

**CALIFORNIA PRIVACY PROTECTION AGENCY**

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**Date:** December 5, 2024

**To:** California Privacy Protection Agency Board  
(Meeting of December 19, 2024)

**From:** Maureen Mahoney  
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**Subject:** **Agenda Item 4 – Legislation Update & Agency Proposals**

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This memorandum provides California Privacy Protection Agency (CPPA) staff's recommendation for the Board to support a legislative proposal requiring browser vendors to include a feature that allows users to exercise their California privacy rights through opt-out preference signals.

**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.<sup>1</sup> The California Department of Justice (DOJ) implemented this in their CCPA regulations, released in 2020.<sup>2</sup> The CPPA's regulations, finalized March 29, 2023, update the requirements for an opt-out preference signal.<sup>3</sup>

Consumers' right to limit the sale and sharing of that information is more important now than ever. Everyday activities like communication, shopping, and essential services increasingly occur online, where personal information that can reveal deeply sensitive insights about a person is collected and repurposed at every interaction. Having control over information related to reproductive health, immigration status, religious beliefs, or political activity is critical for many people. Additionally, young people are spending more time online, increasing parents' concerns about protecting children's information from misuse and disclosure.

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<sup>1</sup> Civ. Code § 1798.135, Cal. Code Regs tit. 11 § 7025.

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

<sup>3</sup> California Privacy Protection Agency, California Consumer Privacy Act Regulations, Final Regulations Text (March 29, 2023), [https://cppa.ca.gov/regulations/pdf/cppa\\_regs.pdf](https://cppa.ca.gov/regulations/pdf/cppa_regs.pdf).

Opt-out preference signals make it significantly easier for consumers to exercise their opt-out rights. Without a global privacy mechanism, consumers 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.<sup>4</sup> Opt-out preference signals make this cumbersome but, for many, crucial task more streamlined and accessible.

However, currently the signals are not readily or easily available to consumers. To date, only a limited number of browsers, that make up less than 10% of the overall global desktop browser market share, offer native support for opt-out preference signals.<sup>5</sup> None of the major browsers that come pre-installed on devices offer these signals, making it difficult for consumers to even learn about these tools. Today, consumers are left on their own to find and download either one of the browsers that supports an opt-out preference signal, or a browser plugin created by a third-party developer that adds support for such signals. It's a burdensome lift for average users, some of whom may be concerned about potential security risks posed by third-party browser extensions.<sup>6</sup>

The major browsers – Google Chrome, Microsoft Edge, and Apple Safari – have declined to offer consumers this privacy protecting tool. These companies make up over 90% of the desktop browser market share, are used daily by most people for essential needs and are heavily dependent on advertising business models that rely upon substantial information collection.<sup>7</sup> Notably, Safari does not allow plugins so consumers accessing the internet through an Apple mobile device have no access to these signals.

In 2024, the CPPA sponsored a legislative proposal, authored by Assemblymember Josh Lowenthal, to require browsers and mobile operating systems to offer opt-out preference signals.<sup>8</sup> The bill was approved by the legislature in August 2024.

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<sup>4</sup> *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](https://advocacy.consumerreports.org/wp-content/uploads/2021/05/CR_CCPA-Are-Consumers-Digital-Rights-Protected_092020_vf2.pdf).

<sup>5</sup> Mozilla Firefox, Brave, and DuckDuckGo all support opt-out preference signals, but together they make up only a small share of the desktop browser market share. See, Kinsta, *Global Desktop Browser Market Share*, <https://kinsta.com/browser-market-share/> and Global Privacy Control, <https://globalprivacycontrol.org/>.

<sup>6</sup> Zach Peterson, *The Hidden Dangers of Web Browser Extensions: What You Need to Know*, SMU OFFICE OF INFORMATION TECHNOLOGY (June 27, 2024), <https://blog.smu.edu/itconnect/2024/06/27/the-hidden-dangers-of-web-browser-extensions-what-you-need-to-know/>.

<sup>7</sup> 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/>.

<sup>8</sup> AB 3048 (2024), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240AB3048](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB3048).

Governor Newsom vetoed the bill on September 20, with the following veto message:

I am concerned, however, about placing a mandate on operating system (OS) developers at this time. No major mobile OS incorporates an option for an optout signal. By contrast, most internet browsers either include such an option or, if users choose, they can download a plug-in with the same functionality. To ensure the ongoing usability of mobile devices, it's best if design questions are first addressed by developers, rather than by regulators.<sup>9</sup>

Staff notes that as indicated above, only a few browsers currently offer opt-out preference signals, and the major browsers used by most consumers do not offer native support for these signals. Additionally, Apple's Safari does not allow plugins, so this functionality is not available for many mobile internet users.

Given the Governor's concerns about the mobile operating system requirement, staff recommends narrowing the requirement to browsers only, and considering mobile operating systems further at a later date. Should the Board agree to move forward with this modified proposal, staff would also recommend some technical amendments to the legislation, for example to use a definition of "opt-out preference signal" that mirrors the one in the CCPA regulations, for clarity.<sup>10</sup>

Even in its modified form, the proposal could still provoke opposition. For example, many businesses objected to the CCPA's requirement to honor opt-out preference signals as an opt-out of sale/sharing, and many of these same industry groups cited their continued objection to an opt-out signal mandate in their opposition to AB 3048.<sup>11</sup> Should the proposal move forward, staff looks forward to continuing to engage with stakeholders to help address any concerns.

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<sup>9</sup> Office of the Governor, AB 3048 Veto Message (Sept. 20, 2024), <https://www.gov.ca.gov/wp-content/uploads/2024/09/AB-3048-Veto-Message.pdf>.

<sup>10</sup> The definition of opt-out preference signal in the regulations is: "a signal that is sent by a platform, technology, or mechanism, on behalf of the consumer, that communicates the consumer choice to optout of the sale and sharing of personal information and that complies with the requirements set forth in section 7025, subsection (b)." See Cal. Code Regs tit. 11 § 7001(u), [https://cpha.ca.gov/regulations/pdf/cpha\\_regs.pdf](https://cpha.ca.gov/regulations/pdf/cpha_regs.pdf).

<sup>11</sup> California Chamber of Commerce et al., Letter to Assemblymember Lowenthal re: AB 3048 (Lowenthal) California Consumer Privacy Act of 2018: OptOut Preference Signal Oppose – As Introduced February 16, 2024 (March 26, 2024), <https://ct3.blob.core.windows.net/23blobs/72f5dc7e-3c95-4ccf-88d9-f667e693f8a1>.

The proposal works within the framework of the existing CCPA to better enable consumers to control the disclosure of their personal information to third parties. Because a browser-level opt-out signal requirement would significantly advance Californians' consumer privacy, staff recommends that the Board support a modified legislative proposal at this time and authorize staff to work with the legislature to develop a browser-only proposal, to offer to the author to sponsor the bill, and to support it.

### **Recommendation**

Staff recommends that the Board support 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 and direct staff to endeavor to develop a broad and important potential of coalition supporters of the proposal, to work with the Governor's Office, the legislature and interested parties to refine last year's legislation based on the proposal, to offer to the author to again sponsor and support such updated legislation.