

# Revised Draft CCPA Regulations Released!

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OR

*Draft Regulations II: Revenge of the Redline*



Household  
redefined!

IP address  
isn't always  
personal  
data!

Can  
notices be  
shorter?

# Your Faegre Drinker Speakers

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# The Nominees for Best Edit Are . . .

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# Household Redefined!

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(k) ~~(h)~~ “Household” means a person or group of people who: (1) reside at the same address, (2) share a common device or the same service provided by a business, and (3) are identified by the business as sharing the same group account or unique identifier ~~occupying a single dwelling.~~

# Collection Notices . . . Shortened?

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(b) A business shall include the following in its notice at collection:

- (1) A list of the categories of personal information about consumers to be collected. Each category of personal information shall be written in a manner that provides consumers a meaningful understanding of the information being collected.
- (2) For each category of personal information, the ~~The~~ business or commercial purpose(s) for which it ~~the categories of personal information~~ will be used.
- (3) If the business sells personal information, the link titled “Do Not Sell My Personal Information” or “Do Not Sell My Info” required by section 999.315(a), or in the case of offline notices, ~~the web address for~~ where the webpage ~~to which it links~~ can be found online.
- (4) A link to the business’s privacy policy, or in the case of offline notices, ~~the web address of the~~ where the business’s privacy policy can be found online.

# Privacy Policies . . . Shortened?

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d. Identify Collection of Personal Information 1. List the categories of consumers' personal information the business has collected about consumers in the preceding 12 months. The notice categories shall be described written in a manner that provides consumers a meaningful understanding of the information being collected.

1. ~~For each category of personal information collected, provide the categories of sources from which that information was collected, the business or commercial purpose(s) for which the information was collected, and the categories of third parties with whom the business shares personal information. The notice shall be written in a manner that provides consumers a meaningful understanding of the categories listed.~~

# But Disclosure and Sale still by Category of PI

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## e. Disclosure or Sale of Personal Information

- ~~1. State whether or not the business has disclosed or sold any personal information to third parties for a business or commercial purpose in the preceding 12 months.~~
1. ~~2.~~ **Identify** ~~List~~ the categories of personal information, if any, that ~~it~~ **the business has** disclosed **for a business purpose** or sold to third parties ~~for a business or commercial purpose~~ in the preceding 12 months.
- 2. For each category of personal information identified, provide the categories of third parties to whom the information was disclosed or sold.**
- ~~3. State whether or not the business~~ **has actual knowledge that it** sells the ~~personal information of minors under 16 years of age without affirmative authorization.~~

# Who are Service Providers?

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- (a) ~~To the extent that a person or entity~~ A business that provides services to a person or organization that is not a business, and that would otherwise meet the requirements and obligations of a “service provider” under ~~Civil Code section 1798.140(v)~~ the CCPA and these regulations, ~~that person or entity~~ shall be deemed a service provider for purposes of the CCPA and these regulations.
- (b) To the extent that a business directs a ~~person or entity~~ second business to collect personal information directly from a consumer on the first business’s behalf, and the second business would otherwise meet all other the requirements and obligations of a “service provider” under the CCPA and these regulations ~~Civil Code section 1798.140(v)~~, ~~that person or entity~~ the second business shall be deemed a service provider of the first business for purposes of the CCPA and these regulations.

# What are Service Providers Allowed to Do?

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(c) A service provider shall not use personal information received either from a person or entity it services or from a consumer's direct interaction with the service provider for the purpose of providing services to another person or entity. A service provider may, however, combine personal information received from one or more entities to which it is a service provider, on behalf of such businesses, to the extent necessary to detect data security incidents, or protect against fraudulent or illegal activity. A service provider shall not retain, use, or disclose personal information obtained in the course of providing services except:

- (1) To perform the services specified in the written contract with the business that provided the personal information;
- (2) To retain and employ another service provider as a subcontractor, where the subcontractor meets the requirements for a service provider under the CCPA and these regulations;
- (3) For internal use by the service provider to build or improve the quality of its services, provided that the use does not include building or modifying household or consumer profiles, or cleaning or augmenting data acquired from another source;
- (4) To detect data security incidents, or protect against fraudulent or illegal activity; or
- (5) For the purposes enumerated in Civil Code section 1798.145, subsections (a)(1) through (a)(4).

