

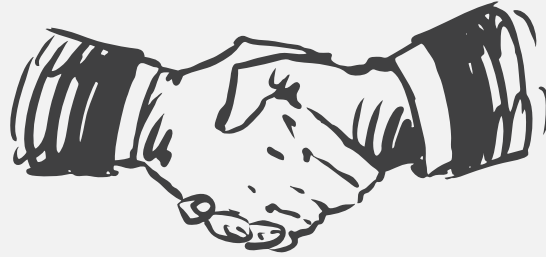


**REDCL<sup>VER</sup>**  
ADVISORS

What every digital marketer  
should know about privacy

April 2021

# Legal Disclaimer



*The materials available in this presentation are for informational purposes only and not for the purpose of providing legal advice. Red Clover Advisors, LLC is not a law firm, and if you need legal advice, please contact a competent attorney to provide appropriate legal advice with respect to your specific concern.*





# How to be a savvy digital marketer in today's ever flowing sea of privacy laws





“Privacy is a fundamental human right  
and at the core of everything we do.”  
- Apple, Inc.





“*It’s a matter of trust.*”  
- Billy Joel



# Why privacy matters?



# Common Challenges



**Overwhelmed**



**Confusion**



**Limited  
resources**



# Examples of Marketing & Privacy working together







Website where a user's data was going to be automatically shared with a third party. If that happened, it would be "sold" and subject to CCPA's do not sell requirements



What did the company do?  
Added the check-box "do you want to have this data shared?"



Plus we had the right privacy notice links





Company wanted to re-engage people who opted out of their email list and were still customers of the organization



What did the company do? In their account, on the regular website, and in the allowable space of a transactional email, pushed users to a landing page with valuable content plus created an opt-in campaign from that landing page



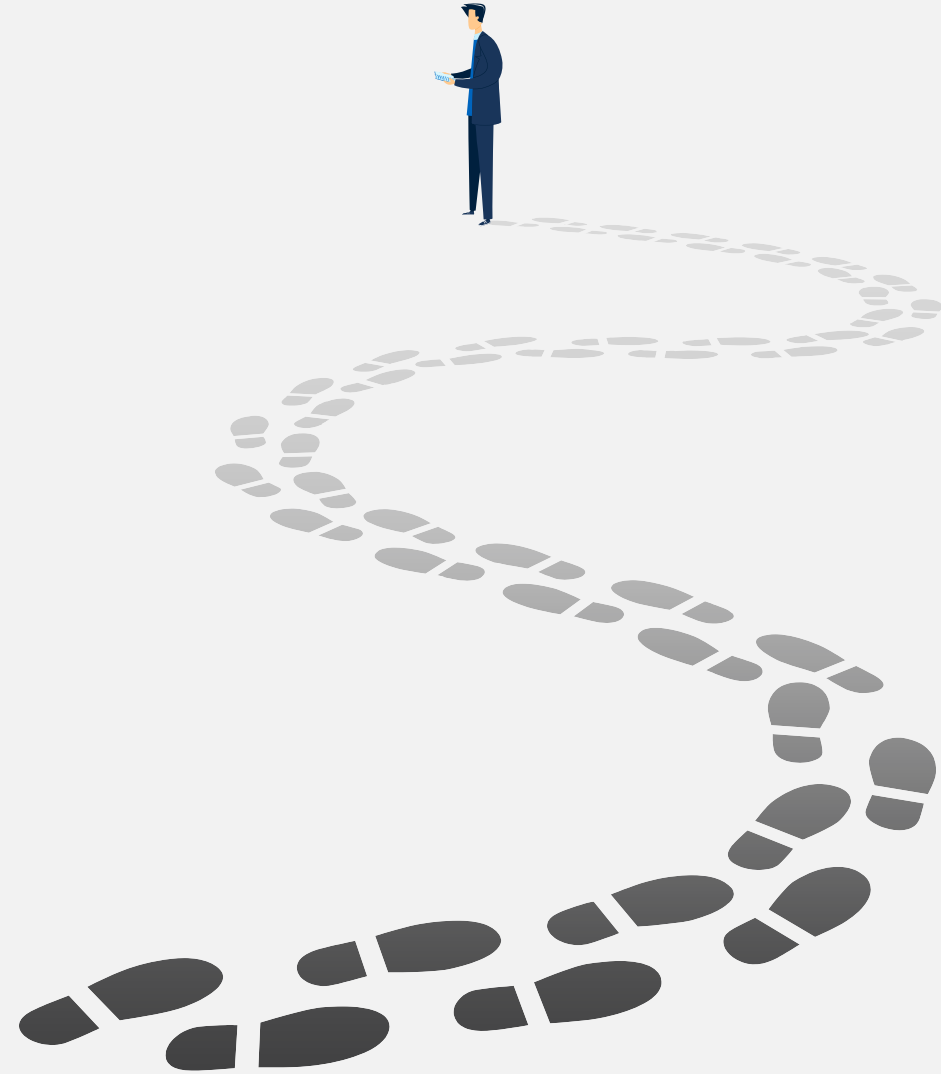
Plus ensured compliance with applicable privacy laws



