Privacy Practices in the Video Game Industry:

A Report on Emerging Industry Standards

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Presenters

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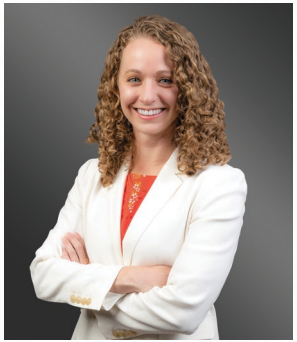

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Topics

1. **Current US Privacy Laws Impacting the Video game Industry (CCPA)**
2. **Upcoming legal changes (CPRA / VCDPA)**
3. **Emerging Industry standards**
    1. **Age of privacy notices**
    2. **Size of privacy notices**
    3. **Enumerated category disclosure**
    4. **Propensity to sell data**
    5. **Prevalence of Do Not Sell My Personal Information Links**
    6. **Data subject rights to access, delete, and rectify**
    7. **Use of AdTech (e.g., cookies, tracking pixels, and tags)**
    8. **Use of cookie banners**
    9. **Financial disclosures**

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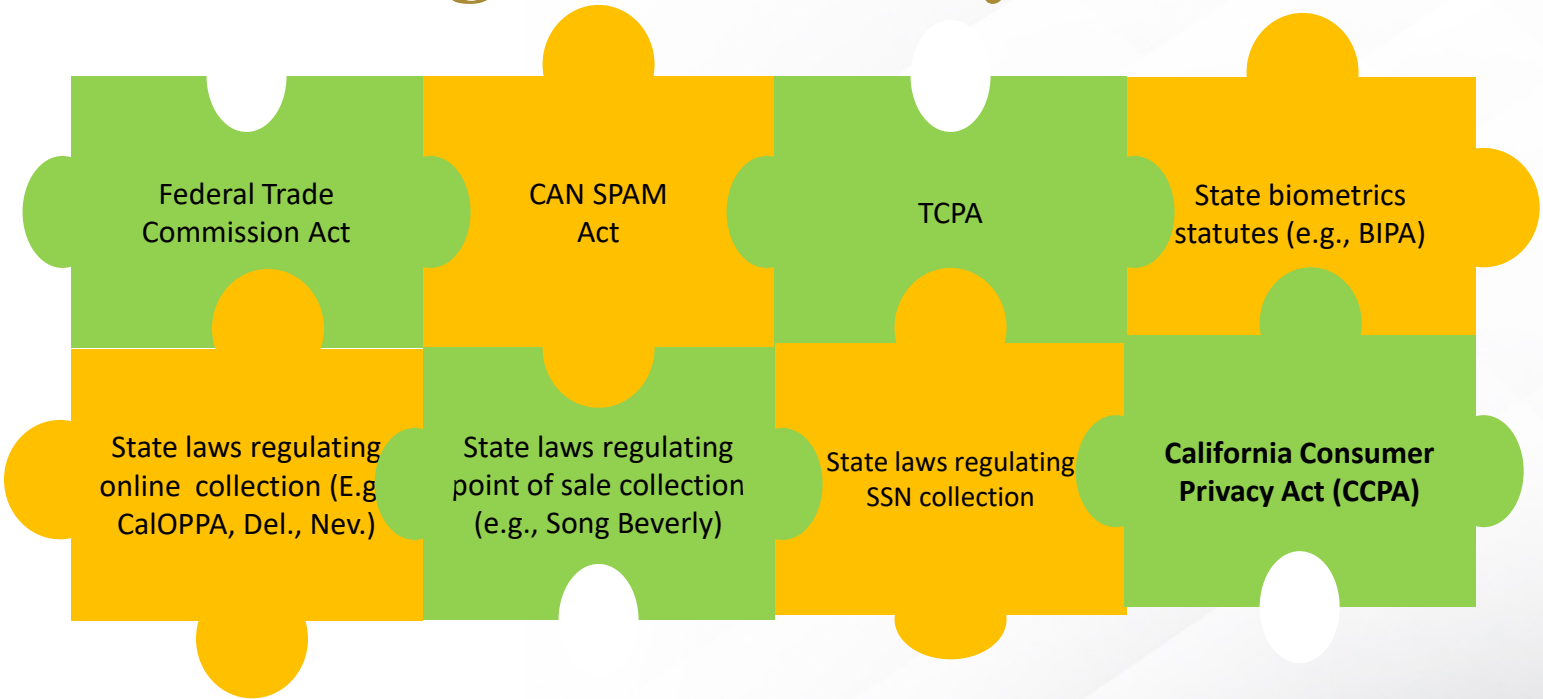
1. Current US Privacy Laws Impacting the Video game Industry



