



Office of the Governor

JCOTS Consumer Data Protection Workgroup Meeting #3: Administration Considerations

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Introduction

- The Northam Administration applauds the initiative taken by the General Assembly on this issue
- The Administration supports the suggestions provided by the Office of the Attorney General
- Looking to other states (California, Colorado) for examples of what has

Administration Suggestions

- Increased protections for children
- General opt-out provision
- Annual report from OAG
- Public record database updated language

Increased Protections for Children (Automatic Opt-Out)

- The administration recommends the consideration of an automatic opt-out for minors be implemented
 - Colorado's and California's consumer data protection laws contain relevant provisions, and consumer protection experts recommend it
 - It would only apply to persons known to be children by data controllers or processors

Increased Protections for Children (Authorization Process)

- VCDPA could define the process by which the utilization of data from a minor may be authorized
 - Under the Colorado Privacy Act (CPA,) controllers are prohibited from processing personal data concerning a child under the age of 13 "without first obtaining consent from the child's parent or lawful guardian" (CPA, SB 21-190, pg. 25, 2021)
- The language provided in the CPA offers a good model that could be adopted into the VCDPA

General Opt-Out

- The Administration suggests the consideration of a clause granting Virginia consumers the right to a universal opt-out mechanism
- As written currently, VCDPA grants consumers the right to opt out of the processing of personal data for:
 - Targeted advertising
 - The sale of personal data
 - Profiling in furtherance of decisions that produce legal or similarly significant effects

General Opt-Out (cont' d)

- Language similar to that in the Colorado Privacy Act (CPA) regarding an authorized agent opt-out could be adopted
 - Under CPA, consumers have the right to "authorize another person, acting on the consumer's behalf, to opt out of the processing of the consumer's 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" (Colorado Privacy Act, SB 21-190, pg. 18, 2021)

OAG Reporting Structure

- The workgroup may consider a provision that would create an annual report from OAG on enforcement actions
- The report might also:
 - Identify shortcomings encountered related to consumer protection
 - Provide recommendations for more effective enforcement
 - Provide data on usage, opt-out frequency, etc.
- An annual report could provide a clear roadmap for businesses on what activities are impermissible, and confidence for consumers in the privacy of their data

Public Record Processors

- The workgroup may consider offering clarity to public record processors in the Definitions section of the bill
- Public record processors, such as Lexis Nexis, Westlaw, etc. offer critical services to government, research institutes, law enforcement, and the general public
- Given their role as an aggregator of publicly available information, an exemption or modification should be considered for this

Conclusions

- VCDPA would be strengthened by addressing data privacy protections for children
- A universal opt-out tool would improve the effectiveness of the VCDPA for VA citizens
- Annual reporting from OAG creates a lasting avenue to fine-tune enforcement and build public confidence in the law
- Some fine-tuning for the treatment of public records processors may be productive