

California's Consumer Privacy Rights Act: Opt-Out Rights and Data Profiling

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With the passage of the Consumer Privacy Rights Act (CPRA), we are presenting several blog articles on different topics related to the new law. We previously wrote about key [effective dates](#) and the newly-added definition of [sensitive information](#). This week, we will focus on consumer opt-out rights and data profiling.

Consumer Opt-Out Rights

The CPRA created several new rights for consumers – one of which is the right to opt out of the sale or the *sharing* of their personal information. In order to understand this new opt-out right, we need to review the new definition of sharing personal information in the CPRA.

The CPRA differentiates between the sale of personal information and the sharing of personal information. Sharing personal information means disclosing it to third parties for “cross-context behavioral advertising, whether or not for monetary or other valuable consideration, including transactions between a business and a third party for cross-context behavioral advertising for the benefit of a business in which no money is exchanged.” Section 1798.140 (a)(h)(1).

What is cross-contextual behavioral advertising? Think about advertising targeted to the consumer based on their internet behavior. Contextual advertising might be an ad shown specifically to a consumer for a product related to that consumer's internet search. If you are a California resident, the CPRA will give you the right to opt out of the sharing of your personal information in this way. How will a consumer exercise this right? The CPRA states that a consumer shall have the right, at any time, “to direct a business that sells or shares personal information about the consumer to third parties not to sell or *share* the consumer's personal information.” Section 1798.120(a).

Data Profiling – What is it?

Another consumer right related to the consumer opt-out rights found in the CPRA pertains to data profiling. Profiling is defined in the CPRA as the automated processing of personal information to “to evaluate certain personal aspects relating to a natural person, and in particular to analyze or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location or movements.” Section 1798.140 (z). One bright

note is that Section 1798.185 (a)(16) states that regulations will need to be developed “governing access and opt-out rights with respect to businesses’ use of automated decision-making technology, including profiling and requiring businesses’ response to access requests to include meaningful information about the logic involved in such decision-making processes, as well as a description of the likely outcome of the process with respect to the consumer.”

We will be following these opt-out rights closely – both from a consumer privacy standpoint and for businesses that use such targeted advertising technologies, including automated processing of personal information – to see how the regulations will address the logic involved in the decision-making process and its impact on consumers.

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