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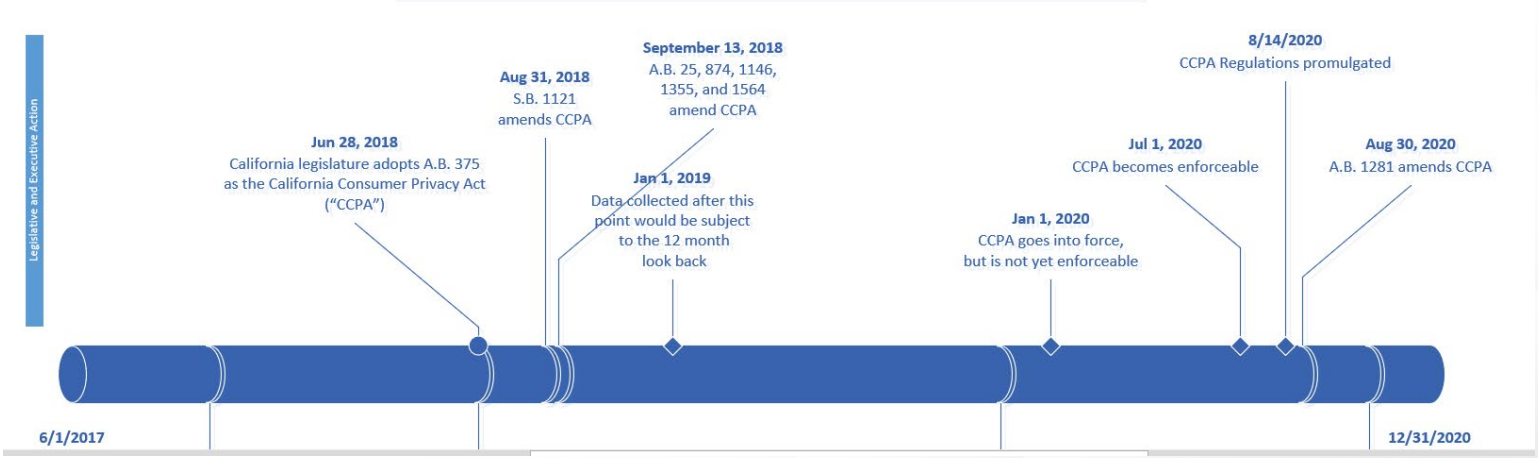
1. Current US Privacy Laws Impacting the Video game Industry

- The California Consumer Privacy Act (CCPA) has been the driving force for the past two years in the United States



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1. Current US Privacy Laws Impacting the Video game Industry

	GDPR	CCPA
Ability to Process Data	Permissible Purpose	
	Data Minimization	
Individual Rights	Notices to Data Subjects	Notices to Data Subjects
		Financial Incentive Disclosure
	Right to Access Data	Right to Access Data
	Right to Fix Errors	
	Right to Be Forgotten	Right to Be Forgotten
		Right to Opt Out of Sale
	Right to Object to Other Uses	
		Right to Services on Equal Terms
Accountability & Governance	Documentation / record keeping (Data inventory & DPIA)	
	Designated DPO (if necessary)	
Security	Appropriate Data Security	Appropriate Data Security
	Breach Notification	*Breach Notification*
Data Transfers Outside of EEA	Adequacy measures req. for transfers to countries w/ laws that don't parallel EEA	
Transfers to Third Parties	Contractual Requirements in Processor Agreements	Contractual Requirements in Service Provider Agreements
	Joint controllers allocate responsibilities	
Marketing & AdTech	Consent for AdTech cookies	Consent for AdTech cookies (not expressly req'd, but impacts compliance risks)
	Consent prior to direct marketing	

