



CIVIL JUSTICE
ASSOCIATION OF CALIFORNIA

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Xavier Becerra, Attorney General
California Department of Justice
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Lisa B. Kim
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Re: *Comments by the Civil Justice Association of California on Fourth Set of Proposed Regulations for the California Consumer Privacy Act*

Dear Attorney General Becerra:

The Civil Justice Association of California ("CJAC") appreciates the opportunity to provide comments on this latest version of the proposed regulations implementing CCPA.

CJAC respectfully requests the Office of the Attorney General address the following issues:

1. Clarify that use of the opt-out button is optional since it is duplicative and may be confusing.

The proposed Section 999.306(f) indicates the opt-out button is optional at the outset but then follows with language suggesting it is mandatory. Subsection (f)(1) states the opt-out button "**may** be used in addition to a notice of right to opt-out, but not in lieu of any requirement to post the notice of right to opt-out or a 'Do Not Sell My Personal Information' link" (emphasis supplied). However, subsection (f)(2) states that "Where a business posts the 'Do Not Sell My Personal Information' link, the opt-out button **shall** be added to the left of the text" (emphasis supplied).

We request clarification the button is optional. It appears that (f)(2) is mandating the position of the button only, but the language is unclear. Since the notice of right to opt out or a "Do Not Sell My Personal Information" ("DNS") link is required regardless, the button is duplicative and could also be confusing. Some consumers may believe that merely clicking the toggle-like button effectuates the opt-out, when the button is just another link to the DNS page. In light of this, it is best left to the business to decide whether the button will facilitate the opt-out process on a given web page. We also suggest providing flexibility to businesses with the design and placement of the button, as businesses may find approaches that are simpler and clearer for the consumer.

Accordingly, we recommend revising subsections 999.306(f)(1) and (2) as follows:

(f) Opt-Out Button.

(1) The following opt-out button **or one that is similar** may be used in addition to posting the notice of right to opt-out, but not in lieu of any requirement to post the notice of right to opt-out or a "Do Not Sell My Personal Information" link as required by Civil Code section 1798.135 and these regulations. **Businesses are not required to use an opt-out button.**

(2) ~~Where~~ **When** a business ***chooses to use the opt-out button with*** posts the “Do Not Sell My Personal Information” link, the opt-out button shall be added to the left of ***next to*** the text, ***similar to what is as*** demonstrated below. The opt-out button shall link to the same Internet webpage or online location to which the consumer is directed after clicking on the “Do Not Sell My Personal Information” link.

(3) The button shall be approximately the same size as any other buttons used by the business on its webpage.

2. Allow businesses to request two forms of identity verification from authorized agents to provide better protection of consumers.

CJAC requests the below language be revised per the below to allow businesses to require two forms of identity verification from authorized agents, which will provide stronger protection of consumers and their information from fraudsters:

§ 999.326 Authorized Agent.

(a) When a consumer uses an authorized agent to submit a request to know or a request to delete, a business may require the authorized agent to provide proof that the consumer gave the agent signed permission to submit the request ***along with two forms of identity verification***. The business may also require the consumer to do either of the following:

- (1) Verify their own identity directly with the business.
- (2) Directly confirm with the business that they provided the authorized agent permission to submit the request.

3. Provide a reasonable implementation period for the latest revisions.

Given the complexity and burden of implementing new regulations, which has been further exacerbated by remote workforces and shutdowns, we ask the Attorney General to specify in the regulations that businesses have at least six to 12 months from final adoption of the regulations to implement them before they are enforced. This will also provide certainty businesses need, especially during these times.

Conclusion

Addressing the forgoing concerns will help reduce unnecessary enforcement and litigation burdens on businesses, the courts, and your Office. We are happy to answer any questions you may have and look forward to the opportunity to work with your Office on improvements to the regulations.

Thank you for your consideration,



Kyla Christoffersen Powell
President and Chief Executive Officer