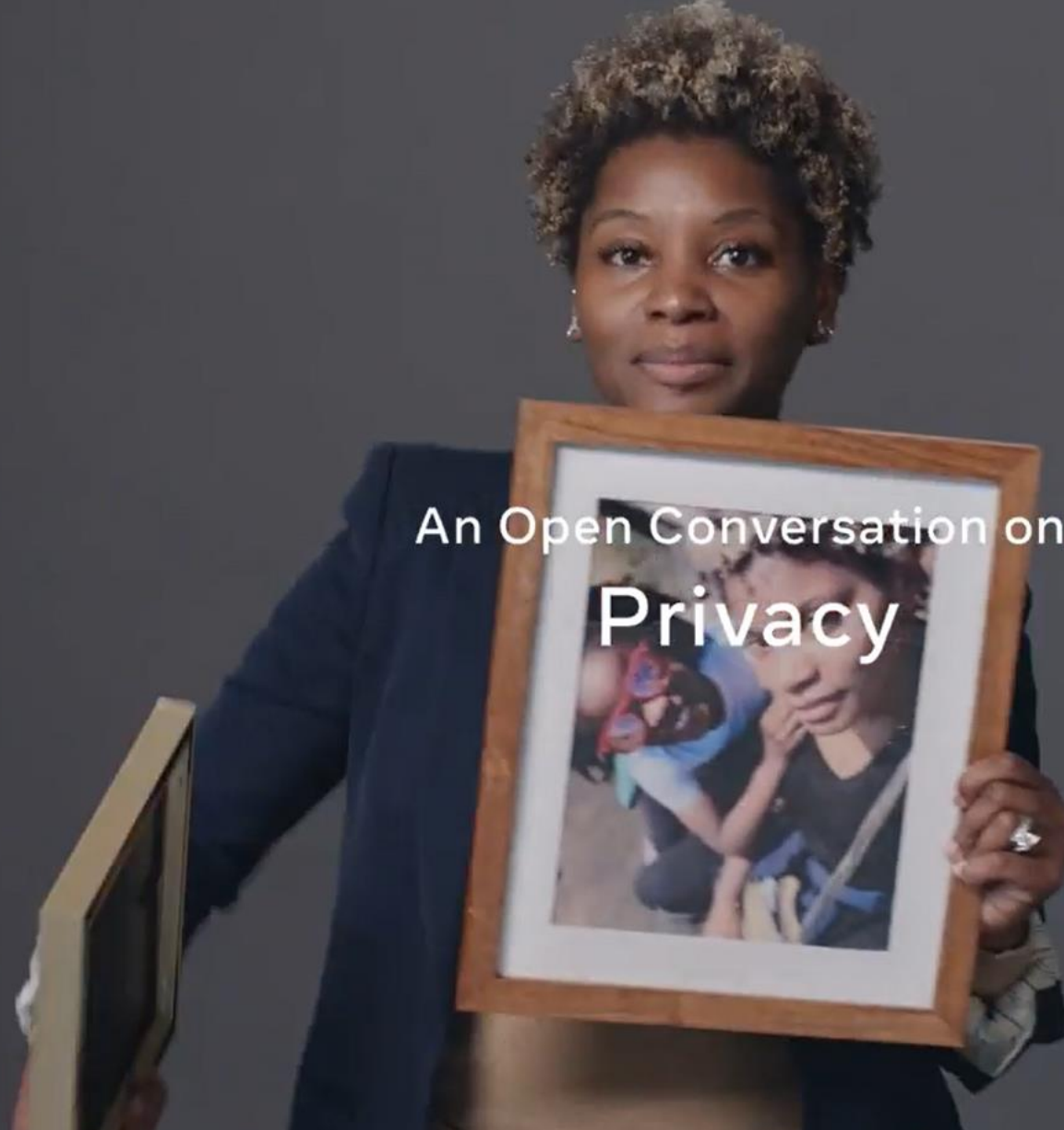
2022 – Dozens of privacy bills drafted or re-enacted

