

Practical Implementation of the California Consumer Privacy Act (“CCPA”) Proposed Regulations

Sharon Klein | kleins@pepperlaw.com

Alex Nisenbaum | nisenbauma@pepperlaw.com

Pepper Hamilton LLP
—Attorneys at Law

October 23, 2019 | www.pepperlaw.com

Audio

The screenshot displays the Cisco Webex Events interface. At the top, the title bar reads "Cisco Webex Events" with standard window controls. Below the title bar is a menu with "File", "Edit", "View", "Communicate", "Participant", "Event", and "Help". The main content area shows a video player with a red text overlay: "Audio should stream automatically on entry through your computer speakers". Below this, a banner for "Pepper Hamilton Webinar" is visible. At the bottom of the video player, an "Audio Broadcast" control panel is shown, displaying "24.7 Kbps" and buttons for "Pause" and "Stop". The "Pepper Hamilton LLP Attorneys at Law" logo is also present. On the right side, a "Participants" panel lists "Panelist 1" (Brian Dolan (Host)) and "Attendee" (Brian Dolan (me)). The bottom of the interface features a toolbar with icons for mute, video, chat, and other functions.

File Edit View Communicate Participant Event Help

Cisco Webex Events

Connected

BD
Brian Dolan (Host)

Viewing Pepper Hamilto... ▾

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Pepper Hamilton Webinar

Audio Broadcast

24.7 Kbps

Pause Stop

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BD Brian Dolan (Host)

BD Brian Dolan (me)

Q&A

Audio

Cisco Webex Events

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Viewing Pepper Hamilto...

If you cannot stream audio, click phone icon and a phone number will be sent to you

Pepper Hamilton Webinar

Audio Broadcast
24.7 Kbps
Pause Stop

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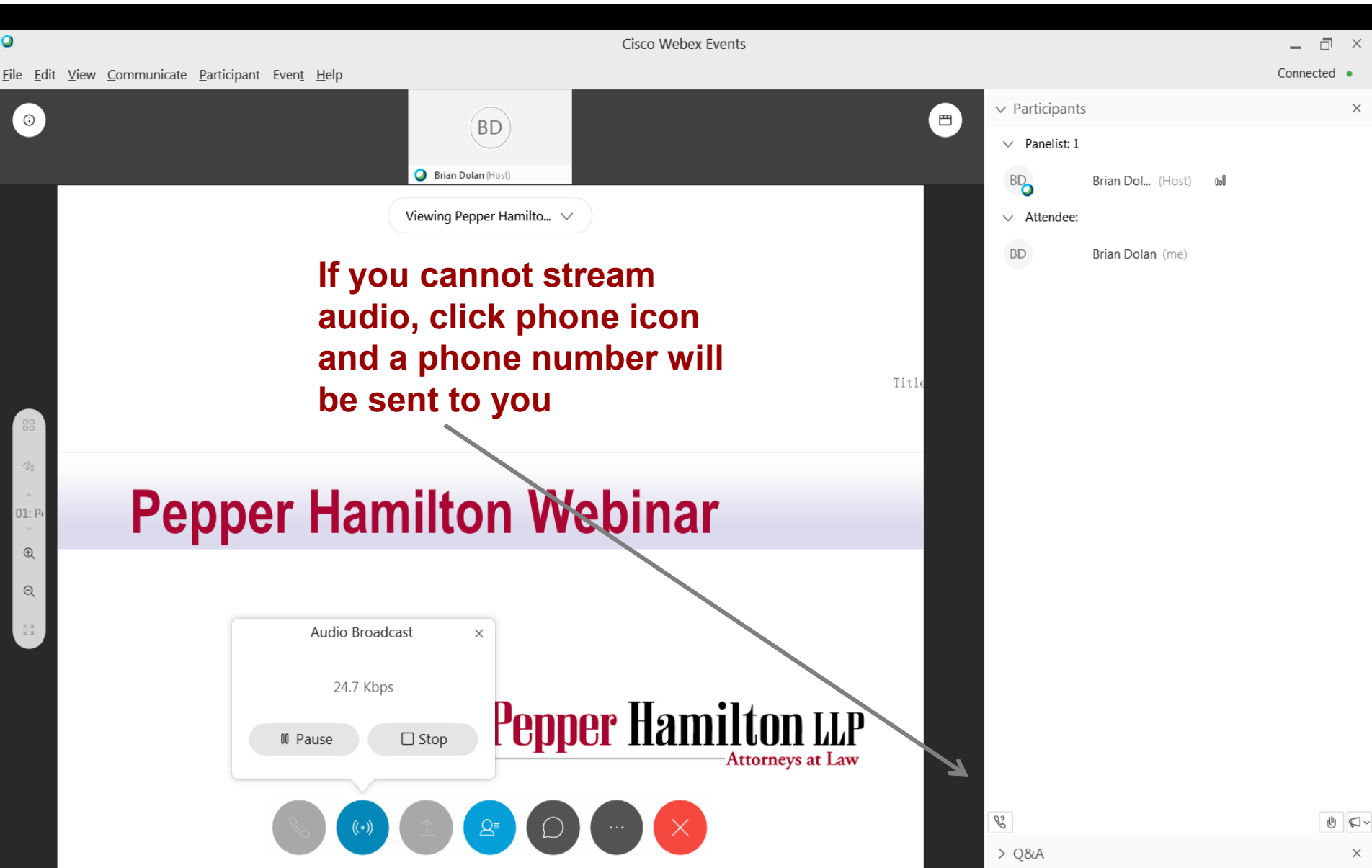
Participants

