

# Survey of Fortune 500 Companies' Privacy Representations

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## Introduction

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With the enactment of the European General Data Protection Regulation (“GDPR”) and the California Consumer Privacy Act (“CCPA”), companies have been forced to cope with a shifting privacy landscape that impacts the data that they collect online and offline from customers, visitors, and employees. In the context of the CCPA, poor drafting, combined with a lack of practical regulatory guidance and the prospect of imminent judicial challenges, make it a particularly difficult statute for compliance.

At BCLP we have the honor to represent dozens of companies across a wide cross-section of industries including B2B, B2C, SaaS, retail, eCommerce, manufacturing, pharmaceuticals, and agricultural. Given our unique position in the market, we believe that we have an obligation to provide our clients – and the privacy community as a whole – with accurate benchmarking to help them make informed compliance decisions.

To help identify trends, BCLP randomly sampled 10% of the Fortune 500. The sample includes a broad cross-section of companies. The metrics provided in this report reflect the public disclosure of corporate privacy practices with a specific focus on CCPA requirements.

Sincerely,



David Zetoony  
Co-Chair Global Data Privacy and Security Team  
Bryan Cave Leighton Paisner LLP

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## Executive Summary

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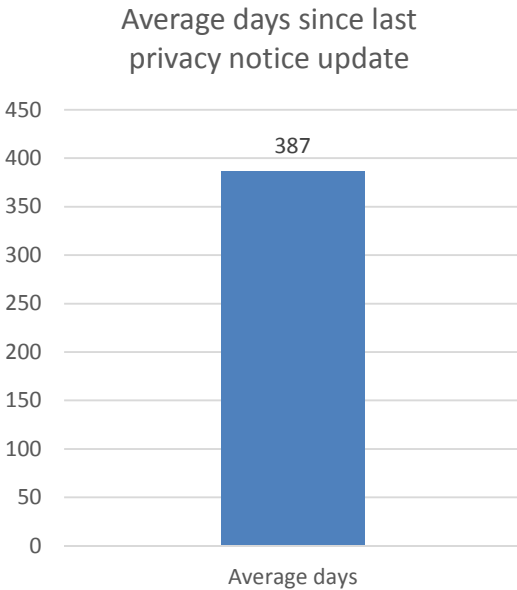
There is no one strategy for disclosing privacy practices to consumers, or for complying with the federal and state laws – including the CCPA – that govern data privacy. The following summarizes current industry trends:

- Privacy notices are, on average, over a year old.
- The majority of companies have not updated their privacy notices for the CCPA.
- Privacy notices that reference enumerated categories are evenly split between using tables and lists.
- 10x more privacy notices disclose that they do not sell personal information than disclose that they do sell personal information.
- The majority of privacy notices are silent or unclear about selling practices.
- The vast majority of privacy notices do not include a “Do Not Sell” option.
- Those companies that are disclosing the sale of information are complying with the CCPA’s requirement to provide a “Do Not Sell” option.
- Only a small number of companies that don’t sell personal information are still providing a “Do Not Sell” option.
- Most companies are not including a “Do Not Sell” link on their homepage.
- Some companies include the “Do Not Sell” link, but it is non-functional.
- Most companies offer access and deletion rights.
- The average quantity of behavioral advertising cookies on a corporate homepage is 6.74
- Most companies are not deploying a cookie notice or banner.
- Those that do are split in terms of whether to use an opt-in, notice, or deemed consent banner.

## Section 1: Age of Privacy Notices

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Companies routinely update their privacy notices to account for new legal requirements, changes in business practices, and changes in industry standards and practices. The average age of a privacy notice indicates the number of days since the notice was last updated:



Privacy notices are, on average, over a year old.

