

CALIFORNIA'S IOT LAW ON THE SECURITY OF CONNECTED DEVICES

Excerpted from Chapter 27 (Cybersecurity: Information, Network and Data Security)
from the April 2020 updates to *E-Commerce and Internet Law: Legal Treatise with Forms 2d Edition*
A 5-volume legal treatise by Ian C. Ballon (Thomson/West Publishing, www.IanBallon.net)

CCPA LITIGATION AND AG REGULATORY ENFORCEMENT: HOW TO BE PREPARED FOR IT AND HOW TO AVOID IT

SPRING ACADEMY – PRIVACY + SECURITY FORUM MAY 6-8, 2020

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Ian is also the author of the leading treatise on internet and mobile law, [E-Commerce and Internet Law: Treatise with Forms 2d edition](#), the 5-volume set published by West (www.IanBallon.net) and available on Westlaw, which includes extensive coverage of data privacy and cybersecurity breach issues, including a novel transactional approach to handling security breaches and exhaustive treatment of trends in data privacy, security breach and TCPA class action suits. In addition, he serves as [Executive Director of Stanford University Law School's Center for the Digital Economy](#). He also chairs [PLI's annual Advanced Defending Data Privacy, Security Breach and TCPA Class Action Litigation](#) conference. Ian previously served as an Advisor to ALI's Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transactional Disputes (ALI Principles of the Law 2007) and is a member of the consultative group for the [Data Privacy Principles of Law project](#) (ALI Principles of Law Tentative Draft 2019).

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Ian holds JD and LLM degrees and the [CIPP/US certification from the International Association of Privacy Professionals](#) (IAPP).

who is authorized to sue for civil penalties.¹²

The Act also broadened the scope of New York’s security breach notification statute, which is separately analyzed in section 27.08.

A copy of the SHIELD Act is set forth in section 27.09[35]. Guidance on how to conduct a risk assessment and draft a written information security program is set forth in section 27.13.

27.04[6][L] California’s IoT Law on the Security of Connected Devices

California’s IoT data security law,¹ Cal. Civil Code §§ 1798.91.04 to 1798.91.06, which took effect on January 1, 2020, requires a manufacturer of a connected device to equip the device with a reasonable security feature or features that are appropriate to the nature and function of the device, appropriate to the information it may collect, contain, or transmit, and designed to protect the device, and any information it contains, from unauthorized access, destruction, use, modification, or disclosure. Specifically, the law requires that a manufacturer² of a connected device³ equip the device with a reasonable security feature⁴ or features that are all of the following:

- (1) Appropriate to the nature and function of the device.

¹²N.Y. Gen. Bus. Law, § 899-bb(2)(d).

[Section 27.04[6][L]]

¹The Internet of Things (IoT) is a broad term used to refer to connected devices—such as smart refrigerators, smart televisions, wearable exercise monitors, self-driving cars, home security systems, and home or office climate control systems, among other things—that collect, store, or transfer information to other devices and networked computers, including personal data. *See generally supra* § 27.03B (explaining IoT).

²*Manufacturer* means “the person who manufactures, or contracts with another person to manufacture on the person’s behalf, connected devices that are sold or offered for sale in California. For the purposes of this subdivision, a contract with another person to manufacture on the person’s behalf does not include a contract only to purchase a connected device, or only to purchase and brand a connected device.” Cal. Civil Code § 1798.91.05(c).

³*Connected device* means “any device, or other physical object that is capable of connecting to the Internet, directly or indirectly, and that is assigned an Internet Protocol address or Bluetooth address.” Cal. Civil Code § 1798.91.05(b).

⁴A *security feature* is “a feature of a device designed to provide security for that device.” Cal. Civil Code § 1798.91.05(d).