- Panelist 1
- Attendee:

BD Brian Dolan (Host)

BD Brian Dolan (me)

Q&A



Q&A

Cisco Webex Events

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Click here to send questions to us

Pepper Hamilton Webinar

Audio Broadcast
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Pause Stop

Pepper Hamilton LLP
Attorneys at Law

Participants

- Panelist: 1
 - BD Brian Dol... (Host)
- Attendee:
 - BD Brian Dolan (me)

Q&A

The webinar will be starting at approx. 12:00pm ET / 9:00 AM PT.

There is currently no audio until we start.

We are on mute and will be starting in a few minutes.

Sharon R. Klein

Partner, Commercial Department

Phone: 949.567.3506

kleins@pepperlaw.com

- ▶ Chair, Privacy, Security and Data Protection practice
- ▶ Handles a variety of corporate and intellectual property matters, in particular, helping technology and outsourcing clients grow and succeed
- ▶ Advises businesses on planning, drafting and implementing privacy, security and data protection policies and “best practices,” compliance with applicable laws, regulations and rules, and crisis management and litigation strategies for non-compliance
- ▶ Certified as an information privacy professional by the International Association of Privacy Professionals (IAPP).



Alex C. Nisenbaum

Associate, Health Sciences

949.567.3511

nisenbauma@pepperlaw.com

- ▶ Member Pepper's Privacy, Security and Data Protection Group and Technology Group
- ▶ Practice is focused on data privacy and security and information technology transactions matters
- ▶ Advises clients on data privacy and information security laws and regulations, including compliance with HIPAA/HITECH, Gramm-Leach-Bliley, cross-border data transfer, state data protection and breach notification requirements and development and implementation of privacy policies and "best practices"
- ▶ Certified as an information privacy professional (CIPP/US & CIPP/E) by the International Association of Privacy Professionals (IAPP).



Agenda

- ▶ Where we've been
 - CCPA
 - Amendments
- ▶ AG proposed regulations
- ▶ Practical takeaways

CCPA

- ▶ Broad exposure - personal information / sale
- ▶ Consumer rights
 - Right to Know
 - Right to Deletion
 - Right to Opt-Out of “Sale”
 - Right to be Free from Discrimination
- ▶ Effective January 1, 2020
 - Private right of action for data breaches
 - Enforcement by the Attorney General July 1, 2020

Amendments

- ▶ August 2018
 - Extend rulemaking period / delay AG enforcement
 - Revisions to exemptions
- ▶ September 2019
 - One-year (partial) exemption for HR data and business-to-business customer personnel data
 - Clarifying edits to definition of personal information
 - Authorize business to require a consumer that maintains an account to submit verifiable consumer request through that account

AG Proposed Regulations

- ▶ Released on October 10, 2019
- ▶ Coverage:
 - Notice to consumers
 - Submission and Response to consumer requests
 - Verification for consumer requests
 - Rules for personal information of minors
 - Non-discrimination; financial incentives
- ▶ Four public hearings from December 2-5
- ▶ Written comments accepted until December 6

Notice to Consumers

Notice to Consumers

- ▶ At or before point of collection
 - Online
 - Offline (paper version/prominent signage)
- ▶ Right to opt-out of sale
- ▶ Notice of financial incentive
- ▶ Privacy policy

Personal Information

- ▶ **“Personal information”** means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household
 - Far broader than typical US law (GDPR-esqe)
- ▶ **Categories** include classic contact information, IP address, biometric information, geolocation data plus:
 - “Commercial information” including purchase records and consuming histories or tendencies
 - “Internet or other electronic network activity information”
 - “Audio, electronic, visual, thermal, olfactory, or similar information”
 - “Professional or employment-related information”
 - “Inferences drawn” from any personal information

Privacy Policy

Required Disclosures

- ▶ Categories of personal information collected in preceding 12 months
- ▶ For each category of personal information collected:
 - Sources of the information
 - Business purpose for the information
 - Categories of third parties with whom the business shares the information

Privacy Policy

Required Disclosures

- ▶ Whether or not the business has disclosed or sold personal information to third parties for a business purpose in the preceding 12 months
- ▶ Categories of personal information disclosed or sold to third parties for a business purpose in the preceding 12 months
- ▶ Whether or not the business sells the personal information of minors under 16 without affirmative authorization
- ▶ Explain consumer has right to opt-out and provide notice of right to opt-out or link to the notice