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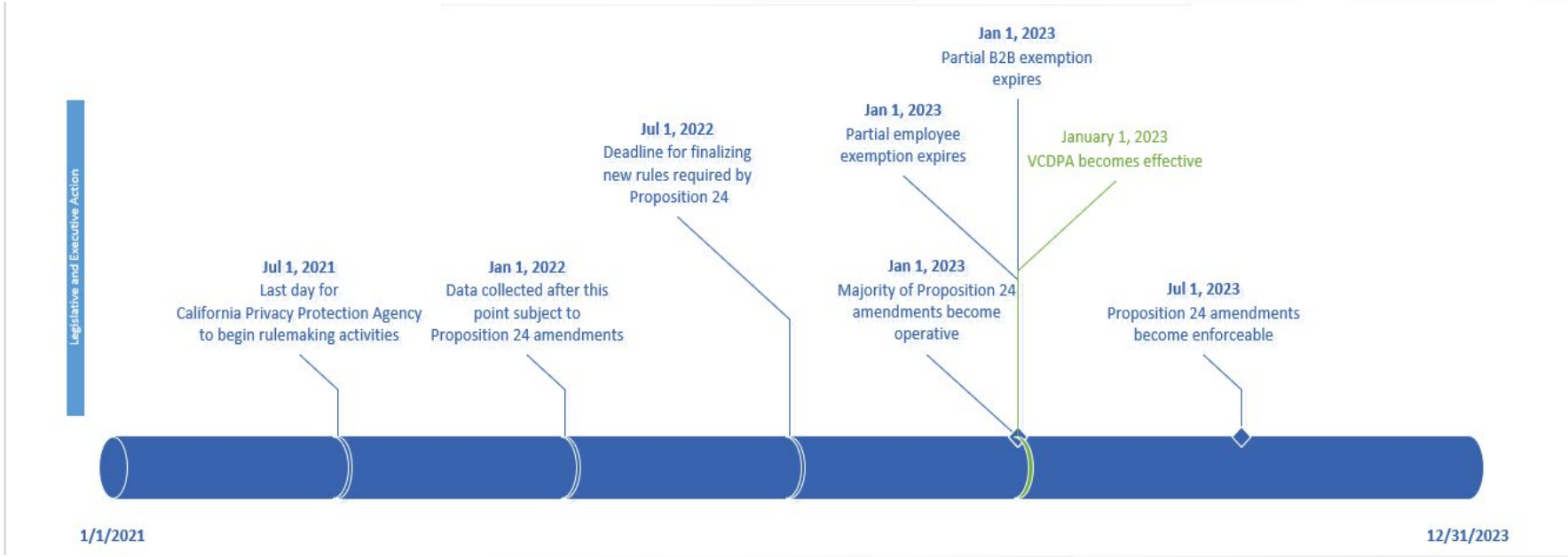
2. Upcoming legal changes (CPRA / VCDPA)



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2. Upcoming legal changes (CPRA / VCDPA)

	GDPR	CCPA	CPRA	VCDPA
Ability to Process Data	Permissible Purpose			**Permissible Purpose** (consent for processing sensitive data)
	Data Minimization		**Data Minimization**	**Data Minimization**
Individual Rights	Notices to Data Subjects	Notices to Data Subjects	Notices to Data Subjects	Notices to Data Subjects
		Financial Incentive Disclosure	Financial Incentive Disclosure	
	Right to Access Data	Right to Access Data	Right to Access Data	Right to Access Data
	Right to Fix Errors		**Right to Fix Errors**	**Right to Fix Errors**
	Right to Be Forgotten	Right to Be Forgotten	Right to Be Forgotten	Right to Be Forgotten
			Right Opt-Out of Beh. Advertising	**Right Opt-Out of Beh. Advertising**
	Right to Object to Other Uses	Right to Opt Out of Sale	Right to Opt-Out of Sale	Right to Opt-Out of Sale
			Right to Obj. to Use of Sen. Info	
			Right to Obj. to Auto Decision-making & Profiling	**Right to Obj. to Auto Decision-making & Profiling**
		Right to Services on Equal Terms	Right to Services on Equal Terms	Right to Services on Equal Terms
Accountability & Governance	Documentation / record keeping (Data inventory & DPIA)		**Documentation / record keeping (security audit and/or privacy risk assessment)**	**Data protection assessments**
	Designated DPO (if necessary)			
Security	Appropriate Data Security	Appropriate Data Security	Appropriate Data Security	Appropriate Data Security
	Breach Notification	*Breach Notification*	*Breach Notification*	*Breach Notification*
Data Transfers Outside of EEA	Adequacy measures req. for transfers to countries w/ laws that don't parallel EEA			
Transfers to Third Parties	Contractual Requirements in Processor Agreements	Contractual Requirements in Service Provider Agreements	Contractual Requirements in Service Provider Agreements	Contractual Requirements in Service Provider Agreements
	Joint controllers allocate responsibilities			
Marketing & AdTech	Consent for AdTech cookies	Consent for AdTech cookies (not expressly req'd, but impacts compliance risks)	Consent for AdTech cookies (not expressly req'd, but impacts compliance risks)	Consent for AdTech cookies (Must provide a right to opt out of targeted advertising)
	Consent prior to direct marketing			

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3. Emerging Industry Standards

- Privacy program choices that were made when the CCPA was first enacted are being re-evaluated in light of changing industry trends.
- Companies are increasingly concerned with finding themselves out of the pack in privacy trends.
- Companies are increasingly beginning to have their privacy programs subjected to internal and external audit. Some auditors are comparing practices against industry standards; others misinterpret industry standards.
- Greenberg Traurig LLP benchmarked the video game industry in Q2 2021 to identify specific privacy trends within the industry.

