



Privacy + Security Forum, Fall 2022

Derisking your Website

November 4, 2022

Hilary Lane and Ashley Shively, Holland & Knight
Maggie Gloeckle, Chief Privacy Officer, HP Enterprises
Jack Yang, Director of Privacy and Security, Netflix

Holland & Knight

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Agenda



Polling Question

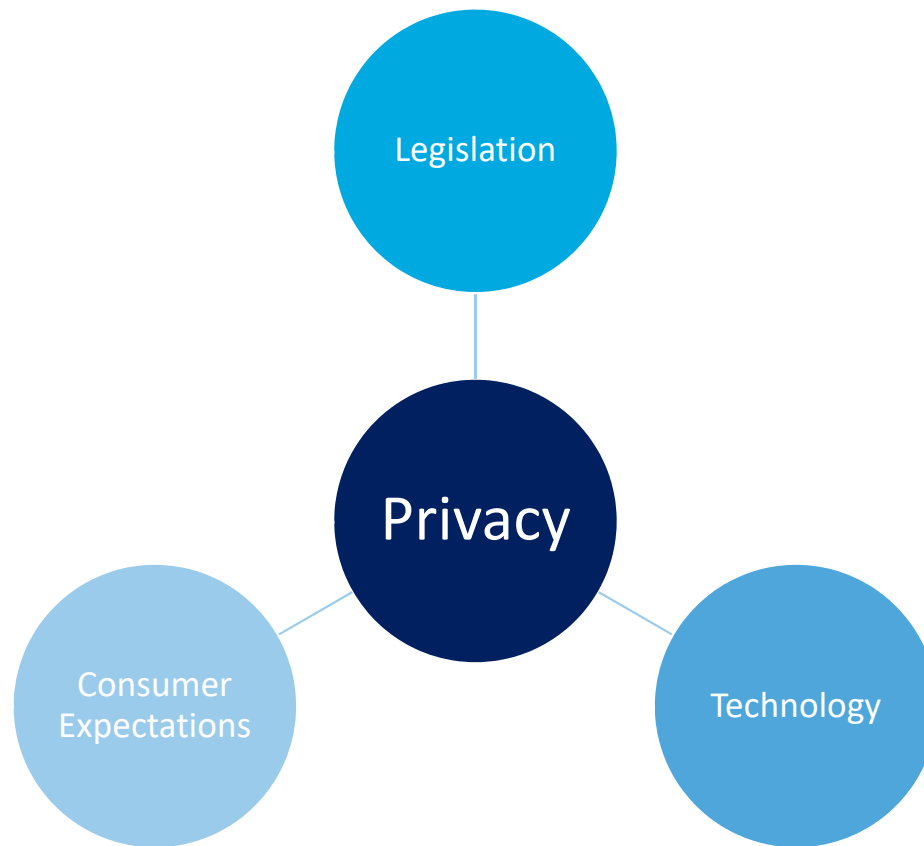
Are you:

- a) In-house counsel
- b) Law firm
- c) Government
- d) Student / Professor
- e) Business (non-lawyer)
- f) Other

