

Cyber-Security, Data Protection and Privacy

California Privacy Rights Act (CPRA) soon comes into force

The California Privacy Rights Act (“CPRA”), a ballot initiative to amend the California Consumer Privacy Act (“CCPA”), will enter into force on **January 1st, 2023**. Enforcement of the CPRA will begin on July 1st, 2023. The CPRA, which will, among others, apply to Israeli companies that collect or process personal data on California residents (e.g., in the context of offering online services), introduces several changes to the CCPA. This client update provides a brief overview of key changes introduced by the CPRA.

- **Applicability:** the CPRA applies to any entity that conducts business in California that meets any of the following thresholds:
 - had annual gross revenues in excess of \$25,000,000 in the preceding calendar year;
 - alone or in combination, annually buys, sells, **or shares** personal information of 100,000 or more consumers or households – this threshold sets a higher bar than the previous requirement in the CCPA (50,000 consumers or households), however it also includes the “sharing” of data, which was not included in the CCPA;
 - derives 50% or more of its annual revenues from selling **or sharing** consumers’ personal information – similarly to the previous threshold, “sharing” of personal information was added; or
 - has voluntarily chosen to be subject to the CPRA.

As of January 2023 the requirements of the CPRA will apply to employee and business-to-business personal information, as they apply to consumer information.

- **Notice obligations:** the CPRA broadens the notice obligations that were stipulated in the CCPA to include the following:
 - **Sensitive information:** businesses should include a separate disclosure on whether “sensitive personal information” (e.g., social security number, precise location, racial, ethnic or religious information, etc.) is collected, the categories of such information and the purpose of its collection.
 - **Data retention period:** the notice should mention for how long personal information will be retained or the criteria that the business will use to determine for how long to retain such personal information.

- **Selling or sharing personal information:** the notice should mention whether the individual's personal information is sold to third parties or shared with them.
- **Consumer rights:** the CPRA introduces additional rights granted to consumers:
 - **Correct inaccurate data:** in addition to the right to request deletion of personal information granted under the CCPA, the CPRA allows individuals to request the correction of inaccurate personal information held on them.
 - **Opt-out of sharing personal information:** in addition to the right granted to consumers under the CCPA to opt-out of the sale of their personal information, consumers may now opt-out of sharing personal information, even if such sharing does not constitute "sale" of personal information. The CPRA also adds the option for a business to allow opting-out using an opt-out preference signal (the specifications of such signal will be detailed in regulations enacted under the CPRA).
 - **Automated decision making or profiling:** consumers should be provided with information regarding the use of automated decision-making or profiling mechanisms and be given an opportunity to opt-out. "Profiling" is defined as referring to any form of automated processing of personal information 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.
 - **Limitation of the disclosure of sensitive personal information:** a business that collects sensitive personal information from consumers shall allow consumers to submit requests to limit the business' use of sensitive personal information to that which is necessary to provide the relevant services or goods.
 - **Obligations of service providers:** Service providers are required to assist businesses in responding to privacy rights requests.
 - **Data portability:** consumers may request to transmit specific pieces of personal information to another entity in a format that is easily understandable to the average consumer, and to the extent technically feasible, in a structured, commonly used, machine-readable format.
- **Children:** the CPRA provides additional protection to personal information of children under the age of 16 and prohibits businesses from selling or sharing personal information of such children without their consent, or without the affirmative consent of a parent or legal guardian for children under the age of 13.
- **Security:** the CPRA requires businesses to implement reasonable security procedures and practices appropriate to the nature of the personal information that they collect, in order to protect the personal information from unauthorized or illegal access, destruction, use, modification, or disclosure.
- **Data minimization:** the CPRA clarifies that a business' collection, use, retention, and sharing of a consumer's personal information must be reasonably necessary and proportionate to achieve the purposes for which it was collected or processed.
- **California Privacy Protection Agency:** the CPRA establishes the California Privacy Protection Agency, which shall be responsible, *inter alia*, for administering, implementing and enforcing the CPRA, providing guidance to consumers about their rights, providing guidance to businesses about their duties and responsibilities, providing technical assistance and advice to the Legislature, etc.

- **Addition of a “Contractor” as an entity to which the CPRA applies:** the term refers to a person to whom the business makes available a consumer’s personal information for a business purpose, pursuant to a written contract, which should include certain provisions specified in the CPRA, such as the permitted use of the personal information only for the business purposes specified in the contract and a prohibition on selling or sharing personal information.
- **Penalties:**
 - Similarly to the CCPA, violation of the provisions of the CPRA may be punishable by a civil or an administrative fine in the amount of up to USD 2,500, or up to USD 7,500 for an intentional violation.
 - Violations (even if unintentional) of the consumer privacy rights of minors may be punishable by a monetary fine of up to USD 7,500.
 - Under the CPRA, service providers and contractors could be held liable for their own violations of the CPRA and be subject to the same sanctions as businesses.

What should you do to comply?

As mentioned above, the CPRA introduces new data protection obligations on businesses, service providers and contractors. The CPRA applies, among others, to many non-US companies, especially those offering online services to California residents. Accordingly, you should:

- Analyze whether the CPRA applies to you as a business, service provider or contractor.
- To the extent that the CPRA applies to you:
 - Review your data processing operations that relate to California residents.
 - Update your internal policies and mechanisms to comply with the new requirements, including with respect to facilitation of new data subject rights, restrictions on processing of sensitive personal information and information on children, and on automated decision- of making and profiling.
 - Update your privacy policy to address the new notice obligations.
 - Provide data subjects with the ability to opt-out of the sharing of their personal information, in addition to the ability to opt-out of the sale of such information.

It should be noted that new regulations under the CPRA will likely be published in the upcoming month, imposing additional requirements and clarifying some of the requirements described above.

Please feel free to contact us with any questions that you may have on this matter.



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