

CALIFORNIA PRIVACY PROTECTION AGENCY

TITLE 11. LAW

DIVISION 6. CALIFORNIA PRIVACY PROTECTION AGENCY CHAPTER 1. CALIFORNIA CONSUMER PRIVACY ACT REGULATIONS

November 3, 2022.

NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS AND ADDITION OF DOCUMENTS AND INFORMATION TO RULEMAKING FILE [OAL FILE NO. 2022-0628-02]

Update to Proposed Text

Pursuant to the requirements of Government Code section 11346.8, subdivision (c), and section 44 of Title 1 of the California Code of Regulations, the California Privacy Protection Agency (Agency) is providing notice of modifications made to the proposed regulations sections 7001, 7002, 7003, 7004, 7010, 7011, 7012, 7013, 7014, 7015, 7016, 7022, 7023, 7024, 7025, 7026, 7027, 7028, 7050, 7051, 7052, 7053, 7062, 7063, 7070, 7071, 7072, 7080, 7100, 7102, 7301, 7302, and 7303 of Title 11, Division 6, Chapter 1 of the California Code of Regulations. These proposed regulations were the subject of a Notice of Proposed Rulemaking published in the California Register (Register 2022, No. 27-Z) on July 8, 2022, as Notice File Number 2022-0628-02 and the subject of public hearings on August 24 and 25, 2022.

These proposed modifications are in response to comments received regarding the proposed regulations and for clarification purposes. Changes made after the 45-day comment period are illustrated in both the regulation text and form by ~~orange double strikethrough~~ for proposed deletions and green double underline for proposed additions.

Update to Documents and Other Information Relied Upon

Pursuant to the requirements of Government Code sections 11346.8, subdivision (d), 11346.9, subdivision (a)(1), and 11347.1, the Agency is also providing notice that documents and other information that the Agency has relied upon in adopting the proposed regulations have been added to the rulemaking file and are available for public inspection and comment. The documents and information added to the rulemaking file are as follows:

Brook, *Structured vs. unstructured data, an engineer's take on privacy implications*, IAPP (Mar. 23, 2021), available at <https://iapp.org/news/a/structured-versus-unstructured-data-an-engineers-take-on-the-privacy-implications>.

California Department of Justice, Attorney General's Office, *Attorney General Bonta Announces Settlement with Sephora as Part of Ongoing Enforcement of California Consumer Privacy Act*, Press Release (Aug. 24, 2022), available at

<https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-settlement-sephora-part-ongoing-enforcement>.

Colorado Attorney General's Office, Proposed Draft of Colorado Privacy Act Rules (2022), available at https://coag.gov/app/uploads/2022/10/CPA_Final-Draft-Rules-9.29.22.pdf.

Consumer Financial Protection Bureau, *CFPB Issues Advisory to Protect Privacy When Companies Compile Personal Data*, Press Release (July 7, 2022), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-advisory-to-protect-privacy-when-companies-compile-personal-data/>.

Consumer Financial Protection Bureau, *CFPB Takes Action to Address Junk Data in Credit Reports*, Press Release (Oct. 20, 2022), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-address-junk-data-in-credit-reports/>.

Consumer Financial Protection Bureau, *CFPB Takes Action to Stop False Identification by Background Screeners*, Press Release (Nov. 4, 2021), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-stop-false-identification-by-background-screeners/>.

Consumer Financial Protection Bureau, *Consumer Financial Protection Bureau, Fair Credit Reporting; Name-Only Matching Procedures*, Advisory Opinion (Nov. 4, 2021), available at https://files.consumerfinance.gov/f/documents/cfpb_name-only-matching_advisory-opinion_2021-11.pdf.

Consumer Financial Protection Bureau, *Fair Credit Reporting; Facially False Data*, Advisory Opinion (Oct. 20, 2022), available at https://files.consumerfinance.gov/f/documents/cfpb_fair-credit-reporting-facially-false-data_advisory-opinion_2022-10.pdf.

Consumer Financial Protection Bureau, *Fair Credit Reporting; Permissible Purposes for Furnishing, Using, and Obtain Consumer Reports*, Advisory Opinion (July 7, 2022), available at https://files.consumerfinance.gov/f/documents/cfpb_fair-credit-reporting_advisory-opinion_2022-07.pdf.

Consumers Union, Letter to Federal Trade Commission (Jun. 27, 2018), available at <https://advocacy.consumerreports.org/wp-content/uploads/2018/06/CU-to-the-FTC-Facebook-Dark-Patterns-6.27.18-1-1.pdf>.

Federal Trade Commission, *FTC Bringing Dark Patterns to Light* (Sept. 2022), available at <https://www.ftc.gov/reports/bringing-dark-patterns-light>.

Federal Trade Commission, *FTC Report Shows Rise in Sophisticated Dark Patterns Designed to Trick and Trap Consumers* (Sept. 15, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-report-shows-rise-sophisticated-dark-patterns-designed-trick-trap-consumers>.

Gray et al., *End User Accounts of Dark Patterns as Felt Manipulation*, Proceedings of the ACM on Human-Computer Interaction, Volume 5, Issue CSCW2 (2021), available at <https://dl.acm.org/doi/abs/10.1145/3479516>.

Kaminski, *Privacy and the Right to Record*, 97 Boston Univ. L. Rev. 167 (2017), available at: <https://www.bu.edu/bulawreview/files/2017/03/KAMINSKI.pdf>.

Katsanis et al., *A Survey of U.S. Public Perspectives on Facial Recognition Technology and Facial Imaging Data Practices in Health and Research Contexts*, PLoS ONE, vol. 16, no. 10, 2021, Art. no. e0257923 (Oct. 14, 2021), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8516205/>.