- (2) Appropriate to the information it may collect, contain, or transmit.
- (3) Designed to protect the device and any information contained therein from unauthorized access, destruction, use, modification, or disclosure.⁵

Subject to these requirements, if a connected device is equipped with a means for authentication⁶ outside a local area network, it will be deemed a *reasonable security feature* under the statute if either:

- (1) The preprogrammed password is unique to each device manufactured; or
- (2) The device contains a security feature that requires a user to generate a new means of authentication before access is granted to the device for the first time.⁷

The statute also includes four express exclusions. It may not be construed “to impose any duty upon the manufacturer of a connected device related to unaffiliated third-party software or applications that a user chooses to add to a connected device.”⁸

It may not be construed “to impose any duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications, to review or enforce compliance . . .” with the statute.⁹

It may not be construed “to impose any duty upon the manufacturer of a connected device to prevent a user from having full control over a connected device, including the ability to modify the software or firmware running on the device at the user’s discretion.”¹⁰

And it may not be applied “to any connected device the functionality of which is subject to security requirements

⁵Cal. Civil Code § 1798.91.04(a). *Unauthorized access, destruction, use, modification, or disclosure* means “access, destruction, use, modification, or disclosure that is not authorized by the consumer.” *Id.* § 1798.91.05(e).

⁶*Authentication* means “a method of verifying the authority of a user, process, or device to access resources in an information system.” Cal. Civil Code § 1798.91.05(a).

⁷Cal. Civil Code § 1798.91.04(b).

⁸Cal. Civil Code § 1798.91.06(a).

⁹Cal. Civil Code § 1798.91.06(b).

¹⁰Cal. Civil Code § 1798.91.06(c).

under federal law, regulations, or guidance promulgated by a federal agency pursuant to its regulatory enforcement authority.”¹¹

California’s IoT security law, which was the first U.S. statute to specifically address the security of information shared by connected devices, has been either applauded by security experts for taking a step in the right direction or criticized for focusing on adding “good” features instead of removing bad ones that subject devices to attacks.¹² It seems likely that other states or the federal government will seek to enact IoT regulations in the coming years.

27.04[6][M] Insurance Industry Data Security Laws

An increasing number of states—including **Alabama**,¹ **Connecticut** (effective October 1, 2020),² **Delaware**,³ **Michigan** (effective January 20, 2020 and January 20, 2021),⁴ **Mississippi**,⁵ **New Hampshire**,⁶ **Ohio**,⁷ and **South Carolina**⁸—have enacted variations of the National Association of

¹¹Cal. Civil Code § 1798.91.06(d).

¹²See Adi Robertson, *California just became the first state with an Internet of Things cybersecurity law*, The Verge, Sept. 28, 2018 (quoting Robert Graham); Edward Kovacs, *California IoT Cybersecurity Bill Signed into Law*, SecurityWeek, Oct. 1, 2018 (quoting Graham as stating that the law “will do little [to] improve security, while doing a lot to impose costs and harm innovation.”).

[Section 27.04[6][M]]

¹Ala. Code §§ 27-62-1 to 27-62-12; *infra* § 27.09[2] (setting forth the statute).

²Connecticut’s Insurance Data Security Law, which is based on the National Association of Insurance Commissioners’ Model Insurance Data Security Law, takes effect on October 1, 2020, and replaces Conn. Gen. Stat. Ann. § 38a-999b. The statute is set forth in section 27.09[8][B].

³Del. Code Ann. tit. 18, §§ 8601 to 8611; *infra* § 27.09[9] (setting forth the statute).

⁴Mich. Comp. Laws Ann. §§ 500.550 to 500.565 (effective January 20, 2021); *infra* § 27.09[25][B] (setting forth the provisions).

⁵Miss. Code Ann. §§ 83-5-801 to 83-5-825; *infra* § 27.09[27] (setting forth the statute).

⁶N.H. Rev. Stat. Ann. §§ 420–P:1 to 420–P:14; *infra* § 27.09[32] (setting forth the statute).

⁷See Ohio Rev. Code Ann. §§ 3965.01 to 3965.11; *infra* § 27.09[38][B] (setting forth the statute).

⁸See S.C. Code Ann. §§ 38-99-30 to 38-99-100; *infra* § 27.09[44] (set-

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