

The Future of Privacy in California

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The California Privacy Rights Act (CPRA) will replace the California Consumer Privacy Act (CCPA) on January 1, 2023. With some rights retroactive to January 1, 2022, businesses should prepare now.

Changes to keep in mind under the CPRA include:

Businesses

A “business” is an entity that conducts business in California for-profit and annually either:

1. Has gross revenue of \$25 million or more,
2. Buys, receives, sells or shares the personal information of 100,000 or more consumers or households (not devices); or
3. Derives 50% or more of its revenue from selling or sharing personal information.

Notice Obligations

The pre-collection notice obligation is revised by requiring businesses to disclose categories of personal information collected, purposes for which the information is collected or used, whether it is sold or shared, and the retention period. These disclosures are also required for sensitive personal information.

Sensitive Personal Information

A new category of “sensitive personal information” is created which includes “personal information that reveals” information such as SSNs, financial information, unique biometric data, precise geolocation, and the contents of mail, email or texts. Businesses must provide a new “Limit the Use of My Sensitive Personal Information” link, if applicable.

Enhanced Contractual Obligations

Additional contractual terms are now required between a business and:

1. Any “third parties” with whom it sells or shares personal information and/or
2. Any “services providers” or “contractors” (newly defined under CPRA) it discloses personal information to, that limit the use of such information, impose security obligations and grant the business rights to ensure such parties comply with their obligations.

Cross-Context Behavioral Advertising

The concept of “sharing” is introduced and defined as a business making available personal information to a third party for “cross-context behavioral advertising,” meaning targeted advertising based on personal information obtained from the consumer’s activity across businesses and different platforms that the consumer did not intentionally interact with. The same disclosure and opt-out rights that apply to “sales” also apply to “sharing.”

Enhanced Consumer Rights

Now added are the “right to correct information,” the “right to opt-out of sharing,” the “right to data portability”; and the “right to limit the use of sensitive personal information.”

Publicly Available Exception

The definition of publicly available information (which is not considered personal information) is now expanded to information that is made available to the public by the consumer or from widely distributed media.

What Businesses Can Do Now

- Reexamine their personal information processing in light of CPRA.
- Determine whether they are engaging in “cross-context behavioral advertising.”
- Prepare to update contracts and privacy policy to address CPRA’s requirements once California releases final CPRA regulations.

