

## CCPA ENFORCEMENT ON TRACK TO BEGIN JULY 1, DESPITE COVID-19 CONCERNS

- California's Attorney General is scheduled to begin enforcing the California Consumer Privacy Act (CCPA) on July 1, 2020. The Attorney General recently rejected calls from the ad-tech industry and other groups to delay enforcement until January 2, 2021 in light of the COVID-19 pandemic.
- With enforcement less than 60 days away, the Attorney General still hasn't published the final implementing rules required under CCPA.
- The Attorney General has said his office will "look kindly on those that ... demonstrate an effort to comply." Covered businesses should be sure to take visible steps toward compliance before July 1, even if full compliance is not yet feasible.

As the COVID-19 pandemic and related stay-at-home orders around the country continue to prohibit many business operations, influential advertising and media groups have joined forces with over 30 major trade groups and companies in an effort to delay the enforcement of the California Consumer Privacy Act (CCPA), which is scheduled to begin on July 1, 2020. Roughly 30 companies from the ad-tech industry have joined the coalition in a revised letter submitted on March 20 calling for California Attorney General Xavier Becerra to forbear from enforcement until January 2, 2021.

Despite their combined efforts, the Attorney General has denied their request for the six-month extension and remains committed to the original enforcement date. Starting July 1, the Attorney General will have the power to bring enforcement actions in court for violations of the CCPA, and courts will have the power to impose civil penalties of up to \$7,500 per violation.

### COVID-19 And Unfinalized Rules

The industry letter cites two major problems with this timeline. First, key personnel needed to build internal processes for CCPA compliance on site have been prevented from undertaking such tasks due

to mandatory work-from-home measures many companies have instituted to limit the spread of COVID-19.

Second, despite taking effect on January 1, 2020, the CCPA regulations have not yet been finalized and have since gone through two sets of modifications, with each modification making substantial changes to company obligations. In fact, the deadline to comment on the latest modification only recently ended on March 27. This means that, once the final version of the rules is published, companies will have less than 60 days to finish implementing them before becoming subject to possible enforcement actions.

### Basic Compliance Measures To Take

While it may be difficult to devise a fully operational compliance program when the regulations themselves have not yet been finalized, companies should still start to implement basic compliance measures. These include (i) mapping where and how data is collected, stored and shared (both online and offline), (ii) developing a system for receiving and responding to consumer requests, (iii) preparing notices to be given at the time of collection, and (iv) drafting or updating privacy policy terms to be

compliant with the most recent iteration of the CCPA rules.

Covered businesses struggling to achieve full compliance before July 1 should heed comments the Attorney General made in a December 10, 2019 interview, before “coronavirus” became part of the national lexicon: “We will look kindly, given that we are an agency with limited resources, and we will look kindly on those that ... demonstrate an effort to comply.”<sup>1</sup> Demonstrating that effort in the limited time left before July 1 could include updating the company’s Privacy Policy to include a statement specific to California residents that makes CCPA-required disclosures while also stating that the policy may be updated again before the end of 2020 as part of ongoing compliance efforts. But companies should

take a very cautious approach to such disclosures until a comprehensive data map has been completed. For example, the CCPA requires a covered business to declare in its Privacy Policy whether or not it “sells” consumers’ personal information, and an incorrect declaration can expose a company to civil monetary penalties, among other things. Companies who are not traditional data brokers will be tempted to declare that they do not sell personal information, but this is one area where consulting with a trusted legal advisor is vital given how broadly “sale” is defined in the CCPA.

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1 <https://www.reuters.com/article/us-usa-privacy-california/california-ag-says-privacy-law-enforcement-to-be-guided-by-willingness-to-comply-idUSKBN1YE2C4>

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