

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)

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Ian was named the Lawyer of the Year for Information Technology Law in the 2019, 2018, 2016 and 2013 editions of Best Lawyers in America and was recognized as the 2012 [New Media Lawyer of the Year](#) by the Century City Bar Association. In both 2018 and 2019 he was recognized as one of the Top 1,000 trademark attorneys in the world for his litigation practice by *World Trademark Review*. In addition, in 2019 he was named one of the top 20 Cybersecurity lawyers in California and in 2018 one of the Top Cybersecurity/Artificial Intelligence lawyers in California by the *Los Angeles and San Francisco Daily Journal*. He received the "Trailblazer" Award, Intellectual Property, 2017 from *The National Law Journal* and he has been recognized as a "Groundbreaker" in *The Recorder's* 2017 Litigation Departments of the Year Awards for winning a series of TCPA cases. In addition, he was the recipient of the California State Bar Intellectual Property Law section's Vanguard Award for significant contributions to the development of intellectual property law (<http://ipsection.calbar.ca.gov/IntellectualPropertyLaw/IPVanguardAwards.aspx>). He is listed in Legal 500 U.S., The Best Lawyers in America (in the areas of information technology and intellectual property) and Chambers and Partners USA Guide in the areas of privacy and data security and information technology. He has been recognized as one of the Top 75 intellectual property litigators in California by the *Los Angeles and San Francisco Daily Journal* in every year that the list has been published (2009 through 2019). Mr. Ballon was also listed in *Variety's* "Legal Impact Report: 50 Game-Changing Attorneys" (2012) and was recognized as one of the top 100 lawyers in L.A. by the *Los Angeles Business Journal*. Mr. Ballon also holds the CIPP/US certification from the International Association of Privacy Professionals (IAPP).

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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In 2017 Mr. Ballon was named a "Groundbreaker" by *The Recorder* at its 2017 Bay Area Litigation Departments of the Year awards ceremony and was selected as an "Intellectual Property Trailblazer" by the *National Law Journal*.

Mr. Ballon was named as the Lawyer of the Year for information technology law in the 2019, 2018, 2016 and 2013 editions of *The Best Lawyers in America* and is listed in Legal 500 U.S., *The Best Lawyers in America* (in the areas of information technology and intellectual property) and Chambers and Partners USA Guide in the areas of privacy and data security and information technology. He also serves as Executive Director of Stanford University Law School's Center for E-Commerce in Palo Alto.

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