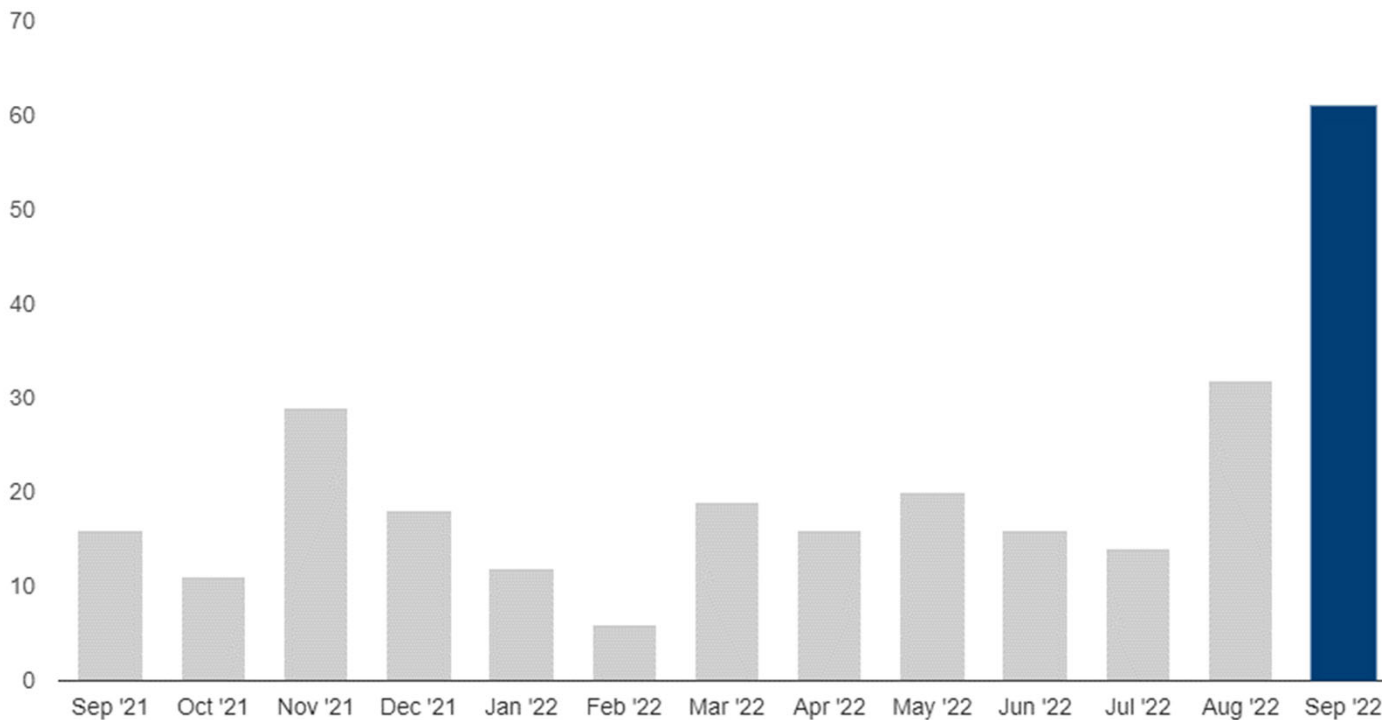
Polling Question

How long has your practice focused on Privacy?

- a) 0-1 year
- b) 1-2 years
- c) 3-5 years
- d) 5-10 years
- e) More than 10 years



US Privacy class actions



“Law.com Radar surfaced a major blitz of privacy class actions last month, with internet, media, retail, banking and health care companies all finding themselves in the crosshairs. More than 60 privacy cases were flagged by Radar in September, a volume that's about four times the typical monthly average. Notably, claims are no longer focused solely on the conduct of major technology companies: Digital privacy concerns are now driving litigation against a much wider array of defendants.”

Law.com RADAR (Oct. 3, 2022)