# Where We Are Today



**Put yourself in the  
shoes of your customer**





**Where are we  
being tracked?**



Three in ten US users deploy ad-blocking software that can prevent companies from tracking online activity

39%

of consumers are likely to walk away from a company that requires them to provide highly personal data to conduct business with them (*Akamai*)

Consumers want to see data security/privacy made a core corporate value, no third-party sales of their data

39%

the option to choose how their data is used

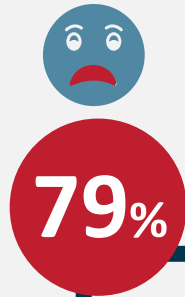
37%

and clarity about how they can set privacy settings

36%



Roughly eight-in-ten adults (79%) said they were at least somewhat **concerned** about how companies were using the **data collected** about them



In 2019, 52% of Americans said they had decided not to use a product or service because they were worried about how **much personal information** would be collected about them

of consumer respondents said that they **trust consumer-packaged-goods** or media and entertainment companies



# What happens when you don't comply





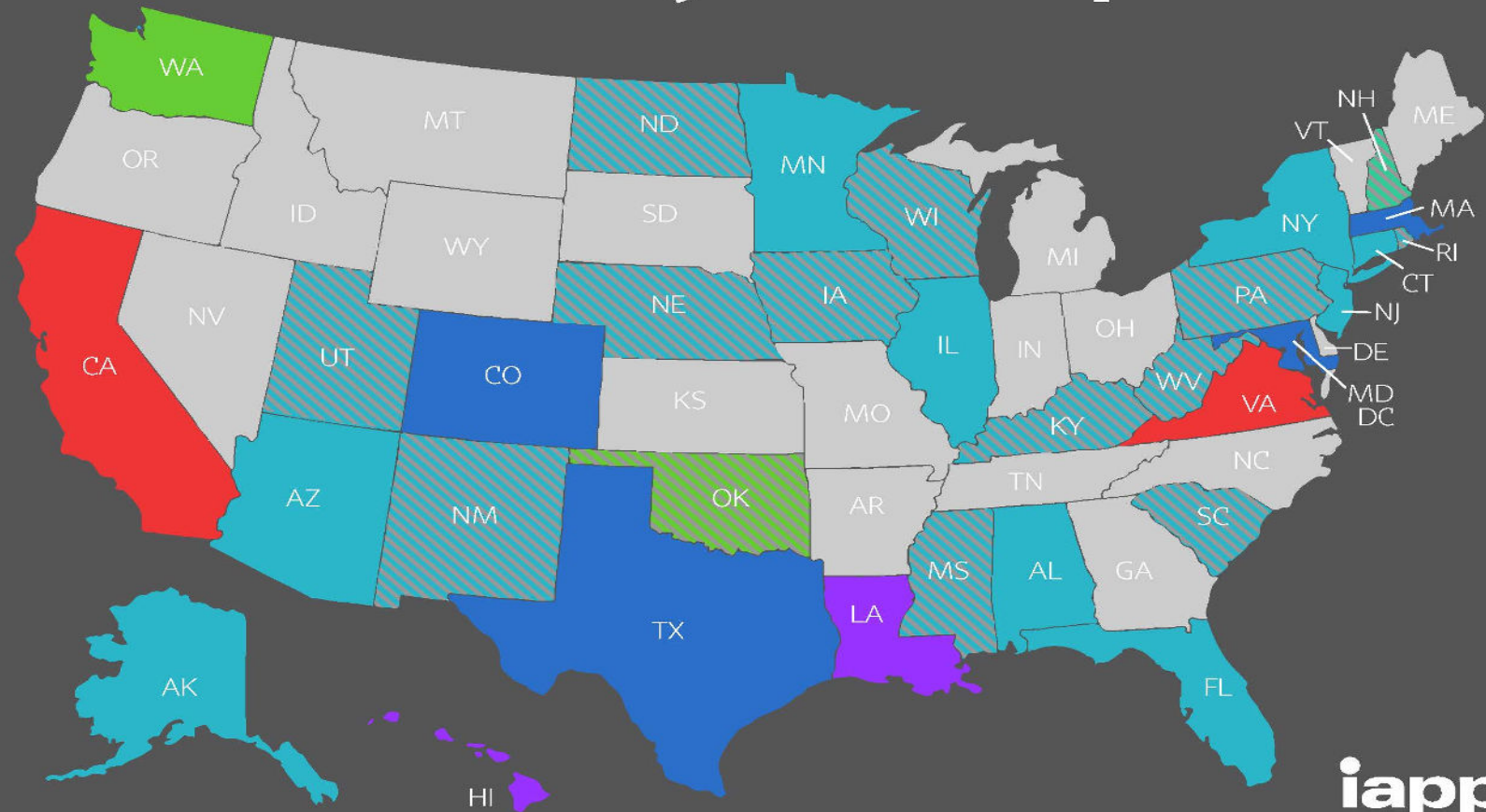
# State Comprehensive-Privacy Law Comparison



