



American Data Privacy and Protection Act (ADPPA) Provides Privacy and Security Protections that are in Many Respects Stronger than those under the California Consumer Privacy Act (CCPA)

I. Background

On August 15, 2022, the California Privacy Protection Agency (Agency) wrote a [letter](#) to House Speaker Pelosi and Minority Leader McCarthy to oppose the ADPPA. The Agency’s objections were twofold, namely, that (1) the ADPPA could be amended in the future to weaken privacy protections, whereas any amendment of the CCPA in the future must be consistent with its intent and purpose, thereby effectively creating a “floor” of privacy protections; and (2) the ADPPA would prevent the Agency from carrying out its mandate or create uncertainties in this regard. Significantly, the Agency’s letter did not state that CCPA¹ provides stronger or more comprehensive privacy and security protections than the ADPPA. Indeed, it could not have done so since “the substantive protections in the ADPPA as presently drafted are significantly stronger than the California Privacy Rights Act in nearly every way.”²

II. ADPPA vs. CCPA

- **ADPPA imposes greater restrictions on the use of personal data.** As part of the “duty of loyalty”, ADPPA imposes specific and detailed restrictions on the purposes for which personal information may be used. The CCPA has no parallel provision, and states only that personal information may not be processed for purposes incompatible with the disclosed purposes for which it was collected.
- **ADPPA is more protective of sensitive personal data.** By default, the ADPPA limits the use of sensitive personal data to what is strictly necessary to provide a service or for a very limited number of specifically enumerated purposes. In addition, the ADPPA requires individuals to affirmatively opt-in to most transfers of personal data to third parties. By contrast, the CCPA requires consumers to affirmatively opt-out of certain uses of sensitive personal data, and even that right does not apply to sensitive data that is not used for inferring characteristics of consumers.
- **ADPPA imposes a “privacy by design” requirement that is absent from the CCPA.** The “privacy by design” requirement of the ADPPA requires covered entities to identify and

¹ All references to the CCPA are to the CCPA as amended by the California Privacy Rights Act (CPRA), the substantive provisions of which go into effect January 1, 2023.

² See [“The Bipartisan House Privacy Bill Would Surpass State Protections”](#) by Stacey Gray, Director of Legislative Research & Analysis at the Future of Privacy Forum, July 21, 2022.

mitigate privacy risks related to their products and services and with respect to minors, and to implement training and safeguards to address these risks. The CCPA has no parallel provision.

- **ADPPA data rights are more extensive than the CCPA.** While both the ADPPA and CCPA require covered entities to provide notices of how they use and share personal data, and give individuals the right to access, correct and delete their personal data, the ADPPA includes the additional right of portability, namely, the right to export the data in human-readable and machine-readable format to the individual or directly to another entity. In addition, the ADPPA right to access includes the right to know the names of third parties to whom the covered entity has transferred the data for consideration, whereas the CCPA requires only that the business provide the “categories” of third parties with whom the data has been shared. Also, if a covered entity makes a material change to its privacy policies or practices, the ADPPA requires that it provide prior notice to affected individuals to allow them to withdraw consent to the processing of their data for the changed purposes, subject to limited exceptions. The CCPA simply requires that businesses update their privacy policy at least once every 12 months. Finally, the ADPPA requires covered entities to take “all reasonable electronic measures” to notify each affected individual in each covered language in which the privacy policy is made available of the material changes to the policy. The CCPA has no such requirement.
- **ADPPA provides broader protection against the use of personal data for targeted or deceptive advertising.** The ADPPA includes the right to opt-out of targeted advertising. In addition, there is a complete prohibition on the use of personal data for targeted advertising to individuals under age 17. Finally, the ADPPA explicitly prohibits deceptive advertising or marketing. The CCPA has no right to opt-out of targeted advertising for most personal data, no prohibition on targeted advertising to minors, and no prohibition on deceptive advertising or marketing.³
- **ADPPA provides greater protection for minors.** In addition to the prohibition on targeted advertising to minors, the ADPPA establishes a division within the FTC dedicated to the privacy of minors and marketing to minors, including submitting an annual report to Congress on its activities. Covered entities are explicitly required to consider and mitigate privacy risks to minors in their products and practices, and large data holder impact assessments of algorithms must specifically include steps taken to mitigate potential harms to minors. The CCPA includes no similar requirements.
- **ADPPA provides greater protections against the use of personal data for discriminatory purposes.** The ADPPA includes an explicit prohibition on the use of personal data for discriminatory purposes. In addition, any covered entity that intends to use algorithmic decision-making must, prior to doing so, evaluate the design, structure and inputs to reduce the risk of discrimination. Finally, large data holders that use algorithms, must perform detailed impact assessments on an annual basis. The CCPA has no comparable provision. While it does authorize the issuance of regulations governing opt-out rights with respect to automated decision-making technology, no such regulations have yet been issued.
- **The ADPPA imposes greater corporate accountability.** In addition to requiring covered entities to designate privacy and security officers responsible for implementation and oversight of the entity’s privacy and security program, the ADPPA requires that in the case of large data holders, an executive officer certify annually to the FTC that internal controls are in place to comply with the requirements of the ADPPA, and that the entity maintains

³ Per bullet #2, consumers may restrict the use of sensitive data that is used for inferring characteristics of consumers.

internal reporting structures to ensure that the certifying executive officer is involved in and responsible for decisions affecting compliance with the ADPPA. The CCPA has no comparable requirement.

III. Conclusion

There is no question that the ADPPA provides not only comprehensive, detailed and robust privacy and security protections, but that these protections exceed those under the CCPA and other state privacy laws.