



August 20, 2024

California Privacy Protection Agency  
Attn: Elizabeth Allen  
2101 Arena Blvd.  
Sacramento, CA 95834  
regulations@coppa.ca.gov

**RE: Public Comment on Data Broker Registration Regulations**

Dear Elizabeth Allen and Members of the California Privacy Protection Agency,

Thank you for your ongoing work and the opportunity to comment regarding the implementation of Senate Bill 362 (“the Delete Act” or “the Act”). The Future of Privacy Forum (“FPF”) is a non-profit organization dedicated to advancing privacy leadership, scholarship, and principled data practices in support of emerging technologies in the United States and globally. FPF seeks to support balanced, informed public policy and equip regulators with the resources and tools needed to craft effective regulation.<sup>1</sup> In response to the Agency’s public comment on data broker registration regulations, FPF recommends clarifying the definition of “direct relationship” to better align with user expectations on the forthcoming accessible deletion mechanism. Specifically, FPF encourages the Agency to consider:

- How the proposed definition may lead to unintentional data deletion requests, and
- Whether tying a “direct relationship” to recent user interactions may lead to the accessible deletion mechanism not operating as intended.

**Clarify the definition of “direct relationship”**

**A. The proposed definition may lead to unintentional data deletion requests.**

As currently drafted, the regulations define a covered data broker to include a business that sells personal information about a user that the business did not directly collect from the user, including instances where a business has a direct relationship with a user.<sup>2</sup> This proposed standard for when businesses qualify as covered data brokers may be an expansion from the plain text of the Delete Act, which is focused exclusively on businesses that lack a direct relationship with individuals.<sup>3</sup> Should the Agency proceed in expanding the scope of organizations subject to the Delete Act, it is crucial to consider potential consequences for

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<sup>1</sup> The opinions expressed herein do not necessarily reflect the views of FPF’s supporters or Advisory Board.

<sup>2</sup> Data Broker Registration – Notice File Number Z2024-0625-02, § 7601, Cal. Priv. Prot. Agency (July 5, 2024), [https://coppa.ca.gov/regulations/pdf/data\\_broker\\_reg\\_prop\\_text.pdf](https://coppa.ca.gov/regulations/pdf/data_broker_reg_prop_text.pdf)

<sup>3</sup> Cal. Civ. Code, § 1798.99.87.

individual expectations and the exercise of consumer rights through the accessible deletion mechanism, or the Delete Requests and Opt-Out Platform (DROP) provided for under the Delete Act.<sup>4</sup>

The Delete Act calls for the development of an accessible deletion mechanism that requires covered data brokers to, upon request, delete **any** personal information about an individual, not just information collected from third-party sources.<sup>5</sup> Given that the accessible deletion mechanism intends to serve as a ‘one-stop shop’ to enable individuals to issue bulk deletion requests, it is important to ensure that both the organizations and personal data subject to such requests are aligned with individual expectations and are not over- or under-inclusive. If the impact of a bulk deletion request covers less data than users expect, individuals may have a false sense of their online privacy. If the request implicates more information than expected, individuals may lose personal data or access to desired products and services. The scope of entities required to register for the data broker list is therefore critical to the success of the Delete Act and the DROP.

An individual who issues a bulk request through the DROP that is transmitted to organizations with whom they have a direct relationship could result in the deletion of not just third-party data collected about users, such as clickstream data used for targeting ads, but also first-party data affirmatively provided to the business, potentially including entire accounts and their storage contents. As a result, individuals could inadvertently delete their social media profiles, email accounts, or online photo and file storage. While the Delete Act contains an exception for a data broker to deny a deletion request if maintaining the personal information is “reasonably necessary” to fulfill a purpose described in subsection (d) of Section 1798.105 of the California Consumer Privacy Act, this exclusion may not encompass all of an entity’s first-party data and businesses may find it easier to comply broadly with a request to delete data than rely on an exception.<sup>6</sup>

FPF notes that the Agency’s Initial Statement of Reasons provides an illustrative example of a scenario where a business that offers a widely used service may also buy and sell data about a user unrelated to information directly collected by the user.<sup>7</sup> FPF finds this to be a helpful explanation of the Agency’s reasoning for this proposed definition and demonstrates that a

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<sup>4</sup> Cal. Civ. Code, § 1798.99.86.

