



WHITE PAPER

Evisort and the CCPA



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Table Of Contents

Introduction	3
What do companies need to do to become compliant with the CCPA?	3
What can Evisort do that other companies cannot?	4
How can Evisort help companies update its privacy policies?	5
How can Evisort ensure compliance with the CCPA throughout companies' contracts?	6
How can Evisort help companies update Data Processing Addendum to be compliant with the CCPA?	7
Conclusion	8
About Evisort	8

Introduction

The California Consumer Privacy Act (CCPA) will take effect on January 1, 2020 and apply to companies both inside and outside of California that obtain, sell, and use consumers' personal information. The Act expects companies to be compliant with the CCPA on January 1, 2020. Compliance will require an update to privacy policies, service provider contracts, and DPA riders. Evisort can help companies easily identify noncompliant policies and contracts and ensure companies become and remain compliant.

What do companies need to do to become compliant with the CCPA?

CCPA compliance requires companies to analyze multiple parts of its business. First, companies will have to change its process for collecting consumer information. Under the CCPA, companies must inform consumers about what information it will collect prior to obtaining the information.¹ This requires companies to update its privacy policies and add a link on its website allowing consumers to opt-out of information collection and/or selling their information to third parties.

Second, consumers can request companies delete their personal information altogether.² This requires companies to be able to easily access the personal information its obtained and delete it. Additionally, this requires companies to change how it obtains and utilizes consumers' personal information. Consumers will be able to request access to the personal information a company has obtained on them. "Companies are going to have trouble pulling that information together,"³ and will have 45 days to provide consumers with that information.

Lastly, the CCPA affects third-party service provider and vendor contracts that companies have. The third-party providers and vendors are required to be CCPA compliant as well if it has a contract with a compliant-required company.⁴ This requires every company to review all contracts with vendors and update language to ensure those vendors and third parties are compliant. Companies often house hundreds of thousands of contracts and ensuring all of these contracts are CCPA-compliant can be very costly.

¹ S.B. 1121, 2018 Leg. (CA).

² Id.

³ Maria Korolov, California Consumer Privacy Act (CCPA): What you need to know to be compliant, (Oct. 4, 2019), <https://www.csoonline.com/article/3292578/california-consumer-privacy-act-what-you-need-to-know-to-be-compliant.html>

⁴ Id.

What can Evisort do that other companies cannot?



A quick Google search shows multiple advertisements from companies claiming it can help with CCPA compliance. However, these offerings do not typically have the same level of assistance as Evisort. These companies fall into three categories:

- (i) Companies providing data compliance programs to assist IT departments;
- (ii) Law firms offering help with understanding the CCPA and how to become compliant; and
- (iii) Companies providing third party verification services to review a company’s policies and ensure it is CCPA compliant.

Evisort fills in the CCPA-compliance gap where the industry is lacking.

Evisort was founded by lawyers who studied and understand the language in the CCPA. Evisort’s support staff can help its customers understand the CCPA if compliance is a concern. Evisort has already taken steps to assist companies by disseminating studies and white papers, as well as conducting webinars, explaining the important concerns around the CCPA.

Evisort can also assist with compliance by helping companies update its privacy policies and contracts.

How can Evisort help companies update its privacy policies?

The CCPA requires companies to update its privacy policies every twelve (12) months and update “any California-specific description of consumers’ privacy rights.”⁵ After January 1, 2020, privacy policies must include:

- (i) A detailed description of consumers’ rights under the CCPA;
- (ii) A list of categories of personal information the company has collected about consumers in the past twelve (12) months;
- (iii) A list of categories of personal information that has been sold in the past twelve (12) months; and
- (iv) A list of categories of personal information the company has disclosed for business purposes.

If a company uploads its privacy policies onto the Evisort platform, the company can then easily search the required language to identify if it is missing in its existing policies. Evisort’s Document Analyzer tool allows users to search through documents and find specific language. As companies begin to update its privacy policies, the legal team can use Evisort to search through privacy policies and find where language is not compliant with the CCPA.

