

CALIFORNIA'S IOT LAW ON THE SECURITY OF CONNECTED DEVICES

From the forthcoming 2022 updates to Chapter 27 (Cybersecurity: Information, Network and Data Security)
E-Commerce and Internet Law: Legal Treatise with Forms 2d Edition
A 5-volume legal treatise by Ian C. Ballon (Thomson/West Publishing, www.IanBallon.net)

(This excerpt is from the forthcoming update and may contain errors. Please email the author at ballon@gtlaw.com for a complimentary copy of the final published version.)

GETTING READY FOR CPRA LITIGATION – WHAT YOU NEED TO KNOW AND LESSONS LEARNED FROM CCPA LITIGATION TO DATE

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Ian has been listed in Best Lawyers in America consistently every year since 2003 and was named Lawyer of the Year for Information Technology in 2022, 2020, 2019, 2018, 2016 and 2013. He is included in the Lawdragon list of the Top 500 Lawyers in America and has been included on the *Daily Journal's* annual list of the Top 100 Layers in California. In 2022, 2021, 2020, 2019 and 2018 he was recognized as one of the Top 1,000 trademark attorneys in the world for his litigation practice by *World Trademark Review*. In addition, in 2019 he was named one of the top 20 Cybersecurity lawyers in California and in 2018 one of the Top Cybersecurity/Artificial Intelligence lawyers in California by the *Los Angeles and San Francisco Daily Journal*. He received the "Trailblazer" Award, Intellectual Property, 2017 from *The National Law Journal* and he has been recognized as a "Groundbreaker" in *The Recorder's* 2017 Litigation Departments of the Year Awards for winning a series of TCPA cases. In addition, he was the recipient of the California State Bar Intellectual Property Law section's [Vanguard Award for significant contributions to the development of intellectual property law](#). He has also been listed in Legal 500 U.S., The Best Lawyers in America (in the areas of information technology and intellectual property) and Chambers and Partners USA Guide in the areas of privacy and data security and information technology. He has been recognized as one of the Top 75 intellectual property litigators in California by the *Los Angeles and San Francisco Daily Journal* in every year that the list has been published (2009 through 2020). He was also listed in *Variety's* "Legal Impact Report: 50 Game-Changing Attorneys" (2012), was recognized as one of the top 100 lawyers in L.A. by the *Los Angeles Business Journal* and is both a Northern California and Southern California Super Lawyer.

Ian is also the author of the leading treatise on internet and mobile law, [E-Commerce and Internet Law: Treatise with Forms 2d edition](#), the 5-volume set published by West (www.IanBallon.net) and available on Westlaw, which includes extensive coverage of data privacy and cybersecurity breach issues, and a novel transactional approach to handling security breaches and trends in data privacy, cybersecurity breach and CCPA class action suits. In addition, he is the author of *The Complete CAN-SPAM Act Handbook* (West 2008) and *The Complete State Security Breach Notification Compliance Handbook* (West 2009). In addition, he serves as [Executive Director of Stanford University Law School's Center for the Digital Economy](#). He also chairs [PLI's annual Advanced Defending Data Privacy, Security Breach and TCPA Class Action Litigation](#) conference. Mr. Ballon previously served as an Advisor to ALI's Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transactional Disputes (ALI Principles of the Law 2007) and as a member of the consultative group for ALI's Principles of Data Privacy Law (ALI Principles of Law 2020).

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E-COMMERCE & INTERNET LAW

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Volume 3



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California's IoT Law on the Security of Connected Devices

California's IoT data security law,¹ Cal. Civil Code §§ 1798.91.04 to 1798.91.06, which took effect on January 1, 2020, requires a manufacturer of a connected device to equip the device with a reasonable security feature or features that are appropriate to the nature and function of the device, appropriate to the information it may collect, contain, or transmit, and designed to protect the device, and any information it contains, from unauthorized access, destruction, use, modification, or disclosure. Specifically, the law requires that a manufacturer² of a connected device³ equip the device with a reasonable security feature⁴ or features that are all of the following:

- (1) Appropriate to the nature and function of the device.
- (2) Appropriate to the information it may collect, contain, or transmit.
- (3) Designed to protect the device and any information contained therein from unauthorized access, destruction, use, modification, or disclosure.⁵

Subject to these requirements, if a connected device is equipped with a means for authentication⁶ outside a local area network, it will be deemed a *reasonable security feature* under the statute if either:

- (1) The preprogrammed password is unique to each device manufactured; or
- (2) The device contains a security feature that requires a user to generate a new means of authentication before access is granted to the device for the first time.⁷

¹ The Internet of Things (IoT) is a broad term used to refer to connected devices--such as smart refrigerators, smart televisions, wearable exercise monitors, self-driving cars, home security systems, and home or office climate control systems, among other things--that collect, store, or transfer information to other devices and networked computers, including personal data. *See generally supra* § 27.03B (explaining IoT).

² *Manufacturer* means “the person who manufactures, or contracts with another person to manufacture on the person's behalf, connected devices that are sold or offered for sale in California. For the purposes of this subdivision, a contract with another person to manufacture on the person's behalf does not include a contract only to purchase a connected device, or only to purchase and brand a connected device.” Cal. Civil Code § 1798.91.05(c).

