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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
- Excludes 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

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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

An aerial photograph of a busy pedestrian crossing. The crossing is marked with white diagonal stripes on a dark asphalt surface. Numerous people of various ages and ethnicities are walking across the crossing in different directions. Some are carrying bags, some are in groups, and some are alone. The scene is captured from a high angle, looking down on the street.

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.

A large flock of birds is captured in flight against a dramatic sky at sunset. The birds are silhouetted against the bright, golden light of the setting sun, which is partially obscured by dark, heavy clouds. The sky transitions from a deep blue at the top to a bright orange and yellow near the horizon. The bottom of the image shows a calm body of water reflecting the light from the sky. A blue, trapezoidal graphic element is overlaid on the bottom right corner, containing the text.

Road to 2020 and
Beyond

Road to 2020 and Beyond

- 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



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