



Brief Report on the California Consumer Privacy Act of 2018 (CCPA)

[Cal. Civ. Code Title 1.81.5. CCPA §§ 1798.100–1798.199]

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This contribution covers the provisions of the California Consumer Privacy Act of 2018 relevant to the operationalisation of goods and services related to personal data and its management.

Introduction

Initially, the document elaborates on personal data, which is at the core of the Regulation. Overall, it is divided into four sections dealing. Under Sect. 1, the notion of personal data and context of the CCPA Regulation is set along with the details related to cost estimates for CCPA compliance; Sect. 2 enlists rights conferred to consumers by the CCPA; Sect. 3 focuses on core compliance requirements and obligations to stakeholders, and Sect. 4 deals with adopting enforcement mechanisms for the CCPA provisions. These four sections detail salient provisions carved under relevant CCPA sections cited alongside.

In brief, this landmark law tries to give more control to the consumers over the personal information that businesses collect about them. To realise this, it obliges businesses with certain regulatory requirements and confers rights to their consumers who are natural persons or residents of California, which involve rights such as the right to know about

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the personal information collected by businesses for commercial purposes, the right to opt for from selling their information, right to delete such information from businesses, and right to non-discrimination if they enforce such rights. The exclusive feature of this law is that the definition of personal information is extended from natural persons to their households or devices therein. Another talked about feature of the CCPA obliges businesses to provide an option to provide an opt-out logo or button on their website saying 'Do Not Sell My Personal Information' by clicking which consumers will be able to explicitly opt-out their consent for selling their information.

On the other hand, the article points to the limited regulatory mechanisms under CCPA, such as California Attorney General. The State is also proposing additional legislation, California Privacy Rights Act (CPRA), which envisages strengthening the CCPA provisions. CPRA will be a foundation for an independent agency dedicated to privacy law - with the power to audit companies for compliance.

Section 1: More about personal information and its regulatory framework

i. Personal information:

What is personal information?

Personal information means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household – as defined in a §1798.140 o(1) of the CCPA.

Some of the examples of personal data can be found below (but are not limited to these):

- A. Identifiers** [real name, alias, postal address, unique personal identifier, online identifier, internet protocol address, email address, account name, social security number, driver's license number, passport number, or other similar identifiers];
- B. Categories of personal information** from §1798.140(e) of the Title 1.81 Customer Records [e.g., his/her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information];
- C. Characteristics of protected classifications** under California or federal law
- D. Commercial information** (e.g., including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies)
- E. Biometric information**
- F. Internet or other electronic network activity information** (e.g., browsing history, search history, and information regarding a consumer's interaction with an internet website, application, or advertisement)
- G. Geolocation data**
- H. Audio, electronic, visual, thermal, olfactory, or similar information**
- I. Professional or employment-related information**
- J. Education information** from 20 U.S.C. §1232(g) of the Title 1.81 Family educational and privacy rights (e.g., information that is not publicly available personally identifiable information)
- K. Inferences drawn** from any of the above information to create a consumer profile reflecting preferences, characteristics, psychological trends, predispositions, behaviour, attitudes, intelligence, abilities, and aptitudes

Besides these broad categories of characteristics, the Act clearly excluded publicly available consumer information & deidentified

/aggregated consumer information from the purview of personal information.

What are the characteristics of deidentified information or pseudonymization processing of personal information?

Personal information is considered as deidentified if such information cannot reasonably identify, relate to, describe, be capable of being associated with, or be (directly or indirectly) linked to a particular consumer.

The processing of personal information is considered pseudonymization when carried out so that the personal information is no longer attributable to a specific consumer without the use of additional information.

In such cases of pseudonymization, a combination of the additional information might result in the attribution of an identified or identifiable consumer.

ii. The CCPA:

Who is considered a consumer under this Act?

Under this Act, the consumer means a natural person who is a California resident however identified by any unique identifier – as defined in Section 17014 of Title 18 of the California Code of Regulations.

It applies to such a person even if he/she is temporarily outside the State.

However, as it only applies to a natural person, the definition does not encompass a legal person, corporation, or other business entity.

When did the regulation come in force?

The California Consumer Privacy Act of 2018 was entered into force on 01 January 2020.

ii. Setting the context of CCPA and its intention

The California Constitution empowers Californians with the right to privacy as an inalienable right. The right to protect personal information is fundamentally at the core of privacy. When California voters approved the right of privacy in 1972, the California Legislature adopted specific mechanisms to

safeguard Californians' privacy, including the Online Privacy Protection Act, the Privacy Rights for California Minors in the Digital World Act, and Shine the Light.

