

The logo for Bradley, featuring the word "Bradley" in a bold, black, sans-serif font. A horizontal red line is positioned directly beneath the letters "a", "d", and "l".

**Bradley**

# 2021 Privacy Predictions

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# Speakers



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**Global shift to privacy in industry, regulatory, and consumer expectations**

01

**Privacy legislation will be more narrowly focused in the short term, but has the potential for broad privacy changes in the longer term**

02

**Greater scrutiny from consumers and regulators in an evolving privacy climate**

03

## Crystal Ball Predictions for 2021



# Global Shift to Privacy

## Industry Changes

- Google's pursuit of alternatives to third-party cookies for advertising ("FLoC")
- Apple's privacy "nutrition" label requirement in the App Store
- Apple's iPhone privacy feature with opt-in options for ad-tracking by blocking the collection of IDFA (Identifier for Advertisers)
- Google announcement (yesterday!) that they will no longer use information such as IDFA in its iOS apps

## Regulatory Changes

- California Consumer Privacy Act
- California Privacy Rights Act (2023)

## Consumer Expectations

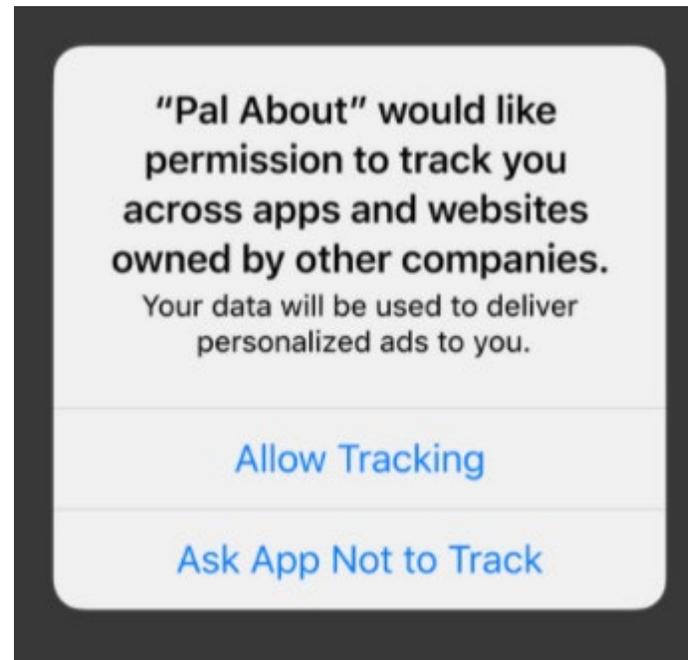
- Privacy companies debuted privacy as a service (i.e. Duck Duck Go, MeWe, and SayMine)

# FLoC

- Replaces third party cookies
- User placed in cohort with thousands of people based on browsing history
  - Done by the browser, cohort updated as user browses
- Methods of assigning cohorts not yet defined
- W3C's thoughts: *“This is a monopolistic player attempting to consolidate their dominance by degrading the Open Web using privacy and collaboration as a veil of legitimacy.”*

# Apple App Tracking

- Requires companies to adhere to certain restrictions on behavior that could be considered “tracking”
- Removes ID for advertising (“IDFA”)



# Privacy Legislation

## Short Term (< 1 year)

- Federal digital privacy law that would regulate facial recognition, artificial intelligence, and/or geolocation tracking
- State laws that focus on specific privacy issues (i.e. Mass. Ballot Q1, NY “BIPA”)
- State “copycat” CCPA legislation—candidates include Washington, Minnesota, and New York have been reintroduced in the 2021 legislative session
- Global privacy legislation—possibly China’s Personal Information Protection Law (PIPL) and additional laws out of the EU

## Longer Term (> 1 year)

- Federal comprehensive privacy legislation
- “Critical Mass” of state comprehensive privacy legislation
- State “copycat” CPRA legislation
- Internet of Things (IOT) legislation
- Additional legislation relating to privacy and cybersecurity in financial services, healthcare, and critical infrastructure

# Federal Privacy Law

- Federal data privacy regulation is on the way — that's a good thing (Jan. 22, 2021 – IAPP)
- With 117th Congress sworn in, will federal privacy law follow? (Jan. 4, 2021 – IAPP)
- Temper expectations on a U.S. federal privacy law in 2021 (Dec. 30, 2020 – Compliance Week)
- Insider Intelligence predicts that Congress will finally pass a federal data privacy law in 2021 (Dec. 28, 2020)

## COPRA

- No state law preemption
- Private right of action

## USCDPA

- State law preemption
- No private right of action



# Enforcement and Litigation

## Litigation

- Courts will make important and novel legal decisions and precedent around CCPA, including:
  - Is CCPA retroactive?
  - Does the private right of action apply only to data breaches?
  - What is reasonable security under CCPA?

## Enforcement

- Uptick in FTC enforcement under Biden administration
- International cross-border transfers will be more highly scrutinized under Schrems ii

# Litigation Trends

- More breaches = more litigation
  - 390 reported to CA Attorney General in 2020 vs. 251 in 2019 (55% increase)
  - National reports of 270% increase in data breaches between 2019 to 2020



# Questions?



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