Kohn, *Clearview AI, TikTok, and the Collection of Facial Images in International Law*, 23 Chi. J. Int'l L. 195 (2022), available at <https://cjl.uchicago.edu/publication/clearview-ai-tiktok-and-collection-facial-images-international-law>.

Kugler, *From Identification to Identity Theft: Public Perceptions of Biometric Privacy Harms*, 10 U.C. Irvine L. Rev. 107 (2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3289850.

Kugler & Strahilevitz, *The Myth of Fourth Amendment Circularity*, 84 Univ. Chi. L. Rev. 1747 (2017), available at <https://lawreview.uchicago.edu/publication/myth-fourth-amendment-circularity>.

LiveRamp, Subject Access Request Explanatory Information Document, available at https://cppa.ca.gov/regulations/pdf/liveramp_sar_info.pdf.

Lomas, *Hold-outs Targeted in Fresh Batch of Noyb GDPR Cookie Consent Complaints*, TECHCRUNCH (Aug. 8, 2022), available at <https://techcrunch.com/2022/08/08/noyb-gdpr-cookie-consent-complaints/>.

Mager & Kranz, *On the Effectiveness of Overt and Covert Interventions in Influencing Cookie Consent: Field Experimental Evidence*, 42nd International Conference on Information Systems (2021), available at <https://aisel.aisnet.org/cgi/viewcontent.cgi?article=1078&context=icis2021>.

Mahoney, Consumer Reports, *Many Companies Are Not Taking The California Consumer Privacy Act Seriously—the Attorney General Needs to Act* (Jan. 9, 2020), available at <https://medium.com/cr-digital-lab/companies-are-not-taking-the-california-consumer-privacy-act-seriously-dcb1d06128bb>.

Martin & Nissenbaum, *Privacy Interests in Public Records: An Empirical Examination*, 31 Harv. J. L. & Tech. 111 (2017), available at <http://jolt.law.harvard.edu/articles/pdf/v31/31HarvJLTech111.pdf>.

Norwegian Consumer Council, *Deceived by Design: How Tech Companies Use Dark Patterns to Discourage Us from Exercising Our Rights to Privacy* (Jun. 27, 2018),

available at <https://fil.forbrukerradet.no/wp-content/uploads/2018/06/2018-06-27-deceived-by-design-final.pdf?source=techstories.org>.

NOYB, *226 Complaints Lodged Against Deceptive Cookie Banners* (Aug. 2022), available at <https://noyb.eu/en/226-complaints-lodged-against-deceptive-cookie-banners>.

NOYB, Guide for OneTrust, available at <https://wecomply.noyb.eu/static/app/pdf/OneTrustGuide.0afba7b9c87d.pdf>.

OECD, *Dark Commercial Patterns*, OECD Digital Economy Papers (Oct. 2022), available at https://www.oecd-ilibrary.org/science-and-technology/dark-commercial-patterns_44f5e846-en.

People of the State of California v. Sephora USA, Inc., Complaint for Injunction, Civil Penalties, and other Equitable Relief (Aug. 23, 2022), available at <https://oag.ca.gov/system/files/media/pea-sephora-complaint.pdf>.

People of the State of California v. Sephora USA, Inc., Final Judgment and Permanent Injunction (Aug. 24, 2022), available at <https://oag.ca.gov/system/files/media/pea-sephora-filed-judgment.pdf>.

Sommers & K. Bohns, *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, 128 Yale L.J. 162 (2019), available at <https://www.yalelawjournal.org/essay/the-voluntariness-of-voluntary-consent>.

Stanford Digital Civil Society Lab, Dark Patterns Tipline, available at <https://darkpatternstipline.org/>.

Strahilevitz, *Reunifying Privacy Law*, 98 California Law Review 2007, 2010-11 (2010), available at http://www.californialawreview.org/wp-content/uploads/2014/10/Strahilevitz.FINAL_.pdf.

Strahilevitz & Kugler, *Is Privacy Policy Language Irrelevant to Consumers?*, 45 J. Legal Stud. S69 (2016), available at <https://www.jstor.org/stable/26457120>.

United Kingdom Information Commissioner's Office, Guide to the General Data Protection Regulation, available at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/>.

Zucker-Scharff & Zimmeck, *How to Implement Global Privacy Control (GPC) for Publishers*, Global Privacy Control, available at <https://globalprivacycontrol.org/Implementing%20GPC%20for%20Publishers.pdf>.

The Agency will accept written comments regarding the proposed changes or materials added to the rulemaking file between November 3, 2022, and November 21, 2022, at 8:00 a.m. All written comments must be submitted to the Agency **no later than 8:00 a.m. on November 21, 2022.**

You may submit comments by the following means:

Electronic:

Comments may be submitted electronically to regulations@coppa.ca.gov. Please include “CPPA Public Comment” in the subject line.

Mail:

California Privacy Protection Agency
Attn: Brian Soublet
2101 Arena Blvd., Sacramento, CA 95834
(279) 895-6083

NOTE: Written comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

All timely comments received that pertain to the modifications to the proposed regulations or the new materials added to the rulemaking file will be reviewed and responded to by the Agency as part of the compilation of the rulemaking file. Please limit written comments to modifications to the text which appear either in ~~orange double strikethrough~~ or in green double underline.

The originally proposed regulation, this Notice, the proposed modifications, a comparison of the text as originally proposed with the proposed modifications, and other documents related to this rulemaking, including those referenced above, are available on the Agency’s website at <https://coppa.ca.gov/regulations/>. The entire rulemaking file is also available to the public upon a request to the Agency using the contact information above.