

California Online Privacy Protection Act

The California Online Privacy Protection Act (Business and Professions Code Section 22575-22579) requires an operator of a commercial website or online service that collects, through the Internet, personally identifiable information about California residents who use or visit its commercial website or online service to conspicuously post its privacy policy on its Web site. In the case of an operator of an online service, the policy may also be made available through any other reasonably accessible means of making the privacy policy available for consumer of the online service.

The term “operator” means any person or entity that owns a website or an online service that collects and maintains personal identifiable information from California residents who use or visits the website or online service, if the website is operated for commercial purpose. The term does not include any third party that operates, hosts, or manages, but does not own, a web site or online service on the owner's behalf or that processes information on behalf of the owner.

Requirements

The privacy policy must fulfill the following requirements:

- (1) It must identify the categories of personally identifiable information that the operator collects through the Web site or online service about individual who use or visit its commercial Web site or online service;**
- (2) It must identify the categories of third-parties with whom the operator may share that personally identifiable information;**
- (3) To the extent that the operator offers to its users and visitors the ability review and request changes to the personal information that was collected through the website or online service, the operator must provide a description of this process;**
- (4) It must describe the process by which the operator will notify its users and visitors when it makes material changes to the privacy policy;**
- (5) It must identify the effective date of the Privacy Policy.**

Scope

The requirement above applies with respect to "personally identifiable information" which is defined as individually identifiable information about an individual consumer collected online by the operator from that individual and maintained by the operator in an accessible form, including any of the following:

- (1) A first and last name.**
- (2) A home or other physical address, including street name and name of a city or town.**
- (3) An e-mail address.**
- (4) A telephone number.**
- (5) A social security number.**

(6) Any other identifier that permits the physical or online contacting of a specific individual.

(7) Information concerning a user that the website or online service collects online from the user and maintains in personally identifiable form in combination with an identifier.

Implementation

The Privacy Policy required by the California OPPA must be posted “conspicuously”. According to the California OPPA, the following options are acceptable:

1) The policy is posted on the homepage or first significant page after entering the site.

2) The home page of the website, or the first significant page after entering the website displays an icon that hyperlinks to a webpage on which the actual privacy policy is posted, and the icon (a) contains the word "privacy" and (b) uses a color that contrasts with the background color of the Web page or is otherwise distinguishable;

(3) The home page of the website, or the first significant page after entering the website displays an text link that hyperlinks to a webpage on which the actual privacy policy is posted, and the text link (a) includes the word "privacy"; or (b) is written in capital letters equal to or greater in size than the surrounding text; or (c) is written in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or is set off from the surrounding text of the same size by symbols or other marks that call attention to the language;

(4) Any other functional hyperlink that is so displayed that reasonable person would notice it.

In the case of an online service, any other reasonably accessible means of making the privacy policy available for consumers of the online service would also be acceptable as a “conspicuous display”.

Violation

The law provides for two types of violations. One is for failing to post a privacy policy after having been reminded of the obligation to do so. The other is for violating the privacy policy itself. More specifically, an operator of a website or online service will be deemed in violation of the California Online Privacy Protection Act if it fails to:

- Fails to post its privacy policy within 30 days after being notified of noncompliance; or**
- Fails to post its privacy policy (a) knowingly and willfully or (b) negligently and materially; or**
- Fails to comply with the provisions of its posted privacy policy (a) knowingly and willfully or (b) negligently and materially.**