

THE CALIFORNIA CONSUMER PRIVACY ACT OF 2018

MORRISON
FOERSTER

SEPTEMBER 2021

WHO MUST COMPLY?

The Act applies to any for-profit entity doing business in California that determines the processing of PI and meets one of the following thresholds:



Annual gross revenues in excess of \$25 million;



Annually buys, receives for its commercial purposes, sells, or shares for commercial purposes personal information relating to 50,000 or more consumers, households, or devices;



Derives 50% or more of its annual revenue from selling consumer personal information.

WHO IS A “CONSUMER?”



Any **California resident**, including a natural person: (i) in California for “other than a temporary or transitory purpose”; or (ii) domiciled in California but outside of California for a temporary or transitory purpose.

Includes customers, employees, individuals associated with commercial customers, independent contractors, and visitors to company premises.

See Exceptions

WHAT IS “COLLECTING” AND “SELLING?”



Collecting – buying, renting, gathering, obtaining, receiving, or accessing any PI about a consumer by any means.



Selling – disclosing PI to another business or third party for monetary or other valuable consideration.

WHAT IS “PERSONAL INFORMATION?”

Personal Information (PI) broadly includes any information that “identifies, relates to, describes, references, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.” This includes but is not limited to:

1. Identifiers (e.g., name, contact information, ID numbers, IP address)

2. PI under the California disposal law (e.g., name and SSN)

3. Characteristics of protected classifications under California and federal law (e.g., race and gender)

4. Commercial information (e.g., purchasing histories or tendencies)

5. Biometric data

6. Internet or other electronic network activity information (e.g., browsing and search history and interactions with websites, apps, and ads)

7. Geolocation data

8. Audio, electronic, visual, thermal, olfactory, or similar information

9. Professional or employment-related information

10. Education information (as defined in FERPA)

11. Inferences drawn from any of the above to create a profile about a consumer reflecting the consumer’s preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitude.

But PI does not include information lawfully made available from federal, state, or local government records, as well as de-identified or aggregated information.

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WHAT INDIVIDUAL RIGHTS DOES THE ACT CREATE?

1

Right to Know/ Access. Among other things, consumers have a right to request individual disclosures, including:

- categories and *specific pieces* of PI collected about the consumer
- categories of sources from which the PI is collected
- the business or commercial purpose for collecting or selling PI
- categories of third parties with whom the business shares PI

Businesses must designate two or more methods for consumers to request the information (including at least a toll-free number) and provide it within 45 days, free of charge, and in a portable format. Consumer requests may be made twice a year and cover the one year period preceding the request. Online-only businesses that maintain direct consumer relationships need only provide an email address for submitting CCPA requests.

2

Right to Deletion of any PI that the business has collected “from the consumer” if an exception does not apply. Businesses must also direct service providers to delete the PI from their records.

3

Right to Opt-Out of Sale. Consumers age 16 and older may opt out of the sale of their PI to third parties. Businesses cannot sell PI of consumers under 16 without express authorization.

4

Right to Be Free from Discrimination. A business may not charge different prices or rates, provide different services, or deny goods or services to consumers who exercise their rights under the Act. It may, however, incentivize the collection, sale, or deletion of PI.

5

Right to Sue if a business’ failure to implement and maintain reasonable security results in the unauthorized access and exfiltration, theft, or disclosure of non-redacted or non-encrypted PI. Consumers must give 30 days’ pre-suit notice for statutory damages, and businesses have an opportunity to cure to avoid suit.

ARE THERE EXCEPTIONS?

General

Publicly available, de-identified, and aggregated data

- Right to deletion is subject to nine exceptions, including fraud prevention

Partial

- Until January 1, 2021,
 - PI pertaining to, e.g., job applicants, employees, or contractors
 - PI obtained in the context of certain B-to-B communications or transactions
- Compliance with law or legal process
- Where compliance with the Act would violate an evidentiary privilege

Specific

- Information subject to the GLBA
- Certain activity regulated by the Fair Credit Reporting Act
- Protected health information under HIPAA
- Clinical trial information

HOW IS IT ENFORCED?

Private Right of Action

- Limited to certain data security events
- 30-day pre-suit notice requirement for statutory damages
- Statutory damages of **\$100-\$750** “per consumer per incident” or actual damages, whichever is greater

California AG Enforcement

- Broader scope than private right of action
- A business will be deemed in violation if it does not cure within 30 days of notice
- Civil penalties of **\$2,500** for each violation, **\$7,500** for intentional violations

WHO SHOULD I CONTACT?



[Kristen J. Mathews](#)
Partner, New York
(212) 336-4038
KMathews@mofo.com



[Julie O'Neill](#)
Partner, Boston
(617) 648-4731
JOneill@mofo.com



[Purvi G. Patel](#)
Partner, Los Angeles
(213) 892-5296
PPatel@mofo.com



[Mary Race](#)
Of Counsel, Palo Alto
(650) 813-5609
MRace@mofo.com



[Vincent Schroder](#)
Of Counsel, Palo Alto
(650) 813-4083
VSchroder@mofo.com



[Nathan D. Taylor](#)
Partner, Washington, D.C.
(202) 778-1644
NDTaylor@mofo.com



[Marian Waldmann Agarwal](#)
Of Counsel, New York
(212) 336-4230
MWaldmann@mofo.com