

2023 U.S. State Data Protection Laws A Summary of Opt-Out Rights and Preference Signal Requirements

In 2023, new data protection laws and regulations will enter into force in California, Colorado, Connecticut, Utah, and Virginia. These new legal requirements will address a broad range of data protection rights and obligations, including how individuals can opt out from having their personal data used for targeted advertising or sold to third parties. As set forth in the table below, each state has created a unique framework for how covered businesses must allow consumers to exercise these rights via the use of opt-out “links” posted on their websites and/or through the implementation of website technology adapting to a device’s privacy configurations. [Note: This table does not address circumstances where consent is required in the context of targeted advertising or the sale of personal data, profiling opt-out rights, or similar privacy obligations.]

The California Privacy Rights Act of 2020 (CPRA)

Opt-Out Rights. A covered business that sells or shares personal information or uses or discloses sensitive personal information for certain purposes must (i) (a) install a “Do Not Sell or Share My Personal Information” link on its webpage to enable individuals to opt out of the sale or sharing of their personal information, (b) install a “Limit the Use of My Sensitive Personal Information” link on its website to consumers to limit the use or disclosure of their sensitive personal information in a manner authorized by law, or (c) install a link on its website that enables consumers to both opt out of the sale or sharing of personal information and to limit the use or disclosure of their sensitive personal information, and/or (ii) comply with the Opt-Out Preference Signal requirements (see below).

Opt-Out Preference Signal. The CPRA allows consumers to opt out of the sale or sharing of their personal information and to limit the use of their sensitive personal information through an opt-out preference signal. According to draft [CPRA regulations](#), an opt-out preference signal gives consumers the ability to opt out of sale and sharing of their personal information with all businesses they interact with online without having to make individualized requests with each business.

Implementing Regulations. California is in the process of drafting and refining its [CPRA regulations](#), which address, among other areas, the operability and functionality of opt-out links and opt-out preference signals.

The terms “**sell**,” “**selling**,” “**sale**,” or “**sold**” mean

(1) selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer’s personal information by the business to a third party for monetary or other valuable consideration. (2) For purposes of the CPRA, a business does not sell personal information when: (A) A consumer uses or directs the business to intentionally: (i) Disclose personal information. (ii) Interact with one or more third parties. (B) The business uses or shares an identifier for a consumer who has opted out of the sale of the consumer’s personal information or limited the use of the consumer’s sensitive personal information for the purposes of alerting persons that the consumer has opted out of the sale of the consumer’s personal information or limited the use of the consumer’s sensitive personal information. (C) The business transfers to a third party the personal information of a consumer as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business,

The California Privacy Rights Act of 2020 (CPRA)

	provided that information is used or shared consistently with this title. If a third party materially alters how it uses or shares the personal information of a consumer in a manner that is materially inconsistent with the promises made at the time of collection, it shall provide prior notice of the new or changed practice to the consumer.
The terms “ share ,” “ shared ,” or “ sharing ” mean	(1) sharing, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer’s personal information by the business to a third party for cross-context behavioral advertising, whether or not for monetary or other valuable consideration, including transactions between a business and a third party for cross-context behavioral advertising for the benefit of a business in which no money is exchanged. (2) For purposes of this title, a business does not share personal information when: (A) A consumer uses or directs the business to intentionally disclose personal information or intentionally interact with one or more third parties. (B) The business uses or shares an identifier for a consumer who has opted out of the sharing of the consumer’s personal information or limited the use of the consumer’s sensitive personal information for the purposes of alerting persons that the consumer has opted out of the sharing of the consumer’s personal information or limited the use of the consumer’s sensitive personal information. (C) The business transfers to a third party the personal information of a consumer as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business, provided that information is used or shared consistently with this title. If a third party materially alters how it uses or shares the personal information of a consumer in a manner that is materially inconsistent with the promises made at the time of collection, it shall provide prior notice of the new or changed practice to the consumer.
The term “ sensitive personal information ” means	(1) Personal information that reveals: (A) A consumer’s Social Security, driver’s license, state identification card, or passport number. (B) A consumer’s account login, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account. (C) A consumer’s precise geolocation. (D) A consumer’s racial or ethnic origin, religious or philosophical beliefs, or union membership. (E) The contents of a consumer’s mail, email, and text messages unless the business is the intended recipient of the communication. (F) A consumer’s genetic data. (2)(A) The processing of biometric information for the purpose of uniquely identifying a consumer. (B) Personal information collected and analyzed concerning a consumer’s health. (C) Personal information collected and analyzed concerning a consumer’s sex life or sexual orientation. (3) Sensitive personal information that is “publicly available” shall not be considered sensitive personal information or personal information.
The term “ opt-out preference signal ” means	a signal that is sent by a platform, technology, or mechanism, on behalf of the consumer, that communicates the consumer’s choice to opt out of the sale and sharing of personal information and that complies with the requirements set forth in section 7025, subsection (b) of the CPRA Regulations . [Note: At the time of publication the CPRA Regulations are still in draft form.]

