



The Next Wave of California Privacy Laws CPRA, CCPA Amendments & More

Webinar No. 4 of IAB's Privacy Law Webinar Series

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Today's Speakers



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CPRA HISTORY

- October 9, 2019: Alastair Mactaggart (Californians for Consumer Privacy) submitted a proposed statewide initiative titled "The California Privacy Rights and Enforcement Act of 2020."
- November 4, 2019: Mactaggart submitted amendments to the text of the Initiative with a new title, "The California Privacy Rights Act of 2020" (the CPRA).
- May 4, 2020: Californians for Consumer Privacy claimed to have submitted nearly one million signatures to qualify the CPRA for the November 2020 ballot.
- May 14, 2020: The Secretary of State issued an update to all county clerks and registrars of voters stating that Mactaggart had filed more than 623,212 signatures with the counties and therefore the county clerks and registrars of voters must, prior to June 26, 2020, to verify 500 signatures or three percent of the number of signatures filed, whichever is greater. If a county received less than 500 signatures, it is required to verify all the signatures filed and certify the number of valid signatures.



Key Provisions of the CPRA Differentiating it from the CCPA

Key Dates

- Operative **January 1, 2023**. With the exception of right of access, **applies to personal information collected on or after January 1, 2022**.
- Subject to enforcement beginning **July 1, 2023** (does not impact CCPA enforcement date of July 1, 2020)

Scope Changes

- **Limits application of the law to exclude many more SMEs.** If a business does not meet the \$25M revenue threshold, it must either annually *buy, sell, or share for cross-context behavioral advertising* the personal information of 100,000 or more consumers or households *or derive more than 50% of its revenue from selling or sharing for cross-context behavioral advertising* personal information.
- **Defines “household”** as “a group, however identified, of consumers who cohabitate with one another at the same residential address and share use of common device(s) or service(s)”

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Sensitive Personal Information

- **New consumer right to limit use of sensitive personal information.** Requires a “Limit the Use of My Sensitive Personal Information“ link on a business’ website. Sensitive personal information is: (1) personal information that reveals (A) a consumer's social security, driver's license, state identification card, or passport number; (B) a consumer's account log-in, financial account, debit card, or credit card number In combination with any required security or access code, password, or credentials allowing access to an account; (C) a consumer's precise geolocation; (D) a consumer's racial or ethnic origin, religious or philosophical beliefs, or union membership; (E) the contents of a consumer's mail, email and text messages, unless the business is the intended recipient of the communication; (F) a consumer's genetic data; and (2)(A) the processing of biometric Information for the purpose of uniquely identifying a consumer; (B) personal information collected and analyzed concerning a consumer's health; or (C) personal information collected and analyzed concerning a consumer's sex life or sexual orientation



