



February 25, 2020

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California Office of the Attorney General
300 South Spring Street, First Floor
Los Angeles, CA 90013

Via Email to: PrivacyRegulations@doj.ca.gov

Attn: Honorable Xavier Becerra, Attorney General

Re: Comments on TEXT OF MODIFIED REGULATIONS Released February 7, 2020

Dear Mr. Becerra:

We are writing to express our positive support for the proposed introduction of the “just-in-time” notice concept¹ as an additional means of providing Notice at Collection and Notice of Right to Opt-Out of Personal Information (PI) Sale to California consumers.

The term “just-in-time” does not appear in the CCPA law currently in force, nor did it appear in the October 10 PROPOSED TEXT OF REGULATIONS. We welcome the introduction of this fresh concept in the February 7, NOTICE OF MODIFICATION TO TEXT because we believe it brings into play a simple and practical means for businesses to implement the spirit of CCPA in a way that can build transparency and trust with Californian consumers.

While the term “just-in-time” is new to CCPA, it is not new to the privacy field. Research focused on consumer privacy at institutions such as Carnegie Mellon

¹ § 999.305 (a)(4) When a business collects personal information from a consumer’s mobile device for a purpose that the consumer would not reasonably expect, it shall provide a **just-in-time notice** containing a summary of the categories of personal information being collected and a link to the full notice at collection. For example, if the business offers a flashlight application and the application collects geolocation information, the business shall provide a **just-in-time notice**, such as through a pop-up window when the consumer opens the application, which contains the information required by this subsection.



University², University of Michigan³, and American Law Institute⁴ has posited for years that providing consumers with relevant and focused privacy information in the moment when they commit to sharing their information with others (the just-in-time notice moment) is a highly desirable best practice.

The introduction of just-in-time notice technology into CCPA leverages strong 2020 trends in today's digital marketplace. Mobile device access for commerce and internet usage has outstripped desktop usage and continues to grow at a robust rate⁵. Mobile use is now the rule, rather than the exception. CCPA's performance-based⁶ approach correctly dictates that consumer notices be clearly and well presented on both desktop and mobile devices, and with equal clarity and ease of access.

Businesses today face growing regulation from an increasing number of jurisdictions, many of which mandate disparate notice and consent requirements for different consumer sets (jurisdiction, age, language, etc.). Accommodating this complexity by adding paragraphs to a business' legal Privacy Policy renders that document outsized, complex, and practically unfit for compliant Notice at Collection. Recent proposals⁷ have suggested that a just-in-time notice be employed as a sub-layer to the mother Privacy Policy.

Consumers today are more aware of their privacy rights than ever before, especially their right to have businesses refrain from selling their personal information. Under CCPA rules, **businesses who do sell** PI may display the new Do Not Sell My Personal Information (DNSMPI) button as a means for consumers to signal the business to stop. (Figure 1)

² Schaub, et al., A Design Space for Effective Privacy Notices, Symposium on Usable Privacy and Security (SOUPS) 2015, Available at <https://www.usenix.org/system/files/conference/soups2015/soups15-paper-schaub.pdf>

³ Florian Schaub, Rebecca Balebako, and Lorrie Faith Cranor, Designing Effective Privacy Notices and Controls, 21 IEEE INTERNET COMPUTING 70 (2017)

⁴ Solove, Daniel J. and Schwartz, Paul M., ALI Data Privacy: Overview and Black Letter Text (January 24, 2020). Available at SSRN: <https://ssrn.com/abstract=3457563>

⁵ <https://techjury.net/stats-about/mobile-vs-desktop-usage/#gref>

⁶ <https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-isor-appendices.pdf>

⁷ <https://www.brookings.edu/blog/techtank/2020/01/06/hitting-refresh-on-privacy-policies-recommendations-for-notice-and-transparency/>



But there is a substantial number of **businesses who do not sell** PI and have no future plans to sell. While these businesses do not need to display the (redundant) DNSMPI button, this writer believes that in practice, many consumers could wrongly conclude that the absence of the DNSMPI button (i.e. absence of a Do Not Sell choice) could infer that this "white hat" business is noncompliant with the spirit of CCPA and should be avoided.

