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# Compliance with the GDPR, CCPA and the New Swiss Law

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# Agenda

- Current Status of the Laws
  - Key aspects of the Laws
- Compare and Contrast on Key Topics
  - Scope of Application
  - Privacy Policies
  - Regulatory Coordination
  - International Data Transfers
  - Vendor Management
  - Privacy By Design and Default
- Where to Go from Here
  - Key areas of focus going forward for companies operating in each region

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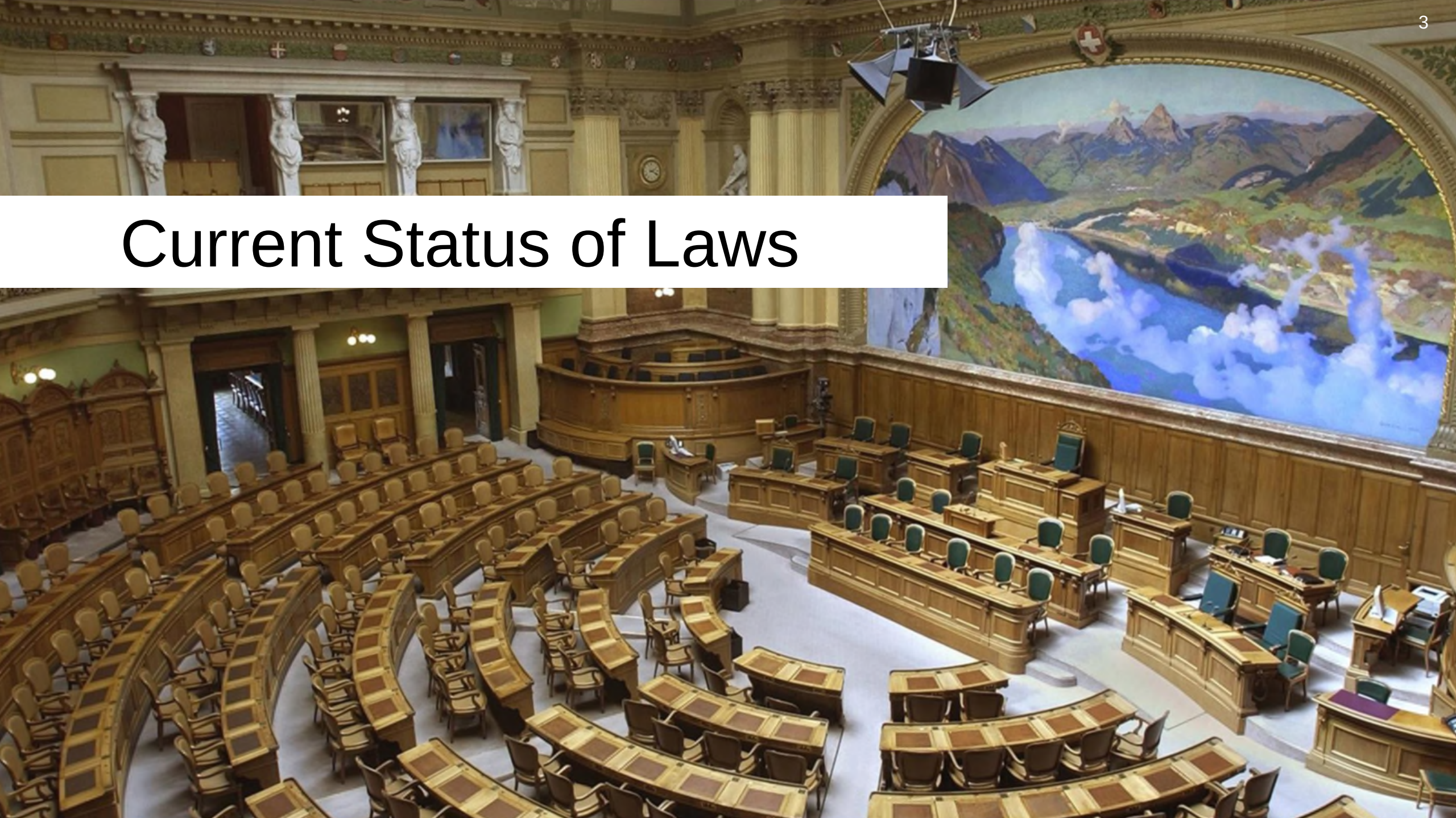
# Current Status of Laws



# Current State: Where We Are and Where We Are Going

- Swiss Law
  - Not yet final, but in final round of revision…. If there wasn't COVID-19
  - 95% equal to GDPR
  - Some Swiss finish oddities……

- GDPR
  - Implemented but we continuously receive new guidance from the supervisory authorities
  - There is already a significant number of enforcement proceedings
  - Still a significant number of open issues, in particular, in relation to international data transfers and data processing

- CCPA
  - Law took effect January 1, 2020
  - Attorney General Regulations still under development and still potentially in flux
  - Regardless, enforcement to commence July 1 (following 30-day notice and opportunity to cure)
  - employee and B2B exemptions will sunset on December 31, 2020
  - Status of Ballot Initiative -- CCPA 2.0?

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# Compare and Contrast

# Compare and Contrast: EU, Switzerland, California

- Field of application
  - Legal persons
  - Minors
  - Extraterritorial Application
- Privacy Notice
  - Policy versus Notice
  - Thick or thin privacy Notice?
  - Global or Regional Notice?
  - Exception of information duty
- Regulatory Coordination and Redress
  - Lead Authority?
  - Representative in the EU? Representative in Switzerland?
  - Private right of action?
  - Opportunities to “cure”?

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# Compare and Contrast: EU, Switzerland, California

- International Data Transfers
  - Adequacy of data protection levels
  - Application of Chapter V for transfers to non EU Controllers/Processors that are subject to the GDPR based on Art. 3 (1) or (2)?
  - Considerations for “sale” in CA

- Vendor Management
  - EU-US/CH-US Privacy Shield + EU/Swiss DPA
  - Do we need to consider Swiss law /GDPR / CA e.g. for data retention, representation, DPO requirements?
  - Subcontracting: What means "the same data protection obligations as set-out" in Art. 28 para 4 GDPR?
  - Standard Contractual Clauses and DPA?
  - Commonalities between EU/Swiss/CCPA vendor DPAs?

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# Compare and Contrast: EU, Switzerland, California

- Privacy by Design + Default
  - When is this required by law?
  - Sample policy considerations
  - How to actually comply?
  - Challenges to implementing
  - Business case for companies doing so even if not required by law

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# Where to go from here

# Where to Go from Here

- In Switzerland focus on:
  - Information, Notification and Cooperation Duties
  - Data Processing by third parties and international transfers, no minimal standard data security
  - C-Level is personally subject to such fines!

- Under GDPR focus on:
  - Mapping data processing activities and understanding their legal justifications
  - Transparency – updating privacy notices, cookies notices
  - Enforcement, not only after first warnings

- For CCPA focus on:
  - Mapping data flows, understanding transfers, consider using inventory to support DSR responses
  - Watch for notices of deficiency and potential triggers for cure period
  - Consider cautious approach to the (draft) Regulations

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good-bye
&
enjoy
your day

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