Our website

ABOUT HARLEY'S HABERDASHERY

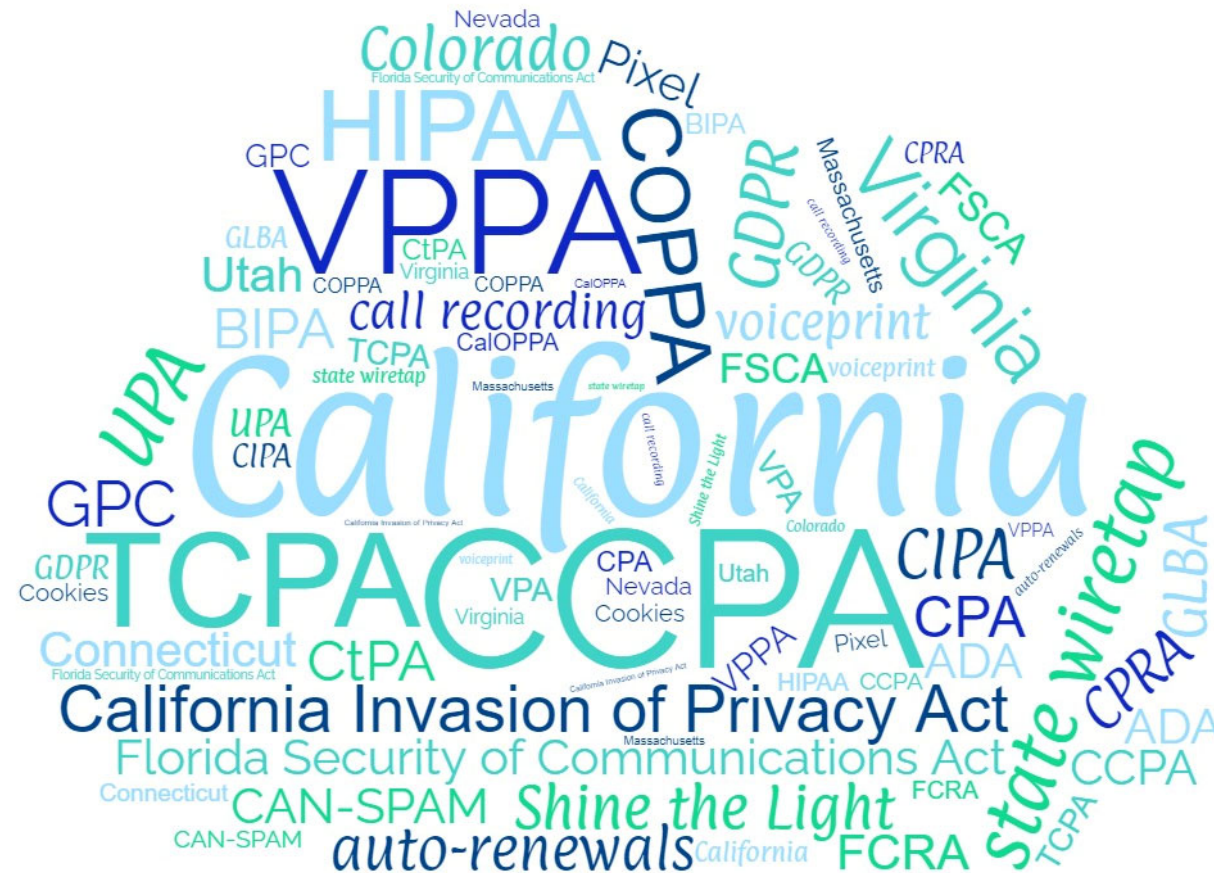
Since April 1, 2020

Since our first day in business, Harley's Haberdashery has been offering our customers the best selection of *absolutely necessary* and completely overpriced pet products and accessories. Our online store has become synonymous with pampered pandemic pets (but honestly, your dog probably does not want to wear clothes and *definitely* not goggles). Check it out and start shopping today!




Customer Signup / Consents

Signup and Consent Considerations



What do you see...



| | |
|--|--------------------|
| Name * | Email * |
| Enter your name | Enter your email |
| Phone * | Address |
| Enter your phone number | Enter your address |
| Birthday * | |
| Day, Month, Year  | |
| Political Affiliation * | |
| <input checked="" type="checkbox"/> I accept the terms & conditions and privacy policy | |
| <input checked="" type="checkbox"/> Sign me up for texts, singing telegrams, and snail mail | |
| <input type="submit" value="Submit"/> | |

* = Required

Americans with Disabilities Act

ADA



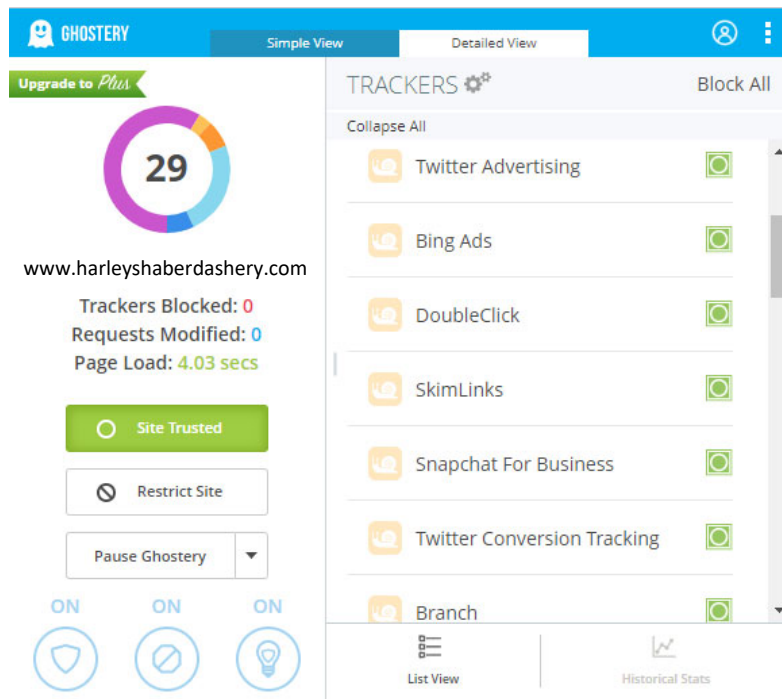
Search engines and accessibility tools can not see images, but they can read alt text. Add a description to improve your site's SEO and accessibility






What's in the image?

