



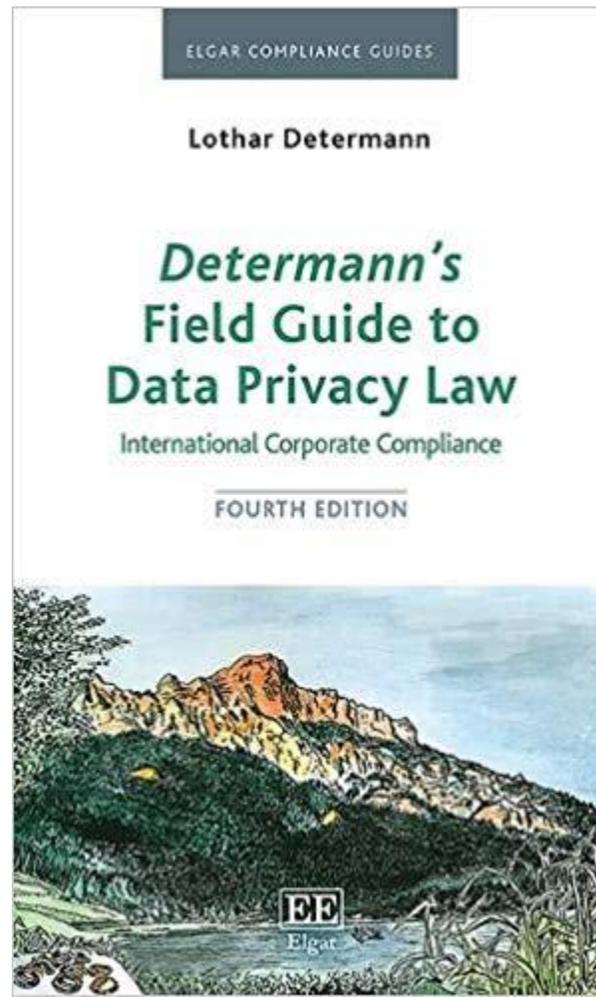
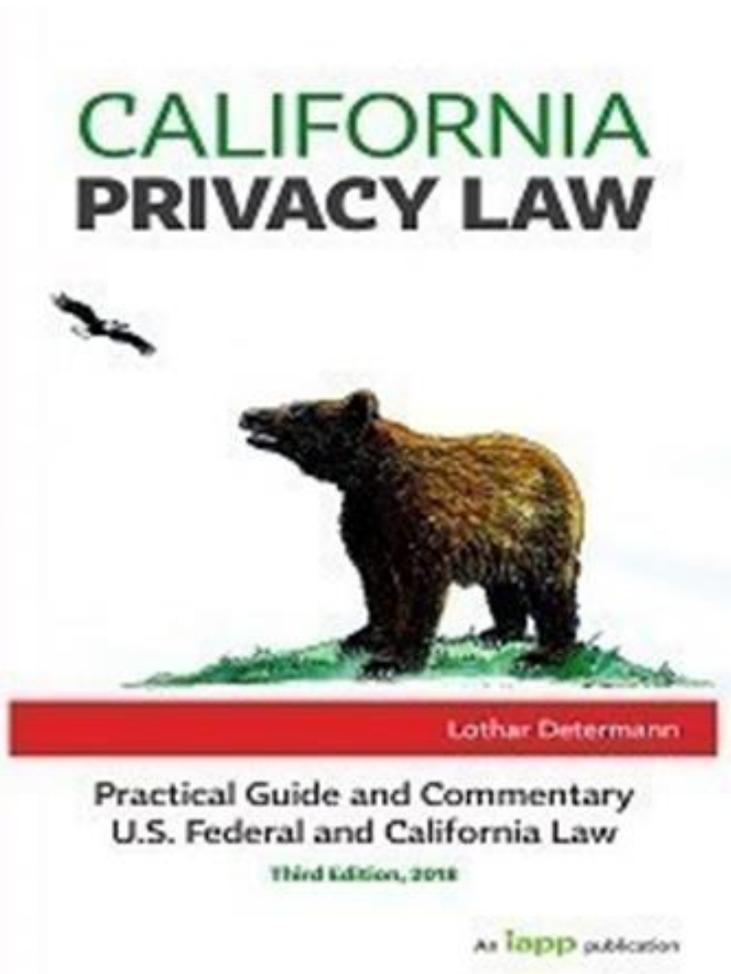
# CCPA Litigation and AG Regulatory Enforcement: How to Be Prepared for It and How to Avoid It



**California Privacy Law**  
Practical Guide and Commentary



# CCPA AG Regulatory Enforcement: How to Be Prepared for It and How to Avoid It



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# California Consumer Privacy Act of 2018