- Task Force Substituted for Comprehensive Bill
- Bill Died in Committee or Postponed
- None

## Statute/Bill in Legislative Process:

- Introduced
- In Committee
- Cross Chamber
- Cross Committee
- Passed
- Signed



Last updated: 4/12/2021

iapp

# What does this mean for Marketers?



# Know the data

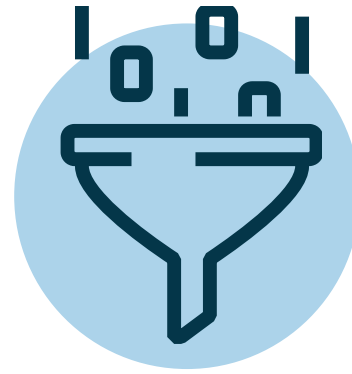




**What data do  
you have?**



**How do you  
use data?**



**Where is it  
stored?**



**Who do you  
share it with?**



# Common Digital Marketing Mistakes





Don't know which  
countries recipients  
are from





Not knowing which laws  
are opt-in versus opt-out  
**AND** bundling consent





# Misinterpretation and / or misapplication of the requirements







Not clear on which  
data is sold and shared  
OR CCPA/CPRA/VCDPA's  
requirements



# Selling vs Sharing

## Selling

“any arrangement involving an exchange of value ("consideration") between the business and a third party or another company for the personal information. These include the act of disclosing or making available personal information for monetary or other valuable consideration.”

