

**ATTACHMENT A**

**Summary of Toy Association Comments on the California Consumer Privacy Act**

<b>CCPA Provision</b>	<b>Issue</b>	<b>Comments and Recommendations</b>
<p><b>Federal Preemption</b> 1798.196</p>	<p>CCPA §1798.196 states: “This title is intended to supplement federal and state law, if permissible, but shall not apply if such application is preempted by, or in conflict with, federal law or the California Constitution.”</p> <p>COPPA preempts inconsistent state law per 15 U.S.C §6502(d): “No State or local government may impose any liability for commercial activities or actions by operators in interstate or foreign commerce in connection with an activity or action described in this chapter [online collection of data from children under 13] that is inconsistent with the treatment of those activities or actions under this section.”</p>	<p>Some elements of the CCPA are inconsistent with COPPA, including COPPA’s definition of children as those under 13 (<i>see</i> 15 U.S.C. §6501(1)), and other definitions in the Act and rule (16 C.F.R. Part 312). Failure to align with COPPA not only creates a preemption issue, but also imposes burdens that fail to advance privacy interests. COPPA’s risk-based framework provides useful guidance on how to balance privacy risks with burdens to consumers and businesses.</p>
<p><b>Sell</b> 1798.140 (t)</p>	<p>The “sale” of personal information is defined broadly to include selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating to another business for monetary “or other valuable consideration.” 1798.140(t)(1)</p> <p>“Selling” does not include:</p> <ul style="list-style-type: none"> <li>• Consumer requests that the business intentionally disclose to 3d party (subject to other restrictions);</li> <li>• Sharing to communicate consumer opt-out;</li> <li>• Sharing with a service provider information necessary to perform a business purpose if service provider does not sell the personal information and, 1) business has provided notice that information is being used or shared, and 2) service provider does not further collect, sell or use personal information except as necessary to perform the business purpose;</li> <li>• Transfer of information as an asset that is part of a merger, acquisition, bankruptcy or other transaction, subject to conditions on third party, including bar on making material retroactive privacy policy changes. 1798.140(t)(2)(C).</li> </ul>	<p>While the CCPA exceptions to the definition of “sale” are useful, §1798.140(t)(2)(C) does not fully align with the exceptions from honoring deletion requests in 1798.105(d). Clarification is needed to establish that a business does not “sell” personal information when the personal information is necessary for a business, service provider, law enforcement or other authorized party to engage in activities described in 1798.105(d).</p>
<p><b>Right to Request Information on Collection</b> 1798.110</p>	<p>Consumers have right to request that a business disclose, and a business must disclose:</p> <ul style="list-style-type: none"> <li>• Categories of PI collected about the consumer;</li> <li>• Categories of sources from which the PI is collected;</li> <li>• Business or commercial purpose for collecting or selling PI;</li> <li>• Categories of third parties with whom the business shares PI;</li> </ul>	<p>It is important to clarify that these obligations do not require development of individual privacy policies or burdensome paperwork obligations.</p>

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<p><b>Right to Request Information on Sale</b> 1798.115</p>	<ul style="list-style-type: none"> <li>• Specific pieces of PI collected about that consumer.</li> </ul> <p>Consumers have the right to request that a business that sells or discloses consumer PI disclose, and business must disclose:</p> <ul style="list-style-type: none"> <li>• Categories of PI that the business collected about the consumer;</li> <li>• Categories of PI that the business sold and categories of third parties to whom PI was sold, by category and third party;</li> <li>• Categories of PI about the consumer disclosed for a business purpose. 1798.115 (a).</li> </ul> <p>A third party may not sell PI about a consumer that has been sold to the third party unless the consumer has received explicit notice and been given the right to opt out. 1798.115 (d).</p>	<p>“Sales” to agents and service providers should be excluded from this obligation.</p>
<p><b>Right to Opt Out</b> 1798.135</p>	<p>Business must put link on its homepage with the words “Do Not Sell My Personal Information”:</p> <ul style="list-style-type: none"> <li>• Link must also enable a consumer to opt out of “sale” of their personal information (the Right to Opt Out) (a) (2)</li> <li>• Consumer can instruct business not to sell their personal information to third parties at any time. (a) (4)</li> </ul>	<p>COPPA requires that in addition to the direct notice to the parent, an operator must post a prominent and clearly labeled link to an online notice of its information practices with regard to children on the home or landing page or screen of its Web site or online service, <i>and</i>, at each area of the Web site or online service where personal information is collected from children. The link must be in close proximity to the requests for information in each such area. §312.4 (d). Operators of online services subject to COPPA – particularly those primarily directed to children – cannot “sell” information to third parties absent parental consent; they can, however, share information with service providers to support internal operations.</p> <p>The requirement for the “Do not sell ...” link at the home page is burdensome and conflicts with COPPA, which has a defined mechanism for parents to request an opportunity to access, correct or delete children’s data.</p>
<p><b>Right to Deletion</b> 1798.105</p>	<p><b>Consumers can request deletion of “any personal information”</b> the business has collected. 1798.105 (a)</p> <ul style="list-style-type: none"> <li>• Businesses must delete the requested information and direct any service providers to do the same. 1798.105 (c)</li> <li>• Businesses do not need to delete PI if necessary to: complete a transaction; detect security incidents; protect against illegal activity. fraud, etc.; exercise free speech; comply with the CA Electronic Communications Privacy Act; engage in research in the public interest; comply with legal obligation; “enable solely</li> </ul>	<p>While the CCPA does not require businesses to delete PI necessary to support internal operations (as enumerated, and those should be expanded), businesses must provide information on collection and “sale” per 1798.110 and 1798.115; offer adult consumers a right to opt-out of the sale of PI per 1978.120(a), give parents of children &lt;13 the opportunity to opt-in to the sale of PI and minors 13 – 16 the right to opt-in per 1798.120(c), subject to definitional exception of a “sale” in 1798.140(t)(2). As</p>

