CCPA Update
What You Need to Know
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Today’s speakers

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Recent Amendments/Clarifications
Recent CCPA Statutory Amendments/Clarifications

1. Temporary and limited one-year exception for certain B2B and HR uses and sharing
2. Reasonable authentication of consumers for rights requests
3. Okay to require use of existing consumer accounts to make CCPA requests.
4. PI = “reasonably” capable of being associated with consumer/household
5. Deidentified and aggregate data are not PI
6. Sale opt-out exception for certain types of vehicle dealer/automaker sharing
7. Deletion right exception for warranty fulfillment or product recall under federal law
8. Some businesses are only required to provide an email address for receiving CCPA requests
9. Businesses that maintain a website must allow consumers to submit CCPA request via the website.
10. Revisions to FCRA exception
11. Businesses are not obligated to collect PI that they would not otherwise collect
Partial B2B Exception

- Sunsets after one year
- Excepts PI “reflecting a written or verbal communication or transaction between the business and the consumer ... acting as an employee, owner, director, officer, or contractor of a company, partnership, sole proprietorship, nonprofit, or government agency ... solely within the context of the business conducting due diligence regarding, or providing or receiving a produce or service to or from [the other entity.]
- The exception does not apply to the non-discrimination and sale opt out rights, or the private right of action in the event of data breach.
Partial Employee Exception

- Sunsets after one year
- Applies to PI collected about a consumer “acting as a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or contractor of that business [if collection and use is] solely within the context of [that individual’s] role or former role [as one of those categories].
- Benefits processing of family members also covered by exception.
- The exception does not apply to the requirement to provide point of collection notice or the private right of action in the event of data breach.
Attorney General
Proposed Regulations
California Attorney General Proposed Regulations

- Draft regulations still subject to change. Final regulations anticipated by July 1, 2020
- Four public hearings announced
  - Sacramento (Dec. 2)
  - Los Angeles (Dec. 3)
  - San Francisco (Dec. 4)
  - Fresno (Dec. 5)
- Comments due to the Attorney General by December 6, 2019, 5:00pm (PST)

Email: PrivacyRegulations@doj.ca.gov

Mail: Privacy Regulations Coordinator
California Office of the Attorney General
300 South Spring Street, First Floor
Los Angeles, CA 90013
Article 2 of Proposed Regs: Notices to Consumers
Types of Notices under CCPA and Proposed Regs

1. Pre-collection notice ("at or before" point of collection)
2. Notice of the right to opt-out of sale of PI
3. Notice of financial incentive
4. The privacy policy
5. New content requirements
Privacy Policies Under the Proposed Regs

Privacy policies must include (among other things):

- Description of the verification process
- The following information **for each category of PI** that is collected
  - categories of sources
  - business or commercial purpose for collection
  - categories of third parties with whom the PI is shared
- Whether the business sells the PI of minors under 16 years of age without affirmative authorization
- If the business is subject to the large business record keeping requirements, the information set out in those requirements
- Opt-in consent for new uses
Article 3 of Proposed Regs: Business Practices for Handling Consumer Requests
Accepting Requests to Know or Delete

- Businesses should account for the methods by which they primarily interact with customers

- Deficient requests: accept or inform consumer how to correct the deficiency

- “Two-step process” for deletion requests
Responding to Requests to Know or Delete

• Right to know:
  – Response to requests for “categories” must be individualized
  – Inform consumer of reason for denial
  – Never disclose certain information

• Right to delete:
  – Must explain how satisfied
  – Choices okay, but global delete option “more prominent”
  – Inform consumer of reason for denial
  – Disclose to consumer that record of request being kept
Responding to Sale Opt-Outs and Sale Opt-ins

• Opt-Out
  – At least two methods, including “Do Not Sell My Info” link
  – Choices okay, but global delete option “more prominent”
  – User-enabled privacy controls signaling sale opt-out must be honored
  – Timing requirements: 15 days; flow down to recent (90 days prior) sale recipients

• Double Opt-In
  – Two-step process (request + separate confirmation)
  – May inform consumer who has opted-out of opt-in right when a transaction requires the sale of PI
Service Providers

- Service Providers can include entities that provide services to a person or organization that is not a business (e.g., non-profit and government entities).

- Additional data use limitations.

- Exception for security incidents and fraud detection.

- Know/delete obligations.

- Comply with CCPA for any PI it processes outside of service provider role.
Training & Recordkeeping

• Training obligations
• Recordkeeping requirements
• Requirements for large businesses (businesses that annually process PI of at least 4mm consumers)
Article 4 of Proposed Regs: Verification of Requests
General Rules Regarding Verification

- No verification of sale opt-outs
- Avoid sensitive data collection unless necessary (and *try* to use what you have)
- Consider various factors including sensitivity of PI and risk of harm to consumer or fraud
- Verifying through existing password-protected account okay
- No account: PI maintained in manner not tied to named person, then can require consumer to show they are “sole consumer” tied to PI (fact-based with factors above relevant)
- No way to verify: tell consumer, and if applies to all, state in privacy policy
Article 6 of Proposed Regs: Non-Discrimination
Discriminatory Practices

- Clarifies that businesses do not discriminate if the price or service difference is “reasonably related” to the value of the consumer’s data.
- The value for data can be calculated using one of seven described methods, or any “practical and reliable method” used in good-faith.
- Expressly allows for limitation of certain rights, such as sale opt out, to higher-cost tiers of service (so long as the difference in price can be justified).
- Raises questions about limits, especially with respect to deletion.
Road to 2020 and Beyond
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- Assess potential “sales”
- Update service provider contracts
- Determine approach to Privacy Policy/Notices
- Determine mechanics of honoring access and deletion rights
- Update website forms/disclosures
- Develop strategy for Adtech
- Create internal policies/training
- Decide whether to submit Comments by December 6, 2019