

LEGAL/LEGISLATIVE ALERT TO ATP MEMBERS – DECEMBER 2019

ATP Files Comments on CCPA Regulations

On Friday, December 6, the ATP filed comprehensive comments with the California Attorney General addressing the concerns of the testing industry over the proposed regulations for implementing the California Consumer Privacy Act (“CCPA”). Although the CCPA will be effective on January 1, 2020, final regulations are not expected to be released until the Spring. According to ATP General Counsel Alan Thiemann, “the failure to have final regulations in place until after the law becomes effective makes it impossible to know exactly what is required to comply with the CCPA.” Nevertheless, Thiemann urged ATP members to take “good faith steps” towards compliance yet this year.

G Harris explained that in submitting comments, ATP “respects the goals of the Proposed Regulations to ensure comprehensive implementation of the California Consumer Privacy Act (“CCPA”) and to provide guidance to businesses that must comply,” but calling attention to specific circumstances within the industry, including the smaller/medium-size of many businesses, to demonstrate the need for significant changes in the final regulations.

Among the recommended changes ATP identified in its comments, Thiemann highlighted several critical points:

- the definition of “sale” should be changed to avoid having the CCPA apply where sharing of an individual’s test results/scores with service providers of the testing organization is necessary to actually provide the testing services.
- the scope of a “service provider” under the CCPA should be expanded to ensure that entities providing testing services are not treated as a business covered by the CCPA.
- test results/scores should not be treated as “personal information.”
- a “safe harbor” from violations of the CCPA should be established for a testing organization that encrypts consumers’ personal information.
- guidance is required to ensure that personal information of employees’ (and job applicants and officer candidates) and business contacts are not covered by the CCPA for 2020.

“These recommendations,” according to John Kleeman, founder and CEO of Questionmark, chair of the ATP International Privacy Subcommittee of the Test Security Committee, “emphasize issues on which every test organization must focus in order to give notice to all consumers/test takers about their rights under the CCPA.” Kleeman also noted that the Privacy Subcommittee expects to publish a “Privacy in Practice” Bulletin on compliance with the CCPA before January 1. Kleeman, and chair of the ATP Test Security Committee Gary Behrens (Fifth

Theory) encourage members to review the full set of comments, but to act now to make strides towards compliance.

A copy of the entire comments is available to members in the Legal/Legislative area of the ATP website. Just log onto your profile and select the Quick link to Legal/Legislative Updates.