

## **“Cost-Based California Effects”**

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The “California Effect” is a recurring trope in discussions about regulatory interdependence. This effect predicts that businesses active in multiple jurisdictions sometimes adopt the strictest regulatory standards that they face in any jurisdiction globally, even if the jurisdiction’s law does not require global compliance. As the argument goes, California Effects often occur because firms find it less expensive to comply with the most stringent standard everywhere than to provide different products to consumers in different jurisdictions based on the relevant local standards. There is a substantial literature that assumes the existence of such Cost-Based California Effects both at the interstate level in the United States and the international level, where they often appear in connection with the EU’s regulatory activities under the moniker “Brussels Effect.” However, empirical evidence documenting these effects’ existence and strength is scarce.

This Article makes two contributions. On a theoretical level, it argues that Cost-Based California Effects should be treated separately from other forms of cross-jurisdictional influence, as their normative implications differ. On an empirical level, it reports results from a case study investigating the existence of these effects in data privacy law, a field in which they have been said to be particularly influential. The analysis tracks changes in almost 700 webpages’ privacy policies in order to reveal the extent to which EU law (which is usually described as comparably stringent) influences transactions between U.S. online services and consumers. The analysis covers two years starting in November 2017, a period that saw the enactment of a new, sweeping data privacy law in the EU. Contrary to what many assume, the analysis reveals that most U.S. online services treat U.S. consumers and EU consumers differently, with EU consumers enjoying higher levels of protection. This result indicates that the impact of EU law on the operations of U.S. online services is limited. Moreover, it suggests that Cost-Based California Effects might be less important than is commonly assumed, at least in data privacy law.