Data Breach Reporting Regs

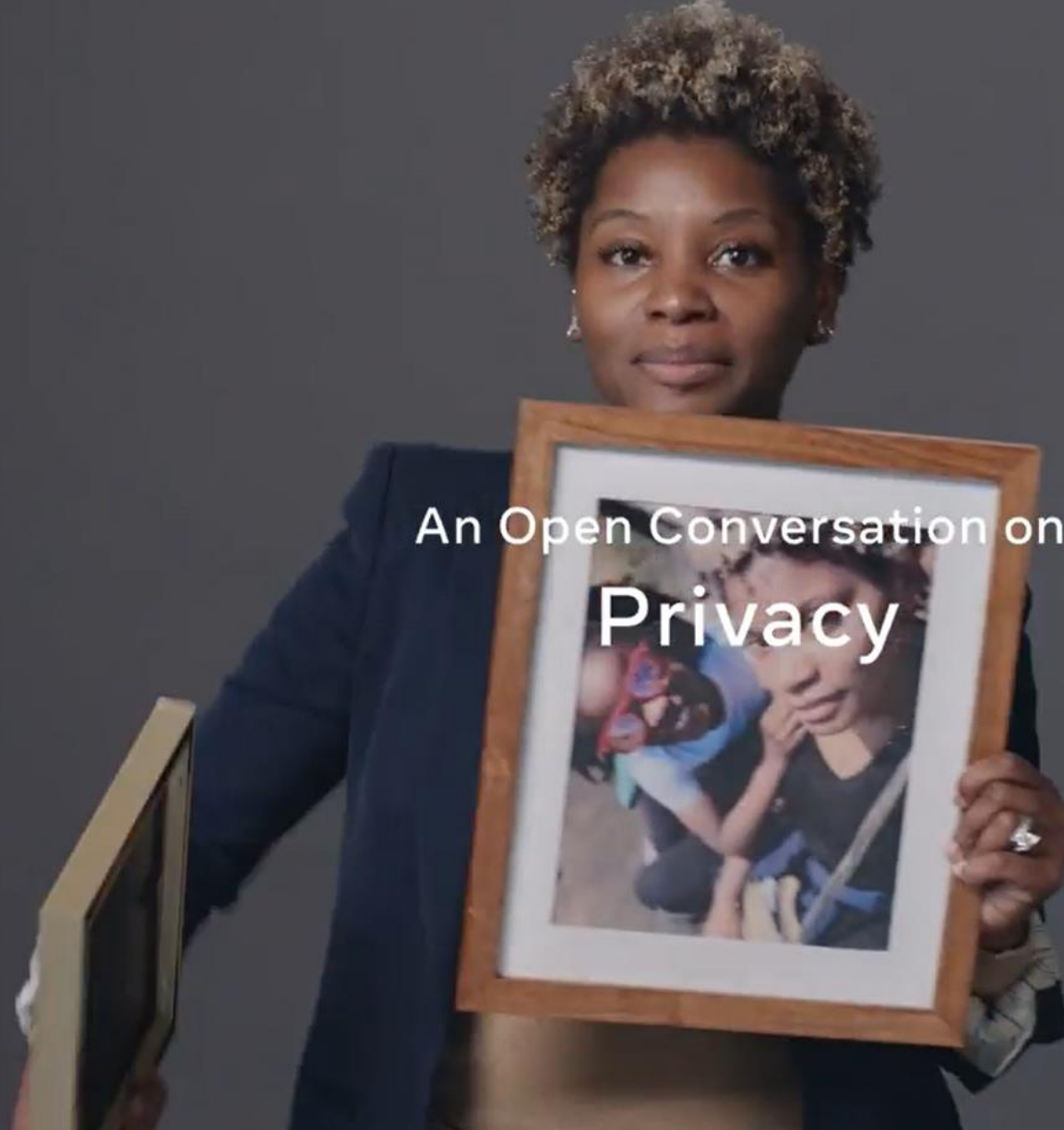
- ① State of the Union
 - Biden set out his intentions to strengthen privacy protections
- ① Senate passed a Cyber Package requiring Firms to report Hacks within 72 hours plus ransomware payments within 24 hours
- ① SACA - Strengthening American Cybersecurity Act
- ① Need for improved visibility from SolarWinds & Colonial Pipeline incidents

