CCPA: Fiction versus Fact

This document discusses in general terms the forthcoming California Consumer Privacy Act (CCPA) and does not provide legal advice. We encourage you to consult your own legal counsel to familiarize yourself with the requirements that govern your situation.

Fiction: The CCPA requires CA personal information to remain in California or the United States.

Fact: The CCPA does not require businesses to keep data in California or the United States, so businesses subject to the law can process the personal information of California residents from anywhere in the world. And, unlike the GDPR, the CCPA does not impose special requirements on businesses for the transfer of personal information outside of California or the United States.

Fiction: My company does not have an office in California so I don't need to worry about compliance with the CCPA.

Fact: The CCPA could still apply to your company, even if you do not have a California office. The CCPA would apply directly to you as a “business” if you:

- Are a for-profit entity;
- Do business in California;
- Collect personal information about California residents; and

Based on a long history of interpretation by California and U.S. courts and in California tax regulations, a company may be considered to “do business” in California, regardless of physical presence or place of incorporation, if it regularly offers goods or services to people or companies in California or otherwise benefits from its activities in California.
Even if you’re not a “business” under the CCPA, you could be subject to certain obligations, for example if you receive a “sale” of California consumers’ personal information from a business subject to the CCPA. In that case, you may need to provide consumers with explicit notice and an opportunity to opt-out before you further share that personal information outside of your organization. Cal. Civ. Code § 1798.115(d).

If every aspect of your processing of California consumers’ personal information takes place wholly outside of California—for example, if you collected that information while the consumer was outside of California—then the CCPA may not apply to your company.

**Fiction:** I know my organization complies with the General Data Protection Regulation (GDPR), so I am also in compliance with the CCPA.

**Fact:** While the GDPR and CCPA overlap in many ways, the CCPA is not a carbon copy of the GDPR. Even a robust GDPR compliance program will not automatically be in compliance with the CCPA, which imposes additional obligations. For example, under the CCPA:

- Consumers have a broad right to opt out of “sales” of their personal information, a right potentially broader than data subject rights to opt out of direct marketing or object to certain processing under the GDPR. Cal. Civ. Code § 1798.120.
- Businesses that “sell” personal information must place a “clear and conspicuous” link on their homepage that says “Do Not Sell My Personal Information” to allow consumers to exercise their right to opt out of sales. Cal. Civ. Code § 1798.135(a)(1).

**Fiction:** CCPA requires giving consumers the ability to opt-in to the use of their data, rather than relying merely on opting-out.

**Fact:** The CCPA does not require businesses to obtain consent—opt in or opt out—to use personal information. The CCPA instead grants consumers the right to opt-out of the “sale” of their personal information. (We explain why “sale” is in quotations below). Even if a consumer opted out of sales, a business can still collect and use information from that consumer as long as the business doesn’t give that information to a third party in return for something of value.

It is true that the CCPA has some limited opt-in obligations: the CCPA prohibits businesses from selling personal information of consumers younger than 16 unless the
consumer has opted-in to the sale or, for those younger than 13, unless the consumer’s parent or guardian has opted-in. Cal. Civ. Code § 1798.120(c).

You might be wondering why we put “sale” in quotation marks. The CCPA defines “sale” to include many activities, including renting, disclosing, transferring, or otherwise making available a consumer’s personal information to a third party for money or other valuable consideration. Cal. Civ. Code § 1798.140(t)(1). Certain transfers are excluded from the definition of “sale” under the CCPA, such as transfers to service providers. Cal. Civ. Code § 1798.140(t)(2).

In other words, a “sale” under the CCPA may be almost any exchange of data for something of value, unless an exception applies—such as transfers to service providers like Salesforce or disclosures directed by the consumer.

**Fiction: CCPA is only about online advertising.**

**Fact:** The CCPA applies to all processing of personal information—online and offline—and it impacts business operations far beyond online advertising. For example, the law grants California residents new rights over their personal information that businesses must receive and honor, including:

- The right to transparency;
- The right to access;
- The right to deletion;
- The right to opt-out of sales of personal information.

While the CCPA may impact the online advertising industry, the CCPA is not “only” about online advertising.

**Fiction: CCPA requires all data to be encrypted.**

**Fact:** The CCPA does not require data to be encrypted. However, it does refer to businesses’ “duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information.” Cal. Civ. Code § 1798.150. Encryption may be appropriate depending on the circumstances, but is not mandated by CCPA.