



What is the
**California Consumer
Privacy Act?**
A Primer



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WHAT IS CCPA?



The California Consumer Privacy Act

The California Consumer Privacy Act (CCPA) is California's comprehensive privacy bill, that went into effect on January 1, 2020.

Businesses are expected to be in compliance with the law by July 1, 2020.



The bill creates a host of new consumer rights and places new obligations on businesses handling the personal information of California residents.

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CCPA TIMELINE

October 2017: Real estate developer Alastair Mactaggart files a ballot initiative containing the preliminary language of the California Consumer Privacy Act (CCPA).

June 21, 2018: Consideration of legislative version (A.B. 375) of CCPA begins. California legislators had previously reached an agreement with Mactaggart to pass a satisfactory consumer privacy law in exchange for the withdrawal of his ballot initiative.

September 24, 2018: California State Legislature passes first round of CCPA amendments via (S.B. 1121). These include revisions to drafting errors, further definition of personal information, and clarification of certain exemptions.

May 2018: Mactaggart announces that his initiative has obtained the requisite number of signatures for placement on the November 2018 general election ballot.

June 28, 2018: Legislative version of CCPA passes both chambers in the California State Legislature, triggering Mactaggart's commitment to withdraw his initiative. Governor Gavin Newsom signs CCPA and amendments into law.



September 2019: California State Legislature passes second round of CCPA amendments. These include exemptions for employee data, data broker registration requirements, and further clarification on the definition of personal information.

October 11, 2019: Governor Newsom signs second round of amendments into law.

July 1, 2020: The Attorney General can start to bring enforcement actions for most provisions of the CCPA.

October 10, 2019: California Attorney General (AG) releases draft implementing regulations. 45-day public comment period begins.

January 1, 2020: CCPA goes into effect. Covered entities have six months before enforcement of most provisions.

Once the Attorney General's proposed regulations are finalized and published the Attorney General may bring enforcement actions within 6 months of that publication date.





CCPA

Applies to

Any commercial (for-profit) entity that processes data of a California consumer and

Meets any one of the following thresholds on an annual basis:

generates a gross revenue of more than \$25 million; or

buys, sells, or shares “personal information” of 50,000 or more “consumers, households, or devices”; or

derives 50 percent or more of its revenue from the sale of “personal information.”

The law also applies to any entity that either:

controls or is controlled by a covered business (see above); or

shares common branding with a covered business, such as a shared name, service mark, or trademark.








The CCPA still likely applies to businesses outside of California even if the business has no physical presence in California.

Key Things to Know

🔑 CCPA's Definition of Personal Information

Personal information is any 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.

Examples of personal information that will fall under CCPA, even if no name is associated with the information:

-  Household's water or energy consumption
-  Particular employee's job description
-  IP address
-  Web browsing history
-  Purchasing tendencies
-  Biometrics
-  Geolocation



Inferences about a consumer using the aforementioned categories

What is not Personal Information?

Personal information does not include: (1) certain publicly available government records and (2) de-identified and aggregate consumer information.

- **Publicly Available** means information that is made available from federal, state, or local government records (how the information is used does not matter)
 - Publicly available does not mean biometric information collected by a business about a consumer without a consumer's knowledge.
- **De-identified and aggregate consumer information is excluded under CCPA.**
 - To qualify as de-identified data, the data must be incapable of being re-identified with users at a later date, and businesses must have procedures in place to prevent re-identification from occurring.

Right to Access Personal Information

Right to Access Personal Information.

- **Look Back Period** –A California consumer may submit a data access request for the personal information (PI) collected within the 12 months prior to their request.

Right to Receive Personal Information in a Readily Usable and Portable Format

(if provided electronically).

Right to Delete Personal Information (subject to exceptions).

- A consumer has the right to request specific pieces of information that a business has collected about them, but they ***do not automatically get that information, the consumer may just request it.***
 - i. Covered businesses must honor “verifiable” requests to delete a California consumer’s personal information.
 - ii. Covered businesses do not have to delete personal information if it is required to complete a transaction or provide a good/service.



Right to Opt-Out of the Sale of Personal Information

- A California consumer has the right to opt-out of a covered business selling the consumer's personal information to third parties.

Right to Opt-In (for minors).

- **Under the Age of 13** – The personal information of minors under the age of 13 may only be sold by covered businesses if the minor's parent or guardian has affirmatively authorized the sale.
- **Minors Ages 13-16** – The personal information of minors ages 13-16 requires affirmative authorization from the consumer.