Privacy as Competition

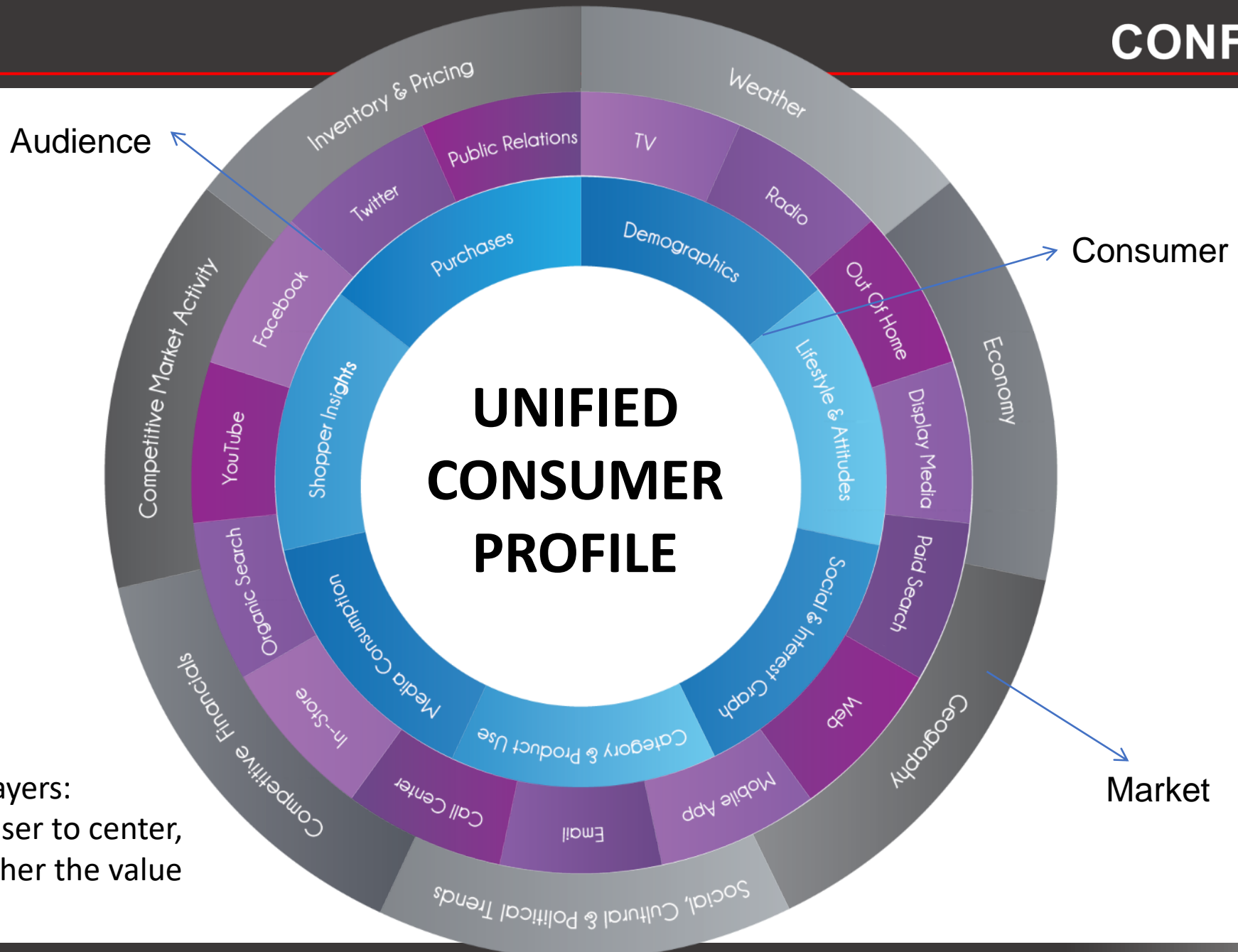
Privacy realities that vendors and suppliers help and hinder