Assembly Bill No. 375 mentions in Section 2 that the Californian Assembly felt a need for such a law after a series of congressional hearings highlighting the vulnerability of the personal data to misuse, as in the case of Cambridge Analytica in March 2018.

Therefore, the Act intends to give control of the flow of personal information to the consumers themselves by conferring them the right to know, right to delete, right to opt-out, and right to non-discrimination concerning the personal information being collected, processed, or shared by the businesses.

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Section 2: Rights conferred by the CCPA

i. Right to know:

With this right, consumers might request businesses disclose the personal information

they have collected, used, shared, or sold and its purpose. Such requests may include:

- The categories of personal information
- Specific pieces of personal information
- The categories of sources from which the business collected personal information
- The purposes for which the business uses the personal information
- The categories of third parties with whom the business shares the personal information
- The categories of information that the business sells or discloses to third parties

It is mandatory for the businesses to furnish such information for the 12 months preceding the request and must provide it free of charge.

iii. Right to delete:

This right confers customers to request businesses to stop selling their opt-out personal information. With some exceptions, businesses cannot sell consumers' personal information after receiving such opt-out requests unless consumers provide authorization allowing the business to do so again.

Businesses must wait at least 12 months before asking their consumers to opt back into the sale of their personal information.

Businesses can only sell the personal information of a child if they get the affirmative authorization (the right to opt-in) for the sale of the personal information of a child less than 16 years. For children under the age of 13, opt-in must come from the child's parent or guardian. For children at least 13 years old but under the age of 16, the opt-in can come from the child.

iii. Right to non-discrimination:

Businesses cannot discriminate just because the consumer exercised their rights under the CCPA which may include denying goods or services, charging a different price, or providing a different level or quality of goods or services.

However, suppose a consumer refuses to provide personal information to a business, asks to delete personal information, or requests to stop selling personal information. In that case, the business providing goods/services may

not be liable for completing the transactions.

Businesses can also offer consumers promotions, discounts, and other deals to consumers in exchange for collecting, keeping, or selling personal information. However, such financial incentives should be reasonably related to the value of consumers' personal information.

Section 3: Compliance with the CCPA: To Whom? and How?

i. Businesses:

What does business means under this Act?

Any entity (either a sole proprietorship, partnership, limited liability companies, corporation, association, or other legal entity) organized/operated for the profit or financial benefit (of its shareholders or other owners) based on the consumers' personal information.

Such personal information might be collected by businesses alone or jointly with others.

Such an entity has to satisfy one or more of the following thresholds:

- With annual gross revenues in excess of twenty-five million dollars (\$25,000,000)
- Undertakes business activities under commercial purposes involving the personal information of 50,000 or more consumers, households, or devices
- Derives 50 percent or more of its annual revenues from selling consumers' personal information

b. Right to non-discrimination:

For for-profit business entities that process personal information on behalf of a business, the use of personal information received from the business must be limited by contract.

iii. Right to non-discrimination:

They are any person other than the business that collected the personal information or a person who receives personal information from a business pursuant to certain contractual limitations.

Section 4: Enforcement of the CCPA

i. California Attorney General:

The Act authorizes any business or third party to seek the opinion of the Attorney General for

guidance on how to comply with the provisions.

In case of failure to comply with the Act (e.g., failure to cure any alleged violation within 30 days after being notified of alleged noncompliance), any business, service provider, or other person violating CCPA provisions shall be subject to:

- Injunction
- Liable for a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each non-intentional violation
- Seven thousand five hundred dollars (\$7,500) for each intentional violation

ii. Data Breach Private Right of Action:

Any consumer whose nonencrypted and nonredacted personal information is subject to

unauthorized access and exfiltration, theft, or disclosure as a result of the business's violation of the duty to implement and maintain reasonable security procedures/practices appropriate to the nature of the information to protect the personal information may institute a civil action for any of the following:

- To recover damages in an amount not less than one hundred dollars (\$100) and not greater than seven hundred and fifty (\$750) per consumer per incident or actual damages, whichever is greater
- Injunctive or declaratory relief
- Any other relief the court deems proper

REFERENCES

1. CCPA, (2018). Cal. Civ. Code - TITLE 1.81.5. California Consumer Privacy Act of 2018 [1798.100 - 1798.199] (Title 1.81.5 added by Stats. 2018, Ch. 55, Sec. 3). https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=3.&part=4.&lawCode=CIV&title=1.81.5
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