

What You Need To Know - Recent Updates in Children's Privacy

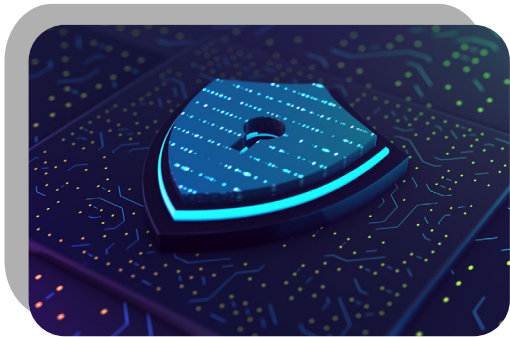
- The Maryland Age Appropriate Design Code Act and amendments to the Connecticut Data Privacy Act both took effect October 1, adding additional protections for teens under 18.
- The California Age Appropriate Design Code, which was enjoined in 2023 on constitutional grounds, has been revived, in part, for now, but won't be enforced for now. Meanwhile, California AB 1949, which would have imposed additional authorization and signaling requirements with respect to data of children under 18, has been vetoed by the Governor.
- The California Attorney General and LA City Attorney settled with gaming publisher Tilting Point Media over CCPA and COPPA allegations.



Maryland and Connecticut Step Up Protections for Minors Under 18

October 1 marked the effective date of state children's privacy legislation in Maryland and Connecticut, both applying new protections for children under age 18.

- **Maryland.** The Maryland Age Appropriate Design Code Act (MAADCA), enacted in May 2024, imposes certain obligations and prohibitions on online services, products or features that are "reasonably likely to be accessed" by children under age 18, including requirements to conduct data protection impact assessments (DPIAs), to apply default privacy settings to children that offer a high level of privacy, to signal to the child when processing geolocation data (which can only be collected when strictly necessary to provide the online product requested) and to provide other "prominent" tools and transparency mechanisms specified in the Act. The MAADCA also prohibits businesses from processing personal data in a way that is inconsistent with the best interests of the child, that is not reasonably necessary to provide an online service or product with which the child is actively and knowingly engaged, or for any reason other than the reason for which the data was collected. Unlike the California Age Appropriate Design Code Act (CAADCA), the MAADCA does not expressly require businesses to estimate the age of users and does not require companies to assess whether the service could expose children to harmful or potentially harmful content, two requirements that have been at the core of constitutional challenges to the CAADCA (see California updates below).
- **Connecticut.** Children's privacy amendments to the Connecticut Data Privacy Act, which also include protections for minors under age 18, are narrower in scope than the MAADCA, applying only to controllers who have actual knowledge, or willfully disregard, that they are offering an online service, product or feature to minors (as opposed to Maryland's "reasonably likely to be accessed" standard). Like the MAADCA, the Connecticut amendments are missing some of the elements subject to constitutional challenges in California, such as age estimation and content



assessments. Connecticut is also missing some elements common to the MAADCA and the CAADCA, such as requirements for default privacy settings and certain transparency requirements. Unlike the MAADCA (which doesn't expressly mention targeted advertising anywhere), the Connecticut amendments expressly prohibit processing minors' personal data for targeted advertising without the minor's (or the minor's parent's, for children under 13) consent or (similar to MAADCA) for any purpose other than the purpose for which the data was collected, but Connecticut does not include language requiring the data to be reasonably necessary to provide a product or service with which the child is actively and knowingly engaged. The Connecticut amendments also include certain requirements regarding social media and direct messaging that are absent from both the CAADCA and the MAADCA.

California's Age Appropriate Design Code

California Age Appropriate Design Code Act (CAADCA) moved its way through the courts. The 9th Circuit issued a ruling in August 2024 reversing in part the 2023 injunction of the CAADCA, which was enacted in 2022 and set to take effect July 1, 2024. Provisions of the law requiring that businesses assess and mitigate the risks that children may be exposed to harmful content remained enjoined (on the basis that the plaintiff is likely to succeed in showing that such provisions violate the First Amendment), but the court found that it was unclear whether the remaining provisions of the CAADCA either facially violate the First Amendment or are severable from violating provisions. The case was remanded to the district court for further consideration, leaving companies wondering whether they needed to quickly rush to implement aspects of the law (including age estimation requirements) that were enjoined well before the effective date and then suddenly released back into effect one month after the effective date. The answer came a couple weeks later, when California agreed in a joint stipulation to stay enforcement of the provisions no longer subject to an injunction until March 6, 2025, giving companies a short reprieve while awaiting the outcome of the case.