The Colorado Privacy Act (CPA)

Opt-Out Rights. A consumer has the right to opt out of the processing of their personal data for “targeted advertising” purposes and of the “sale” of personal data. A consumer may authorize another person, acting on the consumer’s behalf, to opt out of the processing of the consumer’s personal data for “targeted advertising” purposes and of the “sale” of personal data, including through a technology indicating the consumer’s intent to opt out such as a web link indicating a preference or browser setting, browser extension, or global device setting.

Universal Opt-Out Mechanism. Effective July 1, 2024, a controller that processes personal data for purposes of “targeted advertising” and the “sale” of personal data shall allow consumers to exercise the right to opt out of such processing through a user-selected universal opt-out mechanism that meets the technical specifications established by the attorney general. Prior to July 1, 2024, controllers “may” allow consumers to exercise their opt-out rights in this manner.

Implementing Regulations. The CPA gives the Colorado attorney general authority to adopt rules governing privacy, and requires that, by July 1, 2023, the attorney general specifically adopt rules that detail the technical specifications for one or more universal opt-out mechanisms that clearly communicate a consumer’s affirmative, freely given, and unambiguous choice to opt out of the processing of personal data for purposes of targeted advertising or the sale of personal data. For more information, see <https://coag.gov/resources/colorado-privacy-act/>.

The terms “sale,” “sell,” or “sold” mean	(a) the exchange of personal data for monetary or other valuable consideration by a controller to a third party. (b) “Sale,” “sell,” or “sold” does not include the following: (I) The disclosure of personal data to a processor that processes the personal data on behalf of a controller; (II) The disclosure of personal data to a third party for purposes of providing a product or service requested by the consumer; (III) The disclosure or transfer of personal data to an affiliate of the controller; (IV) The disclosure or transfer to a third party of personal data as an asset that is part of a proposed or actual merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the controller’s assets; or (V) The disclosure of personal data: (A) That a consumer directs the controller to disclose or intentionally discloses by using the controller to interact with a third party; or (B) Intentionally made available by a consumer to the general public via a channel of mass media.
The term “targeted advertising” means	(a) displaying to a consumer an advertisement that is selected based on personal data obtained or inferred over time from the consumer’s activities across nonaffiliated websites, applications, or online services to predict consumer preferences or interests; and (b) Does not include: (I) Advertising to a consumer in response to the consumer’s request for information or feedback; (II) Advertisements based on activities within a controller’s own websites or online applications; (III) Advertisements based on the context of a consumer’s current search query, visit to a website, or online application; or (IV) Processing personal data solely for measuring or reporting advertising performance, reach, or frequency.

The Connecticut Data Privacy Act (CDPA)

Opt-Out Rights. A consumer shall have the right to opt out of the processing of their personal data for “targeted advertising” and of the “sale” of their personal data. A consumer may designate another person to serve as the consumer’s authorized agent to opt out of the processing of such consumer’s personal data for “targeted advertising” and the “sale” of personal data. The consumer may designate such authorized agent by way of, among other things, a technology, including, but not limited to, an internet link or a browser setting, browser extension or global device setting, indicating such consumer’s intent to opt out of such processing. A controller shall not require a consumer to create a new account in order to exercise consumer rights but may require them to use an existing account. Any such means shall include the following: (i) providing a clear and conspicuous link on the controller’s internet website to an internet web page that enables a consumer, or an agent of the consumer, to opt out of the targeted advertising or sale of the consumer’s personal data; and (ii) complying with an opt-out preference signal (see below).

Opt-Out Preference Signal. Not later than January 1, 2025, a controller shall allow a consumer to opt out of any processing of their personal data for the purposes of targeted advertising, or any sale of such personal data, through an opt-out preference signal sent, with such consumer’s consent, by a platform, technology or mechanism to the controller indicating their intent to opt out of any such processing or sale. Such platform, technology or mechanism shall: (i) not unfairly disadvantage another controller; (ii) not make use of a default setting, but, rather, require the consumer to make an affirmative, freely given and unambiguous choice to opt out of any processing of their personal data; (iii) be consumer-friendly and easy to use by the average consumer; (iv) be as consistent as possible with any other similar platform, technology or mechanism required by any federal or state law or regulation; and (v) enable the controller to accurately determine whether the consumer is a Connecticut resident and whether they made a legitimate request to exercise their rights.

Implementing Regulations. Connecticut has not yet addressed the need to draft CDPA implementing regulations.

