



Consumers' Rights to Opt-Out



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Professional Background



- Co-founder and CEO
- Over 5000 customers including 60% of F50
- E&Y Entrepreneur Of The Year Award Finalist in NorCal (2018)
- >\$100m in annual revenue on exit



- Co-founder and CMO then SVP / GM
- IPO in July 1999 (NASDAQ: NTIQ)

Privacy Background



- Volunteer on Prop 24 Campaign and ran the marketing efforts
- Policy volunteer for Presidential Campaign
- Helped Californians for Consumer Privacy launch the CPRA Resource Center
- Proposed SB 1059 to enhance Data Broker Registry law and moves registration and regulation of data brokers to Cal PPA

Issue #1: Consumers Don't Know Their Rights

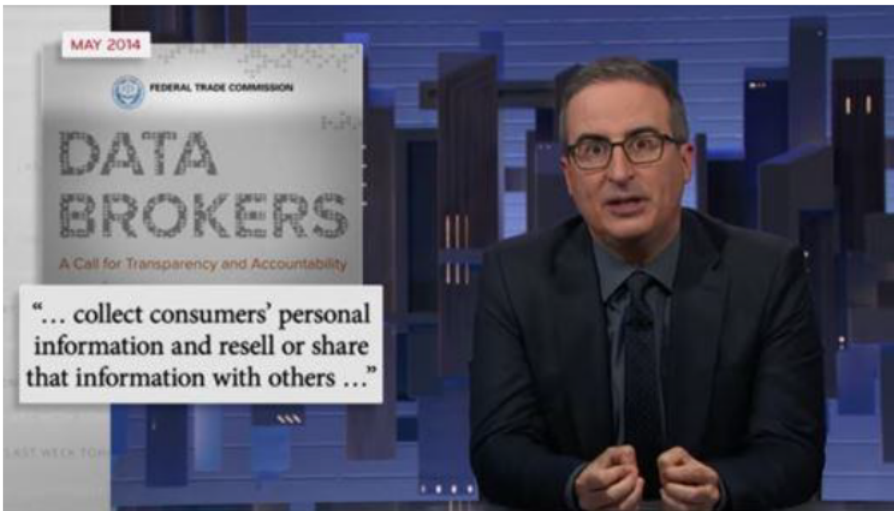
A recent survey by Consumer Action and Consumer Federation of America (CFA) found that many consumers have not exercised their rights under the CCPA to see and delete the personal information collected about them and to request that their information not be sold. The top reason given for not exercising these rights was not knowing about them.

Issue #2: Consumers Facing “Scavenger Hunt” When They Do Exercise their Rights



- “Consumers struggled to locate the required links to opt out of the sale of their information.”
- “Many data brokers’ opt-out processes are so onerous that they have substantially impaired consumers’ ability to opt out.”
- “Some Do Not Sell processes involved multiple, complicated steps to opt out, including downloading third-party software.”
- “Consumers were often forced to wade through confusing and intimidating disclosures to opt out.”
- “About 52% of the time, the tester was “somewhat dissatisfied” or “very dissatisfied” with the opt-out processes.

Issue #3: Consumers Don't Even Know Who Has their Data



These data brokers collect personal information about consumers from a wide range of sources and provide it for a variety of purposes, including verifying an individual's identity, marketing products, and detecting fraud. Because these companies generally never interact with consumers, consumers are often unaware of their existence, much less the variety of practices in which they engage. By

Soon after AB 1202 was signed, the state Justice Department estimated 1,000 data brokers would register. As of last month, however, only 400 data brokers had complied.