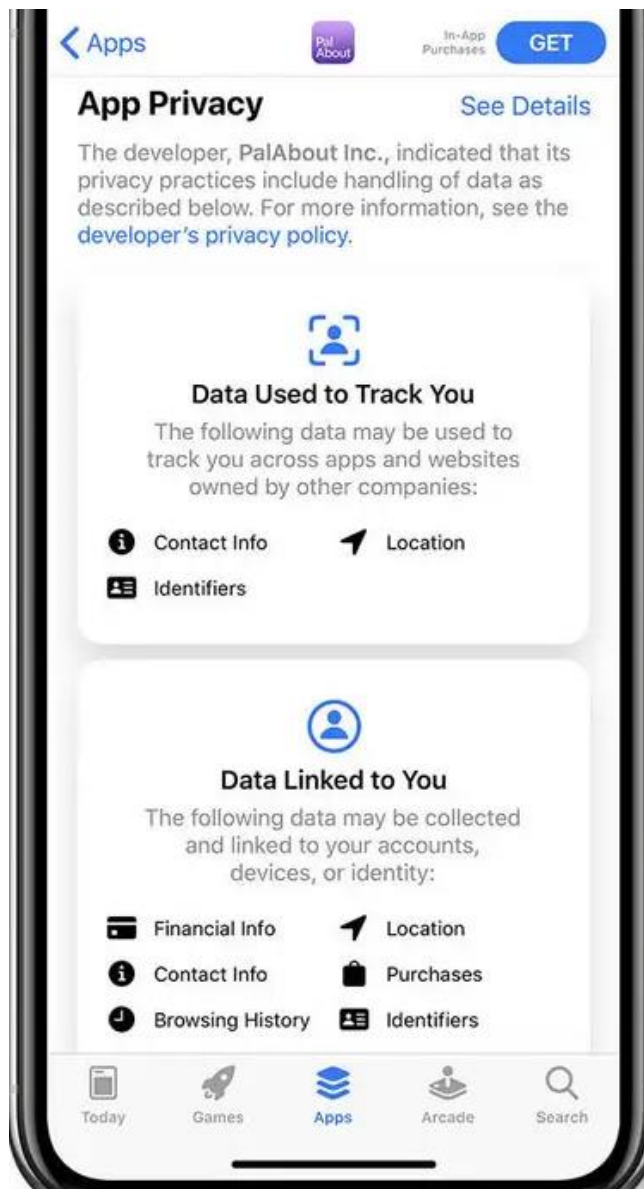
A woman with curly hair, wearing a dark blue blazer, is holding a framed photograph. The photograph shows a person in a blue shirt sitting on the ground, looking down. The text "An Open Conversation on: Privacy" is overlaid on the image.

An Open Conversation on:
Privacy

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An Open Conversation on:
Privacy





Apple App Privacy Nutrition Labels

- Announced WWDC 2020
- ATT – App Tracking Transparency
- Good for users
 - What data IS this app collecting and then sharing?
 - Unauthorized use of your phone’s mic or camera or other sensors
 - “Privacy is a human right”
 - Have you checked?
- Recommend recent [WWDC](#) Privacy Sessions

App and Website Privacy and You

Phone - IDFA

- The Identifier for Advertisers (IDFA) is a random device identifier assigned by Apple to a user's device
- Advertisers use this to track data so they can deliver customized advertising
- The IDFA is used for tracking and identifying you (without revealing personal data)
- Google has GPS ADID

Safari Browser

- Prevent Cross-Site Tracking of 3rd party cookies
- Prevent tracker pixels
- Private Relay
- Hide my Email

iPhone App Privacy Report

Facebook Claims It Will Take A \$10B Revenue Hit From Apple's iOS Privacy Lockdowns

- Apps on Apple now require users to give permission Before allowing 3rd party trackers, as well as the same in Safari
- This 3rd party cookie impact along with Apple's App Tracking Transparency is already starting to impact competitors such as Facebook

The death of cookies



- The death of “3rd party” cookies
 - 1st party – you visit a website, only that website can use its cookie + improves your website experience
 - 3rd party – usually adtech created, to tag and profile you across sites and resources
- GDPR cookie pop-up’s and now Apple’s tracking prevention has led Google to drop 3rd party cookie support in Chrome from 2022 (Safari & Firefox since 2013)
- Goodbye cookie-based advertising, Hello contextual advertising
- Google FLoG , Topics API based on interest-based advertising across 350 topics

Post Pandemic Privacy

challenges and realities of data privacy around Information Governance
during and post Pandemic

It's Endemic!

Evolving Definition of Personal Data

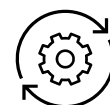
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"Of course I know that. All personal data is in the cloud these days."

