



STATE OF CALIFORNIA

CALIFORNIA PRIVACY PROTECTION AGENCY

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To: California Privacy Protection Agency Board
(Meeting of December 8, 2023)

From: Maureen Mahoney
Deputy Director of Policy & Legislation
California Privacy Protection Agency

Date: November 27, 2023

Re: Agenda Item 5 – Legislation Update & Agency Proposals

This memorandum provides California Privacy Protection Agency (CPPA) staff’s recommendation for the Board to support a legislative proposal to require browser vendors, and other platforms or devices as defined by regulation, to include a feature that allows users to exercise their California privacy rights through opt-out preference signals, as defined by regulation.

Background

Under the California Consumer Privacy Act (CCPA), businesses are required to honor opt-out preference signals as a request to opt-out of sale/sharing.¹ The California Department of Justice (DOJ) implemented this in their CCPA regulations, released in 2020.² The CPPA’s regulations, finalized March 29, 2023, update the requirements for an opt-out preference signal.³

Opt-out preference signals significantly simplify consumers’ ability to exercise their rights to opt-out of sale/sharing under the CCPA. Without a global privacy mechanism, consumers would need to make individual requests at hundreds, if not thousands, of different sites to ask them to stop the sale or sharing of their personal information. Research from Consumer Reports found that consumers often found it difficult to opt out at a single site, to say nothing of opting out at every site.⁴

Currently, to exercise this right under California law, consumers must either use a browser that supports an opt-out preference signal, or take extra steps to find and download a browser plugin created by third-party developers that adds support for such signals. To date, only a limited number of browsers offer native support for opt-out preference signals: Mozilla Firefox,

¹ Civ. Code § 1798.135(e).

² State of California Department of Justice, CCPA Regulations, <https://oag.ca.gov/privacy/ccpa/regs>.

³ California Privacy Protection Agency, California Consumer Privacy Act Regulations, Final Regulations Text (March 29, 2023), https://cppa.ca.gov/regulations/pdf/cppa_regs.pdf.

⁴ *California Consumer Privacy Act: Are Consumers’ Digital Rights Protected?* CONSUMER REPORTS AT 4-5 (Oct. 1, 2020), https://advocacy.consumerreports.org/wp-content/uploads/2021/05/CR_CCPA-Are-Consumers-Digital-Rights-Protected_092020_vf2.pdf.

DuckDuckGo, and Brave.⁵ Together, they make up less than 10% of the overall global desktop browser market share. Importantly, none are loaded onto devices by default, making it difficult for consumers to learn about and take advantage of these protections. Google Chrome, Microsoft Edge, and Apple Safari – which make up over 90% of the desktop browser market share⁶ – have declined to offer these signals, although these companies are also heavily reliant on advertising business models.⁷ No device operating system has yet implemented support for opt-out preference signals.

This legislative proposal to require browser vendors to include a feature that allows users to exercise their California privacy rights through opt-out preference signals could provoke opposition, for example from industry coalitions, given that many businesses objected to the CCPA’s requirement to honor opt-out preference signals as an opt-out of sale/sharing.

However, since this proposal would significantly advance Californians’ consumer privacy, staff recommends that the Board support this legislative proposal, and authorize staff to identify an author, to work with them with them to develop such legislation, and to sponsor and support it. The proposal is consistent with existing law, which requires receiving businesses to honor opt-out preference signals, and with Board-supported legislation such as SB 362, which requires data brokers to honor global deletion requests.

Recommendation

Staff recommends that the Board support this legislative proposal to require browser vendors, and other platforms or devices as defined by regulation, to include a feature that allows users to exercise their California privacy rights through opt-out preference signals, as defined by regulation, and direct staff to find an author, work with them to develop legislation based on the proposal, and sponsor and support such legislation.

⁵ Global Privacy Control, <https://globalprivacycontrol.org/>.

⁶ Kinsta, Global Desktop Browser Market Share, <https://kinsta.com/browser-market-share/>.

⁷ James Ball, *Online Ads Are About to Get Even Worse*, THE ATLANTIC (June 1, 2023), <https://www.theatlantic.com/technology/archive/2023/06/advertising-revenue-google-meta-amazon-apple-microsoft/674258/>.