Additionally, the CCPA will require companies to update its privacy policies annually. The search function will be useful to find where the previous language is in the policies and ensure that language is still compliant.

Evisort’s Document Analyzer also allows users to search for clauses that “do not contain” specific information. This function is very useful for searching through the lists of categories, as these may change. A user can easily search if a category is included in the disclosed list and know very quickly if the policies need updating.

While the CCPA currently applies to California consumer information, all companies across the United States should begin evaluating and updating privacy policies as legal experts believe other states will begin to enact similar laws.⁷

⁵ S.B. 1121, 2018 Leg. (CA).

⁶ Id.

⁷ Tamara Chuang, How California’s data privacy law will change your online experience – no matter where you live, (Oct. 29, 2019), <https://coloradosun.com/2019/10/29/do-you-know-who-has-your-digital-data/>

How can Evisort ensure compliance with the CCPA throughout companies' contracts?

Evisort was built for this. Evisort was created to streamline how companies are tracking, searching, and updating contracts. The CCPA will indirectly apply to multiple types of companies through contracts and agreements. If a CCPA-covered company has a contract with vendors and service providers, the CCPA requirements will be “pushed down” to those companies as well through the contractual agreements⁸. This means that companies who normally do not need to be compliant with the CCPA, will need to be compliant pursuant to these contracts. The CCPA covers all “processing” and “selling” of consumer data which can implicate an otherwise not-covered business⁹. “Processing” is any “operation performed on personal data.”¹⁰ “Selling” is defined as “any disclosure, transfer, or making available personal information of California residents for monetary or other valuable consideration.”¹¹ Therefore, if two companies have a data sharing agreement this is considered “selling” under the CCPA.¹²

For companies to be compliant with the CCPA, all contracts and/or agreements must prevent the service providers and vendors from “retaining, using, or disclosing personal information for any purpose,” besides for the purpose specified in the contract and must require service providers and vendors to “delete the consumer’s personal information from their records” when a consumer requests the business to delete their information.

Evisort can help with all of these contract issues whether it is a contract with a service provider or a vendor. For example, Evisort’s Document Analyzer allows users to search for specific vendors; specific types of agreements; specific clauses and/or provisions; key terms within a contract as a whole; and/or a combination of all of these. A user can find all contracts and/or agreements with X vendor containing specific verbiage related to personal information, transfer of data, usage of data, etc. The Analyzer allows users to search for a contract(s) that “does not contain” specific verbiage, so a user can use the above verbiage to find those contracts and quickly know what needs to be updated.

Further, the Document Analyzer allows users to search for specific provisions, again combining that with a specific vendor (or service provider) or search all contracts as whole. As one example, a user can find important provisions like Data/Security Breach Notice, Obligations, Indemnification, and Limitation of Liability provisions quickly and identify the contracts that need updating.

⁸ Mellisa D. Maxwell and Claire C. Rosston, We’re Not Californians! Why Should We Care about the California Consumer Protection Act?, 62-Advocate (Idaho) 35 (Oct. 2019).

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

Evisort's Analyzer also allows users to save searches, which allows faster viewing in the future as these provisions will need to be update frequently. With this feature, a user knows once a search is completed once, they can easily duplicate the search and streamline the updating process.

Evisort also provides an Expiring Contracts analyzer, which quickly shows when contracts are expiring. This will be important for companies to maintain CCPA compliance because if without an active contract, a service provider or vendor's use of personal information would not be considered a "business purpose" and the CCPA-covered business would be held liable.

Without Evisort's platform, this process will be time-consuming and arduous. However, Evisort's AI can quickly identify what contracts and agreements need updating and make this process easy for companies.

How can Evisort help companies update Data Processing Addendum to be compliant with the CCPA?

