

Date of Hearing: April 30, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1395 (Cunningham) – As Amended April 8, 2019

SUBJECT: Information privacy: smart speaker devices

SUMMARY: This bill would prohibit smart speaker devices and smart speaker device manufacturers, as defined, from saving, storing, or exchanging with a third party recordings of verbal commands or requests given to the smart speaker device, unless a consumer requests their recordings be stored, as specified. Specifically, **this bill would:**

- 1) Provide that a smart speaker device, or a smart speaker device manufacturer, shall not save, store, or exchange with a third party recordings of verbal commands or requests given to the smart speaker device, or verbal conversations heard by the smart speaker device, regardless of whether the smart speaker device was triggered using a key term or phrase, unless a consumer notifies the smart speaker device manufacturer in writing that the consumer requests that their recordings be stored.
- 2) Define the following terms for these purposes:
 - “Smart speaker device” to mean a wireless speaker and voice command device sold in this state with an integrated virtual assistant that offers interactive actions and hands-free activation. A smart speaker device shall not include a cellular telephone, tablet, or laptop computer with mobile data access, or a pager.
 - “Smart speaker device manufacturer” to mean a company that designs, manufactures, tests, distributes, or provides return and repair services for smart speaker device.

EXISTING LAW:

- 1) Bans, under the Electronic Communications Privacy Act of 1986, the interception of electronic communications, such as email, radio-paging devices, cell phones, private communications carriers, and computer transmissions. (18 U.S.C. Secs. 2510-2522, 2701-2711, 3121, and 1367.)
- 2) Provides that, among other rights, all people have an inalienable right to pursue and obtain privacy. (Cal. Const., art., Sec. 1.)
- 3) Prohibits, with exceptions, electronic eavesdropping or recording of private communications by telephone, radio telephone, cellular radio telephone, cable or any other device or in any other manner. Violation can result in penalties of up to \$10,000 and imprisonment in county jail or state prison for up to one year. (Pen. Code Secs. 630-638.)
- 4) Prohibits cable and satellite television operators from monitoring or recording conversations in a subscriber’s residence, except as specified, or from sharing individually identifiable information on subscriber viewing habits or other personal information without written consent. (Pen. Code Sec. 637.5.)

- 5) Establishes criminal and civil penalties for a violation of cable and satellite television privacy laws, including:
 - A misdemeanor, punishable by a fine not exceeding \$3,000, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. (Pen. Code Sec. 637.5(a) and (j).)
 - A private right of action, which any aggrieved person may commence, for damages for invasion of privacy. (Pen. Code Sec. 637.5(i).)
- 6) Governs connected televisions to prohibit any person or entity from providing the operation of a voice recognition feature within this state without prominently informing, during the initial setup or installation of a connected television, either the user or the person designated by the user to perform the initial setup or installation of the connected television. (Bus. & Prof. Code Sec. 22948.20(a).)
- 7) Prohibits actual recordings of spoken word collected through the operation of a voice recognition feature by the manufacturer of a connected television, or by a third party contracting with a manufacturer, for the purpose of improving the voice recognition feature, including, but not limited to, the operation of an accessible user interface for people with disabilities, from being sold or used for any advertising purpose. (Bus. & Prof. Code Sec. 22948.20(b).)
- 8) Prohibits any person or entity from compelling a manufacturer or other entity providing the operation of a voice recognition feature to build specific features for the purpose of allowing an investigative or law enforcement officer to monitor communications through that feature. (Bus. & Prof. Code Sec. 22948.20(c).)
- 9) Specifies that a manufacturer shall only be liable for functionality provided at the time of the original sale of a connected television and shall not be liable for functionality provided by applications that the user chooses to use in the cloud or that are downloaded and installed by a user. (Bus. & Prof. Code Sec. 22948.20(d).)
- 10) Gives the Attorney General (AG) or a district attorney the power to prosecute a manufacturer that violates or proposes to violate these provisions by seeking injunctive relief, a civil penalty of up to \$2,500 per violation, or both, and are cumulative. (Bus. & Prof. Code Sec. 22948.23(c).) Specifies that there is no private right of action for violation of these provisions, nor do these provisions limit any existing right of private action. (Bus. & Prof. Code Sec. 22948.23(a).)
- 11) Defines “connected television” for these purposes to mean a video device designed for home use to receive television signals and reproduce them on an integrated, physical screen display that exceeds 12 inches, except that this term shall not include a personal computer, portable device, or a separate device that connects physically or wirelessly to a television, including, but not limited to, a set-top box, video game console, or digital video recorder. (Bus. & Prof. Code Sec. 22948.21(a).)
- 12) Defines “voice recognition feature” for these purposes to mean the function of a connected television that allows the collection, recording, storage, analysis, transmission, interpretation,

or other use of spoken words or other sounds, except that this term shall not include voice commands that are not recorded or transmitted beyond the connected television. (Bus. & Prof. Code Sec. 22948.21(c).)