Opt-out Notice

- ▶ “Do Not Sell” link on homepage / download or landing page of mobile app
- ▶ A business is exempt from providing opt-out notice if:
 - It does not, and will not, sell personal information while opt-out notice is not posted and
 - Business states in privacy policy it does not and will not sell personal information
- ▶ Consumers who submit personal information while no opt-out notice is posted deemed to have validly submitted opt-out request
- ▶ Definition of “sale”

Privacy Policy

Required Disclosures

- ▶ Description of a consumer's rights to:
 - Request disclosure of personal information collected, disclosed, or sold
 - Request deletion
 - Opt-out of the sale of personal information
 - Nondiscrimination for exercising CCPA rights

Privacy Policy

Required Disclosures

- ▶ Instructions on how to submit a verifiable consumer request to know and delete
- ▶ Description of verification process, including any information the consumer must provide
- ▶ How a consumer can designate an authorized agent to make requests
- ▶ Contact information
- ▶ Date of last update



Privacy Policy

Mechanics

- ▶ Must be:
 - In plain, straightforward language
 - In readable format, including on smaller screens
 - Available in multiple languages in which the business ordinarily provides contracts and other information to consumers
 - Accessible to consumers with disabilities
 - At or before the collection of personal information

Privacy Policy

Mechanics

- ▶ “Conspicuous” link using the word “privacy” on the business’ homepage / mobile app download or landing page
- ▶ If business maintains California-specific description of consumers’ privacy rights on its website, then privacy policy must be included there



Offline Notice

- ▶ Paper / prominent signage
 - Refer to web link to CA privacy rights
 - QR code



Consumer Requests

Submission of Requests to Know/Delete

- ▶ Two or more designated methods required:
 - Toll-free number and interactive webform (right to know)
 - At least one method must reflect how the business primarily interacts with consumers
 - If business does not interact directly with consumers, at least one method must be online
- ▶ Two-step deletion process
- ▶ Can't ignore procedurally deficient requests

Verifiable Consumer Requests

Response Times

- ▶ Must confirm receipt of request to know / delete within 10 days of receiving a request
- ▶ Must respond to requests to know/delete within 45 days of receiving a request
 - If necessary, additional 45 days to respond (for a maximum of 90 days) as long as notice and explanation of reason is given

Responding to Requests

To Know

- ▶ Unable to verify identity? – Business may provide more generalized response
- ▶ Security of personal information/prohibited from providing certain sensitive data
- ▶ Response to requests for categories must be individualized
- ▶ 12 month look back runs from date the business receives the request

Responding to Requests

To Delete

- ▶ Unable to verify identity? - Must be treated as a request to opt-out
- ▶ What is deletion?
 - Permanently and completely erasing personal information except on archived or back-up systems
 - De-identifying the personal information
 - Aggregating the personal information
- ▶ Tell consumer how information was deleted
- ▶ Provide consumer with information if request is denied
- ▶ A la carte deletion option

Responding to Requests

To Opt-Out of Sale

- ▶ Two or more designated methods, including interactive webform available via clear and conspicuous link
- ▶ Treat user enabled privacy controls as opt-out request
- ▶ A la carte opt out
- ▶ Act on opt-out request within 15 days
- ▶ Opt-out requests do not need to be verifiable consumer requests

Verification of Requests

General Principles

- ▶ Must document verification method
- ▶ Wherever feasible, match personal information already maintained by the business
- ▶ Avoid collecting certain sensitive data, unless necessary
- ▶ Avoid collecting new personal information
- ▶ More sensitive data means more stringent verification process
- ▶ Can use a third-party identity verification service

Verification of Requests

Accountholders / Non-accountholders

- ▶ Accountholders
 - Existing account authentication practices
- ▶ Non-accountholders
 - Request for categories requires “reasonable degree of certainty” (2 data points)
 - Request for specific pieces requires “reasonably high degree of certainty” (3 data points + declaration)
 - Level of verification for requests to delete depends on sensitivity

Practical Takeaways

- ▶ Continue data mapping
- ▶ Operationalize vendor management
- ▶ CCPA privacy policy
- ▶ Document plan for compliance
- ▶ Safeguard against data breaches

Practical Takeaways

- ▶ Build processes for requests, responses and verification
- ▶ If personal information is not needed, do not collect it or minimize collection / storage
- ▶ Deidentify personal information where possible
- ▶ Monitor all developments relating to the CCPA and the proposed regulations and copycat legislation

Questions & Answers

For more information, visit

www.pepperlaw.com

Sharon R. Klein

kleins@pepperlaw.com | 949.567.3506

Alex C. Nisenbaum

nisenbauma@pepperlaw.com | 949.567.3511