

# MINTZ LEVIN

## Privacy Newsletter

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### New California Privacy Law Requires All Web Sites to Post Privacy Policies

All companies that sell online to California consumers must post a privacy policy by July 1, under a first-of-its-kind law enacted by the Golden State.

The California Online Privacy Protection Act of 2003 applies to any company or person who conducts business with California consumers via the Internet and collects their personal information. Personal information includes names, physical addresses, e-mail addresses, telephone numbers, Social Security numbers or any other identifier that permits the physical or online contact of an individual residing in California.

Violations occur if a web site operator or online business does not post a privacy policy within 30 days of being notified of non-compliance, or if the operator fails to comply with its own posted policy. It is expected that the new law will be enforced through the California Unfair Competition Law by the California attorney general, district attorneys and certain local government attorneys.

The California law follows a trend of stricter enforcement at the federal level. In recent months, the Federal Trade Commission has waged four cases against companies that misrepresent the security of consumers' personal information. In one recent case, a large entertainment company agreed to settle FTC charges that a security flaw in the company's Web site exposed customers' personal information to other Internet users, in violation of the company's own privacy policy representations and federal law.

According to an FTC press release, the settlement will bar misrepresentations in the future, require the company to implement an appropriate security program, and require audits of its web site security every two years for ten years by a qualified third-party security professional. If the company does not comply with the settlement, it is subject to fines of \$11,000 per violation, the release said. These settlements, along with other releases by the FTC, make it clear that the FTC will consider misrepresentations in published privacy policies to be unfair trade practices and will treat them as such.

#### Compliance with New California Law

To comply with the California law, a web site operator must "conspicuously post" its privacy policy and the policy's effective date. The policy should be posted on a company's home page or on the first significant page after entering the Web site. The law outlines a number of other detailed criteria.

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The privacy policy itself must do several things:

- Identify the personal information the business collects and the third parties with whom it may share the information;
- Describe the process by which a consumer may request changes to his or her personal information; and
- Describe the process by which the business notifies consumers of material changes to the privacy policy.

### Review Your Privacy Policies

The first step should be to audit the collection and use of personally identifiable information collected via your Web site or online service. Such a review should include input from each area of your business that uses or has access to the information, including sales, marketing, billing, accounting and IT. You cannot know or accurately describe in a privacy policy what is being done with the information without this review. An accurate description of the process is critical to compliance with both California and other privacy and privacy-related laws.

Following a review, you should create internal policies and procedures for the use and maintenance of the personal information your company collects. Documenting privacy policies not only helps your company comply with privacy laws and company procedures, it also provides for a smooth transfer of personally identifiable information should your company, Web site or online service be sold.

Mintz Levin has prepared an extensive Privacy Audit Questionnaire to assist with an internal privacy review, and is experienced in drafting privacy policies to comply with applicable federal and state laws, including the new California law.

Please contact Cynthia Larose at 617-348-1732 ([clarose@mintz.com](mailto:clarose@mintz.com)), Ivan Wool at 212-692-6757 ([iwool@mintz.com](mailto:iwool@mintz.com)) or Michael Bisignano at 202-434-7379 ([mbisignano@mintz.com](mailto:mbisignano@mintz.com)) for assistance. ○



*Mintz Levin and ML Strategies provide legal, legislative and consulting expertise on privacy as it relates to many issues. If you would like further information, please contact the Mintz Levin attorney who regularly handles your legal affairs, or one of the attorneys or senior professionals listed below.*

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