



The Association of Business Media Companies

California Law Requires Posting of Privacy Policy

By David Straus, Partner, Thompson Coburn

On July 1, 2004, a new California law—the Online Privacy Act of 2003—took effect and requires the owner of any web site or online service that collects personally identifiable information from a California consumer to take several steps:

- (1) “conspicuously” post its privacy policies on its web site and identify the effective date,
- (2) inform consumers of the types of data that are being collected about them and state how it will be used and shared,
- (3) if there is a process permitting individual consumers to request changes to such data, describe how that process works, and
- (4) state how changes in the privacy policy will be communicated.

The law defines “personally identifiable data” as including first and last name, a physical address, an e-mail address, a telephone number, a social security number and any other information that permits the physical or online contacting of a specific person.

The law defines “conspicuously” to mean (1) the posting of the policy on the web site’s home page or “first significant page,” (2) use of an icon that links to a web page on which the policy is posted (as long as the icon is on the home page or first significant page, contains the word “privacy” and is distinguishable with color or otherwise), or (3) use of a text hyperlink to a web page on which the policy is posted (as long as the hyperlink is on the home or first significant page of the web site and it either includes the word “privacy” or is written with capital letters or letters larger than those surrounding it), (4) use of a different functional hyperlink “that is displayed so that any other reasonable person would notice it,” or (5), in the case of an “online service,” any other reasonably accessible means of making the policy available to users of the service.

“Consumer” is defined as “any individual who seeks or acquires, by purchase or lease, any goods, services, money or credit for personal, family or household purposes.” This definition would *appear* to exempt from the law’s scope any website that collects information only from businesses.

We understand that the law gives consumers the right to bring private lawsuits against web site owners that violate the law, and that the law would also be violated by a failure to comply with a privacy policy as well as a failure to post one. Please note, however, that a web site owner is deemed to be in violation of the posting requirement only if it fails to post that policy “30 days after being notified of noncompliance.” The law does not state how that notification is to take place, or by whom.