This negative confusion could be turned into a huge benefit for consumers and businesses alike with the addition of a displayable We Do Not Sell Your Personal Information (WDNSYPI) symbol or logo to display this DNS commitment to the consumer just in time with the presentation of other privacy facts. (Figure 2)

The OAG's February 7 release provided no information about how just-in-time notices might appear as implemented in daily practice. For your consideration, here are some snapshot examples of "just-in-time" use cases in a CCPA collection moment using the Privacy Facts Interactive Notice (PFIN) paradigm as described in our previous submission⁸:

⁸<http://model.consentcheq.com/20191205-ccpa1010-comment.pdf>

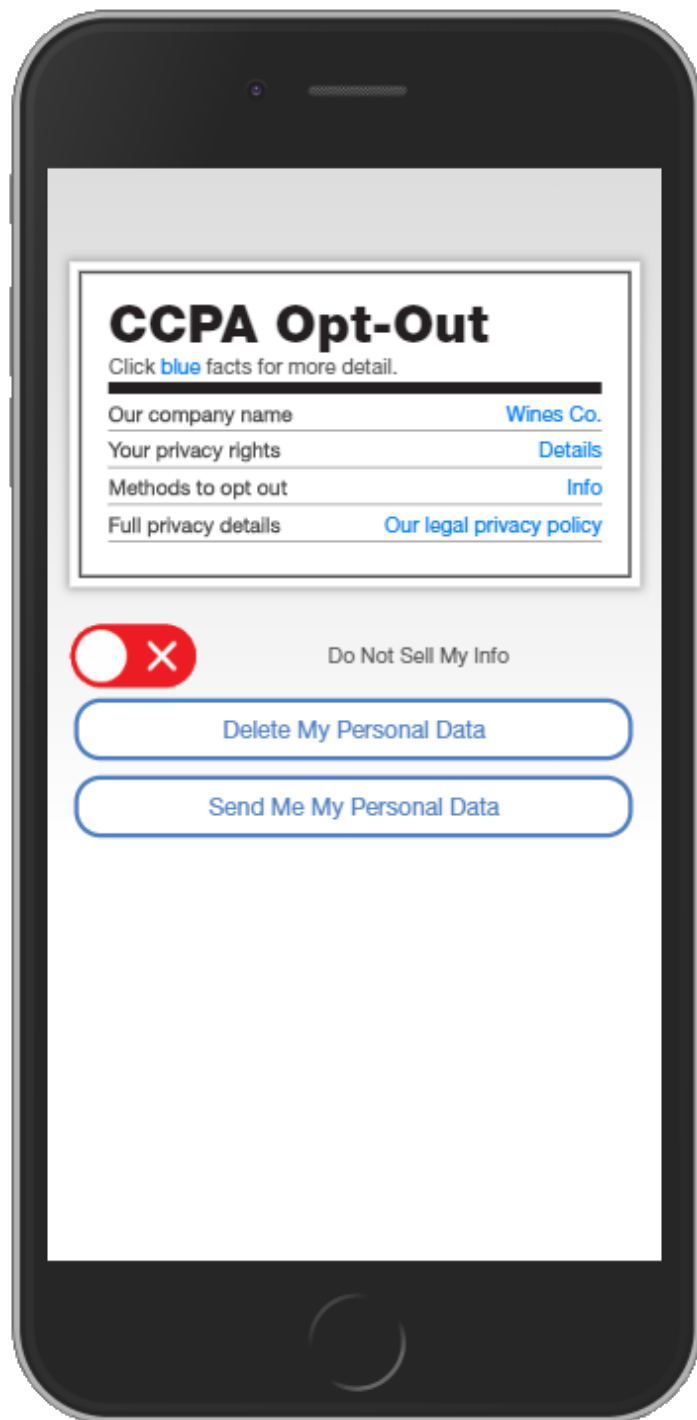


Figure 1 – Snapshot of a CCPA “Just in Time” Notice at Opt-Out

Privacy Facts

We value and respect your privacy and the personal data you may entrust to us. Use [BLUE](#) links to see details.

Who are we? [Sample Company](#)

What data do we collect? [categories](#)

What's our legal basis for using it? [bases](#)

[We do not sell your data](#) [details](#)

You have important privacy rights [your rights](#)

How long do we keep your data? [details](#)

Where do we store your data? [details](#)

What about cookies? [details](#)

Want to view our full Privacy Policy? [full policy](#)

How can you manage your privacy choices? [our dashboard](#)

Who can you talk to [our DPO](#)

What additional resources are available? [resources](#)

Contact our Data Protection Authority (DPA)? [our DPA](#)

Effective Date 2020.01.06



We Do Not Sell Your Personal Info

Figure 2 – Snapshot of a WDNSYPI logo used to signal “We Do Not Sell”



In conclusion, the flexibility, simplicity, and clarity of just-in-time notice technology enhances California consumers' positive and effective control over their personal information as it simplifies their notice and choice. For businesses, employing "just-in-time" notices provides a simplified means for building consumer dialogue and trust. It is an important and welcomed addition to the CCPA regulations.

Additional information on practical CCPA just-in-time notice implementation can be found in PrivacyCheq's previous comment submission to the CCPA Proposed Regulation (closed on December 6, 2019), available here:

<http://model.consentcheq.com/20191205-ccpa1010-comment.pdf>

Thank you for these opportunities to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "D.R. Smith", with a long, sweeping flourish extending to the right.

Dale R. Smith, CIPT
Futurist
drs@privacycheq.com

via email to: PrivacyRegulations@doj.ca.gov