California Settles with Gaming Publisher over CCPA and COPPA Allegation

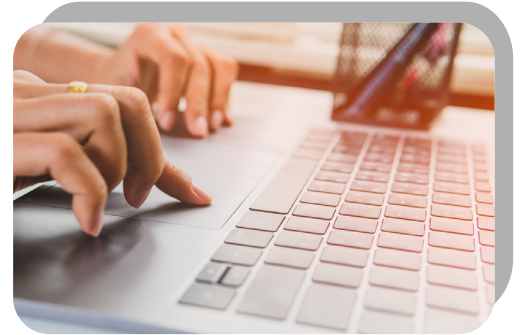
In June 2024, the California Attorney General's Office ("AG") and Los Angeles City Attorney's Office ("LAC") announced a \$500,000 settlement with gaming publisher Tilting Point Media LLC ("Tilting Point") over alleged violations of the California Consumer Privacy Act (CCPA) and the federal Children's Online Privacy Protection Act (COPPA). This settlement is only the third public enforcement action brought pursuant to the CCPA; all three enforcement actions have involved allegations relating to tracking technologies and ad monetization.

What happened?

In 2023, the AG and LAC conducted a joint investigation of Tilting Point's data practices relating to its mobile app game "SpongeBob: Krusty Cook-Off". This investigation followed an investigation in 2022 by the Children's Advertising Review Unit (CARU), where Tilting Point agreed to implement corrective changes from CARU.

Through their investigation, the AG and LAC found that Tilting Point violated COPPA and CCPA, and did not sufficiently remedy the issues identified by CARU. The AG and LAC specifically alleged that Tilting Point violated COPPA and CCPA by:

- Collecting, disclosing, selling, and sharing personal information from children under 13 without parental consent
- Collecting, disclosing, selling, and sharing personal information from children 13 to 15 without obtaining affirmative authorization
- Inadvertently misconfiguring software development kits (SDKs) within its games, which resulted in the above violations
- Using age screens that did not ask age in a neutral manner and that allowed children under 13 to consent to targeted advertising
- Displaying ads that were inappropriate to children and potentially deceptive
- Posting a privacy policy that was ambiguous and incomplete regarding targeted advertising



The parties settled for \$500,000 and injunctive provisions requiring Tilting Point to:

- Not sell or share personal information of a consumer that Tilting Point has actual knowledge is under 13 without parental consent
- Not sell or share personal information of a consumer that Tilting Point has actual knowledge is 13 to 15 without obtaining affirmative authorization
- Provide a compliant privacy policy and just-in time disclosures
- Implement neutral age screens and data minimization processes
- Implement an SDK governance framework that identifies all SDKs in an app, evaluates their configuration settings and controls, reviews the governing contracts, and ensures compliance with all involved sales and shares
- Display appropriate and non-deceptive ads
- Implement CCPA and COPPA compliance programs for three years that document and share review and assessment of SDK governance and data minimization efforts, privacy policies, child-directed or mixed audience classifications, age screens, advertising practices, and consent management

Takeaways

- **SDK Governance.** As noted above, this settlement is the third to specifically involve allegations relating to tracking technologies and ad monetization. Companies must understand and appropriately manage their SDKs. Even an inadvertent misconfiguration can lead to penalties. Building an SDK governance program can help companies comply. The SDK governance program outlined in the settlement provides good insight into what California regulators expect from companies when evaluating their SDKs.

- **Minors are under scrutiny.** This edition of state law insights demonstrates the amount of attention that California is giving to minors. While COPPA has been the historical standard for children, it is now only the baseline. The CCPA provides specific obligations for consumers 13-15. Where a company has actual knowledge of consumers 13 to 15, it must obtain affirmative authorization for sales and shares.
- **How investigations start.** The complaint strongly implies that the AG and LAC initiated their investigation after reviewing CARU's investigation in 2022. Investigations by self-regulatory bodies can lead to investigations by regulators, even if not referred. This is just one way an investigation can start. Other ways include consumer complaints over data subject rights and data breaches.
- **Data minimization.** Data minimization is once again a focus for California regulators. This follows the California Privacy Protection Agency (CPPA) issuing an enforcement advisory earlier this year relating to data minimization requirements.
- **Neutral age gates and appropriate advertising.** The settlement emphasizes the need for neutral age gates and appropriate advertising based on age. While the CAADCA may be on hold, California regulators still expect age-appropriate advertising for apps.

