



2021 Privacy Predictions

January 28, 2021

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

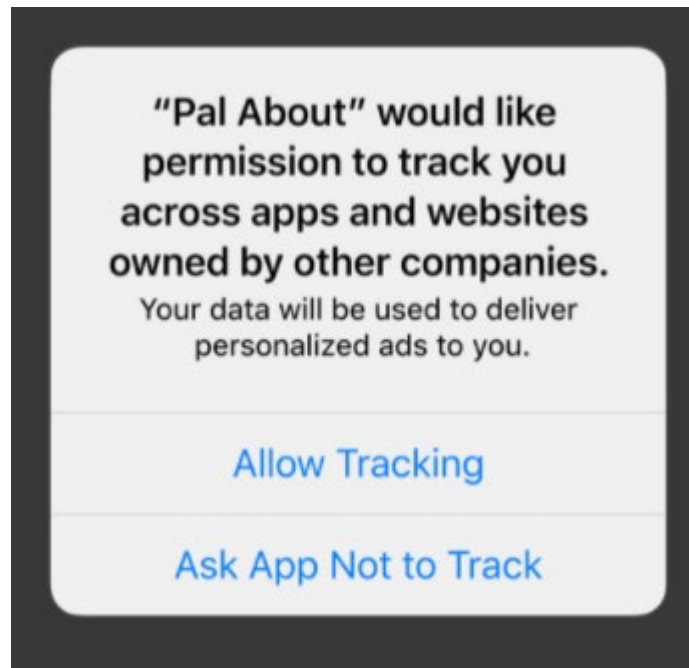
- Privacy companies debuted privacy as a service (i.e. Duck Duck Go, MeWe, and SayMine)

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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