COMPARISON OF CCPA & 个人信息保护法 (CCPA-CENTERED)

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INTRODUCTION (绪论)

CCDA-centered (以CCDA为纲)

Abbreviation (缩写)

在本报告中，CCPA = *California Consumer Privacy Act* [2]
PIPL = 《中华人民共和国个人信息保护法[3]

General Difference (宏观区别)

CCPA与PIPL的侧重不一样。
顾名思义，CCPA更多聚焦于消费者，也就是商业行为中的个人信息保护。
PIPL则更全面，但相应的，细节较少。
因而二者对于个人信息交易的宽容程度也不同。

Structure (报告结构)

分为两部分，常规部分将对CCDA的六个主要方面[1] 进行简要比较。
特别关注部分将要对一个问题"例外"进行专题分析。

RIGHT TO DELETE (删除权)

Delete What? (可删除的范围)

[PIPL] 第四条 个人信息是以电子或者其他方式记录的与已识别或者可识别的自然人有关的各种信息，不包括匿名化处理后的信息。

[CCPA] 1798.105 (a) A consumer shall have the right to request that a business delete any personal information about the consumer which the business has collected from the consumer.

二者规定的范围比较类似，都是"收集什么，就可以删什么"。

Chain Rule? (第三方出现时的处理)

[PIPL] 第二十一条 个人信息处理者委托处理个人信息的…委托合同不生效、无效、被撤销或者终止的，受托人应当将个人信息返还个人信息处理者或者予以删除，不得保留。未经个人信息处理者同意，受托人不得转委托他人处理个人信息。

[CCPA] 1798.105 (3) A service provider or contractor shall cooperate with **the business** in **responding to** a verifiable consumer request, and at the direction of the business, shall delete…

注意这里面有一个主体的不同。PIPL中是逐层负责的，受委托第三方是对处理者（第二方）负责的，而CCPA是统一对消费者本身负责(*cooperate*)。

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RIGHT TO KNOW（知情权）

Know What? How to know? (知什么情？如何知情？)

[PIPL] 第七条　处理个人信息应当遵循公开、透明原则，公开个人信息处理规则，明示处理的目的、方式和范围。

[PIPL] 第十七条　个人信息处理者在处理个人信息前，应当以显著方式、清晰易懂的语言真实、准确、完整地向个人告知下列事项：
（一）个人信息处理者的名称或者姓名和联系方式；
（二）个人信息的处理目的、处理方式，处理的个人信息种类、保存期限；
（三）个人行使本法规定权利的方式和程序；
（四）法律、行政法规规定应当告知的其他事项。

[CCPA] 1798.110 (a) A consumer shall have the right to request that a business that collects personal information about the consumer disclose to the consumer the following:
(1) The categories of personal information it has collected about that consumer.
(2) The categories of sources from which the personal information is collected.
(3) The business or commercial purpose for collecting, selling, or sharing personal information.
(4) The categories of third parties to whom the business discloses personal information.
(5) The specific pieces of personal information it has collected about that consumer.
可以看到CCPA的要求和PIPL类似，但是没有明确规定形式，这是因为在§999.305中。

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Opt-in or Opt-out? (选择进入还是选择退出)

[PIPL] 第二十三条　个人信息处理者向其他个人信息处理者提供其处理的个人信息的，应当向个人告知接收方的名称或者姓名、联系方式、处理目的、处理方式和个人信息的种类，并取得个人的单独同意。接收方应当在上述处理目的、处理方式和个人信息的种类等范围内处理个人信息。接收方变更原先的处理目的、处理方式的，应当依照本法规定重新取得个人同意。
　　　第十五条　基于个人同意处理个人信息的，个人有权撤回其同意。个人信息处理者应当提供便捷的撤回同意的方式。
个人撤回同意，不影响撤回前基于个人同意已进行的个人信息处理活动的效力。

[CCPA] 1798.120. Consumers' Right to Opt Out of Sale or Sharing of Personal Information
(a) (1) A consumer shall have the right, at any time, to direct a business that sells or shares personal information about the consumer to third parties not to sell or share the consumer's personal information. This right may be referred to as the right to opt out of sale or sharing.

可以发现CCPA是选择退出，而PIPL是选择进入。需要先同意，可以随时撤回。而CCPA是有权利要求停止。
程序上考虑是存在区别（时间点不同）。技术上考虑其实区别不大
（总是在一开始，告知同意一体）

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RIGHT TO CORRECT (更正权)

Subject (主动义务与被动响应)

[PIPL] 第五十一条 个人信息处理者应当根据个人信息的处理目的、处理方式、个人信息的种类以及对个人权益的影响、可能存在的安全风险等，采取措施确保个人信息处理活动符合法律、行政法规的规定，并防止未经授权的访问以及个人信息泄露、篡改、丢失。

[CCPA] 1798.106 (a) A consumer shall have the right to request a business that maintains inaccurate personal information about the consumer to correct that inaccurate personal information, taking into account the nature of the personal information and the purposes of the processing of the personal information.
(b) A business that collects personal information about consumers shall disclose, pursuant to Section 1798.130, the consumer's right to request correction of inaccurate personal information.

反映核心理念的差异，PIPL强调处理者责任，要求主动确保信息准确，体现"预防为主"的监管思路。CCPA侧重消费者主动行权，企业响应义务以合规为导向，灵活性更高。

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RIGHT TO LIMIT (限制使用权)

Circumstances (可用情况)

[PIPL] 第四十四条 个人对其个人信息的处理享有知情权、决定权，有权限制或者拒绝他人对其个人信息进行处理。

[CCPA] 1798.121 (a) A consumer shall have the right to direct a business that collects sensitive personal information about the consumer to limit its use of the consumer's sensitive personal information.