Sad brown dog wearing a lion's mane

AdTech and Third-Party Tools

Your AdTech is not a secret



| Blacklight Inspection Result | | |
|---|--|---|
| Blacklight works by visiting each website with a headless browser running custom software built by The Markup. To learn more read our methodology . | | |
| 18 | Ad trackers found on this site. This is more than double the average of seven that we found on popular sites. | ✓ |
| 16 | Third-party cookies were found. This is more than the average of three that we found on popular sites. | ✓ |
| |  This website loads trackers on your computer that are designed to evade third-party cookie blockers. | ✓ |
| |  Session recording services not found on this website. | ✓ |
| |  We did not find this website capturing keystrokes. | ✓ |
| |  When you visit this site, it tells Facebook. | ✓ |
| |  This site allows Google Analytics to follow you across the internet. | ✓ |

Session Replay Technology

What it does

- Software that tracks a user's activity such as mouse clicks, movements, possibly information entered into forms or chat
- Federal Wiretap Act makes it unlawful, in relevant part, for any person to "intentionally intercept [or] endeavor to intercept any electronic communication." 18 U.S.C. § 2511(1)(a)
- Approx. 15 state laws expand this protection with specific "all party consent" statutes

Wiretap Damages

- \$100 - \$10,000 / violation
- California: \$5,000 / violation

New applications of state wiretapping laws

Harley's Haberdashery

User Performed:
Add to Cart

[Home](#) [About Us](#) [Signup!](#) [Contact](#) [FAQ](#) [Support](#) [Store Policies](#) [Shop](#)



