

## Client Advisory

June 2004

# New California Law Mandates Online Privacy Policy

## Law May Apply Outside California

California's Online Privacy Protection Act takes effect on July 1, 2004. The Act requires that commercial Web site operators who collect personally identifiable information from consumers residing in California post their privacy policies in a conspicuous manner on their sites. **The Act applies to any operator of a commercial Web site within or outside California, as long as it collects personally identifiable information from California consumers.**

### Basic Requirements

Under the new legislation, privacy policies must:

- Identify the categories of information collected and the categories of parties with whom the information may be shared;
- Describe the process, if any, by which consumers can review and request changes to their personally identifiable information collected through the site;
- Describe the process by which consumers are notified of changes to the site's privacy policy; and
- Identify the privacy policy's effective date.

Personally identifiable information means individually identifiable information about a consumer collected online and includes: name; physical address; email address; and information collected and stored about a Web site user in a manner that is identified with that user (which may include online shopping preferences). An operator is in violation of the Act if it negligently or knowingly fails to conspicuously post a privacy policy meeting the above requirements or, having posted such a policy, fails to comply with its provisions. If an operator does not have a privacy policy, it is only liable under the Act if it fails to post its policy within 30 days after being notified of non-compliance.

### No Longer Optional

With the exception of Web sites directed to children, posting of a Web site privacy policy has historically been a matter of choice. As a result of the Act, for Web site operators collecting personal information from California consumers, **a privacy policy is no longer optional.** The breadth and scope of the new legislation has yet to be tested, but Web site operators inside and outside California should consider the requirements of the Act in formulating their consumer privacy strategies.

## Steps To Take

Katten Muchin Zavis Rosenman recommends that operators of commercial Web sites collecting personally identifiable information from California consumers conspicuously post on their Web sites a privacy policy in compliance with the Act. Operators who already conspicuously post a privacy policy should consider reviewing their posted policy to determine if it complies with the Act's requirements. Operators should also take the opportunity to review their Web site privacy practices, and to conduct periodic subsequent reviews, in order to make sure their privacy policies are and remain consistent with their privacy practices.

## We Can Help

Further details regarding the Act will be discussed in the summer edition of *AdVantage*, KMZ Rosenman's advertising and marketing law newsletter. KMZ Rosenman's privacy lawyers are prepared to assist you in creating a privacy policy for your Web site and understanding and complying with the requirements of this new Act. If you have any questions about these issues or you wish to become a subscriber to *AdVantage*, please contact:

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