³ *Connected device* means “any device, or other physical object that is capable of connecting to the Internet, directly or indirectly, and that is assigned an Internet Protocol address or Bluetooth address.” Cal. Civil Code § 1798.91.05(b).

⁴ A *security feature* is “a feature of a device designed to provide security for that device.” Cal. Civil Code § 1798.91.05(d).

⁵ Cal. Civil Code § 1798.91.04(a). *Unauthorized access, destruction, use, modification, or disclosure* means “access, destruction, use, modification, or disclosure that is not authorized by the consumer.” *Id.* § 1798.91.05(e).

⁶ *Authentication* means “a method of verifying the authority of a user, process, or device to access resources in an information system.” Cal. Civil Code § 1798.91.05(a).

⁷ Cal. Civil Code § 1798.91.04(b).

The statute also includes four express exclusions. It may not be construed “to impose any duty upon the manufacturer of a connected device related to unaffiliated third-party software or applications that a user chooses to add to a connected device.”⁸

It may not be construed “to impose any duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications, to review or enforce compliance ...” with the statute.⁹

It may not be construed “to impose any duty upon the manufacturer of a connected device to prevent a user from having full control over a connected device, including the ability to modify the software or firmware running on the device at the user’s discretion.”¹⁰

And it may not be applied “to any connected device the functionality of which is subject to security requirements under federal law, regulations, or guidance promulgated by a federal agency pursuant to its regulatory enforcement authority.”¹¹

California’s IoT security law, which was the first U.S. statute to specifically address the security of information shared by connected devices, has been either applauded by security experts for taking a step in the right direction or criticized for focusing on adding “good” features instead of removing bad ones that subject devices to attacks.¹² It seems likely that other states or the federal government will seek to enact IoT regulations in the coming years.

⁸ Cal. Civil Code § 1798.91.06(a).

⁹ Cal. Civil Code § 1798.91.06(b).

¹⁰ Cal. Civil Code § 1798.91.06(c).

¹¹ Cal. Civil Code § 1798.91.06(d).

¹² See Adi Robertson, *California just became the first state with an Internet of Things cybersecurity law*, The Verge, Sept. 28, 2018 (quoting Robert Graham); Edward Kovacs, *California IoT Cybersecurity Bill Signed into Law*, SecurityWeek, Oct. 1, 2018 (quoting Graham as stating that the law “will do little [to] improve security, while doing a lot to impose costs and harm innovation.”).

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- ◆ AI, ML, screen scraping and data portability
- ◆ Antitrust in the era of techlash
- ◆ The CPRA, Virginia, Colorado and Nevada privacy laws, GDPR, California IoT security statute, state data broker laws, and other privacy and cybersecurity laws
- ◆ Software copyrightability and fair use after *Google v. Oracle*
- ◆ Mobile and online contract formation, unconscionability and enforcement of arbitration and class action waiver clauses in an era of mass arbitration
- ◆ TCPA law and litigation after *Facebook v. Duguid* - the most comprehensive analysis of the statute, regulations, and conflicting case law found anywhere
- ◆ The Cybersecurity Information Sharing Act (CISA), state security breach statutes and regulations, and the Defend Trade Secrets Act (DTSA) -- and their impact on screen scraping and database protection, cybersecurity information sharing and trade secret protection, & privacy
- ◆ Platform moderation and liability, safe harbors, and defenses (including the CDA and DMCA)
- ◆ Dormant Commerce Clause restrictions on state law regulation of online and mobile commerce
- ◆ The law of SEO and SEM – and its impact on e-commerce vendors
- ◆ Defending cybersecurity breach and data privacy class action suits – case law, trends & strategy
- ◆ IP issues including Copyright and Lanham Act fair use, *Rogers v. Grimaldi*, patentable subject matter, negative trade secrets, rights of publicity laws governing the use of a person's images and attributes, initial interest confusion, software copyrightability, damages in internet and mobile cases, the use of hashtags in social media marketing, new rules governing fee awards, and the applicability and scope of federal and state safe harbors and exemptions
- ◆ Online anonymity and pseudonymity – state and federal laws governing permissible disclosures and subpoenas
- ◆ Sponsored links, embedded links, #hashtags, and internet, mobile and social media advertising
- ◆ Enforcing judgments against foreign domain name registrants
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Mr. Ballon was named a "Groundbreaker" by *The Recorder* at its 2017 Bay Area Litigation Departments of the Year awards ceremony and was selected as an "Intellectual Property Trailblazer" by the *National Law Journal*.

Mr. Ballon was selected as the Lawyer of the Year for information technology law in the 2022, 2021, 2020, 2019, 2018, 2016 and 2013 editions of *The Best Lawyers in America* and is listed in Legal 500 U.S., Law Dragon and Chambers and Partners USA Guide. He also serves as Executive Director of Stanford University Law School's Center for the Digital Economy.

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- > **Platform moderation and liability, safe harbors and defenses** (ch. 49, 4, 6, 8, 37)
- > **Privacy and IP aspects of Artificial Intelligence (AI) and machine learning** (ch. 5, 26)
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