The term “sale of personal data” means	the exchange of personal data for monetary or other valuable consideration by the controller to a third party. “Sale of personal data” does not include (A) the disclosure of personal data to a processor that processes the personal data on behalf of the controller, (B) the disclosure of personal data to a third party for purposes of providing a product or service requested by the consumer, (C) the disclosure or transfer of personal data to an affiliate of the controller, (D) the disclosure of personal data where the consumer directs the controller to disclose the personal data or intentionally uses the controller to interact with a third party, (E) the disclosure of personal data that the consumer (i) intentionally made available to the general public via a channel of mass media, and (ii) did not restrict to a specific audience, or (F) the disclosure or transfer of personal data to a third party as an asset that is part of a merger, acquisition, bankruptcy or other transaction, or a proposed merger, acquisition, bankruptcy or other transaction, in which the third party assumes control of all or part of the controller’s assets.
The term “targeted advertising” means	displaying advertisements to a consumer where the advertisement is selected based on personal data obtained or inferred from that consumer’s activities over time and across nonaffiliated internet websites or online applications to predict such consumer’s preferences or interests. “Targeted advertising” does not include (A) advertisements based on activities within a controller’s own internet websites or online applications, (B) advertisements based on the context of a consumer’s current search query, visit to an internet website or online application, (C) advertisements directed to a consumer in response to the consumer’s request for information or feedback, or (D) processing personal data solely to measure or report advertising frequency, performance or reach.

Utah Consumer Privacy Act (UCPA)

Opt-Out Rights. A consumer has the right to opt out of the processing of the consumer's personal data for purposes of targeted advertising, or the sale of personal data.

Opt-Out Preference Signal. Controllers are *not* required to recognize universal opt-out signals as a method for consumers to exercise their rights to opt out from targeted advertising or the sale of their personal data.

Implementing Regulations. Utah has not yet addressed the need to draft UCPA implementing regulations.

The terms "sale," "sell," or "sold" mean	(a) the exchange of personal data for monetary consideration by a controller to a third party. (b) "Sale," "sell," or "sold" does not include: (i) a controller's disclosure of personal data to a processor who processes the personal data on behalf of the controller; (ii) a controller's disclosure of personal data to an affiliate of the controller; (iii) considering the context in which the consumer provided the personal data to the controller, a controller's disclosure of personal data to a third party if the purpose is consistent with a consumer's reasonable expectations; (iv) the disclosure or transfer of personal data when a consumer directs a controller to: (A) disclose the personal data; or (B) interact with one or more third parties; (v) a consumer's disclosure of personal data to a third party for the purpose of providing a product or service requested by the consumer or a parent or legal guardian of child; (vi) the disclosure of information that the consumer: (A) intentionally makes available to the general public via a channel of mass media; and (B) does not restrict to a specific audience; or (vii) a controller's transfer of personal data to a third party as an asset that is part of a proposed or actual merger, an acquisition, or a bankruptcy in which the third party assumes control of all or part of the controller's assets.
The term "targeted advertising" means	(a) displaying an advertisement to a consumer where the advertisement is selected based on personal data obtained from the consumer's activities over time and across nonaffiliated websites or online applications to predict the consumer's preferences or interests. (b) "Targeted advertising" does not include advertising (i) based on a consumer's activities within a controller's website or online application or any affiliated website or online application; (ii) based on the context of a consumer's current search query or visit to a website or online application; (iii) directed to a consumer in response to the consumer's request for information, a product, a service, or feedback; or (iv) processing personal data solely to measure or report advertising: (A) performance; (B) reach; or (C) frequency.

Virginia Consumer Data Protection Act (VCDPA)

Targeted Advertising/Sale Opt-Out Rights. A controller shall comply with an authenticated consumer request to exercise the right to opt out of the processing of the personal data for purposes of targeted advertising, or the sale of personal data. If a controller sells personal data to third parties or processes personal data for targeted advertising, the controller shall clearly and conspicuously disclose such processing, as well as the manner in which a consumer may exercise the right to opt out of such processing, and such means shall take into account the ways in which consumers normally interact with the controller, the need for secure and reliable communication of such requests, and the ability of the controller to authenticate the identity of the consumer making the request.

Opt-Out Preference Signal. Controllers are *not* required to recognize universal opt-out signals as a method for consumers to exercise their rights to opt out from targeted advertising or the sale of their personal data.

Implementing Regulations. Virginia has not yet addressed the need to draft VCDPA implementing regulations.

The term “ sale of personal data ” means	the exchange of personal data for monetary consideration by the controller to a third party. “Sale of personal data” does not include: (1) The disclosure of personal data to a processor that processes the personal data on behalf of the controller; (2) The disclosure of personal data to a third party with whom the consumer has a direct relationship for purposes of providing a product or service requested by the consumer; (3) The disclosure or transfer of personal data to an affiliate of the controller; (4) The disclosure of information that the consumer (i) intentionally made available to the general public via a channel of mass media and (ii) did not restrict to a specific audience; or (5) The disclosure or transfer of personal data to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the controller’s assets.
The term “ targeted advertising ” means	displaying advertisements to a consumer where the advertisement is selected based on personal data obtained from a consumer’s activities over time and across nonaffiliated websites or online applications to predict such consumer’s preferences or interests. Targeted advertising” does not include: (1) Advertisements based on activities within a controller’s own websites or online applications; (2) Advertisements based on the context of a consumer’s current search query, visit to a website, or online application; (3) Advertisements directed to a consumer in response to the consumer’s request for information or feedback; or (4) Processing personal data processed solely for measuring or reporting advertising performance, reach, or frequency.

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