## Section 2: Percentage of Privacy Notices Updated for CCPA

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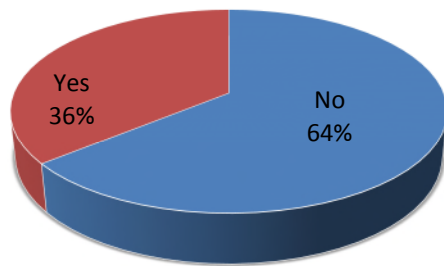
A privacy notice (sometimes referred to as a “privacy policy” or an “information notice”) is a document published by a company that includes, among other things, a description of what types of personal information the company collects, how the company uses that information, and with whom the company shares information. While most companies historically maintained an online privacy notice, the CCPA requires companies to provide a privacy notice to all California residents about whom they collect information (e.g., in-store and online), and to include specific provisions within the privacy notice including:

- A list of the “enumerated categories” of personal information collected by the company;
- A list of the “enumerated categories” of personal information shared by the company with third parties for business purposes;
- A disclosure about whether personal information is “sold” by the company;
- Disclosures concerning the rights of Californians to access, delete, or object to the sale of their personal information; and

- Methods for submitting such requests.

The following indicates the percentage of companies that, as of the time of publication, had updated their privacy notices to attempt to account for the requirements of the CCPA.

Has the company privacy notice been updated for the CCPA?



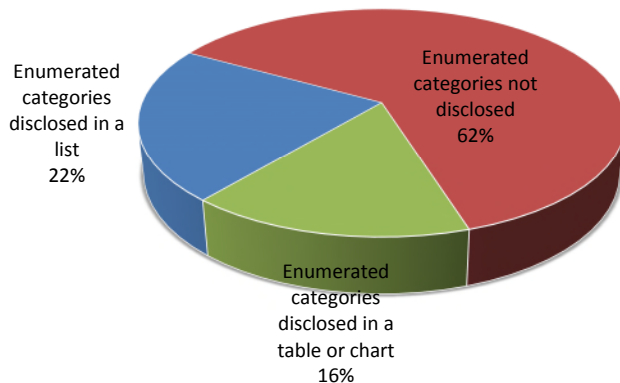
The majority of companies have not updated their privacy notices for the CCPA.

### Section 3: Disclosure by “Enumerated Category”

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The CCPA states that a company should provide within its privacy notice lists of the categories of personal information that it has collected,<sup>1</sup> sold,<sup>2</sup> and disclosed<sup>3</sup> for business purposes. The statute also states that those lists should refer to the “enumerated category or categories” of “personal information” referenced within the statute.<sup>4</sup> The term “enumerated category” refers to a list of specific data fields identified within the CCPA. The following indicates the percentage of companies that, as of the time of publication, had disclosed – via a list or a chart – the “enumerated categories” identified within the CCPA:

Disclosure by "Enumerated Category"



Privacy notices that reference enumerated categories are evenly split between using tables and lists.

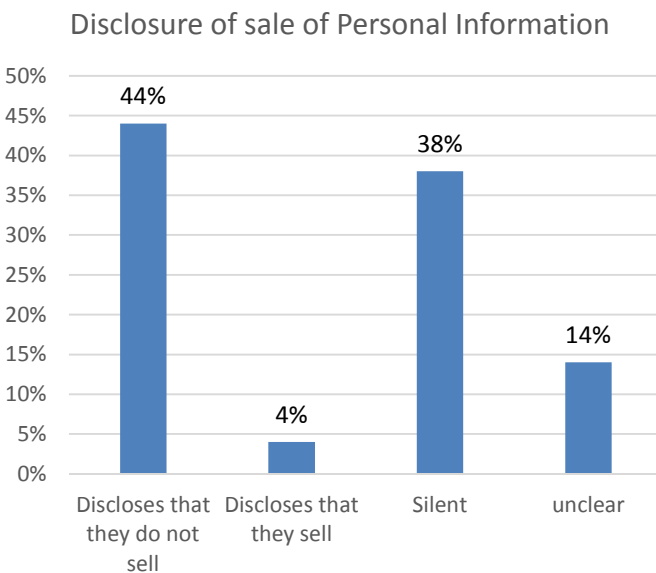
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<sup>1</sup> [Cal. Civil Code 1798.130\(a\)\(5\)\(B\).](#)  
<sup>2</sup> [Cal. Civil Code 1798.130\(a\)\(5\)\(C\)\(i\).](#)  
<sup>3</sup> [Cal. Civil Code 1798.130\(a\)\(5\)\(C\)\(ii\).](#)  
<sup>4</sup> [Cal. Civil Code 1798.130\(c\); Cal. Civil Code 1798.140\(o\)\(1\).](#)

