

July 7, 2004

## **New California Law is the First to Require Privacy Policies**

If you operate a web site, this would be a good time to post or update your privacy policy and how it appears on the site. California's Online Privacy Protection Act of 2003 (California Business and Professions Code Sections 22575-22579) became effective July 1, 2004. The Act requires any entity that operates a commercial website or online service that collects personal information of California residents to conspicuously post the entity's privacy policy, and requires that the privacy policy convey certain information to consumers.[1]

### **Application of the Act**

Personally identifiable information is defined as any individually identifiable information about a consumer[2] that is maintained in an accessible (not encrypted) form, including any of the following: (a) first or last name, (b) physical address, (c) e-mail address, (d) telephone number, (e) social security number, (f) any other identifier that permits the physical or online contacting of a specific individual, or (g) any information concerning an individual maintained in personally identifiable form in combination with any one of the above.

The Act requires the entity to conspicuously post a privacy policy on its website. The entity may satisfy this requirement through any of the following:

- posting the actual privacy policy on its homepage;
- placing on its homepage an icon that hyperlinks to the privacy policy, where the icon:
  - o contains the word "privacy", and
  - o uses a color that contrasts with the background color of the webpage, or is otherwise distinguishable;
- placing a text link on the homepage that hyperlinks to the privacy policy, where the text link does one of the following:
  - o contains the word "privacy",
  - o is written in capital letters equal to or greater in size than the surrounding text, or
  - o is written in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text, or is set off from the surrounding text by symbols or other marks that call attention to the language;

- using any other reasonably noticeable hyperlink.

### **Content of Privacy Policy**

The privacy policy must accomplish all of the following:

- identify the categories of personally identifiable information that the entity collects;
- identify the categories of third parties with whom the entity may share the information that it collects;
- describe the process (if any) by which the entity allows an individual to review and request changes to any of his or her collected information;
- describe the process by which the entity notifies an individual to any material changes of its privacy policy; and
- identify the effective date of the privacy policy.

### **Failure to Comply**

Liability arises if the entity either (a) knowingly and willfully fails to comply with the law, even if the noncompliance is immaterial, or (b) negligently fails to comply with the law and the noncompliance is material. The Act includes a 30-day cure period after notice of noncompliance before the entity will be considered to be in violation. The Act does not contain its own enforcement provisions. It is expected that enforcement will be available through California's Unfair Competition Law (California Business and Professions Code Sections 17200-17209).

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[1] The Act specifically excludes any entity that merely operates, hosts, or manages a website that it does not own or that merely processes information on the owner's behalf.

[2] A consumer is defined as any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit, for personal, family, or household purposes.



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