

PROPOSED STATUTORY TEXT

Sec. 1. Definitions.

- (1) ANONYMOUS INFORMATION.-- The term ‘anonymous information’ means personal information for which there is no possibility of logical association with other information relating to the person or household to whom the personal information relates.
- (2) COLLECTION.-- The term ‘collection’ of personal information means access to personal information by any means, including but not limited to gathering, recording, storing, obtaining, receiving, buying, or renting.
- (3) COMMUNICATIONS SERVICE.—The term ‘communications service’ means interstate or foreign communications by wire or radio
- (4) CONTROLLER.-- The term ‘controller’ means an entity that alone or jointly with others determines the purposes and means of the collection, use, and/or sharing of personal information.
- (5) CONTRACTOR.-- The term ‘contractor’ means an entity that collects, uses, and/or shares personal information but does not alone or jointly with others determine the purposes and means of the collection, use, and/or sharing of personal information. An entity does not alone or jointly with others determine the purposes and means of the collection, use, and/or sharing of personal information if and only if it collects, uses, and/or shares personal information solely pursuant to a written contract that prohibits the entity from collecting, using, and/or sharing personal information for any purposes or using any means other than that specified by the controller(s) of that personal information.
- (6) DE-IDENTIFIED INFORMATION.-- The term ‘de-identified information’ means linkable information for which there is no reasonable possibility of logical association with other information relating to the person or household to whom the linkable information relates, providing that the controller:
 - (A) takes reasonable measures to ensure that the information remains in a form in which there is no reasonable possibility of logical association with other information relating to the person or household to whom the linkable information relates,
 - (B) publicly commits to maintain and use the information only in a form in which there is no reasonable possibility of logical association with other information relating to the person or household to whom the linkable information relates,
 - (C) publicly commits to not attempt to associate the information with other information relating to the person or household to whom the linkable information relates, and
 - (D) contractually obligates any third parties to whom it discloses the information to implement controls (A), (B), and (C).
- (7) FIRST PARTY.-- The term ‘first party’ means an entity with whom a consumer intentionally interacts.
- (8) FUNCTIONAL USE.-- The term ‘functional use’ means the technical use of personal information to provide functionality. Functional use does not include the use of personal information in exchange for consideration from a third party.
- (9) LINKABLE INFORMATION.-- The term ‘linkable information’ means personal information that is not anonymous information.
- (10) NON-TRACKABLE INFORMATION.-- The term ‘non-trackable information’ means reasonably linkable information for there is no reasonable possibility of logical association of the information with other information relating to the person or household obtained from another context or another interaction with the person or household, providing that the controller:

The statutory text in this document is a proposal by Scott Jordan for notice and choice requirements. It should be combined with other requirements, including data minimization, duties, placement of notices, and methods for exercising choice. See the paper “A Proposal for Notice and Choice Requirements of a New Consumer Privacy Law”, *Federal Communications Law Journal*, forthcoming, at <https://www.ics.uci.edu/~sjordan/research/privacy%20proposal.html> for details.

- (A) takes reasonable measures to ensure that the information remains in a form in which there is no reasonable possibility of logical association of the information with other information relating to the person or household obtained from another context or another interaction with the person or household,
 - (B) publicly commits to maintain and use the information only in a form in which there is no reasonable possibility of logical association of the information with other information relating to the person or household obtained from another context or another interaction with the person or household,
 - (C) publicly commits to not attempt to associate the information with other information relating to the person or household obtained from another context or another interaction with the person or household, and
 - (D) contractually obligates any third parties to whom it discloses the information to implement controls (A), (B), and (C).
- (11) NON-SENSITIVE.-- The term 'non-sensitive', when used in conjunction with any type of personal information, means personal information that is not sensitive information.
- (12) OPT-IN CONSENT.-- The term 'opt-in consent' to specified collection, use, and/or sharing of personal information means any freely given, specific, informed and unambiguous indication of the person's wishes, by a statement or by a clear affirmative action, by which the person signifies agreement to the specified collection, use, and/or sharing of personal information relating to that person.
- (13) OPT-OUT CHOICE.-- The term 'opt-out choice' of specified collection, use, and/or sharing of personal information means a choice by which a person can withdraw consent to the specified collection, use, and/or sharing of personal information relating to that person.
- (14) PERSONAL INFORMATION.-- The term 'personal information' means any information relating to a natural person or to a household, excluding publicly available information.
- (15) PSEUDONYMOUS INFORMATION.-- The term 'pseudonymous information' means trackable information for which the related person or household is not reasonably identifiable using that personal information and other reasonably linkable information, providing that the controller:
- (A) takes reasonable measures to ensure that the information remains in a form in which the related person or household is not reasonably identifiable using that personal information and other reasonably linkable information,
 - (B) publicly commits to maintain and use the information only in a form in which the related person or household is not reasonably identifiable using that personal information and other reasonably linkable information,
 - (C) publicly commits to not attempt to identify the person or household to whom the information is related, and
 - (D) contractually obligates any third parties to whom it discloses the information to implement controls (A), (B), and (C).
- (16) PUBLICLY AVAILABLE INFORMATION.-- The term 'publicly available information' means information relating to a natural person or to a household (a) in publicly available government records, (b) that the person or household to whom the personal information is related has made publicly available, or (c) that was made publicly available by widely distributed media.
- (17) REASONABLY IDENTIFIABLE INFORMATION.-- The term 'reasonably identifiable information' means trackable information that is not pseudonymous information.
- (18) REASONABLY LINKABLE INFORMATION.-- The term 'reasonably linkable information' means personal information for which there is a reasonable possibility of logical association with other information relating to the person or household to whom the personal information relates.

