



August 24, 2022

California Privacy Protection Agency  
915 Capitol Mall 350 A  
Sacramento, CA 95814

Re: Comments on proposed regulations

Dear Board Members,

Consumer Watchdog writes to commend the Agency for its thorough draft regulations to implement the California Consumer Privacy Rights Act. We applaud that the rules strive to make it easier for people to take control of their data more than ever before. The regulations, drafted in response to protections California voters passed at the ballot, provide needed guidance on what can be considered a dark pattern, the kind of deceptive language and design businesses often use to extract user consent online. By detailing specific ways in which consent should be obtained that is not manipulative, the regulations help ensure businesses cannot interfere with consumer choices. Businesses must also provide a list of categories of sensitive information collected, whether personal information is sold or shared.

What follows are more detailed comments regarding a few areas of the regulations:

**Connected Cars:** In light of car companies collecting reams of personal data as outlined in our report, [“Connected Cars and the Threat to Your Privacy.”](#) Consumer Watchdog has urged you to draw regulations that would make clear connected car companies that track geolocation and other information cannot use or sell that data beyond a “legitimate operational use.” The regulations on use limits ensure drivers can protect their data. We applaud the Agency for rejecting car and telematics companies’ efforts to incorrectly interpret the CPRA to exempt automotive data collection from the law. The regulations require data collection and use by any business – including a business collecting data through the infotainment system in cars – be proportionate to the purpose. For example, under section 7002, a flashlight app on a person’s phone should not collect geolocation without that person’s consent because an average person would not expect the app to have to know geolocation for the function of the flashlight. Likewise, a car company that knows your location for emergency services such as a car accident should not use geolocation for purposes unrelated to safety.

**Global Opt-Out/Ease of Use:** We commend the regulation 7025 for making clear that companies must both display a “Do Not Share/Sell My Information” button and “Limit the Use of My Sensitive Personal Information” button on their home page, and honor a global opt-out signal. The homepage button is crucial for informing consumers who are not aware of their privacy rights. The global opt-out is critical to make privacy choices as seamless as possible for those who already know they want to exercise their rights. Requiring global privacy signals be honored by businesses is an easy, fluid way for consumers to notify all businesses of their

privacy preferences. In addition, the regulations state that a business should display a message on its website as to whether it has honored a user's preference signal. This simple notification will protect consumers from going through additional opt-out steps if they are unsure their rights have been honored. It will also enable consumers to flag websites for enforcement by the Agency if those rights are not honored.

That many advertising and tech industry firms who see our data as a pot of gold have come out against a global opt-out, including the California Retailer's Association and the California Chamber of Commerce, says something about the importance of such mechanism for consumers. The chamber, which includes among its members major personal data recipients Google, Amazon and Facebook, insurance companies State Farm and Allstate, and big banks Wells Fargo and JP Morgan Chase, said, incorrectly, "a global opt-out is voluntary under the California Privacy Rights Act."

However, we worry about businesses making it difficult for consumers to exercise that opt-out right.

Under the proposed regulation Section 7025, it says, "a business may provide the consumer with an option to provide additional information if it will help facilitate the consumer's request to opt-out of sale or selling." This opens the door to a lot of friction in the form of pop-ups or worse service, which goes against the intent of the law.

For example, companies may still ask for information even if "do not sell/share" is enabled. The law could be interpreted as allowing companies to ask for a name and email frequently, and consumers will get fatigued for being punished for exercising privacy rights. The ability for a business to have the so-called "last say" in this exchange over data sharing should be simply eliminated. Indeed, the Agency's regulations state, "*The path for a consumer to exercise a more privacy-protective option shall not be longer than the path to exercise a less privacy-protective option.*"

**15-days to Honor Opt-Out of Sale/Sharing:** Under Sections 7026 and 7027, businesses have 15 days to honor a person's request to stop selling or sharing data with third-parties, as well as 15 days to limit use and disclosure of sensitive personal information. This is a massive window that threatens to upend the intent of the entire law. And the regulation is not backed up by the statutory language. The problem is once people's data is acquired it is usually sold by businesses right away, oftentimes in seconds. Once data gets out into the world, [it can get into anyone's hands](#). Even when someone opts out, personal information will still be sold because businesses are granted a two-week grace period. It will also spur companies to concentrate on using and selling data within the window, producing a Wild West effect on data selling. And even though it says a business should honor a request "as soon as feasibly possible," a business will cite 15 days as "soon as feasibly possible." Businesses should be forced to honor a person's opt-out request just as soon as they are able to sell your data, which apparently is mere seconds. Please close this gap.

Thank you for hearing our concerns and drafting the strongest privacy rules in the country on behalf of California voters. We look forward to seeing final regulations that address these issues, as well as the next round of draft rules.

Sincerely,

A handwritten signature in black ink, appearing to read 'Justin Kloczko', with a vertical line to its left.

**Justin Kloczko**