



Preparing for California's Privacy Law

June 29, 2018 —

Yesterday, California's legislature enacted a consumer privacy law in order to head off a ballot initiative that had garnered enough support to ensure its presence on the November ballot. While many of us were surprised that today's politicians could act with such alacrity in any situation, the law they have released will undoubtedly spur many debates and court battles to come. Among many things, the law gives California consumers increased control over how their personal data is collected, used, and shared. Consumers now have the right to know what data is being collected, how the data is being used, and to opt-out of this data usage and sharing if they elect.

Disclaimer

As always, we remind you that at Further we are digital marketing experts, not legal scholars. This short list of observations we present here should not be taken as legal advice and in fact, is likely to evolve as more information is gained.

We have heard from several, although not the majority, of our clients as they debate how GDPR and this new California Consumer Privacy Act will impact their business operations. We believe these are valid questions to be asking, and we as an agency are taking an active role in discussions and debates to better understand and communicate to our clients how these regulations may impact their business.

Our Perspective

For the majority of clients we work with, the California Consumer Privacy Act will have a more immediate impact on their business than GDPR. (However, some organizations will DEFINITELY be impacted by GDPR so don't discount that out of hand.)

To our reading of [AB 375](#), there are several encouraging observations that non-profits should consider:



- a) 1798.140 c 1 does not appear to include non-profits in the definition of a “business”. Non-profits are not operated for the profit or financial benefit of its shareholders or other owners.

This interpretation is in accordance with past laws regarding telemarketing whereby non-profits are typically also exempt. Readers may know that it is Further’s long-held belief that fortunately, non-profits are often exempt from these types of marketing and privacy laws as a convenient way for politician’s to also exempt themselves and their re-election campaigns from the same oversight. We’re certainly not complaining in this case!

- b) The law does not take effect until 2020.

Even if future interpretations of the law determine that non-profits are indeed covered by its governance, there is time to plan.

- c) The law only impacts charities operating or fundraising in California.

This particular aspect is not as reassuring as the two above due to the large population of California (particularly donors and advocate populations) in comparison to the rest of the nation. Were non-profits to be deemed subject to this law, some have estimated that as much as 15% of the donating public could be affected.

Furthermore, from a practical standpoint, since charities will not abandon the responsive audiences in California, and since digital platforms are difficult to tailor to one jurisdiction over another due to their boundary-less nature, it would be likely that ALL digital outreach would be better handled by conforming to California’s standards.

The worst-case scenario would be if other states take California’s action as their lead to creating their own state-based regulations which could thus create a



disjointed patchwork of regulation across the United States that would be highly unwieldy to comply with.

The Final Word

Our final word on this subject is that this will undoubtedly NOT be our final word.

This law is likely to be hotly debated and tested by the courts. It will undoubtedly put a smile on lawyer's faces as they eagerly await an endless stream of cases. That said, many of these same lawyers will be fighting for common-sense interpretations of these guidelines that will benefit non-profits. (As a sidebar, it is worth noting that Facebook has publicly announced it will no longer oppose this privacy legislation. For insight into why that may be, check out our whitepaper—[Facebook Addresses Fake News & Privacy](#).)

We believe that in the wake of GDPR and this new California law, other state legislatures are undoubtedly considering similar regulations. While we believe that politicians are vastly over-exaggerating the extent to which Americans value privacy with regard to digital media and marketing, the reality is that these laws may become more common and Further is prepared to advise clients on how to comply with them with the minimum disruption to donations and business operations possible.

If you'd like to talk more about this law or any other issues, please [contact us](#).