MARKETING UNDER THE California Consumer Privacy Act

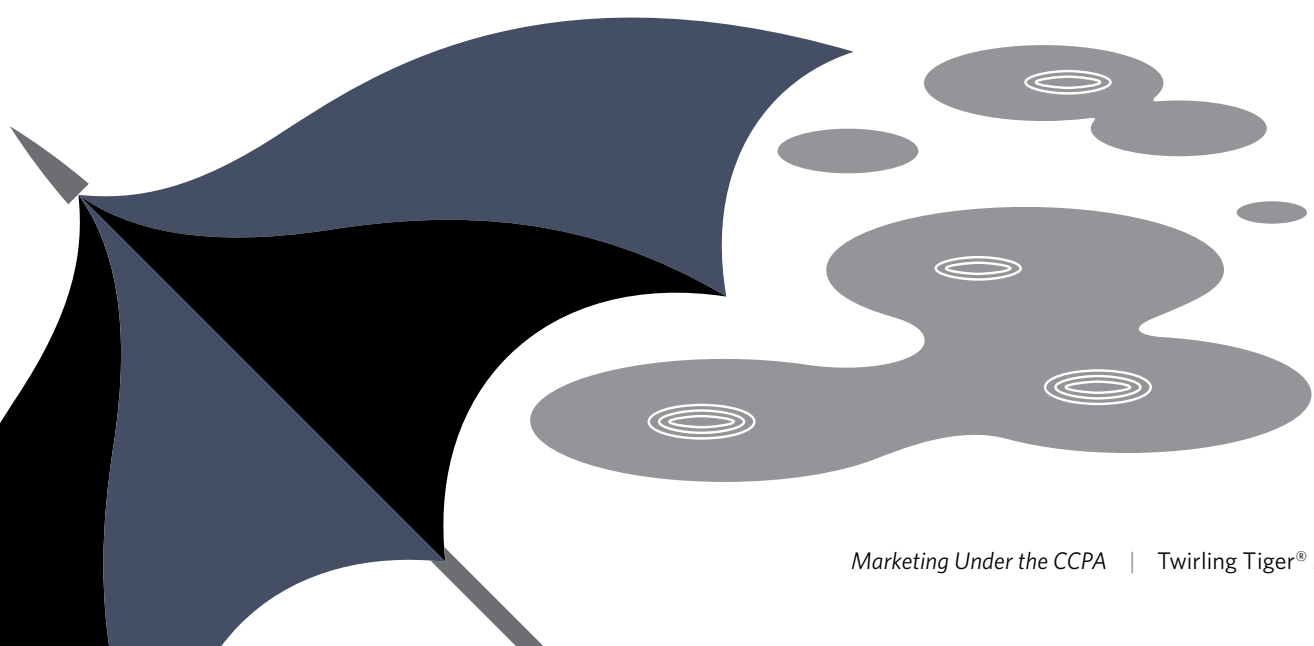
What content marketers need to know to comply with the most stringent and widespread consumer privacy law in the United States

AN EBOOK FOR MARKETERS FROM TWIRLING TIGER MEDIA

contents

"... this law restricts the sharing with very expansive disclosure obligations and also requirements to give individuals a choice whether the data is being shared under the circumstances. And companies have to prepare for this."

—Lothar Determann, partner, Baker McKenzie and privacy law professor, on the impact of the CCPA, in an interview at a SecureWorld conference



the big tech backlash

The California Consumer Privacy Act was created and passed by state legislators in a span of seven days in June 2018, just after the European Union's General Data Protection Regulation (GDPR) took effect on May 28 of that year.

Why the rush? Earlier, a real estate developer, former CIA analyst and veteran financier were fed up with how Big Tech and companies in general treated consumer data and launched a ballot initiative to give power over consumer data back to users. This required a draft of a proposed law to be submitted to the state attorney general and signatures from valid voters to be gathered and verified before the initiative went on voter ballots.

State legislators didn't pay much attention until the Cambridge Analytica scandal, in which California-based Facebook was found to have sold its users' personal data to a UK-based company with highly questionable tactics to gain votes for its political clients. Public outrage ensued, and the three backers then teamed up with lawmakers to create and pass CCPA.

Although it went into effect immediately, lawmakers gave impacted companies until Jan. 1, 2020 to comply.

Source: https://www.caprivacy.org

DEADLINE
01-01-2020

consumers gain more control

Beginning Jan. 1, 2020, California's 40 million residents will have the:

Right to know what personal information is collected, used, shared or sold, both as to the categories and specific pieces of personal information.