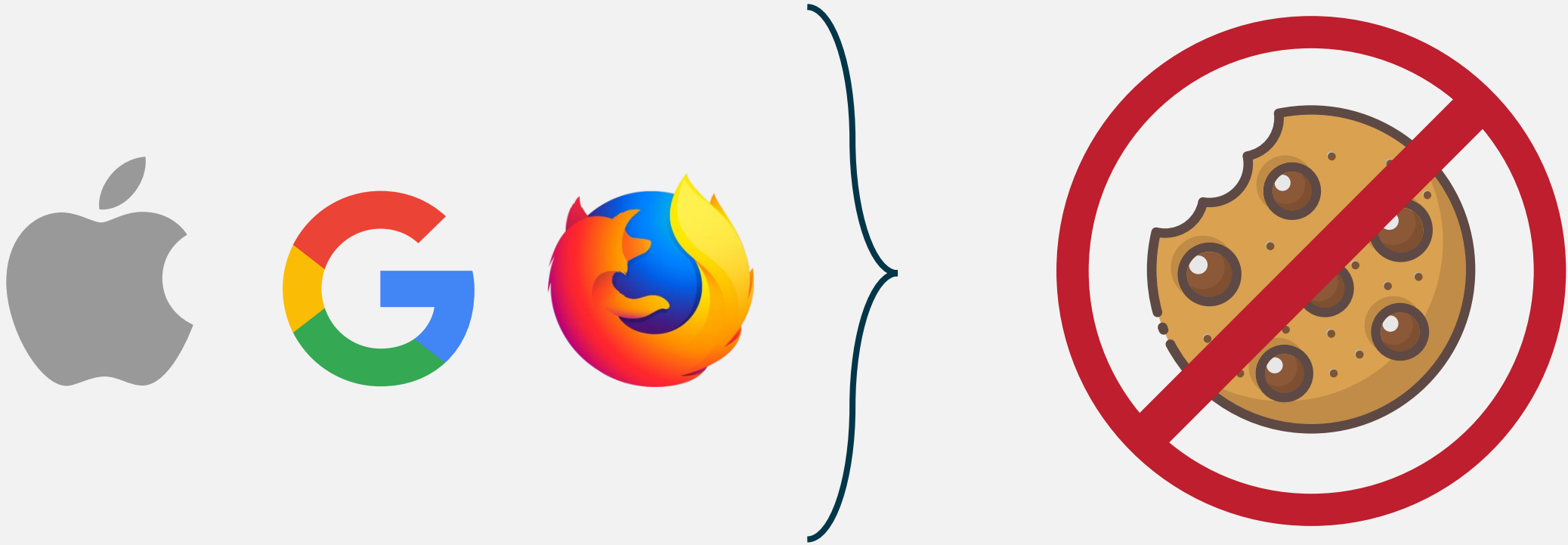
## Sharing

“**sharing**, renting, releasing, disclosing, disseminating, **making available**, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer’s personal information by the business to a third party for cross-context behavioral advertising, whether or **not for monetary** or other valuable consideration, including transactions between a business and a third party for **cross-context behavioral advertising** for the benefit of a business in which **no money is exchanged**.”



# Cross Device Tracking





Shhhh ...



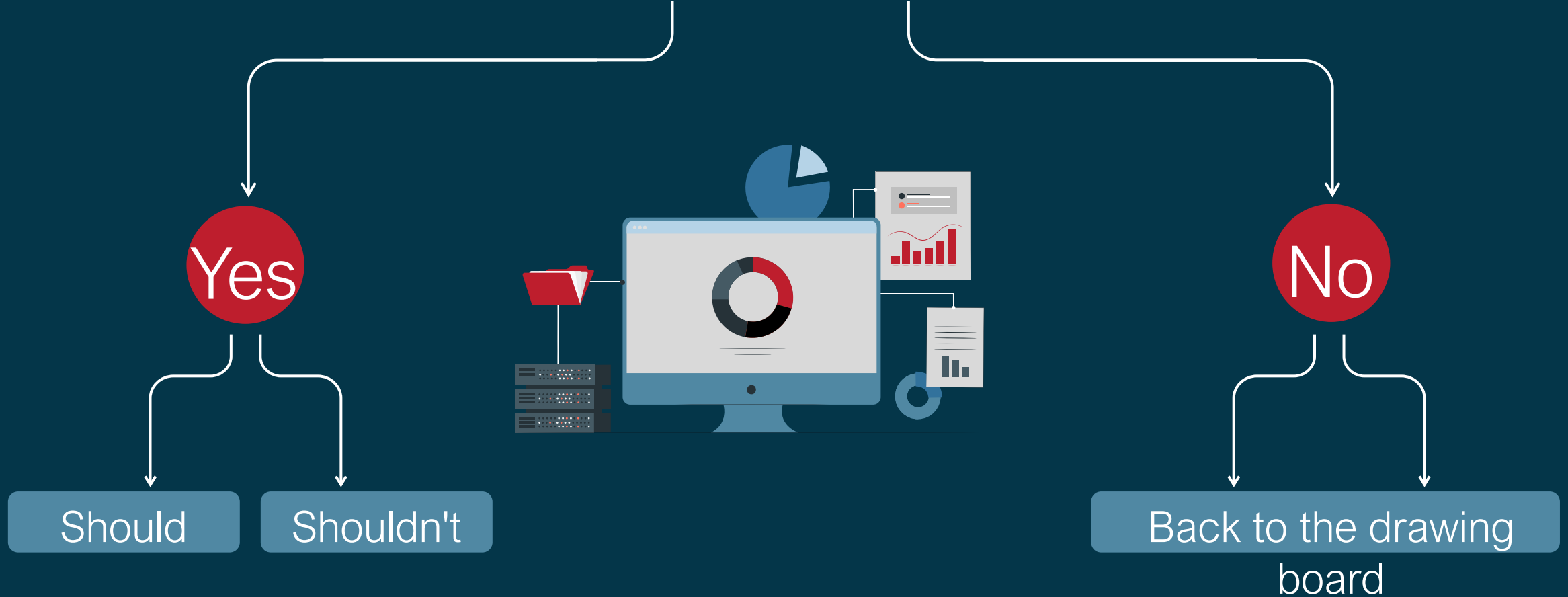
Digital marketers can still reach  
customers and prospects and  
comply with privacy laws