Core Purposes of Privacy Regulations:



Rules to protect natural persons (individuals) when their personal data are processed



Rules on the free movement of personal data *Article 1(1) GDPR



Does not apply to deceased individuals



Does not apply to legal entities (i.e. companies)

Definition of Personal Data Keeps Evolving

GDPR Article 4 - Definitions

(1) **'personal data'**

any information relating to an **identified or identifiable natural person** ('data subject'); an identifiable natural person is one **who can be identified, directly or indirectly**, in particular by reference to an identifier such as...

a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

Definition of Personal Data Keeps Evolving

GDPR's Definition

Data from Devices

Indirect Identification

Personal Data isn't always Personal

Inferred and Derived Data

More than just "PII"

Anonymous Data

Definition of Personal Data Keeps Evolving

CCPA's Definition

broader than PII, More comprehensive than GDPR's definition

Aliases

IP addresses

Personal property records

Purchasing history

Geolocation data

Households & Devices + Internet activity

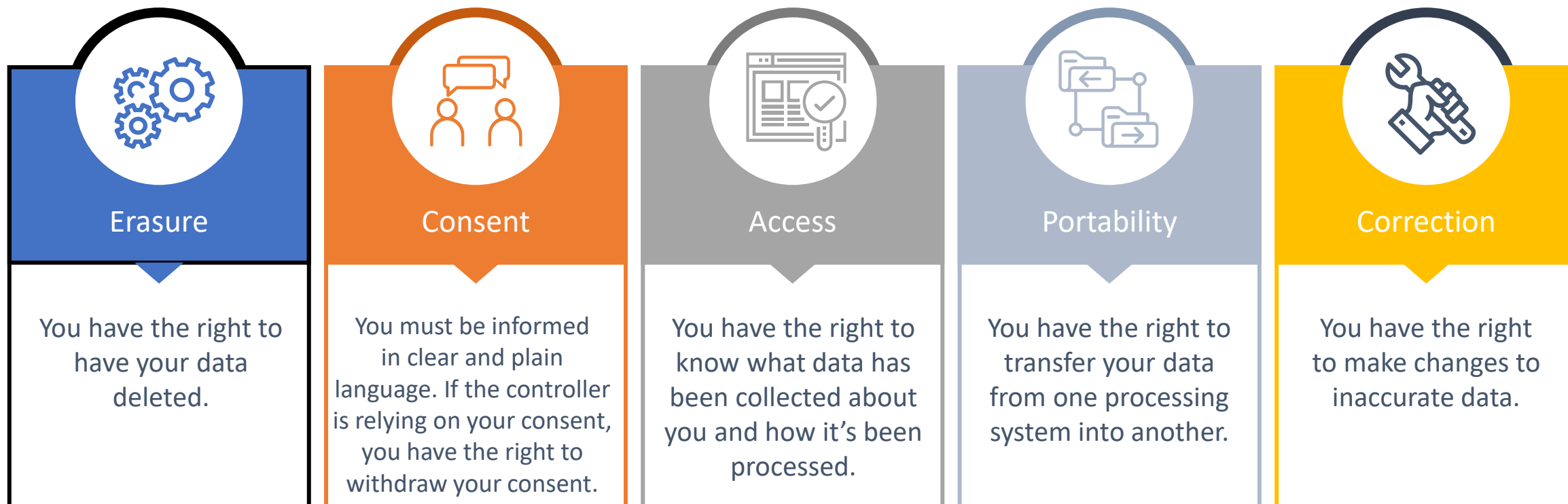
Professional and employment information

Audio, electronic, visual, thermal, olfactory or similar information

Inferences drawn from the above

Your Privacy Rights

📍 Data Subject / Consumer Rights



The year we gave up on privacy?

- The Pandemic came and many of us threw usual privacy concerns around our data out of the window
- Giving away plenty of Personal Data to get what we needed – food delivery, groceries, Uber, Zoom, State digital contact tracing tools...
- The Pandemic put so many more people, and their data, online – and accelerated market movement to ever more online
 - 60% US consumers now buy groceries online, up from 36% 2019