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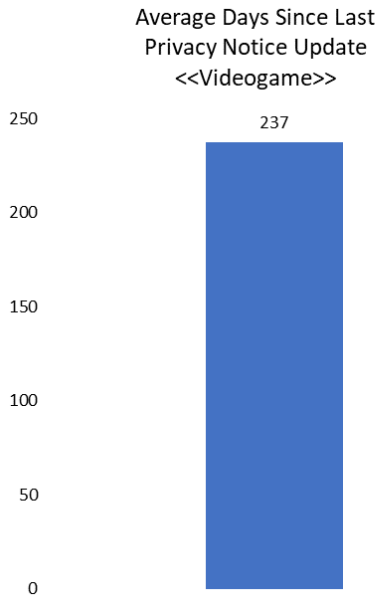
3.1 Age of privacy notices



Trends and Regulatory Issues

- The review and update life cycle of privacy notices has been shortening over the past decade as a result of the increasing changes in the privacy laws.
- Video game companies have newer privacy notices (i.e., more recently updated) then many other sectors.
- For example, the age of video game company privacy notices (237 days) is almost half as old as the average age of privacy notices in more traditional industries (e.g., Food & Beverage companies are averaging ~1.5 year update cycles).
- **This suggests more responsiveness by video game companies to new regulations and developments.**

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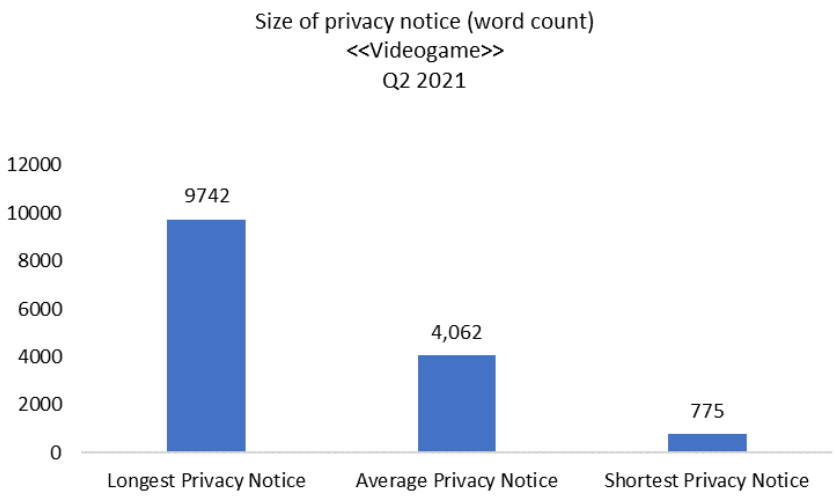
3.2 Size of privacy notices



Trends and Regulatory Requirements

- There are significant differences and relatively little standardization between and among video game companies in terms of the style of privacy notices.
- While the average size of video game privacy notices tracks closely to the larger Fortune 500 (4,133 words), **some companies have privacy notices that could be criticized by regulators as non-accessible to consumers based upon length (i.e., 38 page +).**
- The size of other privacy notices **reflect failures to comport with substantive regulatory requirements.**

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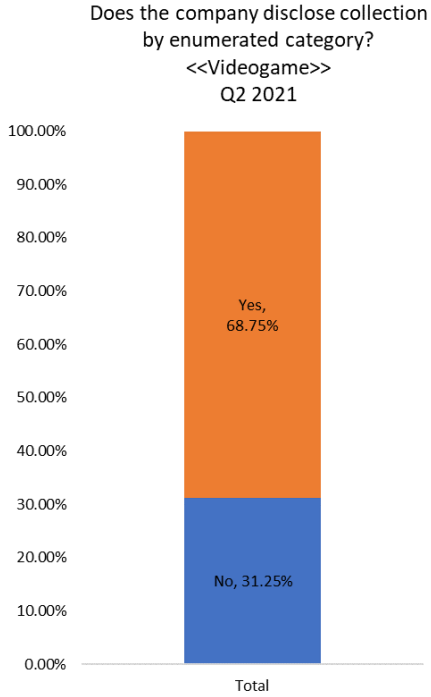
3.3 Enumerated category disclosure (collection)