适用场景不同。PIPL中个人可决定自身一切个人信息的使用权，而CCPA只针对个人敏感信息做了限制使用权的规定。

Opt-in or Opt-out ? (选择加入与选择退出)

Please refer to RIGHT TO OPT-OUT S&S (选择退出)

PIPL "事先通知可用" vs CCPA "提前告知不可用"

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Algo Discrimination (算法歧视)

[CCPA] 1798.125 (a) (1) A business shall not discriminate against a consumer because the consumer exercised any of the consumer's rights under this title, including, but not limited to, by:

(A) Denying goods or services to the consumer.

(B) Charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties.

(C) Providing a different level or quality of goods or services to the consumer…

CCPA没有关于算法歧视/自动化决策的直接规定（GDPR有）。
但透明条款和上述的免歧视条款结合消费者主动行动可以作为反制算法歧视的依据。
有专门的相关法案: Eliminating Bias in Algorithmic Systems (BIAS) Act. 2023
关于原定义的歧视将在后面讨论

[PIPL] 第二十四条 个人信息处理者利用个人信息进行自动化决策，应当保证决策的透明度和结果公平、公正，不得对个人在交易价格等交易条件上实行不合理的差别待遇。

禁止通过自动化决策实施价格歧视，避免"大数据杀熟"行为。但未直接禁止因用户行权（如撤回同意）的一般性差别待遇。

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ON EXCEPTIONS

》法律的效力很大程度上取决于"例外"而不是"规定"。
或者具体来说，对于个人信息保护法的法律，其生来就是为了"被打破的"。

法律的被打破并不意味者法律没有效力。

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Example 1: Delete: Technical Concern

[PIPL] 第四十七条　有下列情形之一的，个人信息处理者应当主动删除个人信息；个人信息处理者未删除的，个人有权请求删除：

　　…

（五）法律、行政法规规定的其他情形。法律、行政法规规定的保存期限未届满，或者删除个人信息从技术上难以实现的，个人信息处理者应当停止除存储和采取必要的安全保护措施之外的处理。

[CCPA] 1798.105.Consumers' Right to Delete Personal Information

(c) (1) A business … shall delete …

unless this proves impossible **or** involves disproportionate effort.

这里明显是PIPL要求更加严格"除非不可为"。而CCPA仅要求"除非不好为",也就是所谓的"比例原则"。

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CONTD.

Example 1.1:Proportionality always fail

[Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 51(5)(b)]
"Among others, the following types of attacks are to be considered as indiscriminate:
[...]
(b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."

No one quite cares about that in Gaza

CONTD.

Example 2: Grey items

[PIPL] 第十三条　符合下列情形之一的，个人信息处理者方可处理个人信息：
（二）为订立、履行个人作为一方当事人的合同所必需，或者按照依法制定的劳动规章制度和依法签订的集体合同实施人力资源管理所必需；
…

依照本法其他有关规定，处理个人信息应当取得个人同意，但是有前款第二项至第七项规定情形的，不需取得个人同意。

[CCPA] (d) A business… shall not be required to comply … if … in order to
(2) Help to ensure security and integrity to the extent the use of the consumer's personal information is reasonably necessary and proportionate for those purposes.
(4) Exercise **free speech**, ensure the right of another consumer to exercise that consumer's right of free speech, or exercise another right provided for by law.
(7) To enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business and compatible with the context in which the consumer provided the information.

这些条款制造了法律的灰色地段，可以看出上面的一些表述完全是是取决于处理者的，或者取决于政府的建议和倾向。虽然消费者保留了诉讼的权力，但在没有社会舆论的帮助下不太可能胜诉。这是需要规范的，也是没有动力规范的。

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Example 3: Coercion

[PIPL] 第十六条　个人信息处理者**不得以**个人不同意处理其个人信息或者撤回同意**为由**，拒绝提供产品或者服务；处理个人信息属于提供产品或者服务所必需的除外。

[CCPA] 1798.125 (a) (1) A business shall not discriminate against a consumer **because** the consumer exercised any of the consumer's rights under this title, including, but not limited to, by:

(A) Denying goods or services to the consumer.
(B) Charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties.
(C) Providing a different level or quality of goods or services to the consumer…

我们可以发现这个条款其实没有办法实施。
厂商只需要将各种声明进行打包，使其不可分离就可以胁迫用户不得不接受。

不交出这些隐私信息，你就别想用知乎？官方回应来了

徐州网管　2018-05-02 09:41

这两天打开知乎APP，你可能会被弹窗提示知乎上线了隐私政策。

通过隐私政策的要点简介和11个章节条款，知乎逐一告知了将如何处理用户的个人信息，并申明了保护用户隐私的承诺。

图片来源: 视觉中国

收集个人信息，将具体收集的内容告诉用户，本应是一件好事，但却引发了不小的争议和质疑。

有用户质疑，知乎为什么要收集那么多个人信息？另一方面，不同意隐私政策就无法继续使用知乎，用户说"不"的权利岂非形同虚设？

▌知乎新隐私政策"不同意不能用" 网友: 不如换成一键卸载?

CONTD.

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REFERENCE

[1] California Department of Justice. (n.d.). *California Consumer Privacy Act (CCPA): Section C - Business obligations*. State of California. Retrieved from
https://oag.ca.gov/privacy/ccpa#sectionc

[2] California Civil Code §§ 1798.100-1798.199.95 (CCPA, 2018).

[3] 《中华人民共和国个人信息保护法》（2021年8月20日第十三届全国人民代表大会常务委员会第三十次会议通过）。

THANKS FOR YOUR ATTENTION.

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