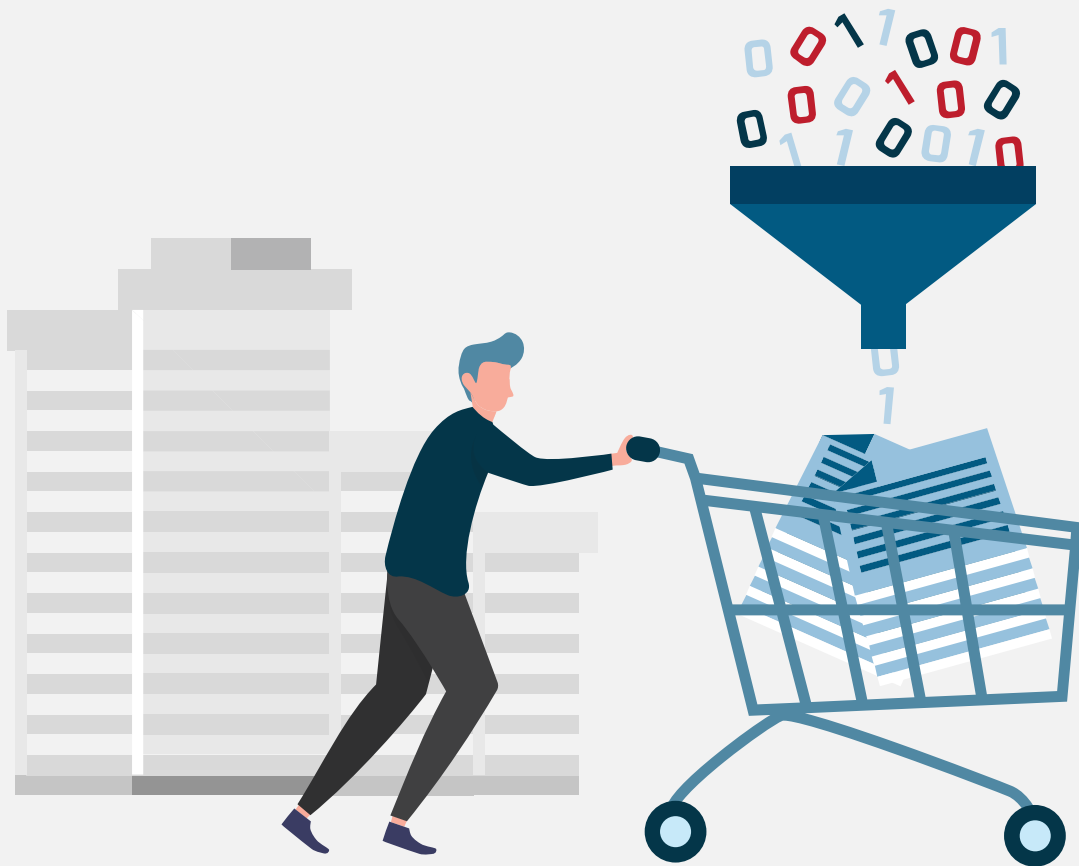


# What Should Marketers Be Doing?



# Can I use this data?







# Marketing responsibly



# Privacy in Marketing Messaging



Privacy as a feature of a product and service



Privacy portal



Consider objections to someone providing data or opting in



Explain the benefits of providing data



- In the EU: cookie banners should be explicit OPT IN and the cookie should fire after the user hits accept
- Cookie banners should not block the site or be a condition of using the site
- Consider the cookie banner and mobile experience (*don't block the site*)
- The language should explain what cookies do (*advertising, analytics, user experience*)
- There should be a separate cookie notice
- In the US: cookie banners do NOT need to be explicit opt in
- In the US: under CCPA, cookies can be considered a sale of data