## Section 4: Disclosure of Selling Practices

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The CCPA requires that a company affirmatively state whether it does, or does not, “sell” information. The term “sell” is broadly defined under the statute to include more than transferring personal information in return for payment. It includes “disclosing, disseminating, making available, transferring, or otherwise communicating” personal information “to another business or a third party for monetary or other valuable consideration.”<sup>5</sup> The CCPA’s broad definition in combination with ambiguity concerning what courts will consider as “valuable consideration,” has led to uncertainty among companies concerning the types of information sharing that might be considered a “sale” under the statute.<sup>6</sup> The following indicates the percentage of companies that, as of the time of publication, disclosed that they “sell” personal information:



10x more privacy notices disclose that they do not sell personal information than disclose that they do sell personal information.

The majority of privacy notices are silent or unclear about selling practices.

## Section 5: Do Not Sell Option and Link

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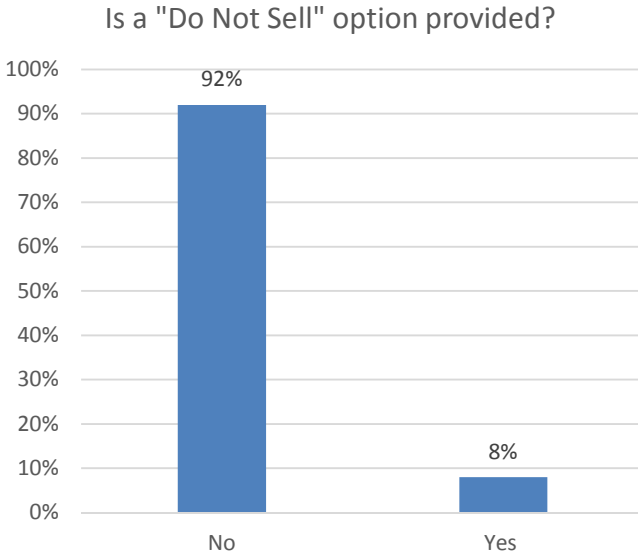
The CCPA states that if a company sells personal information it must provide California residents with the ability to opt-out of the sale of the information.<sup>7</sup> In other words, it must disclose to Californians that they have the “right to opt-out” and provide them a mechanism to do so. The following indicates the percentage of companies that provide Californians with some form of Do Not Sell option:

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<sup>5</sup> [Cal. Civil Code 1798.140\(t\)\(1\).](#)

<sup>6</sup> [Cal. Civil Code 1798.130\(c\); Cal. Civil Code 1798.140\(o\)\(1\).](#)

<sup>7</sup> [Cal. Civil Code 1798.120\(a\), \(b\).](#)



The vast majority of privacy notices do not include a "Do Not Sell" option.

Among the subset of companies that disclose that they do sell personal information the following indicates the percentage of companies that offer a "do not sell" option to Californians:

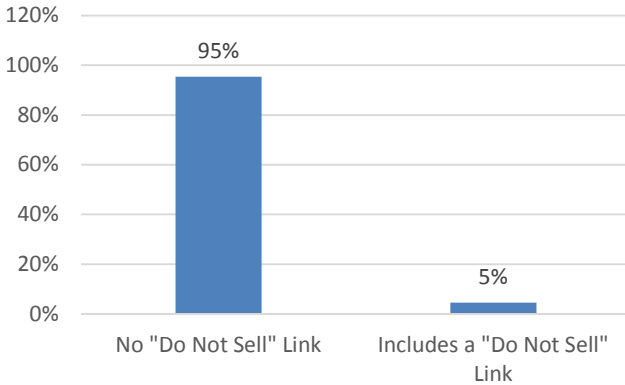


Those companies that are disclosing the sale of information are complying with the CCPA's requirement to provide a "Do Not Sell" option.