COVID and HIPAA

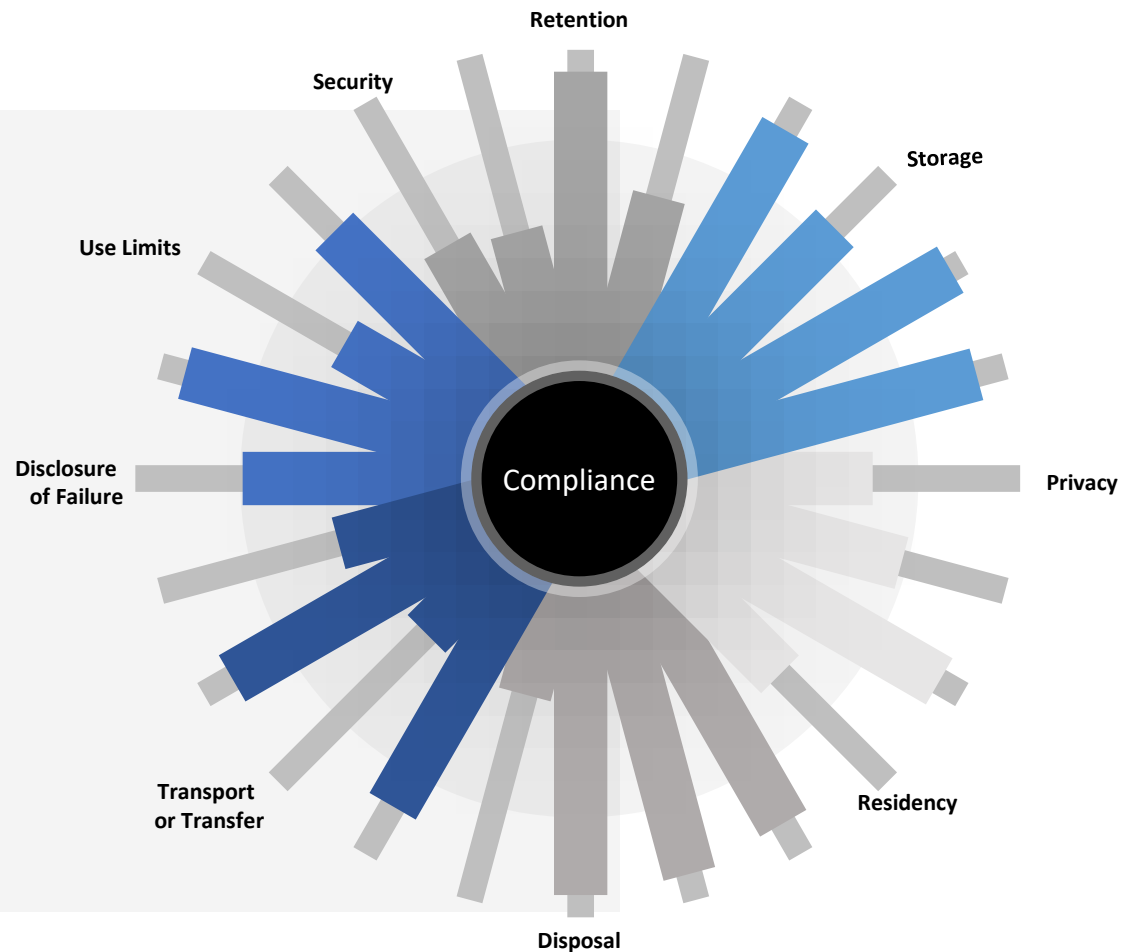
- ⊙ Companies requiring vaccination disclosures for employees and visitors
- ⊙ State and City mandates – e.g. NYC – for vaccinations at private businesses
- ⊙ Pandemic public health data not HIPAA
- ⊙ Employee monitoring and keycards
- ⊙ Still subject to State data breach notification laws where health data is PD

Privacy

- Your key InfoGov Pillar*
- Where to start?*

The evolving compliance opportunity

Many different stakeholders will be impacted by the requirements but need to act in sync to lower organization risk and costs.



Privacy

Existing and pending global privacy compliance laws

Retention

Heritage retention and records-keeping requirements

Residency

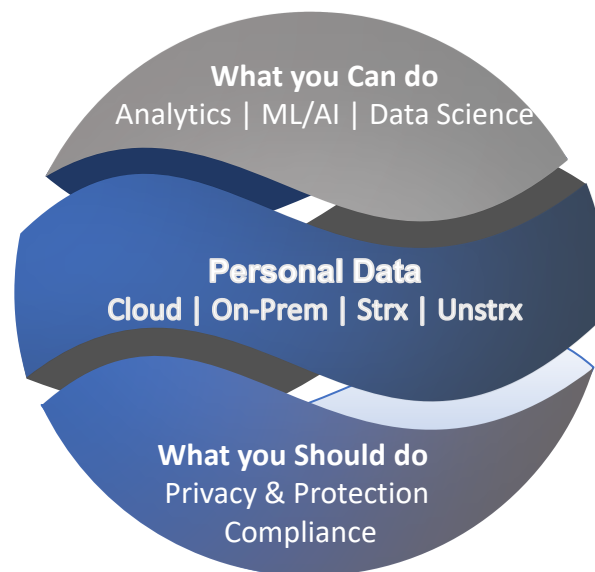
Growing volume of regulations that include keep-in-country mandates

Reporting

Both compliance reporting and data breach obligations continue to grow

Risk now drives What to do With Data

With privacy now a boardroom and C-level risk management issue, driven by regulations such as GDPR and CCPA, the regulatory compliance landscape is accelerating complexity, cost and risks across the business.