Many companies have implemented Data Processing Addendum (DPA) riders to its master agreements with third parties, service providers, and vendors after the enactment of the GDPR (the EU's privacy act, which the CCPA was partially modeled after). The DPA riders used for compliance with the GDPR may not be compliant with the CCPA. For example, if the DPA contained a scope limitation to only apply to GDPR-governed data the DPA will not apply to the CCPA-governed data without updates.¹⁴

Evisort's Document Analyzer can search a specific document type, the DPA, and find the term "scope" to help companies quickly identify if its DPA is not compliant with the CCPA. Additionally, the DPA must include the specific restrictions, listed above, on what a service provider can do with personal information and when a service provider is required to delete the personal information. Evisort's Document Analyzer can search within all of a company's DPA riders to find those that "do not contain" these specific requirements.

¹⁴ David Zetoon, Bryan Cave, and Leighton Paisner, CCPA Privacy FAQs: If a vendor agreed to a Data Processing Addendum in anticipation of the GDPR, does that document ensure that the vendor is a 'service provider' under the CCPA?, (Sept. 23, 2019), <https://www.jdsupra.com/legalnews/ccpa-privacy-faqs-if-a-vendor-agreed-to-89692/>

Conclusion

The CCPA will significantly change how businesses operate and companies must spend an extensive amount of time becoming compliant. However, Evisort can help ease some of the pain points and expedite the process by providing companies a method to easily search and identify non-compliant contracts, policies, and agreements.

While other companies may provide assistance towards CCPA compliance, these companies are asking customers to spend money solely on CCPA compliance assistance. Evisort not only provides multiple levels to assist with CCPA compliance, but also Evisort's platform is useful outside of CCPA compliance to help companies mitigate risk across the company. For example, Evisort's technology can help a company if a data breach issue arises. Data breach issues are a huge cause for concern for companies and can cost companies on average \$4 million to resolve,¹⁵ but Evisort can help reduce that cost by automating the tracking of data breach notice provisions and providing companies an easily accessible way to see clauses in every contract related to data breach issues. This one step can take a significant amount of time and therefore cost a lot of money for a legal team or law firm. Evisort's platform would help a company find all the contracts that may be implicated by a data breach, so if one occurs the legal team can quickly identify the necessary next steps and start working toward a resolution for the company.

Evisort is prepared to assist companies with CCPA compliance and provides daily solutions to change how companies are dealing with its contracts and help save companies money in the process.

About Evisort

Evisort's founders started the company with a single idea in mind: that the time spent by lawyers and business executives organizing, reading through, tracking and performing due diligence on contracts could be made vastly more efficient with the application of advanced artificial intelligence. The question that remained was "How can recent advances in areas such as natural language processing AI be best applied to make the job of a lawyer, banker, supply chain executive, salesperson, etc. easier and infinitely more valuable?" Thus began a thorough investigation of the market that would eventually culminate in a contract management product designed for the modern business.

¹⁵ Chris Brook, What's the Cost of a Data Breach in 2019?, (July 30, 2019), <https://digitalguardian.com/blog/whats-cost-data-breach-2019>

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Over the past three years, between the two of us, we have spoken with more than one thousand general counsel and business executives, selling our AI-powered contract management platform into businesses of all kinds. Our current clients include legal, finance, and procurement teams at companies that range from small engineering firms in the Midwest to billion-dollar telecommunication companies.

Evisort’s current client base reflects its early success and the premier value of its technology, and while none of this happened overnight, Evisort’s story over the past several years has indeed been one of exponential growth. Evisort’s founders, Jake Sussman, Jerry Ting, (both Harvard Law School alumni students at the time of the company’s formation) and Amine Anoun (former MIT PHD candidate and the data scientist responsible for Uber Express Pool), jump-started the company by applying for membership at the Harvard Innovation Lab, which housed our small team of students for the first few years.

Looking to learn more?

With Evisort, clients can track contract by contract and clause type to determine where their outstanding risks are and develop contingency plans accordingly. Contact Evisort today to learn more about how Evisort can make your company CCPA Ready!

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