# Blockbusters and Upsets

# Personal Information isn't Personal Information when its not Personal Information

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## § 999.302. Guidance Regarding the Interpretation of CCPA Definitions

(a) Whether information is “personal information,” as that term is defined in Civil Code section 1798.140, subdivision (o), depends on whether the business maintains information in a manner that “identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular consumer or household.” For example, if a business collects the IP addresses of visitors to its website but does not link the IP address to any particular consumer or household, and could not reasonably link the IP address with a particular consumer or household, then the IP address would not be “personal information.”

*Note: Authority cited: Section 1798.185, Civil Code. Reference: Section 1798.140, Civil Code.*

# Best Visual Effects

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(f) ~~(e) Opt-Out Button or Logo~~

- (1) The following opt-out button ~~or logo~~ may be used in addition to posting the notice of right to opt-out, but not in lieu of any posting of the notice of right to opt-out.



- (2) When the opt-out button is used, it shall appear to the left of the “Do Not Sell My Personal Information” or “Do Not Sell My Info” link, as demonstrated below, and shall be approximately the same size as other buttons on the business’s webpage.  
~~[BUTTON OR LOGO TO BE ADDED IN A MODIFIED VERSION OF THE REGULATIONS AND MADE AVAILABLE FOR PUBLIC COMMENT.]~~



- (3) This opt-out button ~~or logo~~ shall link to a webpage or online location containing the information specified in section 999.306(c), or to the section of the business’s privacy policy that contains the same information.

## On the Cutting Room Floor . . .

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- ~~(3) A business shall not provide a consumer with specific pieces of personal information if the disclosure creates a substantial, articulable, and unreasonable risk to the security of that personal information, the consumer's account with the business, or the security of the business's systems or networks.~~ In responding to a request to know, a business is not required to search for personal information if all the following conditions are met:
- a. The business does not maintain the personal information in a searchable or reasonably accessible format;
  - b. The business maintains the personal information solely for legal or compliance purposes;
  - c. The business does not sell the personal information and does not use it for any commercial purpose; and
  - d. The business describes to the consumer the categories of records that may contain personal information that it did not search because it meets the conditions stated above.

# Data Brokers Only at this Afterparty

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- (d) ~~If a A-business that does not collect information directly from consumers is registered with the Attorney General as a data broker pursuant to Civil Code section 1798.99.80, et seq. it does not need to provide a notice at collection to the consumer if it has included in its registration submission a link to its online privacy policy that includes instructions on how a consumer can submit a request to opt-out. to the consumer, but before it can sell a consumer's personal information, it shall do either of the following:~~
- ~~(1) Contact the consumer directly to provide notice that the business sells personal information about the consumer and provide the consumer with a notice of right to opt-out in accordance with section 999.306; or~~
  - ~~(2) Contact the source of the personal information to:~~
    - ~~a. Confirm that the source provided a notice at collection to the consumer in accordance with subsections (a) and (b); and~~
    - ~~b. Obtain signed attestations from the source describing how the source gave the notice at collection and including an example of the notice. Attestations shall be retained by the business for at least two years and made available to the consumer upon request.~~

# Introducing... Industry Standards for Collection, Financial Incentive, and Opt-Out Notices as well as for Privacy Policies

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[The Notice shall]:

- a. Use plain, straightforward language and avoid technical or legal jargon.
- b. Use a format that draws the consumer's attention to the notice and makes the notice readable, including on smaller screens, if applicable.
- c. Be available in the languages in which the business in its ordinary course provides contracts, disclaimers, sale announcements, and other information to consumers in California.
- d. Be reasonably accessible to consumers with disabilities. ~~At a minimum,~~ For notices provided online, the business shall follow generally recognized industry standards, such as the Web Content Accessibility Guidelines, version 2.1 of June 5, 2018, from the World Wide Web Consortium, incorporated herein by reference. In other contexts, the business shall provide information on how a consumer with a disability may access the notice in an alternative format.