Trends and Regulatory Requirements

- The CCPA requires that businesses disclose their collection by "enumerated category." This refers to 11 specific categories of personal information.
- **1 in 3 video game companies are <u>not</u> in compliance with the requirement to disclose collection of information by enumerated category.**
- **The level of compliance in that regard is significantly worse then compared to the Fortune 500.**

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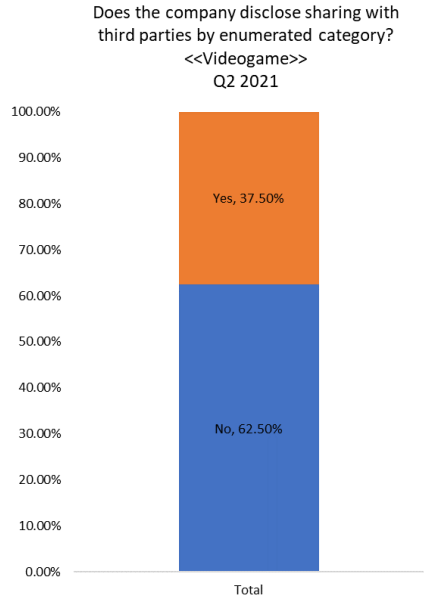
3.3 Enumerated category disclosure (sharing)



Trends and Regulatory Requirements

- The CCPA requires that businesses disclose which of 11 specific "enumerated categories" are shared with third parties, such as service providers.
- **Only a third of video game companies comply with the requirement that disclosure of personal information be itemized by enumerated category.**

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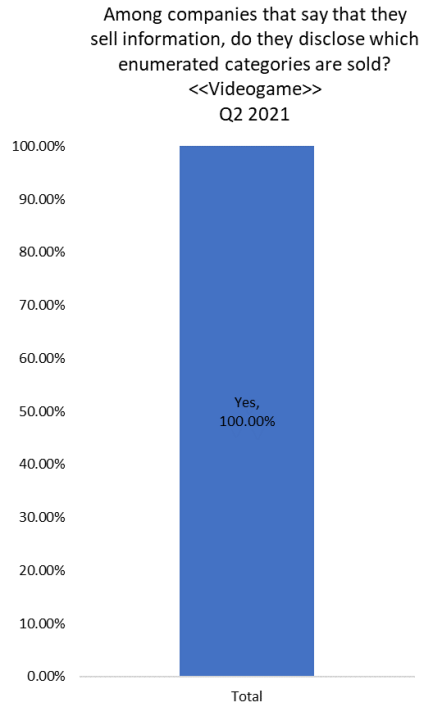
3.3 Enumerated category disclosure (selling)



Trends and Regulatory Requirements

- The CCPA also requires that businesses disclose which of the 11 specific "enumerated categories" are sold to third parties.
- Note that this requirement only applies to companies that sell personal information.
- Among those companies that self-identified as selling personal information, all of them provided the enumerated category level disclosure mandated by the statute.

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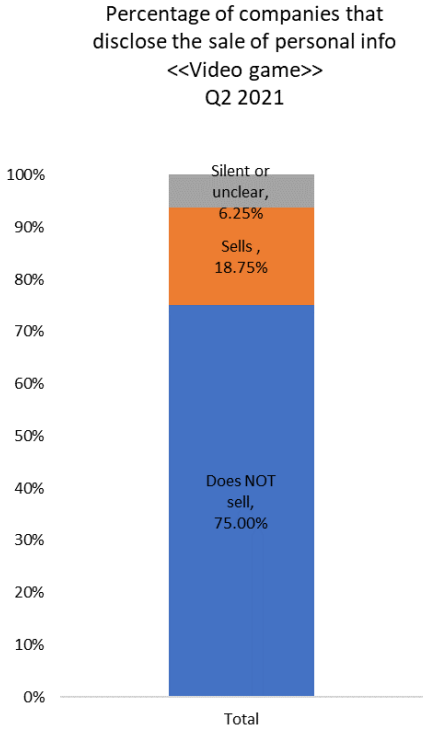
3.4 Propensity to sell data



Trends and Regulatory Requirements

- The CCPA mandates that companies affirmatively state whether they do, or do not, sell personal information.
- Whether a company sells personal information is complicated by a broad definition of "sale" under the CCPA wherein the transfer of personal information for "valuable consideration" (not just money) constitutes a sale.
- **The video game Industry overwhelmingly takes the position that it does <u>not</u> sell personal information. That position comports with the position taken by the majority of Fortune 500 companies.**