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	<p>internal uses that are reasonably aligned with the expectations of the consumer based on the consumer’s relationship with the business”; “otherwise use the consumer’s personal information, internally, in a lawful manner that is compatible with the context in which the consumer provided the information.” 1798.105 (d)</p>	<p>noted, definitions should align with COPPA and avoid burdening businesses with obligations to share names of agents and service providers, which are often confidential business information.</p>
<p><b>Mechanisms to honor requests</b> 1798.130</p>	<p>Consumers can request a copy of all PI a business has collected.</p> <ul style="list-style-type: none"> <li>• Business must provide at least two means for consumers to submit requests for disclosure including a toll-free telephone number and website. Businesses must provide the requested PI free of charge within 45 days of receipt of request. (a) (1), (2)</li> </ul>	<p>Requiring businesses to offer both a toll-free number and a website is burdensome, especially for small businesses. Either a toll-free number or a website should suffice.</p>
<p><b>Consent; Children/Minors</b> 1798.120 (c), (d)</p>	<p>Business can’t sell personal information if business knows consumer is under 16 without first obtaining affirmative consent.</p> <ul style="list-style-type: none"> <li>• Parent or guardian must consent where consumer is under 13 years.</li> <li>• Consumers between 13-16 must give affirmative consent.</li> </ul>	<p>COPPA requires verifiable parental consent prior to collecting, using, or disclosing personal information from children, subject to a number of exceptions, including collection of persistent identifiers to support internal operations (excluding use for interest-based advertising). The CCPA’s broad definition of “personal information” and “sale” appear to require parental consent for data collection, use and sharing exempt under COPPA. Further, requiring consumers age 13 – 16 to “consent” to uses excepted from parental notice and consent obligations under COPPA where children under 13 are concerned will burden businesses without advancing privacy.</p>
<p><b>Data Breaches</b> 1798.150</p>	<p>Businesses are liable if they fail to take “reasonable security measures” in relation to data covered in CA Civ. Code 17987.80 (CA sensitive data) and data breach occurs.</p> <ul style="list-style-type: none"> <li>• Business must notify consumers, regulators of unauthorized access to unencrypted sensitive data “in the most expedient time possible and without unreasonable delay” under separate CA data breach notification law (CA Civ. Code 1798.80 <i>et seq.</i>).</li> </ul>	<p>COPPA requires reasonable security, and SB 327 requires security of connected products.</p>
<p><b>Enforcement and Penalties</b> 1798.150</p>	<p>Consumers can bring private actions for data breaches involving nonencrypted/nonredacted PI as defined in data breach law at CA Civ. Code 1798.81.5 (generally sensitive data), and permits recovery of actual or statutory damages. Recently a proposal to amend the CCPA was introduced to expand the private right of action to any violation of the CCPA.</p>	<p>COPPA bars any private right of action and the Toy Association opposes a scheme of statutory damages and a private right of action. Enforcement of COPPA is the province of the FTC, and state Attorneys General have delegated authority to enforce COPPA. CCPA enforcement should be left exclusively to the Attorney General (or delegated to local District Attorneys with notice to the AG).</p>

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		Guidance should establish that businesses should have no liability for “selling” personal information (as defined in the Act) to a third party that fails to adhere to the requirements of 1798.140(t)(2).
<b>Covered Entities</b> 1798.140	<p>“Business”: 1798.140 (c)</p> <ul style="list-style-type: none"> <li>• Sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit;</li> <li>• Annual gross revenues over \$25,000,000;</li> <li>• derives 50 percent or more of its annual revenues from selling consumers’ personal information;</li> <li>• Sells, or shares for commercial purposes, alone or in combination, the personal information of 50,000 or more consumers, households, or devices.</li> </ul> <p>Applies to entities that share common branding controlled by a qualifying business.</p>	<p>Broad definitions of “personal information” and “selling” (including sharing for ill-defined activities that fit COPPA’s definition of support for internal business operations), coupled with the relatively small number of households or devices affected, very small businesses are likely to be covered. For example, assuming that an average two-person household has a minimum of 6 devices (a computer, phone and tablet) – which, with the growth of connected devices is likely an underestimate - businesses reaching just 8,334 California households are likely to be covered by the requirements.</p>
<b>Protected Individuals</b> 1798.140	<p>“Consumer”: a natural person who is a California resident. 1798.140 (g)</p>	<p>This broad definition, coupled with the broad definition of personal information, risks affecting machine-to-machine communications where employees must log in to operate the equipment. The requirements should be limited to consumer settings only,</p>
<b>Safe Harbors</b>	<p>The CCPA does not create a role for safe harbors.</p>	<p>COPPA establishes a mechanism for safe harbor organizations to be recognized. Complaints involving members of safe harbor organizations recognized by the FTC are referred to the safe harbor organization. This, rather than a private right of action, would be a better alternative to promote compliance with the CCPA. We urge the Attorney General to consider a process to recognize such programs. At a minimum, the Attorney General should provide examples of “reasonable security” of the covered sensitive data that would insulate companies from unnecessary litigation, recognizing that security continues to evolve and that a measure of flexibility is essential.</p>