Right to Equal Services and Prices (Non-Discriminatory)

- A business cannot discriminate against a consumer because they have exercised their CCPA rights.
- A business may change offerings if that difference is *reasonably related* to the value provided by the consumer's data to the business.
- Businesses may offer financial incentives if they are: (1) disclosed in the terms of service or online privacy policy and (2) require opt-in consent.

Actual Knowledge Requirement:

The CCPA imposes an "actual knowledge" requirement on businesses in order to be in violation the minor consent provision. The CCPA provides that businesses which willfully disregard a consumer's age are said to have actual knowledge of the consumer's age.

****Covered businesses must ask consumers whether they are over 16 years of age!****



Exemptions

1. Employee Data (1 year)

CCPA will not cover the collection of personal information from job applicants, employees, business owners, directors, officers, medical staff, or contractors for one year.

- Employees still retain both the right: (1) to bring a private action for a data breach and (2) to be informed of the data categories and purposes for which the data is collected by the business.

2. Medical information that falls under CMIA or HIPAA

3. Sale of info to or from consumer reporting agencies

4. Clinical Trial Information

5. Personal Information under the Gramm-Leach-Bliley Act

6. Publicly Available Information



How Do I Prepare?

- ✔ Prepare data maps, inventories, or other records of all personal information pertaining to California residents, households, devices, information sources, and storage locations.
- ✔ Add newly required disclosures to company privacy policies.
- ✔ Prepare for consumer data access, deletion, and portability requests.
- ✔ Implement **prior opt-in consent** protocols for data sharing for regular and child consumers.
- ✔ Create procedures to comply with opt-out requests of data sharing.
- ✔ Consider alternative business models and web/mobile presence.
 - E.g., California-only sites and offerings.
- ✔ Implement a method(s) for submitting data access requests.
 - Two methods required for businesses not exclusively online (i.e., toll-free phone number, website disclosure).
 - Exception: A business that operates (1) exclusively online and (2) has a direct relationship with a consumer with whom it collects personal information is **only required** to provide an email address for submitting requests for information required to be disclosed.
- ✔ Provide a clear and conspicuous **“DO NOT SELL MY PERSONAL INFORMATION”** link on the business’s homepage.
 - The link should enable a person or someone they authorize to opt-out of the sale of the California resident’s personal information.



How Do I Prepare?

- ☑ Fund and implement new systems and processes to comply with CCPA requirements to:
 1. **Verify** the identity and authorization of person making the request for data access, deletion, and/or portability.
 - Consumer authentication must be *reasonable* in light of the nature of the information being requested.
 2. **Respond** to requests for data access, deletion, and portability within *45 days*.
 - Possibility of a one-time additional 45-day extension (90 days in total).
 - Requests by a California resident may only be made twice a year and only for personal information within 12 months.
 - This information must be provided free of charge.
 - ****No time limits on deletions or “do not sell” requests. ****
 3. **Avoid** asking for opt-in consent for 12 months after a California resident opts out.
- ☑ Update company’s privacy policies to contain a description of California residents’ rights.
- ☑ Create and implement data sharing processes to obtain parental or guardian consent for minors under 13 years of age and affirmative consent for minors 13- 16 years old.

If you are considered a data broker under CCPA, you must register with the California Attorney General (AG).

- **Data broker** - is defined to mean a business that knowingly collects and sells to third parties the personal information of a consumer with whom the business does not have a direct relationship.
 - Does not include entities already regulated by Fair Credit Reporting Act (“FCRA”), Gramm-Leach-Bliley Act (“GLBA”), or California’s Insurance Information and Privacy Protection Act (“IIPPA”).

How Will CCPA be Enforced?

Intentional Violations

The California Attorney General can bring a civil action against a company for penalties up to \$7,500 per any intentional violation of CCPA.

Unintentional Violations

If the company fails to cure an unintentional violation within 30 days of being notified, the California AG may levy a fine of \$2,500 per violation.



Twenty percent of such penalties collected by the State of California shall be allocated to a new “Consumer Privacy Fund” to be a revenue source for enforcement.

Companies that Fall Victim to Data Theft or Data Security

Breaches

Companies subject to civil class action lawsuits may have to pay statutory damages between \$100 to \$750 per California resident and incident, or actual damages, whichever is greater, and any other relief the court deems proper.



Important CCPA Definitions

Business – any commercial (for-profit) entity that does business in the State of California and meets any one of the following thresholds on an annual basis: (1) generates a gross revenue of more than \$25 million; (2) buys, sells, or shares “personal information” of 50,000 or more “consumers, households, or devices”; or (3) derives 50 percent or more of its revenue from the sale of “personal information.”