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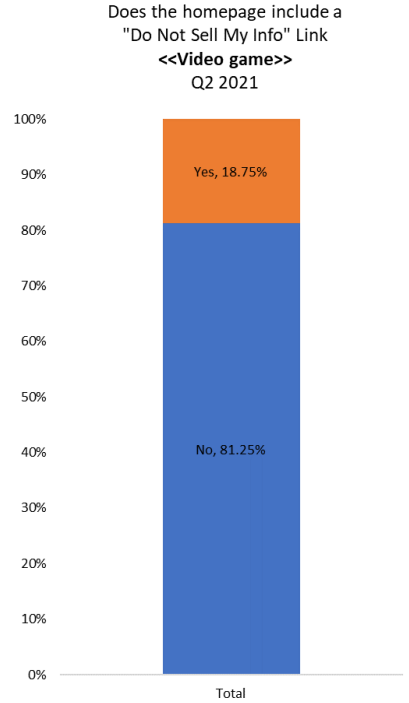
3.5 Prevalence of the "Do Not Sell My Personal Information" Link



Trends and Regulatory Requirements

- The CCPA states that if a company sells personal data they must put a link on their homepage titled "Do Not Sell My Personal Information."
- Admitting the sale of data, and not putting up the link constitutes a violation of the statute.
- Some companies, however, choose to voluntarily put up the link even if they are not selling data. Motivations for that practice differ by company.
- Within the video game industry slightly more companies put up the "Do Not Sell My Personal Information" Link then are engaged in the sale of data.
- **The practice of putting up the link is, however, a minority position.**

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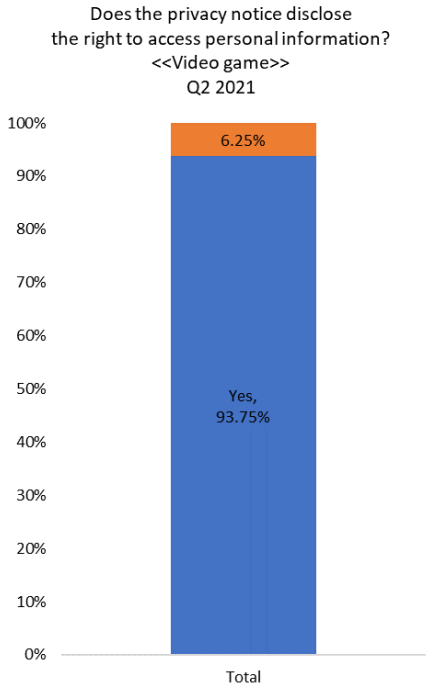
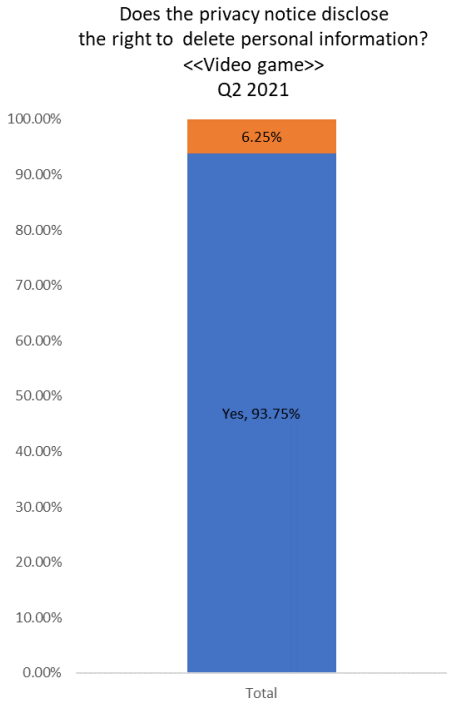
3.6 Data subject rights to access, deletion, and rectification





Trends and Regulatory Requirements

- The CCPA gives consumers the right to request access to their personal information or to request the deletion of their personal information.
- The vast majority of video game companies provide both rights.

