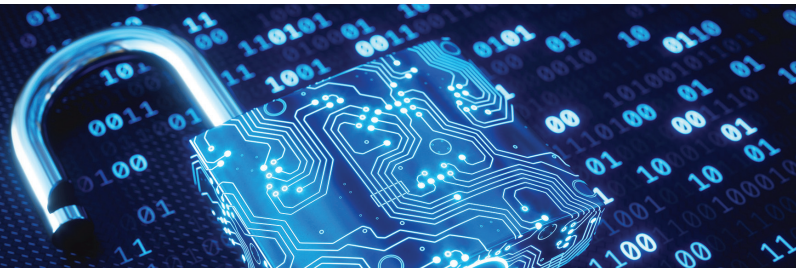
Proskauer

California Consumer Privacy Act (CCPA)



Frequently Asked Questions

Are GDPR-required privacy notices sufficient for the CCPA?

The CCPA together with the Attorney General's proposed regulations require certain CCPA-specific language about consumer rights to be included in a business's privacy policy and other privacy notices. The GDPR and the CCPA differ on the scope of personal information and consumers' rights. Therefore, GDPR-compliant notices will not be sufficient to satisfy the CCPA.

Your Proskauer privacy lawyers are equipped to review existing GDPR-compliant notices and evaluate what additional notices are required to comply with the CCPA.

Does the CCPA apply to employee data?

Because the CCPA includes an expansive definition of consumer ("a natural person who is a California resident"), employee data qualifies as consumer personal information under the CCPA. Pursuant to an amendment passed in the 2019 legislative term, employee data is exempt from most of the CCPA's requirements until January 1, 2021. However, companies are still required to provide employee privacy notices regarding the categories of personal information collected and employee data is still covered by the data breach provisions of the CCPA.

If you are implementing a global CCPA compliance program for non-employee data it may be more efficient to include employee data in this CCPA compliance program now so you do not have to go through the process twice

Since the CCPA only applies to California consumers, can a company just amend its existing privacy policy with a CCPA-compliant notice that has a statement that the notice is only applicable to CA residents?

Many businesses may opt to follow this approach. Your Proskauer privacy team is ready to evaluate your existing privacy notices and add a supplementary CCPA-specific notice that is only applicable to California consumers.

Does the CCPA apply to non-profit organizations?

The CCPA's definition of "business" does not include non-profit organizations. By definition, a CCPA-covered business is an "entity that is organized or operated *for the profit or financial benefit* of its shareholders or other owners. . . ." Section 1798.140(c)(emphasis added).

Are there any exemptions for business to business ("B2B") transactions?

The CCPA exempts for one year, from many of its provisions, personal information collected in B2B communications, or a communication between a business and a government agency, that was collected "within the context of the business conducting due diligence, regarding, or providing or receiving a product or service to or from such company, partnership, sole proprietorship, non-profit, or government agency." Section 1798.145(n)(1). With respect to that information, the business must still comply with the CCPA's opt-out and anti-discrimination requirements.

Are there any exemptions for consumer information that is necessary for the business to maintain?

The CCPA exempts businesses or services providers from having to comply with consumers' requests to delete personal information, "if it is necessary for the business or service provider to maintain the consumer's personal information" for the following business purposes:

- To complete the transaction for which the information was collected
- The business's own cyber-security, to repair the business's system, or other internal uses that are reasonably aligned with the consumer's relationship with the business
- Exercise the business's or other consumers' rights
- Comply with legal obligations
- Engage in studies for the public interest
- "Otherwise use the consumer's personal information, internally, in a lawful manner that is compatible with the context in which the consumer provided the information." Section 1798.105(d).

What responsibilities, if any, do service providers and third-parties to a CCPA-covered business have?

In the CCPA, "service provider" and "third-party" are defined terms that relate to distinct entities. A "service provider" is a for-profit entity "that processes information on or on behalf of a business and to which the business discloses a consumer's personal information for a business purpose *pursuant to a written contract*. . . ." Cal. Civ. Code § 1798.140(v)(emphasis added). A "third-party," by contrast, is defined in the negative—it is defined as a person who is neither the CCPA covered business nor a person who received information from a business pursuant to a written contract (essentially, not a service provider). Cal. Civ. Code § 1798.140(w). Service providers and third-parties have different obligations under the CCPA.

Service providers have a contractual relationship with the company to process consumer information at the direction of the business. The contract must expressly prohibit the service provider from processing or using the consumer information in ways that are not set forth in the contract. In addition to adhering to those requirements, service providers must comply with requests from businesses to delete consumer personal information, at the request of the consumer.

In contrast, third-parties are not part of the CCPA covered business or the service provider and may use the personal information that it receives or collects from the CCPA covered business for its own purposes.

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