

# Cybersecurity, Privacy & Data Protection Alert

**Akin Gump**  
STRAUSS HAUER & FELD LLP

## California's Governor Signals Potential Threat to Businesses' Use of Consumer Data – A New Data Dividend

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### Key Points

- In his State of the State address, Governor Newsom proposed a “Data Dividend” that would apparently entitle Californians to compensation for the use of their data. If passed, it would be the first measure of its kind in the country.
- Businesses that are collecting and sharing personal information of California residents and are subject to the far-reaching 2018 California Consumer Privacy Act (CCPA) would be safe to assume that legislators may seek to apply the proposed Data Dividend to their entities.

In his State of the State address last week, California's new governor Gavin Newsom announced that he has directed his team to develop a “proposal for a new Data Dividend for Californians” that would apparently entitle consumers to compensation for the use of their data. ([State of the State](#) (02/12/2019).) If adopted, the Data Dividend would be the first measure of its kind and could spur other states to pass copycat legislation.

The new proposal signals that California looks set to continue its push to restrict and regulate the use of consumer data in ways that are likely to affect companies far beyond the state's borders. Businesses that are collecting and sharing personal information of California residents and are subject to the far-reaching 2018 California Consumer Privacy Act (CCPA) would be safe to assume that legislators may seek to apply the proposed Data Dividend to their entities.

Echoing the language used by privacy activists, Governor Newsom asserted that consumers' data has “value” and “belongs” to consumers. He also lambasted “companies that make billions of dollars collecting, curating and monetizing our personal data” and stressed that those companies “have a duty to protect it.”

Consumer advocates have been pushing ideas similar to the Data Dividend for some time. It appears that Governor Newsom's office may be working with consumer advocates on the new proposal. Shortly after the governor's speech, the CEO of

### Contact

**Natasha G. Kohne**  
Email  
San Francisco  
+1 415.765.9505

**Dario J. Frommer**  
Email  
Los Angeles  
+1 213.254.1270

**Hyongsoon Kim**  
Email  
Irvine  
+1 949.885.4218

**Diana E. Schaffner**  
Email  
San Francisco  
+1 415.765.9507

Common Sense Media—a nonprofit that helped push passage of the CCPA—reportedly stated that his organization is working on draft legislation to implement the Data Dividend proposal. ([TechCrunch](#)(02/12/2019).)

The proposal also drew support from key legislative players active in the fight to pass the CCPA. State Senate Majority Leader Bob Hertzberg (D–Van Nuys), who helped shepherd passage of the CCPA, called the Data Dividend proposal the “most intriguing part” of the governor’s address. “This is the next frontier of the online data and privacy conversation, and I’m looking forward to hearing what a plan could entail,” Hertzberg said. ([Hertzberg Press Release](#)(02/12/2019).)

It is unclear how the governor plans to model the Data Dividend. Some observers have suggested enacting a tax on profits derived from the collection and sharing of California residents’ personal information and then distributing a share of the proceeds of that tax to all residents. Under California law, such a tax would require a two-thirds vote of the Legislature or approval by voters at a statewide election. Another model would base payment on the actual value of the data. It is an open question how the value would be calculated. One suggestion is to take the total number of California residents from whom a company collects data, divide the profit earned by that number, and then provide each California customer a portion of the result.

Now is the time for businesses to engage with the governor’s office concerning sensible and fair data usage regulation, and to begin to prepare for the same. While awaiting details on the proposal, businesses would do well to review their data collection practices to limit the collection of non-essential data and to ensure collected data is properly used and secured. Our team is closely monitoring the developing California privacy landscape and can assist clients in crafting a related strategy.