## (Golden) Global Privacy Controls

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- (d) ~~(e)~~—If a business collects personal information from consumers online, the business shall treat user-enabled global privacy controls, such as a browser plugin or privacy setting, device setting, or other mechanism, that communicate or signal the consumer’s choice to opt-out of the sale of their personal information as a valid request submitted pursuant to Civil Code section 1798.120 for that browser or device, or, if known, for the consumer.
- (1) Any privacy control developed in accordance with these regulations shall clearly communicate or signal that a consumer intends to the opt-out of the sale of personal information. The privacy control shall require that the consumer affirmatively select their choice to opt-out and shall not be designed with any pre-selected settings.
- (2) If a global privacy control conflicts with a consumer’s existing business-specific privacy setting or their participation in a business’s financial incentive program, the business shall respect the global privacy control but may notify the consumer of the conflict and give the consumer the choice to confirm the business-specific privacy setting or participation in the financial incentive program.

# Honorable Mentions

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*Other changes to the CCPA draft regulations*

# Most Technical: Responding to Requests to Delete

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## (d) Responding to Requests to Delete

- (1) For requests to delete, if a business cannot verify the identity of the requestor pursuant to the regulations set forth in Article 4, the business may deny the request to delete. The business shall inform the requestor that their identity cannot be verified and shall instead treat the request as a request to opt out of sale. If the business sells personal information and the consumer has not already made a request to opt out, the business shall ask the consumer if they would like to opt out of the sale of their personal information and shall include either the contents of, or a link to, the notice of right to opt-out in accordance with section 999.306.

## In True Red Carpet Fashion, Mobile Notices Must Arrive “Just-in-Time”

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(4) When a business collects personal information from a consumer’s mobile device for a purpose that the consumer would not reasonably expect, it shall provide a just-in-time notice containing a summary of the categories of personal information being collected and a link to the full notice at collection. For example, if the business offers a flashlight application and the application collects geolocation information, the business shall provide a just-in-time notice, such as through a pop-up window when the consumer opens the application, which contains the information required by this subsection.

# Employment-Related Information, Featuring (Temporary) Exceptions

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(e) A business collecting employment-related information shall comply with the provisions of section 999.305 except with regard to the following:

(1) The notice at collection of employment-related information does not need to include the link or web address to the link titled “Do Not Sell My Personal Information” or “Do Not Sell My Info”.

(2) The notice at collection of employment-related information may include a link to, or paper copy of, a business’s privacy policies for job applicants, employees, or contractors in lieu of a link or web address to the business’s privacy policy for consumers.

(f) Subsection (e) shall become inoperative on January 1, 2021, unless the CCPA is amended otherwise.

## Opt-Out Notices... Shortened?

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A business shall include the following in its notice of right to opt-out:

- ~~(3) Instructions for any other method by which the consumer may submit their request to opt-out;~~
- ~~(4) Any proof required when a consumer uses an authorized agent to exercise their right to opt-out, or in the case of a printed form containing the notice, a webpage, online location, or URL where consumers can find information about authorized agents; and~~
- ~~(5) A link or the URL to the business's privacy policy, or in the case of a printed form containing the notice, the URL of the webpage where consumers can access the privacy policy.~~

“A man walks into a bar . . . .”