Physical presence in CA is not required.

Consumers – natural persons who are California residents (regardless of whether they are outside California for a temporary or transitory purpose).

Data Broker – a business that knowingly collects and sells to third parties the personal information of a consumer with whom the business does not have a direct relationship.

De-Identified Data – information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer.

Doing Business (if not physically based in CA) – any out-of-state company “is doing business in California if it actively engages in any transaction for the purpose of financial or pecuniary gain or profit in California.” (CA Rev. and Tax. Code § 23101(a)) or enter “into repeated successive transactions” in California, which could occur remotely or online (CA Corp. Code §§ 191(a), 15901.02(ai), 177708.03(a)).

Household – collective of individuals, such as a family or occupants of a residential address.

Personal Information – 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.

Personal information may include but is not limited to: identifiers; IP addresses; email addresses; biometrics; products or services purchased; browsing history; educational or Family Educational Rights and Privacy Act (FERPA) information; employment information; profiling information based on inferences; olfactory information.

Processing – means any operation or set of operations that are performed on personal data, whether or not by automated means.

Important CCPA Definitions

Sale – selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer’s personal information by the business to another business or third-party for monetary or other valuable consideration.

- Exceptions:
 - Consumer-directed disclosures to third parties that do not sell personal information
 - Limited sharing with service providers
 - Business transfers in bankruptcy
 - Mergers and acquisitions

Service Provider – any for-profit entity that processes information on behalf of a covered for-profit business.

- Service providers are prohibited from using or retaining personal information for any other reason than to perform their stated services under a contract.

Third Party – a person who is not any of the following: (1) A business that collects personal information from consumers under this title. (2) A person to whom the business discloses a consumer’s personal information for a business purpose pursuant to a written contract, provided that the contract: (i) Prohibits the person receiving the personal information from: (1) selling the personal information; (2) retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the service specified in the contract, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract; (3) retaining, using, or disclosing information outside of the direct business relationship between the person and the business.

- The definition also includes a third party that makes a certification upon receiving the personal information the third party understands the restrictions set out above and will comply with them.

****A person covered by this paragraph that violates any of the restrictions set forth in this title shall be liable for the violations. A business that discloses personal information to a person covered by this paragraph in compliance with this paragraph shall not be liable under this title if the person receiving the personal information uses it in violation of the restrictions set forth in this title, provided that, at the time of disclosing the personal information, the business does not have actual knowledge, or reason to believe, that the person intends to commit such a violation.****

Some of these definitions are not the exact language of the statute and have been modified to be more user friendly, but for exact language please see California Civil Code 1798.140.

References and Resources

- [California Civ. Code § 1798.100-.199](#)
- [California Consumer Privacy Act: Overview](#) (Mintz)
- [California Consumer Privacy Act: Practical Guide](#) (Bryan Cave Leighton Paisner)
- [California Consumer Privacy Act: Resources](#) (Teach Privacy)
- [CCPA, face to face with the GDPR: An in depth comparative analysis](#) (Future of Privacy Forum)
- [California Consumer Privacy Act: The Challenge Ahead – A Comparison of 10 Key Aspects of The GDPR and The CCPA](#) (Hogan Lovells)
- [And At the End of the Day, the CCPA Remains Very Much the Same \(Guest Blog Post\)](#) (Eric Goldman Technology and Marketing Blog)
- [Analysis of Attorney General Regulations to CCPA – Part 4: Special Rules Regarding Minors](#) (National Law Review)
- [The CCPA And COPPA: Looking For The “Betwixt And Between”](#) (Paul Hastings)
- [What is a ‘sale’ under CCPA?](#) (Golden Data)
- [‘Sale’ under CCPA may not be as scary as you think](#) (IAPP)
- [A Closer Look at the CCPA’s Private Right of Action and Statutory Damages](#) (Patterson Belknap Webb & Tyler LLP)
- [The CCPA Could Reset Data Breach Litigation Risks](#) (Alston & Bird)
- [Third Parties and the California Consumer Privacy Act \(CCPA\)](#) (Return Path)
- [How to know if your vendor is a ‘service provider’ under CCPA](#) (IAPP)
- [A federal privacy law could do better than California’s](#) (Brookings)
- [How Can Pre-Emption Help Produce Meaningful Privacy Protections for Consumers?](#) (Morning Consult)

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