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- (19) SENSITIVE.-- The term ‘sensitive’, when used in conjunction with any type of personal information, means personal information that relates to sensitive characteristics of a person or household, including, but not limited to:
- (A) private personal identifiers, including social security number, driver’s license number, state identification card number, and passport number.
 - (B) private physical characteristics, including genetic data, biometric data, health data, and racial or ethnic origin.
 - (C) personal information about behavior or beliefs, including political opinions, religious or philosophical beliefs, union membership, sex life or sexual orientation, financial information, information pertaining to children, precise geo-location, content of communications, web browsing history, and application usage history.
- (20) SHARING.-- The term ‘sharing’ of personal information means disclosure by any means, including but not limited to disclosure by transmission, dissemination, making available, releasing, transferring, renting, selling, or otherwise communicating, except that it excludes disclosure to a contractor.
- (21) THIRD PARTY.-- The term ‘third party’ means any entity other than a first party or a first party’s contractors.
- (22) TRACKABLE INFORMATION.-- The term ‘trackable information’ means reasonably linkable information that is not non-trackable information.
- (23) USE.-- The term ‘use’ of personal information means any operation or set of operations performed on personal information, including but not limited to organization, structuring, adaptation, alteration, retrieval, consultation, alignment, or combination of personal information.

Sec. 2. Notice.

- (a) PRIVACY POLICY.-- A controller shall maintain a publicly accessible privacy policy. The privacy policy shall disclose accurate information regarding the controller’s collection, use, and sharing of personal information sufficient for consumers to make informed choices regarding the use of the controller’s services.
- (b) CATEGORIES OF PERSONAL INFORMATION.-- The privacy policy shall disclose the categories of personal information collected and used, and for each such category, the classification(s) of that category. The classifications shall consist of reasonably identifiable information, pseudonymous information, non-trackable information, de-identified information, and anonymous information.
- (c) METHODS AND SOURCES.-- The privacy policy shall disclose, for each category of personal information collected:
- (1) the method of collection (if the personal information is collected by or on behalf of the controller), and
 - (2) the sources of collection (if the personal information is shared with the controller by another entity).
- (d) PURPOSES.-- The privacy policy shall disclose, for each category of personal information collected or used, the purposes for which the category of personal information is collected or used.
- (e) FUNCTIONAL USE.-- The privacy policy shall disclose, for each category of personal information collected or used and each such purpose, whether the use constitutes functional use, and if so, the functionality enabled by the collection and use of that category of personal information.
- (f) SHARED PERSONAL INFORMATION.-- The privacy policy shall disclose the categories of personal information shared, and for each such category, the classification(s) of that category. The

classifications shall consist of reasonably identifiable information, pseudonymous information, non-trackable information, de-identified information, and anonymous information.

(g) RECIPIENTS.-- The privacy policy shall disclose the third parties with which the controller shares personal information. For each such third party, the privacy policy shall disclose the categories of personal information shared with that third party, the purposes for which the controller shares each category of personal information with that third party, and any contractual limits on the third party's use and further sharing of that personal information. If a controller enables any third parties to collect additional personal information, the controller's privacy policy shall disclose the third parties so enabled and any contractual limits on such collection.

Sec. 3. Choice.

(a) MARKETS WITH EFFECTIVE COMPETITION.— A controller in a market with effective competition, except for a controller offering telecommunications (insofar as it receives or obtains personal information by virtue of its provision of telecommunications), shall

(1) OPT-OUT OF NON-FUNCTIONAL USE.— offer consumers an opt-out choice from the controller's collection and use for non-functional purposes (if any) of the consumer's non-sensitive reasonably identifiable information and sensitive pseudonymous information,

(2) OPT-IN TO NON-FUNCTIONAL USE.— obtain opt-in consent for the controller's collection and use for non-functional purposes (if any) of the consumer's sensitive reasonably identifiable information,

(3) OPT-OUT OF SHARING.— offer consumers an opt-out choice from the controller's sharing (if any) of the consumer's non-sensitive pseudonymous information and sensitive non-trackable information, and

(4) OPT-IN TO SHARING.— obtain opt-in consent for the controller's sharing (if any) of the consumer's reasonably identifiable information and sensitive pseudonymous information.

(b) MARKETS WITHOUT EFFECTIVE COMPETITION AND COMMUNICATIONS SERVICES.— A controller in a market without effective competition, and a controller offering a communications service (insofar as it receives or obtains personal information by virtue of its provision of a communications service), shall

(1) OPT-OUT OF NON-FUNCTIONAL USE.— offer consumers an opt-out choice from the controller's collection and use for non-functional purposes (if any) of the consumer's non-sensitive pseudonymous information and sensitive non-trackable information,

(2) OPT-IN TO NON-FUNCTIONAL USE.— obtain opt-in consent for the controller's collection and use for non-functional purposes (if any) of the consumer's reasonably identifiable information and sensitive pseudonymous information,

(3) OPT-OUT OF SHARING.— offer consumers an opt-out choice from the controller's sharing (if any) of the consumer's non-sensitive non-trackable information, and

(4) OPT-IN TO SHARING.— obtain opt-in consent for the controller's sharing (if any) of the consumer's reasonably identifiable information, pseudonymous information, and sensitive non-trackable information.