## Loyalty Programs: A Dark Comedy Series

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(2) Example 2: ~~A retail store offers discounted prices to consumers who sign up to be on their mailing list. If the consumer on the mailing list can continue to receive discounted prices even after they have made a request to know, request to delete, and/or request to opt-out, the differing price level is not discriminatory.~~ A clothing business offers a loyalty program whereby customers receive a \$5-off coupon to their email address after spending \$100 with the business. A consumer submits a request to

(3) Example 3: A grocery store offers a loyalty program whereby consumers receive coupons and special discounts when they provide their phone numbers. A consumer

(4) Example 4: An online bookseller collects information about consumers, including their email addresses. It offers discounts to consumers through browser pop-up windows while the consumer uses the bookseller’s website. A consumer submits a

# The Good, the Bad, and the Good-Faith Estimate of Consumer Data Value

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## § 999.336. Discriminatory Practices

- (a) A financial incentive or a price or service difference is discriminatory, and therefore prohibited by Civil Code section 1798.125, if the business treats a consumer differently because the consumer exercised a right conferred by the CCPA or these regulations.
- ~~(b) Notwithstanding subsection (a) of this section, a~~ A business may offer a financial incentive or price or service difference if it is reasonably related to the value of the consumer's data as that term is defined in section 999.337. If a business is unable to calculate a good-faith estimate of the value of the consumer's data or cannot show that the financial incentive or price or service difference is reasonably related to the value of the consumer's data, that business shall not offer the financial incentive or price or service difference.
- (c) A business's denial of a consumer's request to know, request to delete, or request to opt-out for reasons permitted by the CCPA or these regulations shall not be considered discriminatory.

## Nightmare “Full House” Feature: Right to Know or Delete Requires Each Member to Verify

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*Where a household **does not have a password-protected account** with a business, a business shall not comply with a request to know or delete household personal information unless all of the following are satisfied:*

- (1) All consumers of the household jointly request access to specific pieces of information for the household or the deletion of household personal information, and the business can individually verify all the members of the household subject to verification requirements set forth in Article 4, then the business shall comply with the request.;
- (2) The business individually verifies all the members of the household subject to the verification requirements set forth in section 999.325; and
- (3) The business verifies that each member making the request is currently a member of the household.

## Household Requests (With a Password Protected Account)

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(b) Where a consumer has a password-protected account with a business that collects personal information about a household, the business may process requests to know and requests to delete relating to household information through the business's existing business practices and in compliance with these regulations.

# Lights, Camera, Verification!

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## § 999.323. General Rules Regarding Verification

(d) A business shall not require the consumer to pay a fee for the verification of their request to know or request to delete. For example, a business may not require a consumer to provide a notarized affidavit to verify their identity unless the business compensates the consumer for the cost of notarization.

## § 999.325. Verification for Non-Accountholders

(f) A business shall deny a request to know specific pieces of personal information if it cannot verify the identity of the requestor pursuant to these regulations.

## § 999.330. Minors Under 13 Years of Age

(c) A business shall establish, document, and comply with a reasonable method, in accordance with the methods set forth in subsection (a)(2), for determining whether a person submitting a request to know or a request to delete the personal information of a child under the age of 13 is the parent or guardian of that child.

# Agents ~~with a license to kill~~ who Submit Requests to Know or Delete

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(d) An authorized agent shall implement and maintain reasonable security procedures and practices to protect the consumer's information.

(e) An authorized agent shall not use a consumer's personal information, or any information collected from or about the consumer, for any purpose other than to fulfill the consumer's requests, for verification, or for fraud prevention.

## Live in the Matrix?

### Only One Method Required for Submitting Requests to Know/Delete

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- (a) A business that operates exclusively online and has a direct relationship with a consumer from whom it collects personal information shall only be required to provide an email address for submitting requests to know. All other businesses shall provide two or more designated methods for submitting requests to know, including, at a minimum, a toll-free telephone number, and if the business operates a website, an interactive webform accessible through the business's website or mobile application. Other acceptable methods for submitting these requests include, but are not limited to, a designated email address, a form submitted in person, and a form submitted through the mail.

# Thank you

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