Key Provisions of the CPRA Differentiating it from the CCPA

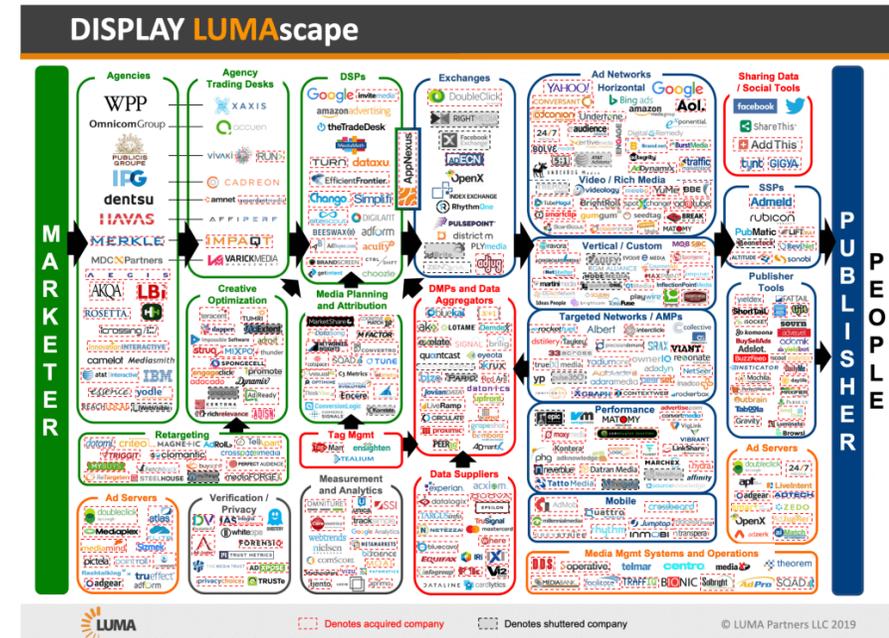
Digital Advertising Impact

- **Changes right to opt out of sale into right to opt out of sale or sharing with any third party** and requires a “Do Not Sell or Share My Personal Information” link. **“Sharing” is the same as selling except the exchange with the third party is for the purpose of cross-context behavioral advertising**, “the targeting of advertising to a consumer based on the consumer's personal Information obtained from the consumer's **activity across businesses, distinctly-branded websites, applications, or services, other than the business, distinctly-branded website, application, or service with which the consumer intentionally interacts,**” whether or not for monetary or other valuable consideration
- Provides as an **alternative** to the Do Not Sell/Share and Limit Use of Sensitive Information links the ability to offer an **“opt-out preference signal sent with the consumer's consent by a platform, technology, or mechanism, based on technical specifications set forth in regulations”** to be promulgated
- Clarifies that **“non-personalized advertising shown as part of a consumer's current interaction with the business” is a “business purpose” except when it involves precise geolocation**. Defines “precise geolocation” as any data that is derived from a device and that is used or intended to be used to locate a consumer within a geographic area that is equal to or less than **the area of a circle with a radius of 1,850 feet, except as prescribed by regulations**

Key Provisions of the CPRA Differentiating it from the CCPA

Digital Advertising Impact (cont.)

- “Business purpose” includes advertising and marketing services, except for cross-context behavioral advertising, to the consumer, provided that the service provider or contractor shall not combine the personal information of opted-out consumers with personal information from another person or that it collects from its own Interaction with consumers
- Defines a new category of entity in addition to business, service provider, and third party – contractor. Changes contractual restrictions on service providers and contractors to prohibit sharing for cross-context behavioral advertising. Limits secondary processing incompatible with context in which the personal information was collected
- Acknowledges that a business may respond to opt-out requests by informing the consumer of a charge for the use of a product or service, in which case the business must present the terms of any financial incentive offered for the retention, use, sale, or sharing of the consumer's personal information



Key Provisions of the CPRA Differentiating it from the CCPA

Financial Incentives

- Makes explicit that **the financial incentives/non-discrimination provision does not prohibit a business from offering loyalty, rewards, premium features, discounts, or club card programs** consistent with the CPRA

Data Retention

- Requires disclosures regarding **data retention** and places limitations thereon

Information Security

- Adds an **affirmative security obligation** beyond the reference in the private right of action
- Makes explicit that the **“implementation and maintenance of reasonable security procedures and practices pursuant to Section 1798.81.5 following a breach does not constitute a cure with respect to that breach”**



Key Provisions of the CPRA Differentiating it from the CCPA

Exemptions and Exclusions

- **Deletes exclusion of noncommercial speech (including political speech and journalism) from “commercial purposes.” But excludes “lawfully obtained, truthful information that is a matter of public concern” from personal information and expands publicly available information to include information that a business has a reasonable basis to believe is lawfully made available to the general public by the consumer or from widely distributed media and information made available by someone to whom the consumer disclosed the information without restriction to a specific audience.**
- **Extends employee information and B2B exemptions to January 1, 2023**
- **Limits consumer rights in the context of certain educational uses**
- **New qualified exemption to the right to delete and the right to opt-out where the “consumer has consented to the business's use, disclosure, or sale of that information to produce a physical item such as a school yearbook containing the consumer's photograph”**



Key Provisions of the CPRA Differentiating it from the CCPA

Consumer Rights to Delete, Access, and Correct

- **Expands flow-down obligations for deletion requests**
- Adds a **new right to correct inaccurate information** similar to the GDPR rectification right
- **Expands right to access beyond the last 12 months** with respect to information collected beginning in 2022
- **Excludes from right to access copies of data generated to help ensure security and integrity**

Rulemaking and Enforcement

- **Establishes the California Privacy Protection Agency** and transfer rulemaking authority from the AG over a period of time. Gives **CPPA authority to take enforcement action through an administrative hearing process.**
- Adds **many new categories of areas** where the AG and subsequently the CPPA must **promulgate regulations prior to July 1, 2022**

