CARLTON FIELDS

California Refines Online Privacy Protection Act to Require New Disclosures

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On September 27, 2013, Governor Jerry Brown signed into law changes to California's online privacy law (the California Online Privacy Protection Act), making California the first state to impose disclosure obligations on web site operators who track the online behavior of consumers. Under the amended law, any "operator of a commercial Web site or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit its commercial Web site or online service" must post a privacy policy on its Web site, or in the case of an operator of an online service, make the privacy policy available in a reasonably accessible way. In addition to privacy policy requirements contained in the previous version of the law, the amended law requires that the privacy policy now disclose:

- "How the operator responds to Web browser 'do not track' signals or other mechanisms that provide consumers the ability to exercise choice regarding the collection of personally identifiable information about an individual consumer's online activities over time and across third-party Web sites or online services, if the operator engages in that collection"; and
- "Whether other parties may collect personally identifiable information about an individual consumer's online activities over time and across different Web sites when a consumer uses the operator's Web site or service."

The first of the above-stated requirements may be satisfied by the operator including a hyperlink in the privacy policy "to an online location containing a description, including the effects, of any program or protocol the operator follows that offers the consumer that choice." As with the previous version of the law, operators who "fail[] to post its policy within 30 days after being notified of noncompliance" will be deemed to have violated the law, subjecting the operator to potential litigation and/or enforcement action by the California Attorney General's Office. Financial service institutions with web sites, mobile apps or other online services that collect personally identifiable

information about consumers residing in California should consider reviewing how their current systems respond to "do not track" mechanisms, and their applicable privacy policies in light of the new California requirements.

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