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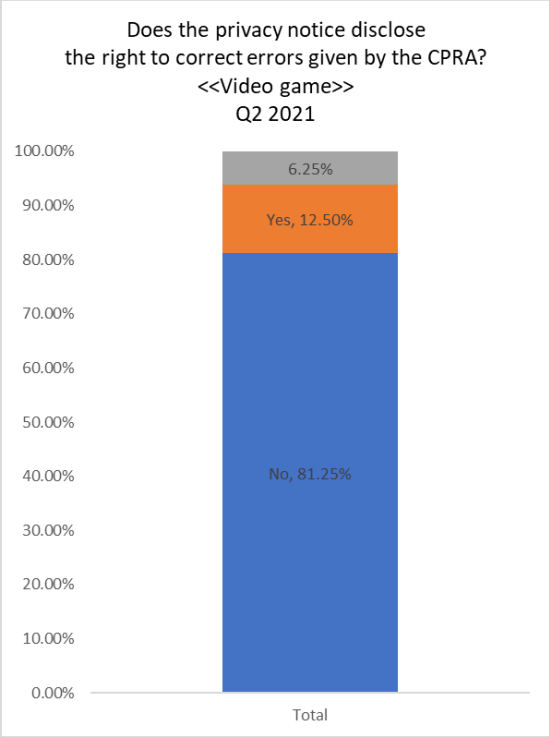
3.6 Data subject rights to access, deletion, and rectification



Trends and Regulatory Requirements

- The CPRA (2023) and the VCDPA (2023) will also confer a right to fix inaccurate information.
- Whether a company offers a right to "rectification" is a bellwether for whether they have adapted their privacy notices for the CPRA.
- **The vast majority of video game companies have not yet adjusted their privacy practices to comport with the new statutes.**

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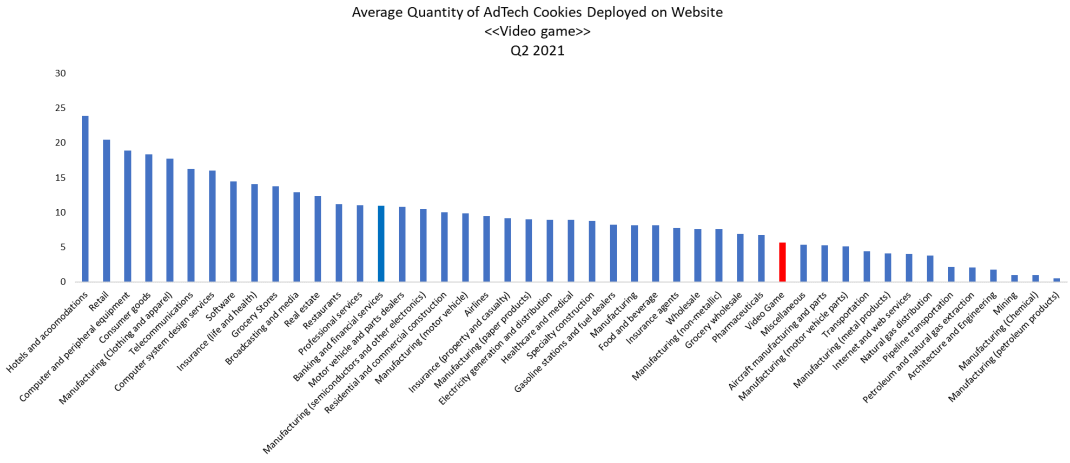
3.7 Use of Advertising Technology (AdTech)

Greatest Quantity	Average Quantity	Smallest Quantity
25	5.6	0



Trends and Regulatory Requirements

- AdTech refers to the use of third-party advertising technology on websites or in Apps such as cookies, pixels, tags, javascript, or SDKs.
- There was a significant debate in 2020 about whether the use of third party AdTech constituted the "sale" of personal information.
- That debate was partially resolved by the passage of the CPRA which specifically addressed AdTech and defined it largely as the "sharing" of information (separate and apart from the sale). The VCDPA similarly chose not to define AdTech as the sale of personal information.
- Video game companies on average are light AdTech users, **however certain industry members engage in AdTech usage that significantly outstrips their industry benchmark.**