- CCPA Effective - January 1, 2020
- Broker Registration requirement: January 31, 2020 and annually
- Enforcement - July 1, 2020
- Look-back to January 1, 2019
- Substantive amendments in Sept. 2018 and Oct. 2019
- Draft AG Regulations published Oct. 10, 2019
- Applies to companies worldwide, B2C and B2B
- Disclosure requirements, opt-in, opt-out re. “selling of personal information”
- New consumer rights to access, deletion, and porting of personal data
- New penalties
- New statutory damages in case of data security breaches

# CCPA - a Moving Target



Cal. Civ. Code §1798.130 - disclosure obligations for “preceding 12 months” look back to January 1, 2019

Draft AG regulations October 10, 2019, modified Feb 10, 2020, modified again March 11, 2020

Statutory amendments enacted October 11, 2019

Effective date January 2020

Delayed effective date for some B2B, HR information Jan 2021 - but with look-back to Jan 1, 2020

No delay due to COVID-19 pandemic

# Cal Civil Code §1798.99.82

A data broker that fails to register as required by this section is subject to injunction and is liable for civil penalties, fees, and costs in an action brought in the name of the people of the State of California by the Attorney General as follows:

(A) A civil penalty of one hundred dollars (\$100) for each day the data broker fails to register as required by this section.

(B) An amount equal to the fees that were due during the period it failed to register.

(C) Expenses incurred by the Attorney General in the investigation and prosecution of the action as the court deems appropriate.

(2) Any penalties, fees, and expenses recovered in an action prosecuted under this section shall be deposited in the Consumer Privacy Fund, created within the General Fund (...)

# Cal Civil Code § 1798.155

(c) Any civil penalty assessed for a violation of this title, and the proceeds of any settlement of an action (...) shall be deposited in the Consumer Privacy Fund (...) with the intent to fully offset any costs incurred by the state courts and the Attorney General in connection with this title.

# Cal Civil Code § 1798.155

(a) Any business or third party may seek the opinion of the Attorney General for guidance on how to comply with the provisions of this title.

# Cal Civil Code § 1798.155

(b) A business shall be in violation of this title if it fails to cure any alleged violation within 30 days after being notified of alleged noncompliance.

# Cal Civil Code § 1798.155

(b) (...) Any business, service provider, or other person that violates this title shall be subject to an injunction and liable for a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each violation or seven thousand five hundred dollars (\$7,500) for each intentional violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General. The civil penalties provided for in this section shall be exclusively assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General.

# California Attorney General



# California Attorney General Privacy Unit

## Privacy Unit

The Department of Justice's Privacy Unit:

- Enforces state and federal privacy laws.
- Empowers Californians with information on their rights and strategies for protecting their privacy.
- Encourages businesses to follow privacy-respectful best practices.
- Advises the Attorney General on privacy matters.

# California Attorney General Settlements

## Security breaches, call recording, spyware, inadvertent disclosures in mailings and lists

<https://oag.ca.gov/privacy/privacy-enforcement-actions>

2019/7: Equifax - 2017 breach, nationwide settlement, \$600m

2019/7: Premera Blue Cross - 2014 breach, \$10 million multi-state settlement

2019: Aetna Inc., \$935,000 settlement, mailing vendor sent letters to 1,991 Californians that revealed through an over-sized window in the envelope that the recipients took HIV-related medication

2018: Uber Technologies, Inc., \$148 million nationwide settlement, 2016 data breach

2017: Cottage Health System, \$2 million settlement, 2 separate breaches

2017: Lenovo Corporation, \$3.5 million multi-state settlement, allegations re. illegally preinstalled ad-injecting software that compromised the security of computers

2017: Target Corporation, multi-state \$18.5 million settlement, breach

2016: Wells Fargo Bank, \$8.5 million settlement for recording consumers' phone calls without disclosure

2015: Houzz, Inc., call recording, settlement, \$175,000.

2015: Comcast, posted names, phone numbers and addresses of customers who had paid for unlisted VOIP service, \$25 million in penalties, \$8 million in restitution to customers - joint proceedings with Public Utilities Commission

2014: Aaron's, Inc., spyware on laptop computers, settlement to refund \$25 million to California customers and pay \$3.4 million in civil penalties and fees.

2014: Kaiser Foundation Health Plan, Inc., breach, settlement, \$150,000

2013: Citibank, N.A., breach, multistate settlement, \$420,000 to California and \$55,000 to Connecticut

2012: Anthem Blue Cross, printing SSN on mailings visible on the envelope, \$150,000 settlement

# California Attorney General Litigation

*The People of the State of California v. Delta Air Lines Inc.*, No. 12-526741 (Superior Court for the State of California, City and County of San Francisco, filed December 6, 2012, dismissed May 9, 2013).