Right to delete personal information held by businesses and by extension, a business's service provider.

Right to opt out of sale of personal information. Consumers are able to direct a business that sells personal information to stop selling that information. Children under age 16 must provide opt-in consent, with a parent or guardian consenting for children under 13.

Right to non-discrimination in terms of price or service when a consumer exercises a privacy right under CCPA.

Privacy advocates predict that by the end of 2020, another 10 states will pass similar legislation and, a year later, a federal consumer data protection law will take effect.

Sources: California Attorney General's Office; WatchGuard Technologies

who needs to comply

It's estimated at least a half million companies currently must comply with CCPA. The law's authors made exemptions for nonprofit organizations and smaller companies with limited resources. However, consumers may not differentiate and will give their business to those with greater data security standards.

The law states that CCPA applies to any business that meets at least one of the following criteria:

- ✔ Makes at least **$25 million** in gross annual revenues
- ✔ Buys, receives, or sells the personal information of **50,000 or more** users or devices
- ✔ Earns **50% or more** of annual revenues from selling consumers' personal information

There are other components, but those are the three major ones.

Among exempted organizations are healthcare and insurers covered by HIPAA; financial companies covered by Gramm-Leach-Bliley; and most credit reporting agencies.

Source: California Attorney General's Office

WHAT HAPPENS IF YOU DON'T COMPLY?

You can expect the state's attorney general to initiate a civil case against you if you remain non-compliant after 30 days of being notified. Each violation carries a fine of $2,500 to $7,500. The latter is if the violations were intentional. So, for instance, if you have 1,000 CCPA-guaranteed users and fail to fix compliance issues within a month of notification, you could face as much as $7.5 million in penalties.

key requirements

From a consumer standpoint, the CCPA means:

- ✔ Businesses must disclose their data collection and sharing practices to consumers.
- ✔ Consumers have a right to request that their data be deleted.
- ✔ Consumers have a right to opt out of the sale or sharing of their personal information.
- ✔ Businesses are prohibited from selling personal information of consumers under age 16 without explicit consent.

For businesses subject to CCPA, it means:

- ✔ They must provide notice to consumers as or before any data collection takes place.
- ✔ They must create procedures to respond to requests from consumers to know, opt out, or delete their data.
- ✔ For requests to opt out, businesses must provide a "Do Not Sell My Info" link on their website or mobile app.
- ✔ They must respond to requests from consumers to know, delete, and opt out within 45 days.
- ✔ Current draft regulations say businesses must treat user-enabled privacy settings that signal a consumer's choice to opt out as a valid opt-out request.
- ✔ They must verify the identity of consumers who make requests to know and to delete, whether or not the consumer maintains a password-protected account with the business.
- ✔ If a business is unable to verify a request, it may deny the request, but must comply to the greatest extent it can. For example, it must treat a request to delete as a request to opt out.
- ✔ They must disclose financial incentives offered in exchange for the retention or sale of a consumer's personal information and explain how they calculate the value of the personal information. Businesses must also explain how the incentive is permitted under the CCPA.
- ✔ They must maintain records of requests and how they responded for 24 months in order to demonstrate their compliance.

In addition, businesses that collect, buy, or sell the personal information of more than 4 million consumers have additional record-keeping and training obligations.

Source: California Attorney General's Office

impact on marketing

$12 billion

A Berkeley, California, consultancy expects CCPA to protect more than $12 billion worth of personal information used for advertising in California each year. That's great news for California consumers; maybe not so much for digital marketers who have relied on that protected data.

At a minimum, every impacted marketing department needs to reevaluate its operational policies and website structure. Specifically:

- Provisions must be in place for prospects and current customers to opt in/opt out to receive digital and print-based campaigns.
- Within those campaigns, marketers must be clear on how the prospects' data was obtained and is being used.
- Do not use or purchase third-party data or lists; it's always been a bad practice and is now even moreso.
- Instead, build prospect databases and CRMs through direct permissions. This includes direct mail, email blasts and other marketing channels that utilize lists.
- It also includes any department—sales, customer service, etc.—that communicates through lists. Find out how those mailing lists are generated and beware if third-party data are involved.

Source: http://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/CCPA_Regulations-SRIA-DOF.pdf

growing lists organically

Under CCPA, a Californian who receives, say, an unsolicited email from you can now demand to know where you got their name, email address, etc., and ask that it be expunged.