<sup>5</sup> Cal. Civ. Code, § 1798.99.86(a)(2).

<sup>6</sup> Cal. Civ. Code, § 1798.99.86(c)(2)(A).

<sup>7</sup> “For example, a business that offers a widely used service, such as a video game that can be used on a mobile phone, may also buy and sell data about a consumer completely unrelated to the game purchase or use, such as information about their menstrual cycle. Thus, the business would not be considered a data broker with respect to the personal information collected directly from the consumer for the video game but would be considered a data broker for purposes of the personal information about the consumer’s menstrual cycle that it independently bought and sold to third parties.” California Privacy Protection Agency, *Initial Statement of Reasons*, p. 7

[https://www.cppa.ca.gov/regulations/pdf/data\\_broker\\_reg\\_isor.pdf](https://www.cppa.ca.gov/regulations/pdf/data_broker_reg_isor.pdf)

business may function as a data broker only with respect to certain sources of data or certain customers. We recommend that the proposed definition of “direct relationship” could be strengthened and further aligned with the Initial Statement of Reasons by explicitly stating that deletion requests apply specifically to brokered data and not any personal data associated with an individual. The Agency could clarify either in these regulations or in a future process, but it should be an essential consideration as the Agency develops the DROP.

## **B. Considerations in tying a "direct relationship" to recent user interactions**

The draft regulations propose that there must be an interaction between a user and a business within the preceding three years for a “direct relationship” to exist. The Agency explains this is intended to prevent businesses from claiming an indefinite direct relationship and avoiding registration requirements.<sup>8</sup> FPF is agnostic as to whether three years is the appropriate timeframe but encourages the Agency to consider how creating a definition dependent on user interactions with a business will interact with exercising individual rights through the DROP.

The intended purpose of the DROP is to be a one-stop mechanism for individuals to quickly delete data from businesses with whom they do not have a direct relationship. A requirement that a user must have interacted with a business in the preceding three years could lead to many infrequently used websites and services being on the list that a user might not expect to encounter. Broadening the types of businesses considered data brokers would result in a user needing to more closely inspect the list of companies they would be requesting to delete their data from or risk losing desired data, thus diminishing the value of this one-stop mechanism.

Additionally, it is unclear how the proposed three-year requirement for holding a “direct relationship” would impact other customers of a business. Whether a user has interacted with a business within the preceding three years is unique *to each individual*. Would a business need to register for the data broker list and respond to DROP requests for its entire customer base if more than three years have lapsed for merely one user? If so, businesses could be required to respond to DROP requests from individuals they routinely interact with. The proposed definition may incentivize businesses to prematurely delete their customers' data solely to avoid needing to register as a data broker rather than when it is most prudent to delete it in line with data retention best practices. In the alternative, the regulations could specify that a business may only be a data broker with respect to the data of individuals with whom they have not interacted in the previous three years. Still, the appearance of such organizations on the data broker registry could also confuse individuals using the DROP.

One approach to the issue of indefinite relationships is the concept of “refreshing consent” developed through the Colorado Privacy Act’s implementing regulations.<sup>9</sup> Under the regulations,

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<sup>8</sup> California Privacy Protection Agency, *Initial Statement of Reasons*, p. 7  
[https://www.cppa.ca.gov/regulations/pdf/data\\_broker\\_reg\\_isor.pdf](https://www.cppa.ca.gov/regulations/pdf/data_broker_reg_isor.pdf).

<sup>9</sup> 4 CCR 904-3, Rule 7.08 “Refreshing Consent.”

a controller must refresh consent after 24 months of inactivity to continue processing sensitive data or personal data for a secondary use. While Colorado's refreshing consent concept applies in a different context than the Delete Act's "direct relationship" definition, FPF encourages the Agency to continue exploring how mitigating its concern with "indefinite direct relationships" can better align with user expectations and the goals of the DROP.

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Thank you for this opportunity to provide comment on these proposed regulations. We welcome any further opportunities to provide resources or information to assist in this important effort. If you have any questions regarding these comments and recommendations, please contact Bailey Sanchez at [bsanchez@fpf.org](mailto:bsanchez@fpf.org).

Sincerely,

Bailey Sanchez  
Senior Counsel, U.S. Legislation