<https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-files-suit-against-delta-airlines-failure>

# California Attorney General Misc.

- Data Breach Reports 2016, 2014, 2012,  
<https://oag.ca.gov/privacy/privacy-reports>
- PRIVACY ON THE GO - RECOMMENDATIONS FOR THE MOBILE ECOSYSTEM (2013),  
[https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/privacy\\_on\\_the\\_go.pdf?](https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/privacy_on_the_go.pdf?)

# Risk Considerations

CCPA compliance deficits are and will remain systemic. The law is too broad, wordy and complicated. Draft regulations have been modified multiple times and are not final.

AG's resources are limited and not concentrated on privacy. AG is hiring but cannot rely on privacy fund. Who will be singled out in enforcement actions?

# Risk Considerations

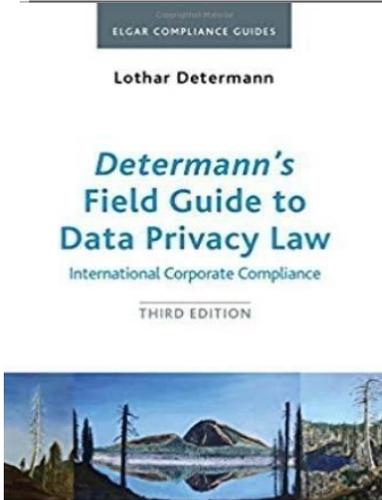
- CCPA no basis for multi-state, national settlements
- Breaches continue but will now be pursued in private litigation even more fiercely
- Federal constitution/statutes, jurisdictional obstacles relatively lesser concern re. companies that have HQ, other offices in California
- Clear formal violations (e.g., disclosure missing on website, failure to respond to consumer requests, failure to register as data broker) easier to detect and prove than complex substantive questions (e.g., value of data for discrimination claims, does global revenue count for \$50m threshold)
- Power of complaints by consumers, NGOs, academics, journalists, politicians
- Techlash politics

# Risk Mitigation Measures

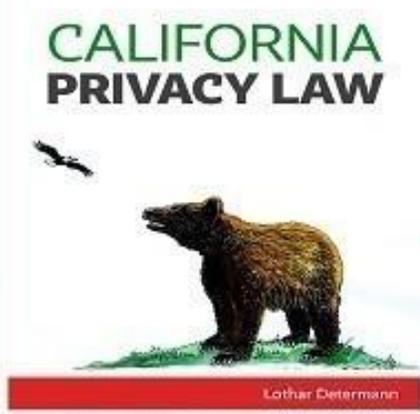
- Comply with the statute and regulations
- Address all formal, binary compliance requirements first and correctly (use tools as necessary for this goal)
- Keep CCPA disclosures clearly separated from other privacy policies
- Don't compromise to soften required disclosures for marketing purposes or to keep documents 'reader friendly'
- Do not offer "do not sell" option "just in case" unless you can continue to serve consumers after cutting off all potentially affected data sharing
- Manage your extended enterprise - vendors
- Audit and re-assess high risk activities, including online advertising, data monetization

# Take-Aways

- Cal AG can - and intends to - enforce after June 30, 2020
- 30 day notice / cure period
- Assess your business's specific risks and compliance priorities
- Focus on data security and formal requirements first
- Don't let 'perfect' become the enemy of 'good'
- Be well



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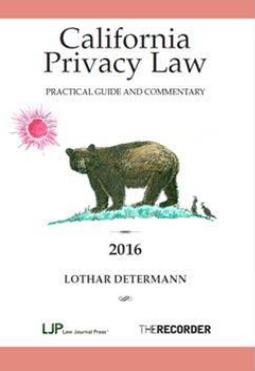
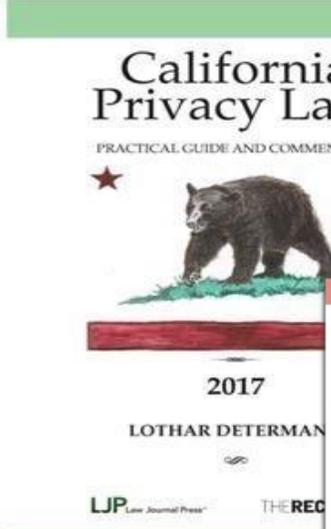
データ保護法ガイドブック  
グローバル・コンプライアンス・ブログ



