



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814
COMMISSIONER PETER A. FELDMAN

March 25, 2019

The Honorable Xavier Becerra
Attorney General of California
1300 I Street
Sacramento, CA 95814

Dear Attorney General Becerra:

As your office works to adopt regulations to implement and streamline the California Consumer Privacy Act (CCPA), I write today in hopes that you will consider the impact of this statute's "Right to Delete" provision on the ability of retailers, manufacturers, and others to conduct efficient recalls of hazardous consumer products.¹

The U.S. Consumer Product Safety Commission (CPSC) is an independent federal regulatory agency responsible for protecting the public from unreasonable risks of injury and death associated with consumer products. Because CPSC is not a privacy regulator, I take no position with respect to the merits of the broader consumer privacy considerations underpinning the CCPA. However, given CPSC's extensive work on consumer product recalls, I would like to call your attention to the ways in which CPSC and recalling firms rely on industry-collected personally identifiable information (PII) of consumers purchasing consumer products to advance safety.

To improve recall effectiveness, CPSC compliance staff works with manufacturers, distributors, and retailers to develop mutually acceptable programs that include a variety of notification methods to alert affected consumers about product recalls. Research shows, and the CPSC has long recognized, a powerful positive relationship between direct notification of consumers and recall success.² Direct notification is not possible without affected consumers' PII. Often, CPSC will encourage a recalling firm to use the information it collects through registration cards,

¹ California Consumer Privacy Act of 2018, ch. 55, 2018 Cal. Stat. 91 (codified at Cal. Civ. Code tit. 1.81.5); Cal. Civ. Code § 1798.105(a) (effective Jan. 1, 2020).

² See e.g. Dennis R. Murphy & Paul H. Rubin, *Determinants of Recall Success Rates*, 11 J. OF PROD. LIAB. 17, 17-28 (1988); and see U.S. CONSUMER PROD. SAFETY COMM'N, RECALL EFFECTIVENESS WORKSHOP REPORT 5 (2018), available at https://www.cpsc.gov/s3fs-public/Recall_Effectiveness_Workshop_Report-2018.pdf?R1VyLtr18M_id.2vkAk1HoUZjaSCab (last visited Mar. 25, 2019) (CPSC staff finding that "[d]irect notice recalls have proven to be the most effective recalls").

Hon. Xavier Becerra

March 25, 2019

Page 2

records, catalog orders, retailer loyalty cards, or other means, to effect direct notification.³ In other situations, companies may purchase commercially-available mailing lists of consumers who are likely to use a particular product.⁴ Industry-collected consumer PII, and the direct notification it enables, is therefore an important tool to locate and remove hazardous product as quickly as possible.

Because CCPA's "Right to Delete" provision could result in the deletion of this critical consumer PII, it is my hope that you will consider language to preserve its availability to allow for the efficient transmission of recall notifications. The CCPA states that "[a] consumer shall have the right to request that a business delete any personal information about the consumer which the business has collected from the consumer."⁵ While the CCPA contains a number of exemptions under which failure to fulfill a consumer's request to delete PII would be permissible, no exemption for consumer safety or recall efficiency currently exists.⁶ Perhaps regulatory language to this effect would be appropriate to further consumer safety.

Thank you for your attention to this matter. As always, I am available to assist you in any way I can.

Sincerely,



Peter A. Feldman
Commissioner

³ See U.S. CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 19 (2012), available at <https://www.cpsc.gov/s3fs-public/8002.pdf> (last visited Mar. 25, 2019). NOTE: The CPSC regulations create no affirmative legal obligation for private sector firms to collect such information. See 16 C.F.R. pt. 1000 et seq. (2018).

⁴ Because such lists are generally available from business that sell personal information about consumers to third parties, the CCPA "Right to Opt-Out" provision raises additional concerns with respect to the commercial availability, accuracy, and completeness of consumer PII for these purposes. See Cal. Civ. Code § 1798.120 (effective Jan. 1, 2020).

⁵ Cal. Civ. Code § 1798.105(a) (effective Jan. 1, 2020).

⁶ See Cal. Civ. Code § 1798.105(d)(2)-(9) (enacted by ch. 55) (exempting business from complying with a request when there are fraudulent activities, problems with their systems, questions of free speech, compliance issues with the California Electronic Communications Privacy Act, ongoing studies, or other legal obligations).