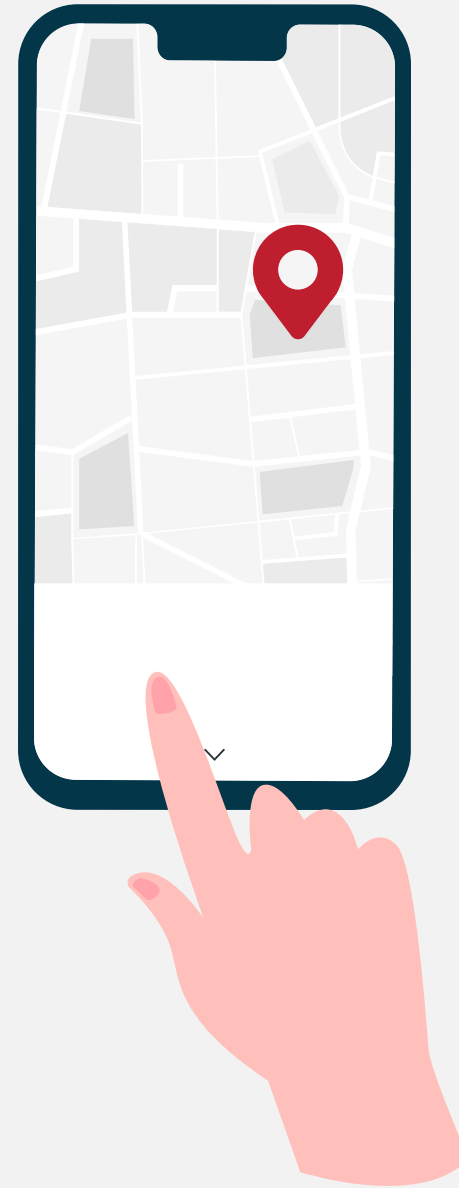


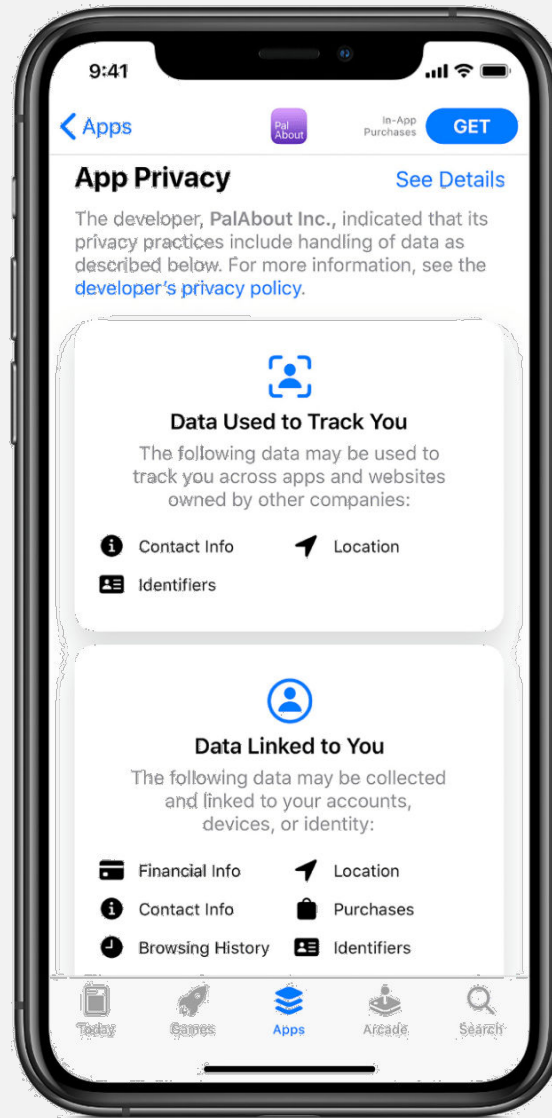
# What's the deal with cookie banners?



## IDFA – Opt In approach

Currently, about **70% of iOS users share** their IDFA with app publishers, after this change it's estimated that this number will drop to 10% to 15%.





## Move from cookies to identifiers



### Digital Fingerprinting:

by gathering variables like the browser name and version, screen resolution, list of fonts and plugins, and IP address and location, companies can identify unique users with 99% accuracy. Even though ad tech companies have promised the data used for these fingerprints don't contain any PII (personally identifiable information like name, email address, or phone numbers), the fingerprints remain privacy-invasive nonetheless.



### Demographic Attributes:

“Researchers from two universities in Europe have published a method they say is able to correctly re-identify 99.98% of individuals in anonymized data sets with just 15 demographic attributes.” Even if no personally identifiable information is collected, ad tech companies can re-identify users using data from other data sets, collected or purchased.



### Browsing histories:

The dataset consists of two weeks of browsing data from ~52,000 Firefox users. The work replicates the original paper's core findings by identifying 48,919 distinct browsing profiles, of which 99% are unique



## Building Trust Through Privacy Notices



Updating and reviewing your privacy notice creates transparency with your customers

Knowing your data will help you create an accurate privacy notice and manage individual rights requests

Implementing the right compliance requirements can help strengthen customer relationships





Collection and purpose limitation. The CPRA prohibits businesses from collecting more information than needed and from retaining personal information/sensitive personal information for longer than reasonably necessary for the disclosed purpose of collection.