GDPRおよび諸外国の異なるデータ保護法  
を前提に、効率的なデータの保護・管理の  
要点を解説。主な論点をA-Zで紹介し、検討  
すべき課題を段階的・立体的に理解する。  
企業法務担当者必携。

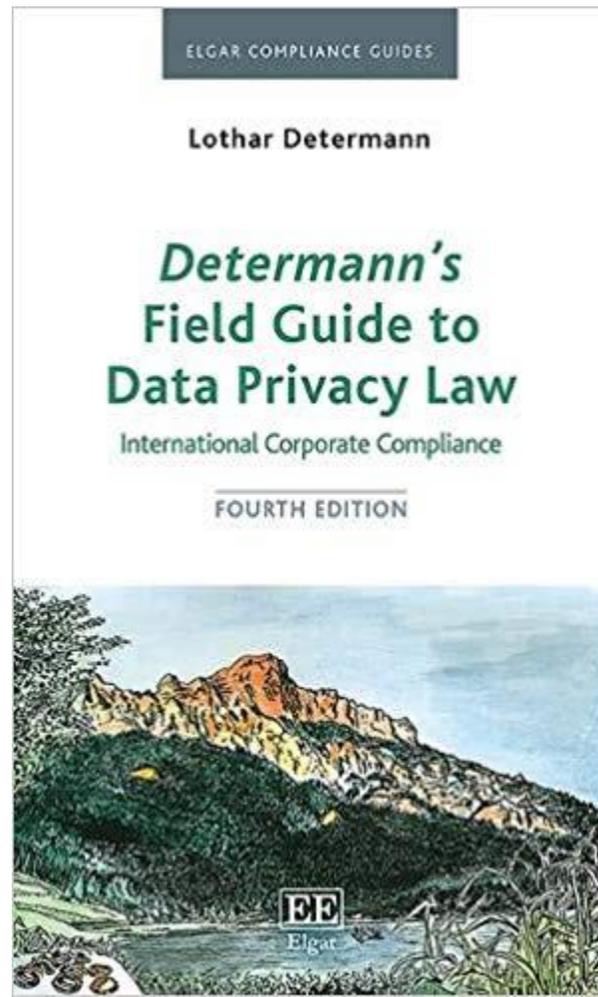
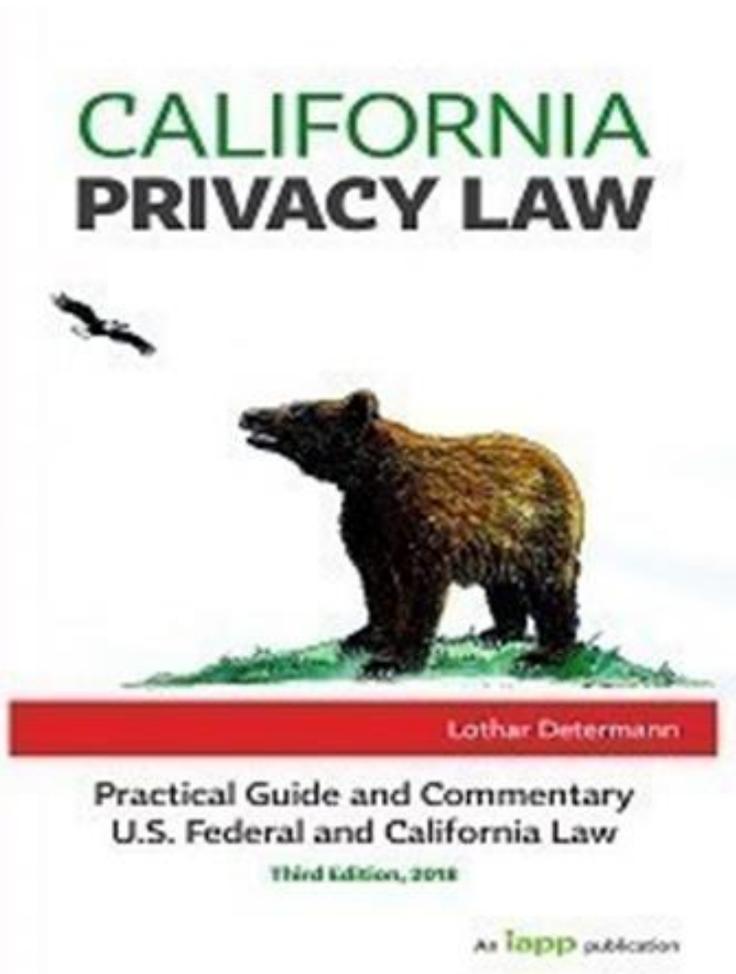
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# Questions?

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