Value creation

Agile businesses want to distill, derive and act across their data using the latest accelerators.

Global scale

It's about All your data, whatever and wherever it is - knowing, managing and using it appropriately.

Regulatory complexity

Before acting on any data, you should ensure you're first on top of compliance.

How to embrace privacy compliance

1. **Compliance**

Organizational and technical measures across people, policy, process and education change management, demonstrating transparent accountability

2. **Personal Data**

Knowing what you have, where and why, know the lineage, lifecycle and purpose and be able to timely respond to data subject and consumer rights

3. **Data protection**

Protecting the data you have, across cybersecurity, encryption, access controls & monitoring through to incident breach readiness and reporting



Information Governance....

- Retention
- Residency
- Privacy
- Security
- Legal Holds
- Disposal
- Anonymization

Embracing privacy for transformation

What are Your Control Frameworks?



- Risk categories, Client Audit needs?
- 3rd Party Vendor risk assessment & mgmt.

Privacy Compliance Building Blocks

Prescriptive stepping stones journey with actionable outcomes to compliance

Discovery

Know your relevant data: Understand where personal data & metadata resides around a central catalogue

Records of Processing

Capture your processing activities on personal data and demonstrate progression towards privacy specific requirements

Purpose & Choice

Help you manage the purposes of processing by consumer/data-subject, execute and meet their rights including consent & opt-outs

Lifecycle Mgmt

Protect personal data: Safeguard data by applying anonymization and minimization techniques via automatable policy execution for archiving & retention

Subject Rights

Enable your organization to comply to consumer/data-subject rights requests within the timescales defined

Privacy Readiness Journey



Key Foundational Elements for Privacy & Records and Information Management



Collaborative relationships with allies and stakeholders



Records retention policies



Training and awareness



Data classification and controls



Information security



Data inventory/data mapping/file plans

- More than just what data (types) are where (in each data source)
- Also includes for what purpose are we collecting, using and storing that data?



Governance guidelines for new technologies

- Integration into application development processes

Relationship Building/ Stakeholder Management



How do these relationships strengthen IG or privacy efforts?

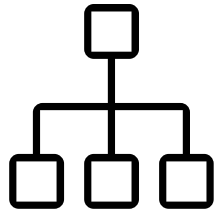


What relationships are most important?



How do you go about developing them?