Among the subset of companies that disclose that they do not sell personal information some still purport to offer a "do not sell" option. For these companies, however, it is unclear what, if anything, the Do Not Sell option is intended to do if selected by a California resident:



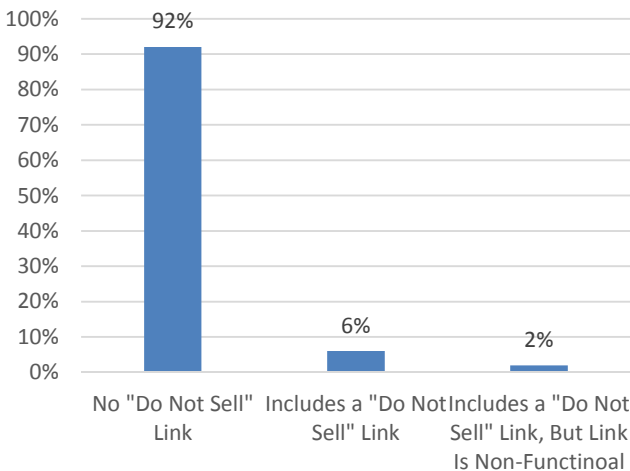
Among companies that claim that they do not sell personal information what percentage offer a "Do Not Sell" mechanism?



Only a small number of companies that don't sell personal information are still providing a "Do Not Sell" option.

In addition to providing a do not sell option, the CCPA requires that companies that sell personal information provide a "Do Not Sell My Personal Information" link on both the company's homepage and within the company's privacy notice that takes California residents to an internet web page that enables the opt-out of such sales.<sup>8</sup> Companies that do not sell personal information are not required to post a "Do Not Sell Link."<sup>9</sup> The following indicates the total percentage of companies that include a do not sell link on their homepage:

Percentage of companies that have placed a "Do Not Sell Link" on their homepage?



Most companies are not including a "Do Not Sell" link on their homepage.

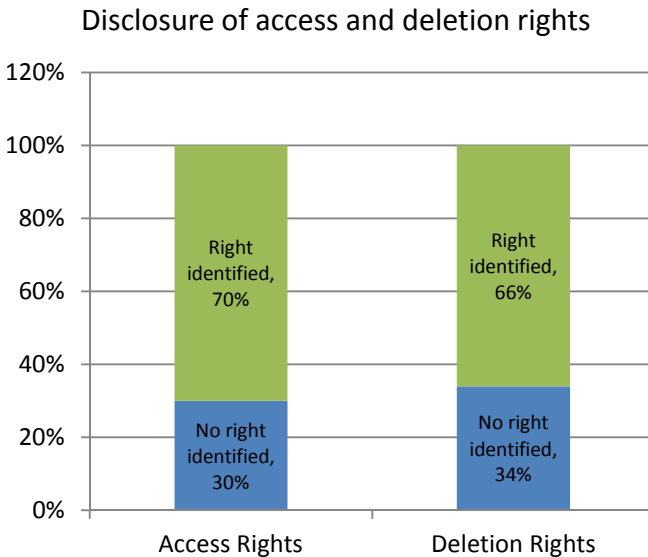
Some companies include the "Do Not Sell" link, but it is non-functional.

<sup>8</sup> [Cal. Civil Code 1798.135\(a\)\(1\); Cal. Civil Code 1798.135\(a\)\(2\)\(A\).](#)  
<sup>9</sup> [Cal. Civil Code 1798.120\(b\).](#)

## Section 6: Data Subject Rights (e.g., Access and Deletion)

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The CCPA gives Californians the ability to request that a company provide them with access to their personal information or that a company delete the information that it holds about them. The following indicates the percentage of companies that disclose access and deletion rights:



Most companies offer access and deletion rights.