Phone location data from people who visited abortion clinics, including Planned Parenthood, was legally on sale for \$160, report says

Top mental health apps are 'data sucking machines' that could be trading your sensitive information

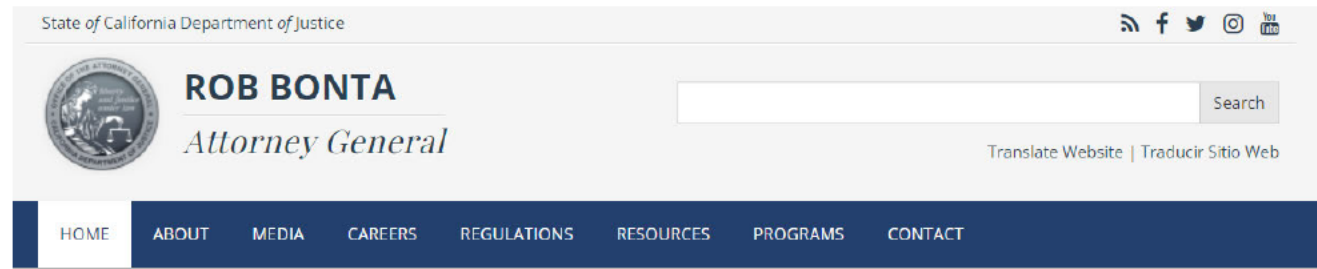
Priest outed via Grindr app highlights rampant data tracking

Proposal #1: PPA Should do PSAs to Educate Consumers re: their Privacy Rights

- PPA has a \$10 million per year budget.
- Because staffing is going slow and steady and enforcement does not begin until the middle of 2023, I estimate that the PPA has unused budget of at least \$7 million this Fiscal Year and will have unused budget of \$5 million next fiscal year.
- The PPA has the money, and should spend it on public awareness, as Prop 24 says in Section 1798.99.40 (e) that the PPA shall *“Provide guidance to consumers regarding their rights under this title.”*
- Spend the unused money on Public Service Announcements as the law requires the PPA to provide guidance to consumers

Proposal #2: The PSAs Call to Action Should Be an Enhanced Consumer Privacy Interactive Tool

- Californians should be encouraged via PSAs to report businesses that are making it difficult for them to opt-out.
- The Cal AG has in fact created reporting tool called the Consumer Privacy Interactive Tool that provides the ability for Californians to report CCPA violations by businesses, but it is limited to drafting notices to businesses that do not post an easy-to-find “Do not Sell My Personal Information” link on their website.
- This tool should be greatly enhanced to include reporting of businesses not respecting optouts.
- The enhanced tool should be the call to action in the PSAs



Consumer Privacy Interactive Tool

The California Attorney General is creating a tool to help consumers draft a notice of noncompliance to send to businesses that may have violated the California Consumer Privacy Act (CCPA). **Right now, this tool is limited to drafting notices to businesses that do not post an easy-to-find “Do Not Sell My Personal Information” link on their website.** This tool may be updated over time to include other potential CCPA violations. This tool was last updated on July 17, 2021 (v1.0).

Proposal #3: Increase Visibility into Data Brokers

- Californians should have visibility into those businesses with whom they have no direct relationship with that may be selling and/or sharing our personal data that includes our precise geolocation.
- After AB 1202 passed in 2020 to establish the California Data Broker Registry, the California DOJ estimated that over 4000 data brokers exist and at least 1000 would register, but two years later only approximately 400 have registered.
- SB 1059 would increase data broker registrations and require data brokers provide clear instructions on opt-out, and also transfers the regulation and registration over data brokers to the PPA.
- I know the PPA can't weigh in on proposed legislation, but I urge the PPA to look more closely at the practices of data brokers, especially considering recent headlines regarding the egregious use of our location data. Location is considered under the CPRA as sensitive personal information, so I urge you to look at what you can do from a regulatory perspective to limit the use of sensitive personal info including location.

Conclusion

- Educate the people of California – use it or lose it
 - Leverage the 40m people of California to help you find violators in a crowd-source manner
 - Help provide sunshine and transparency with companies we don't have a direct relationship that share and sell our data
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- See <https://tomkemp.blog/2021/10/14/how-the-california-privacy-protection-agency-better-protect-consumers/>