Data Inventory/Data Mapping

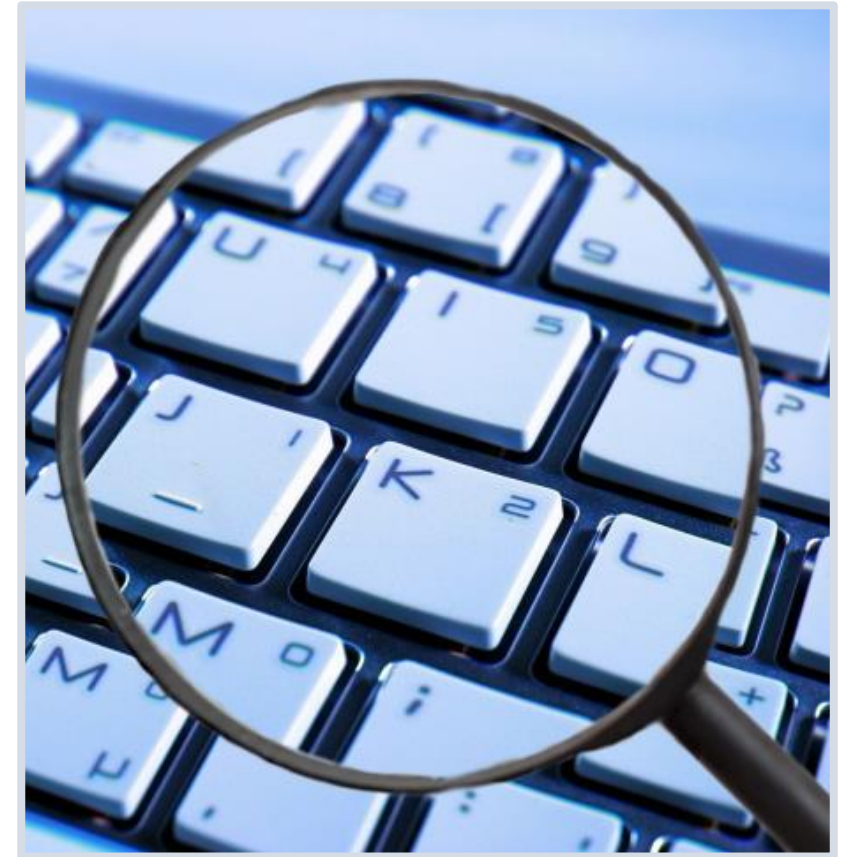


What elements do you capture in an inventory or data map?



Are some elements different for privacy versus a records management inventory?

Instilling a Culture of Privacy



Privacy Impact Assessments



“an analysis of how information is handled: (i) to ensure handling conforms to applicable legal, regulatory, and policy requirements regarding privacy; (ii) to determine the risks and effects of collecting, maintaining, and disseminating information in identifiable form in an electronic information system; and (iii) to examine and evaluate protections and alternative processes for handling information to mitigate potential privacy risks”



Do you need any or all of the personal data?
Strive for data minimization.



Review and address any international data transfer needs



Get approval through an information governance checklist (ensure any new tool or service can tick the boxes of “how does it handle retention / legal-holds / disposal AND privacy rights” etc.)



Review with your business leaders, local or global Data Privacy Officer or the Information Governance team

Privacy By Design

based on seven “foundational principles”:

1 Proactive not reactive;
preventative not remedial

2 End-to-end security – full
lifecycle protection

3 Privacy as the default
setting

4 Visibility and transparency –
keep it open

5 Privacy embedded
into design

6 Respect for user privacy –
keep it user-centric

7 Full functionality –
positive-sum, not zero-sum



[Apple Maps Image Collection](#)

[Making Siri smart without endangering Privacy](#)

https://en.wikipedia.org/wiki/Privacy_by_design

Conclusion

Close coordination between RIM and Privacy initiatives can benefit your organization's ability to govern its information. Coordination can:



Broaden the network
of allies and
stakeholders



Strengthen &
Automate your
organization's data
map



Build the business case
for investment in file
and data analysis tools



Improve security and
compliance of
systems of record



Risk Centric -
Increase the
profile of your
program

Additional Privacy Resources



[International Association of Privacy Professionals](#)



[Privacy laws around the world](#)



[Privacy Impact Assessment template](#)

[Privacy newsflashes](#)



[US state privacy law comparison](#)

[US Privacy Guide](#)

Thank You

Let's connect & discuss further
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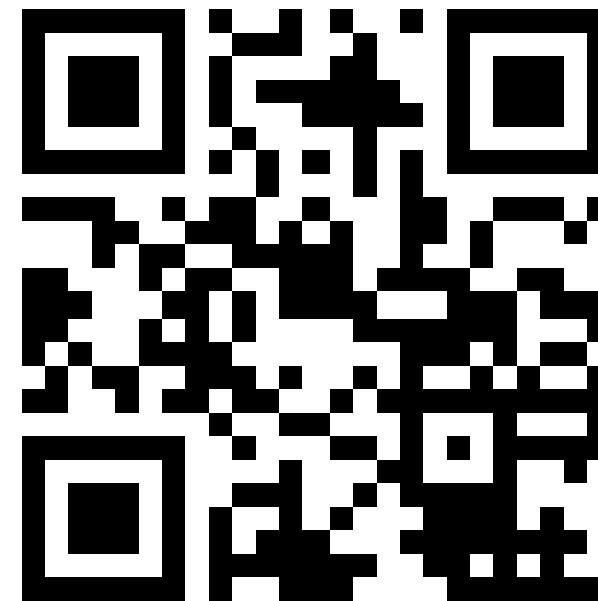
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- 2021 ARMA NOVA Vice President
- 2020 Nominated for the UK ICO's Practitioner Award for Excellence in Data Protection
- 2019 ARMA NOVA Member of the Year
- 2018 Top 50 Social Media Influencers across Legal, Compliance and RegTech, by Thompson Reuters
- 2016 & 2017 Information Governance Expert Of The Year Finalist Winner, InfoGovCon