

CALIFORNIA'S IOT LAW ON THE SECURITY OF CONNECTED DEVICES

Excerpted from Chapter 27 (Cybersecurity: Information, Network and Data Security) of
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)

CYBER RISK, INSURANCE, AND WAR: AN INSIDE VIEW

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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 takes effect on January 1, 2020, will require 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 as of January 1, 2020, a manufacturer² of

[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).

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.
- (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

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).

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).

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 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.

⁹Cal. Civil Code § 1798.91.06(b).

¹⁰Cal. Civil Code § 1798.91.06(c).

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.”).

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 3. [Reserved]

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 5. Database Protection, Screen Scraping and the Use of Bots and Artificial Intelligence to Gather Content and Information
 6. Trademark, Service Mark, Trade Name and Trade Dress Protection in Cyberspace
 7. Rights in Internet Domain Names

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- Chapter* 8. Internet Patents
 9. Unique Intellectual Property Issues in Search Engine Marketing, Optimization and Related Indexing, Information Location Tools and Internet and Social Media Advertising Practices
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 11. Employer Rights in the Creation and Protection of Internet-Related Intellectual Property
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 13. Idea Protection and Misappropriation

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 28. Advertising in Cyberspace

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 41. Laws Regulating Non-Obscene Adult Content Directed at Children
 42. U.S. Jurisdiction, Venue and Procedure in Obscenity and Other Internet Crime Cases

Part VIII. Theft of Digital Information and Related Internet Crimes

43. Detecting and Retrieving Stolen Corporate Data
 44. Criminal and Related Civil Remedies for Software and Digital Information Theft
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Volume 5

- Chapter* 46. Identity Theft

47. Civil Remedies for Unlawful Seizures

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