It's always been a best practice to build first-party lists; that is, generating mailings and campaigns based on people who have opted in or somehow interacted with your website, social media channels, staff, or shown interest through referrals.

Third-party lists fell out of favor years ago due to being notoriously outdated and full of false information, so if you are still buying or using such lists—stop! Under CCPA, a Californian who receives, say, an unsolicited email from you can now demand to know where you got their name, email address, etc., and ask that it be expunged. If you ignore them, they can turn you in to authorities to investigate and spread word through their own social channels. Is it worth it to risk that kind of exposure and damage to your brand?

Instead build your own lists and audit them periodically to maintain CCPA compliance.

Let's face it, one reason companies bought third-party lists in the past was to save time and build seemingly more robust marketing channels and sales pipelines. It takes more work to build a list from scratch, grow it organically and stay compliant with consumer privacy laws, from CCPA to the venerable CAN-SPAM.

That's why it's important to periodically audit every name in any list: direct mail, e-newsletters … you name it. In your CRM, build a field, if you haven't already, that shows exactly where that data originated, since you may later need to expunge all names generated from a non-CCPA-compliant source.

Next, you need to be upfront with any California resident (citizen, employee, business partner, etc.) who has received or will receive targeted or general marketing. Like GDPR, it's a good idea to do

growing lists organically

this for any prospect or customer since other states and eventually the federal government will come online with their own privacy laws modeled after CCPA.

What do I need to do?

- Audit your lists and pare down consumer data to only what you actually need, rather than gathering as much as you can.
- Conduct a data inventory of all information you hold on Californians. This also is known as data mapping and will show how much of your list is immediately and directly impacted by CCPA.
- Update your published privacy policy to reflect users' rights under CCPA.
- Send an email to your lists alerting everyone to the updated privacy policy.
- Recapture those prospects and customers from previous lists, especially if they were acquired through third parties, through an easy opt-in—such as a link or button on the privacy policy notification email.
- Consider adding a website pop-up for someone to opt in for content marketing, such as e-newsletters or direct mail, when someone initially visits.
- For those that do opt out, you must set up a verification system to ensure they are indeed the same user in your database.

CCPA considers cookies to be personal data and requires disclosure.

What about cookies?

CCPA considers cookies to be personal data and requires disclosure. If cookies are being used solely to make a website function, no consent is needed. But if you use cookies for tracking, customization, etc., users need to be notified and allowed to opt out.

growing lists organically

What about names gathered at trade shows?

Trade show organizers frequently build and distribute attendee lists for exhibitor marketing, session tracking and lead generation. The following from the website JD Supra explains the legislation's impact on follow-up communications to attendees.

CCPA does not specifically address the use of email to communicate with attendees following a trade show or conference. The CCPA does, however, generally require that a company that collects email addresses from California-resident conference attendees provide the attendees with a privacy notice that discloses that the email addresses may be used for follow-up communications.

Assuming that the privacy notice is provided, and California residents are informed about other CCPA-based rights (such as the right to request that their email address be deleted from the conference host), nothing within the CCPA prohibits a conference host from using the emails to transmit follow-up or marketing communications. Note, however, that if the attendee list is given to a third party to handle the follow-up emails, the conference-host should ensure that the third party is a "service provider" as defined by the CCPA or risk that the information transfer could be classified as a "sale" of personal information, which would trigger an obligation to honor "do not sell" requests.

Source: https://www.jdsupra.com/topics/trade-conference/california-consumer-privacy-act-ccpa/trade-shows/

Need more details on the CCPA?

https://oag.ca.gov/privacy/ccpa

it's going to be OK, maybe even better

CCPA is going to force companies, particularly their sales and marketing teams, to do business differently. That's not necessarily a bad idea. Some organizations will be hit harder than others. Mailing lists may end up much smaller, but relationships with the remaining subscribers or prospects or clientele will be stronger because these are people who *want* to hear from you. That means you are already a step or two ahead in engagement.

Remember: You can still sell user data; you just need users' permission first and must honor those who opt out of such transactions. You also need to make that opt-out process as easy and clearly visible as possible.

The law demands more transparency and provides consumers more control. This may send shudders among some MarTech and AdTech executives, but the upshot is CCPA also builds brand integrity for those who follow, rather than flaunt, the new rules around digital marketing and advertising.

Take the time now to scrub your lists and then make sure everyone throughout the organization is aware of CCPA requirements and abides by them. As we've mentioned before, the penalties for failing to comply are serious. Enough that non-compliance doesn't just put you out of favor with consumers; it can put you out of business. •

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