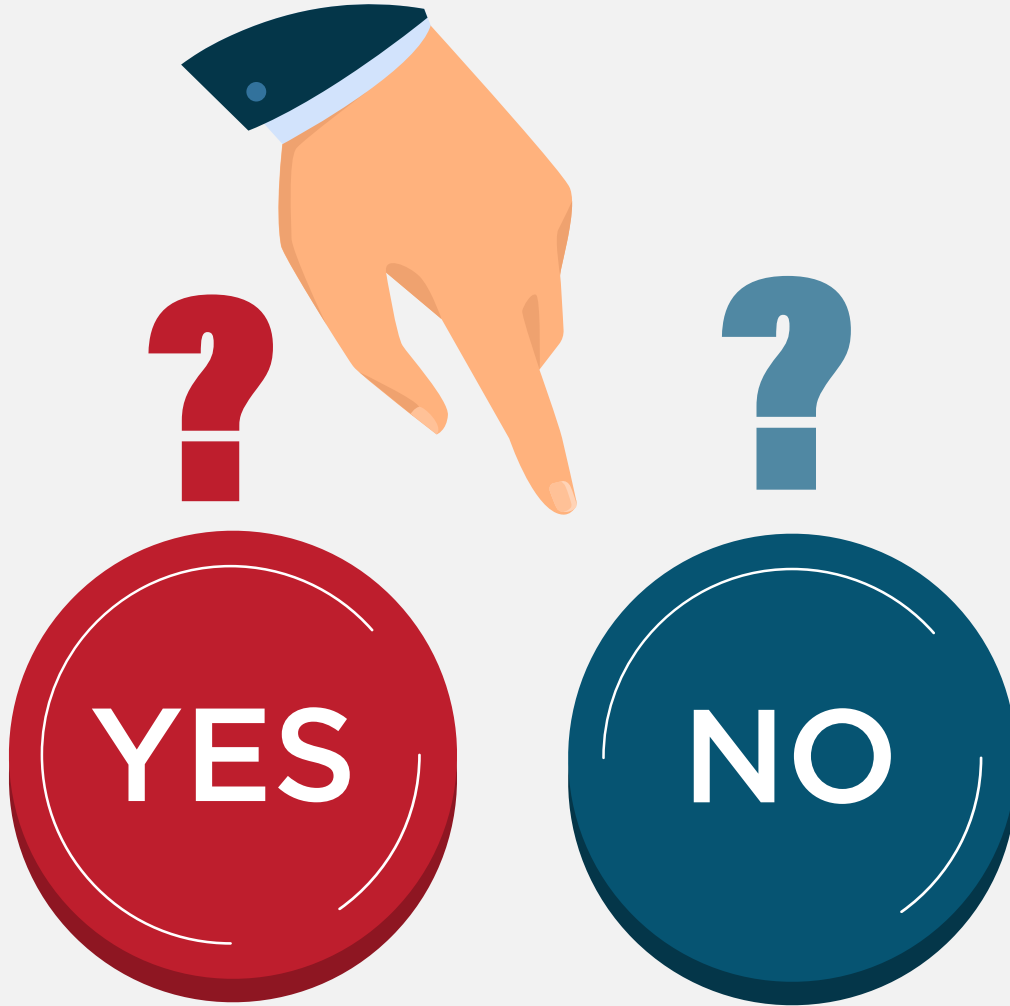


# Opt-In Requirements Must Haves

- NO pre-ticked boxes
- Be specific
- Not a condition of service
  - Opt-in for marketing emails should not be tied to purchasing the service (*must be freely given*)
- Must be easy to withdraw
- Link to privacy notice
- *Note: unsubscribe does not fulfill the individual right to deletion*



# Keep Subscribers With Preference Centers



**SEPHORA**

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**STAY IN CONTROL OF YOUR INBOX**

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YOU ARE CURRENTLY SUBSCRIBED AS:  
[REDACTED]

[Log in](#) to change your first name and email address.

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**MANAGE YOUR EMAIL SUBSCRIPTIONS**

**1. Promotional Emails**  
We'll send you special offers, updates on the latest beauty trends, and store news.

☒ All offers\*  
Enter your Zip/Postal Code to hear about store events near you.

United States  Zip/Postal code

☐ Weekly\*  
☐ Monthly\*  
☐ Unsubscribe

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**2. Sephora Notifications & Reminders**  
We'll send you personalized recommendations and other emails based on categories you shop most.