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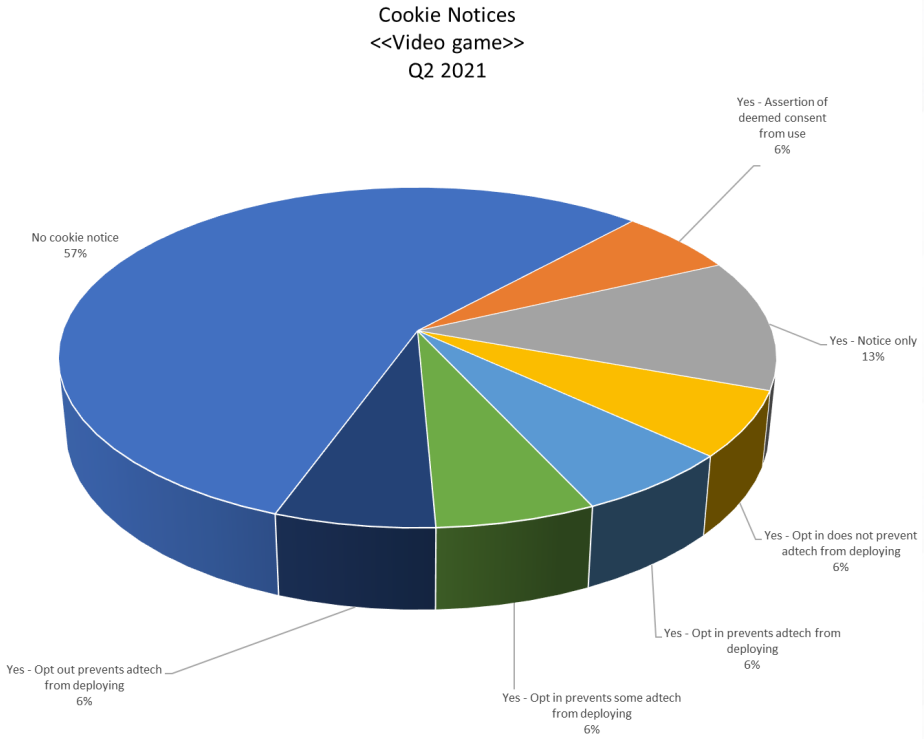
3.8 Use of cookie banners



Trends and Regulatory Requirements

- The decision about whether to utilize a cookie banner is complex and involves several factors including whether a company wants to ensure that AdTech is not a sale by getting opt-in consent, whether a company attempts to mitigate risk by offering consumers the option of opting-out (or "not selling") through cookies.
- **Beginning on January 1, 2023, websites will be mandated by both the CPRA and the VCDPA to have at *least* an opt-out mechanism**.
- Many websites will attempt to comply with that requirement through the deployment of a cookie banner.
- **Almost 50% of video game companies have now implemented some form of cookie banner, although the configurations vary.**

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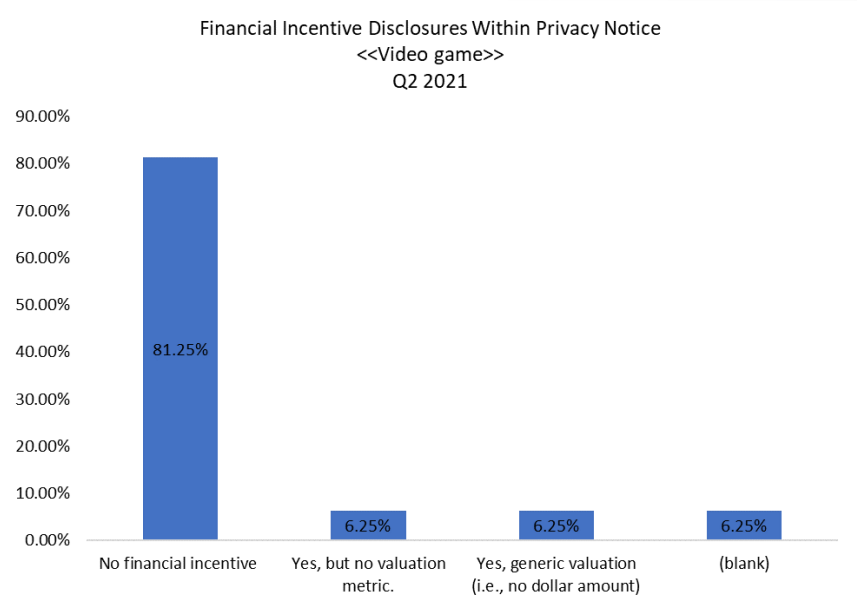
3.9 Financial Incentive Disclosures



Trends and Regulatory Requirements

- The regulations implementing the CCPA require that any company which offers a benefit in return for personal information must include a "financial incentive disclosure."
- The Attorney General took the position that most (if not all) loyalty programs were financial incentive disclosures.
- Businesses have been resistant to the concept of financial disclosures in part because they mandate that the business disclose the business's value in the collection of the data.
- **Few video game companies have elected to include a financial incentive disclosure in their privacy notices.**

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Thank You!

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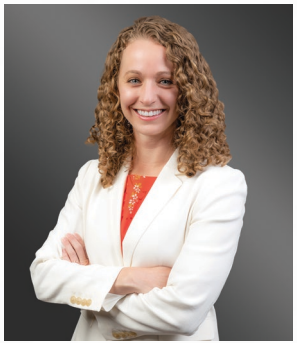

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