



Comments to the California Department of Justice's (DOJ) Second Set of Revisions to the California Consumer Protection Act (CCPA) Regulations

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I am a tenured law professor at Santa Clara University School of Law, where I teach Internet Law. This is my third set of comments on the California Department of Justice (DOJ)'s proposed regulations for the California Consumer Privacy Act. My prior two sets of comments:

- Submitted December 6, 2019 on the initial draft regulations:
<https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=3093&context=historical>
- Submitted February 25, 2020 on the first set of revisions:
<https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=3156&context=historical>

This time, I am commenting on the second set of revisions dated March 11, 2020. These comments represent only my views and not the views of my employer or any third party.

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Deletion of 999.302

While the prior draft's exclusion of IP addresses from "personal information" was imperfectly expressed, the idea was in the right direction. Rather than eliminating the idea entirely, the DOJ would fix many problems by excluding IP addresses from the definition of "personal information" solely for purposes of 1798.140(c)(1)(B).

Opt-Out Button

I appreciate the DOJ stepping back from the unworkable proposed opt-out button design. However, now I do not understand how the DOJ plans to comply with 1798.185(a)(4)(C), which mandates that the DOJ establish rules and procedures for the development and use of an opt-out logo or button. Is the DOJ postponing or abandoning that effort?

Transparency Reports

999.317(g) should be deleted entirely because the DOJ has not provided adequate justification for it. The book *Full Disclosure* by Archon Fung et al lays out multitudinous challenges to properly designing transparency reports. 317(g) conflicts with much of the book's guidance, especially the uncertainty about who will use the information and how they will use it.

Separately, the newly-added "reasonably should know" qualifier should be deleted because it will force businesses to comply with the rule before actually reaching the 10M threshold. This language makes business anticipate future but uncertain customer growth. As with all numerical thresholds for obligations in the CCPA or regulations, the DOJ should provide a phase-in period so that businesses incur the compliance expenses only after they reach the threshold.

CCPA and COVID-19

The DOJ should relax the July 1, 2020 enforcement date. California has declared a state of emergency and is on indefinite lockdown due to COVID-19. This is not business as usual.

Instead, these circumstances significantly hamper businesses' ability to respond to the constantly-changing requirements of the draft regulations. Due to illness or layoffs, some businesses will not have employees available to implement the new requirements. Furthermore, businesses across the state are under extreme financial stress due to the imminent state-wide economic depression; and many businesses have seen their customer base virtually dry up overnight, making it challenging for them to meet the expenses like rent and payroll needed to keep the lights on.

In the face of the unprecedented public health crisis, many businesses will need adequate time to manage the logistics, and absorb the expenses, of complying with the DOJ's regulations. Forcing businesses to incur additional compliance expenses, on a super-tight timeline, will hurt everyone.

Thank you for considering my comments.



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