☒ Subscribe\*  
☐ Unsubscribe

**UPDATE**

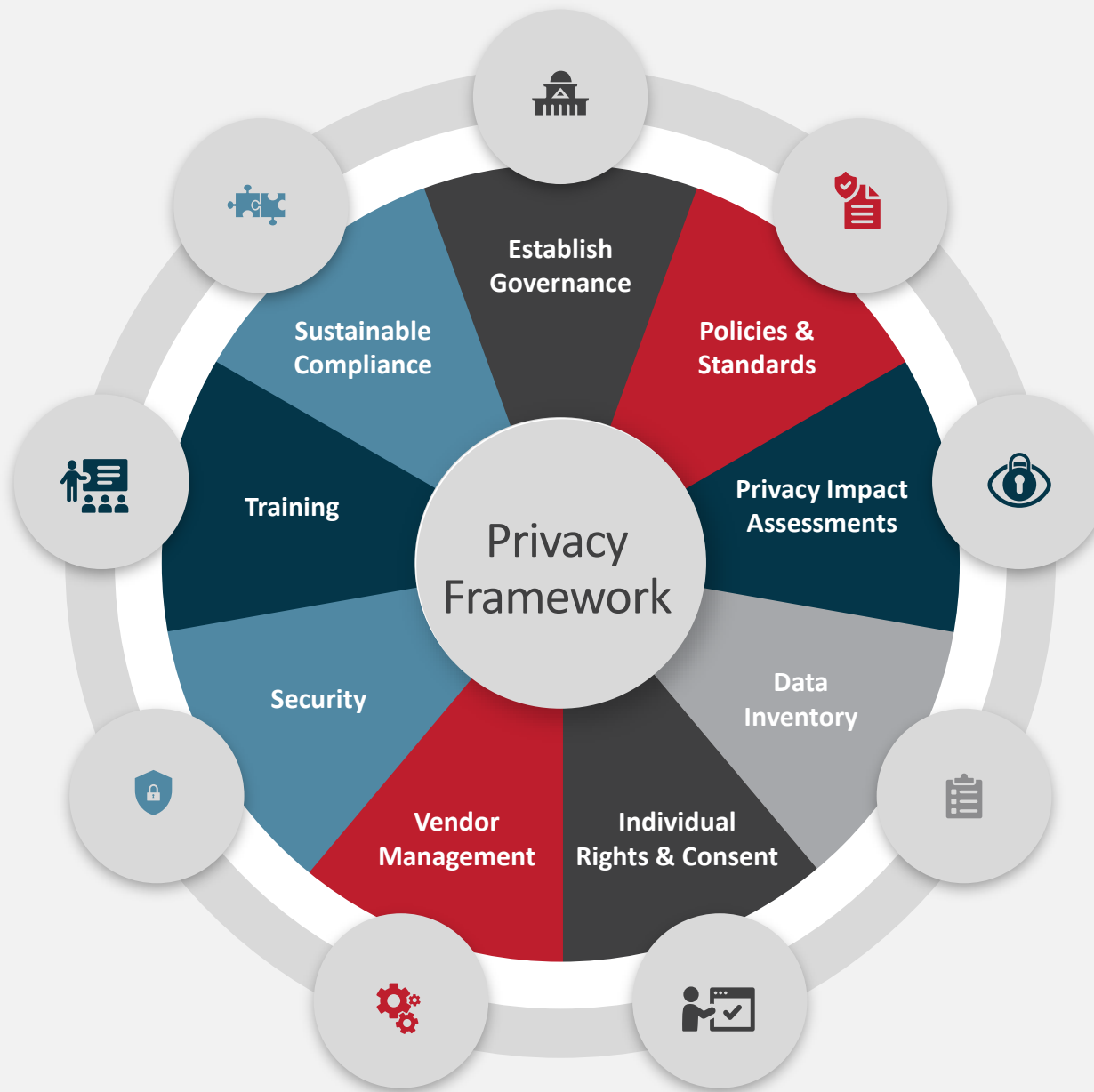
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1-877-SEPHORA (1-877-737-4672)

A collage of several Sephora promotional emails, including one titled 'BEAUTY INSIDER', another 'A LOVE NOTE', and a 'No long summer SALE' announcement.

# Your 2021 Action Plan







Review email marketing strategy, list sources, know which countries targeted and legal requirements



Evaluate opt-in consent experience



Consider implementing a preference center to include downgrade options



Keep up with the data flow (*collect, use, share*)



Focus on first party data strategy



Use privacy first messaging to encourage individuals to opt in and share accurate personal data



Follow advancements like Google FLoC, Apple SkAdNetwork, Global Privacy Control



Stay tuned in to future privacy laws



Privacy –  
an opportunity  
to engage with  
customers



Building long lasting  
relationships built  
on trust



Companies who pay  
attention to privacy have  
a competitive edge.



# She Said Privacy/He Said Security

*A podcast about data privacy, cybersecurity,  
and growing a business with integrity.*



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Like any good marriage, Jodi and Justin Daniels debate, evaluate, and sometimes even quarrel about data privacy and security in the 21st century.

*Wait—that's not all marriages? Huh.*

[www.redcloveradvisors.com/podcasts](http://www.redcloveradvisors.com/podcasts)



Grab the slides, take a  
quiz and more

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