## Section 7: Cookie Banners and Notices

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Many companies utilize cookies, pixels, tags, and other forms of tracking technologies provided by third parties to identify individuals that visit their website, and to advertise to them when they leave their website. There is ambiguity about whether permitting a third party behavioral advertiser to track California residents on a website does, or does not, constitute the “sale” of personal information under the CCPA. Companies have responded to that ambiguity in a variety of ways including, but not limited to:

- Limiting their use of tracking technology to only third parties that agree to be “service providers” under the CCPA.
- Posting a notice on their website that asks California users to consent to the deployment of third party behavioral advertising technology (an “opt-in cookie notice”).
- Posting a notice on their website that informs California users about the use of third party behavioral advertising technology and provides California users the ability to opt-out of such use on a device-specific and browser-specific basis (an “opt-out cookie notice”).

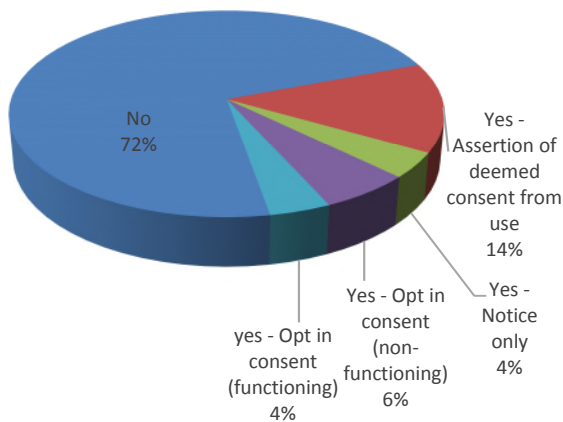
- Posting no cookie notice, but treating the use of third party behavioral advertising cookies as the “sale” of information and permitting Californians to opt-out of such sales via a do not sell mechanism.

The following indicates the quantity of third party behavioral advertising cookies deployed on company homepages:

Greatest Quantity	Smallest Quantity	Average Quantity
30	0	6.74

The following indicates the percentage of companies that have posted a cookie notice on their homepage:

Deployment of Cookie Notice on homepage



Most companies are not deploying a cookie notice or banner.

Those that do are split in terms of whether to use an opt-in, notice, or deemed consent banner.

## Methodology

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BCLP generated a report in December 2019 of the companies within the Fortune 500. A computer random number generator identified 10% of the total population (the “Survey Population”). The privacy notices and homepages of the Survey Population were examined on **December 26, 2019**, using Chrome for iOS Version 79.0.3945.88 (official build) (64 bit). Cookies were identified and classified as “advertising” using Ghostery for Chrome Version 8.4.4. All websites were visited from an IP address physically associated with Los Angeles, California.

Note that while this report identifies patterns and trends, it does not indicate what percentage of companies are in compliance with the CCPA. Strategies for compliance with the CCPA are fact intensive and require an examination of multiple factor in order to determine whether the Act applies to a company and, if so, what a company is required to do pursuant to the Act.

## About the Author

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Mr. Zetoony is a partner in the Boulder, Colorado, office of Bryan Cave Leighton Paisner, LLP, an international law firm. Mr. Zetoony co-leads the firm's global data privacy and security practice and represents companies around the world on data privacy and security issues. He has helped hundreds of companies design their strategy for CCPA and GDPR compliance.

Mr. Zetoony graduated *cum laude* with a dual degree in history and policy studies from Rice University in Houston, Texas and received his juris doctorate from the University of Virginia School of Law in Charlottesville, Virginia. He has served in various leadership roles within the privacy and data security community including as a co-chair for the Colorado chapter of the International Association of Privacy Professionals.

Mr. Zetoony frequently speaks and writes on issues of domestic and international data privacy and security law. He received a JD Supra Readers' Choice Award in 2017, 2018, and 2019, and has been repeatedly named as the top "thought leader" in data privacy by Lexology. He was named a Cybersecurity & Data Privacy Trailblazer by the National Law Journal in 2016. In addition to his data privacy and security practice, he has received several awards for his *pro bono* contributions including the Pro Bono Partner of the Year Award from the Catholic Charities of the Archdiocese of Washington, D.C., and the Commitment to Justice Award from the Central American Resource Center

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