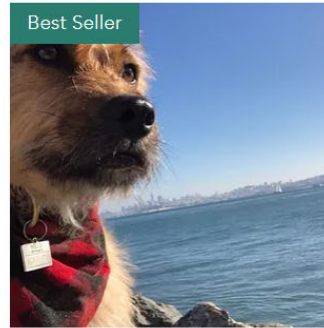
Extra Salty Hat

\$85.00



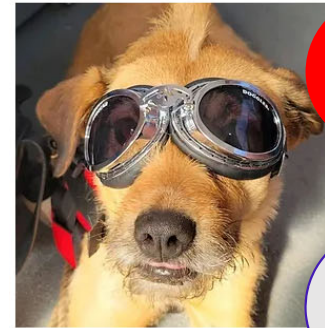
Oversized sunhat

\$20.00



Checkered Bandana

Out of stock

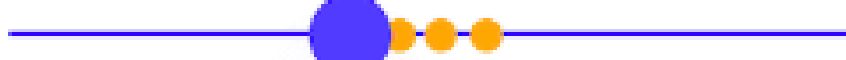


Stylish Silver Goggles

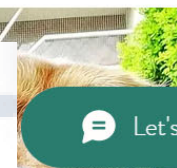
\$189.00

User Performed:
<> ERROR

User Performed:
Rage Clicks

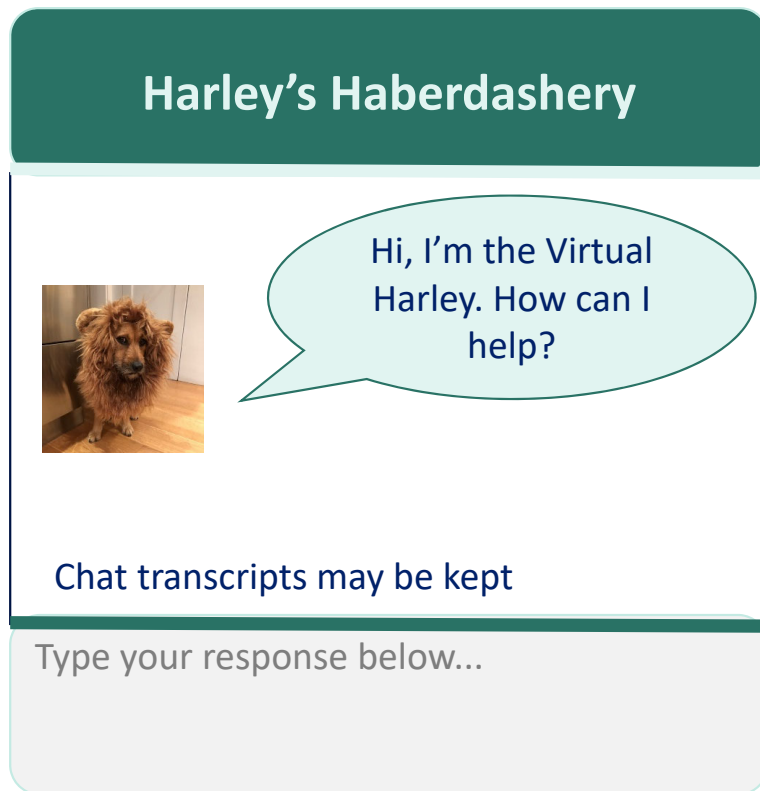


Rage Clicks



Let's Chat!

Chatbots



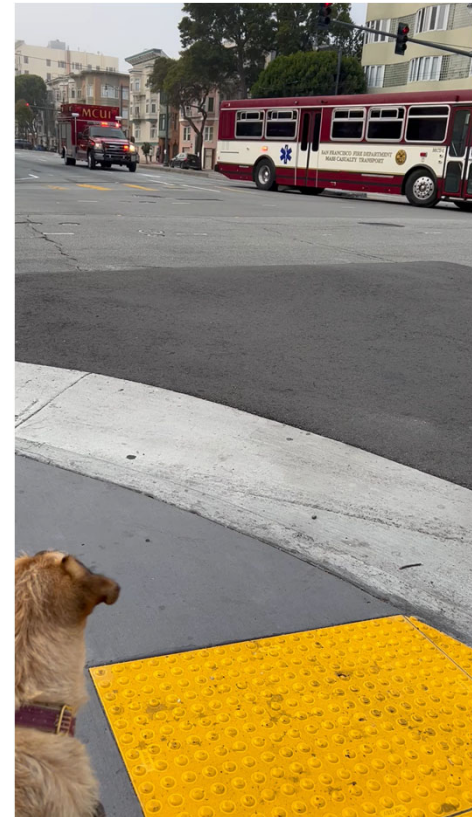
- Latest iteration of state wiretap claims
- 50+ class action lawsuits filed in California since August
- Seek damages and explicit disclosure of "recording" on tool interface
- Defendants include healthcare, automotive, retail, etc.
- Now seeing tag-along claims in MA and PA

Meta Pixel

- Invisible code that sends information about website visitors back to Meta
 - Widely used analytics tool, gathers information about visits to a company's website
- Use of Meta pixel has led to class actions under several different laws
 - Video Privacy Protection Act (VPPA)
 - Invasion of privacy
 - Wiretapping

Video Privacy Protection Act

- Enacted 1988
- Reaction to reporter obtaining information about Supreme Court nominee Judge Robert Bork's video rental history from video store
- Over 60 class actions filed this year against broad array of defendants based on Meta Pixel
 - Motions to dismiss pending in 15 cases
 - Denied or partially denied in 4 cases



Privacy claims stemming from healthcare providers' use of third-party tools



Healthcare Pixel Cases

- Key allegation: in using standard website marketing/analytics tools, healthcare entities are sharing website user data with Google, Facebook, etc.— who can identify users (even if providers cannot) —and without clear notification to users
- Particularly problematic in the healthcare context, but could be an issue in other sensitive areas as well (law firms, drug rehab, diet, dating, etc.)

Global Privacy Control & Do Not Sell

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Privacy Policy

We keep your stuff real private...don't worry about it.

Global Privacy Control

- First Cal. AG settlement alleged that Sephora used tracking software on site and app, and violated the CCPA:
 - Failed to alert customers of the data being collecting and sold
 - Failed to process opt-out requests via user-enabled global privacy controls
 - Described service provider contracts as “not valid”
- Resulted in a **\$1.2 million settlement** and injunctive relief

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You may use an Opt-Out Preference Signal, such as GPC, to opt-out of the sale or sharing of your personal information.

No Opt-Out Preference Signal as been detected.

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Questions?

Thank you!



Hilary Lane
Holland & Knight
Partner, Tampa
Hilary.Lane@hklaw.com



Maggie Gloeckle
Chief Privacy Officer
HP Enterprises



Ashley Shively
Holland & Knight
Partner, San Francisco
Ashley.Shively@hklaw.com



Jake Yang
Director, Privacy and Security
Netflix