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California “Information Sharing Disclosure”

A new California law, effective January 1st, requires businesses to disclose whether they sell personal information of California residents for direct marketing purposes. The law may affect your business despite your location outside of California or lack of significant business activity in California.

The law affects businesses, irregardless of location, which either (a) have an established business relationship with California residents or (b) share the personal information of California residents with third parties for direct marketing purposes. Nonprofit organizations are exempt, as are businesses of fewer than 20 employees. If the law applies to your business, you must offer a disclosure option to California residents, either by posting instructions on your website or by another method in response to requests received. Upon receiving a disclosure request, you must act on the request promptly (within 30 days), by disclosing:

- All categories of information disclosed to third parties (e.g. name, address, Social Security Number, occupation, banking information and any profile information disclosed); and
- The identity of all third parties to which your business disclosed such personal information within the preceding 12 months.

Businesses that have an implemented and posted Privacy Policy, pursuant to which individuals may opt-in or -out of the sharing of personal information, are exempted from the law’s disclosure requirements. Such businesses instead may comply by simply providing a copy of or link to their Privacy Policy in response to disclosure requests from California residents. Also, businesses that do not share personal information with third parties (whether generally or specifically as to California residents) are not subject to the law. Likewise, businesses that do not interact with California residents are not subject to the law.

Penalties for noncompliance can be steep. The law provides for civil penalties for noncompliance of up to \$500 per violation, and up to \$3,000 per violation for willful or intentional noncompliance.

If you have any questions about this new law and how it may impact your business, please contact me at (202) 339-0303 or by email at amirsky@andrewmirsky.com. Thank you.

Andrew Mirsky