



The California Consumer Privacy Act: Part 3

Compliance & Enforcement
(Or What We Think Will Happen)



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Agenda

01 Compliance Requirements

02 Enforcement “Tea Leaves”

Speakers



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Compliance Requirements The “Blocking & Tackling”

Compliance Activities (so far)

- Consumer Identity Verification
- Notice of Data Handling Practices
- Access & Copy Right
- Deletion Right
- Opt-Out Right

Consumer Identity Verification

- AG Regulatory Action
 - What ID mechanisms will suffice?
 - Safe Harbor?
- Pre-existing Relationship with Consumer
 - Account log-in is likely sufficient
 - Similar to refunds
- No Pre-existing Relationship with Consumer
 - Can **not** require registration to verify Identity
 - Background Screening has examples
 - Data Source Obligations
 - Force the data source to authenticate Identity

Notice of Data Handling Practices - §1798.100(b)

- Generally Seen as a Privacy Policy
- Available **before** data is collected
- Must be available for **off-line** data collection
 - In-Store Retail Loyalty Program Enrollments
 - AG Guidance on how to do this
- Content of notice
 - Categories of Data Collected
 - Categories of Purposes for Use
 - Can't use data for a non-disclosed purpose
 - Art to drafting purposes

Access & Copy - §1798.100(a) & §1798.110

- Specific Request for Data
 - Verifiable Consumer Request **required**
 - Can't verify ID, can't provide access
 - **Specific** pieces of data collected
 - direct
 - **third party**
 - Specific third parties **and** Service providers (§1798.115)
 - Similar to “Shine-the-Light” law
- Right **must** be disclosed in Privacy Statement
- Consumer has a right to a copy of all data they have access to
- 45 days to respond (possible 90 day extension)
- If exception used to refuse access, still must respond

Deletion - §1798.105

- Right Limitations
 - Data collected from the Consumer
 - Third party data not subject to request
 - Highly limited right
 - Business purposes *et al*
 - Document why data is retained (Records Retention Program)
- Right has to be disclosed in Privacy Statement
- 45 days to respond (possible 90 day extension)
 - may be difficult for large data sets
- If exception used to refuse access, still must respond

Opt-Out - §1798.120

- Right Limitation
 - Only applies to **sale** of data to **third parties**
- No exceptions for “Business Need” or financial model
- Where applies, nearly absolute
- Need to document **why** Vendors and partners get data
 - Important to avoid them being “third parties”
 - Important to avoid classifying transaction as a “sale”
- If Data is about **16-year old or younger**
 - **Must** get affirmative consent **prior** to sale
- AG Regulation Issues
 - Applicability up and down supply chain
- Right has to be disclosed in Privacy Statement
- 45 days to respond (possible 90 day extension)
 - may be difficult for large data sets
- If exception used to refuse access, still must respond

Opt-Out Link - §1798.135

- AG Regulation
 - Define Clear & Conspicuous
- “Magic Language” for links
 - “Do Not Sell My Personal Information”
 - Can’t **only** embed this in Privacy Policy
 - Put link at **point of data collection**
 - Put link in Privacy Policy as well
 - **Must** link directly to Opt-Out form
 - **Can’t** inquire of Opt-In for 12 months



AG Enforcement “Reading the Tea-Leaves”

Historical Precedence

- CalOPPA
- California “Shine-the-Light” Law
- Unfair Competition Law
- FTC Enforcement Actions

Enforcement Process

- AG Must Promulgate Regulations
 - Can't enforce what isn't there
 - Admin Procedure Act still applies (Cal Gov Code §§11346 – 11348)
- July 2020 is enforcement date
 - except where §11343.4 says otherwise
(Rules are “effective” quarterly)
- AG must provide notice of violation prior to enforcement action
 - 30 days to cure

CalOPPA Enforcement

- Traditional AG Enforcement
 - Knowledge of Violation an issue
- Leverage Consumer Experience
 - On-Line Form for Consumer Complaints
 - Media Outreach
 - Privacy Watchdogs
 - Consumer Watchdogs

Expectations

- AG will finalize Rules early 2020
 - Currently Hiring Staff
- Existing enforcement actions will drive future trends
- AG Will find some way to ease its burden of enforcing
 - Bill to permit County & City Attorneys to enforce
- Enforcement will first focus on “Big Name” businesses
 - See AG Enforcement webpage
(<https://oag.ca.gov/privacy/privacy-enforcement-actions>)
 - Preemption fight may limit enforcement actions
 - Delta’s CalOPPA action



Thank You