- 13) Establishes the California Consumer Privacy Act of 2018 (CCPA) to provide various rights to consumers. Subject to various general exemptions, the CCPA grants a consumer, among other things:
- the right to know what PI a business collects about consumers, as specified, including the categories of third parties with whom the business shares PI, and the specific pieces of information collected about the consumer;
 - the right to know what PI a business sells about consumers, as specified, including the categories of PI that the business sold about the consumer and the categories of third parties to whom the PI was sold, by category or categories of PI for each third party to whom the PI was sold;
 - the right to access the categories and specific pieces of information a business has collected about the consumer;
 - the right to delete information that a business has collected from the consumer;
 - the right to opt-out of the sale of the consumer's PI if over 16 years of age, and the right to opt-in, as specified, if the consumer is a minor; and,
 - the right to equal service and price, despite exercising any of these rights. (Civ. Code Sec. 1798.100 et seq.)
- 14) Generally requires under the CCPA that a business subject to the CCPA do all of the following, among other things: comply with the above requirements, provide various notices to those ends, and execute various requests upon receipt of a verifiable consumer request, as specified; and provide certain mechanisms for consumers to make their lawful requests, including a clear and conspicuous link titled "Do Not Sell My Personal Information" on the business's internet homepage to enable consumers, or a person authorized by the consumer, to opt-out of the sale of the consumer's PI. (Civ. Code Sec. 1798.100 et seq.)
- 15) Provides of particular relevance to this bill, that a consumer has the right to request that a business delete any PI about the consumer which the business has collected from the consumer. Requires a business to comply with such a request upon receipt of a verifiable consumer request and to direct any service providers to delete the consumer's PI from their records. Provides, however, that a business shall not be required to comply with the consumer's request to delete their PI, if it is necessary for the business or service provider to maintain the consumer's PI in order to, among other things:
- Complete the transaction for which the PI was collected, provide a good or service requested by the consumer, or reasonably anticipated within the context of a business's ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer.

- Debug to identify and repair errors that impair existing intended functionality.
- Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business. (Civ. Code Sec. 1798.105.)

16) Grants all consumers over the age of 16 the right, at any time, to direct a business that sells PI about the consumer to third parties not to sell the consumer's PI (the right to "opt-out"). For all consumers less than 16 years of age, prohibits businesses from selling PI unless the consumer (or in the case of consumers under 13 years of age, the consumer's parent or guardian) has affirmatively authorized the sale of the consumer's PI (the right to "opt-in"). (Civ. Code Sec. 1798.120.) Requires a business, for a consumer who has opted-out of the sale of the consumer's PI, to respect the consumer's decision to opt-out for at least 12 months before requesting that the consumer authorize the sale of the consumer's PI. (Civ. Code Sec. 1798.135.)

FISCAL EFFECT: None. This bill has been keyed nonfiscal by the Legislative Counsel.

COMMENTS:

1) **Purpose of this bill:** This bill seeks to ensure that smart speaker devices cannot save, store, or share recordings of consumers' verbal commands or requests, or their verbal conversations more generally, in the absence of a written request from the consumer. This is an author-sponsored bill.

2) **Author's statement:** According to the author:

The CCPA and [Civil Code Section] 1798.120 [establish] an opt-out system for consumers who do not want businesses to share or collect their data. There is no mention of smart speakers and consumers having the option of opting in and or out of these devices passively eavesdropping on private conversations.

AB 1395 would prohibit a smart speaker device, as defined, or a specified manufacturer of that device, from saving or storing or sharing recordings of verbal commands or requests given to the device, or verbal conversations heard by the device, regardless of whether the device was triggered using a key term or phrase unless a consumer opts-in and notifies the manufacturer in writing they wish for their recordings to be stored.

3) **CCPA background:** Last year, the Legislature enacted the CCPA (AB 375, Chau, Ch. 55, Stats. 2018), which gives consumers certain rights regarding their PI, including: (1) the right to know what PI that is collected and sold about them; (2) the right to request the categories and specific pieces of PI the business collects about them; (3) the right to delete PI that a business has collected from them; and, (4) the right to opt-out of the sale of their PI, or opt-in in the case of minors under 16 years of age. Additionally, the CCPA ensures that a business does not discriminate against a consumer for exercising their CCPA-based rights by denying the consumer goods or services, charging different prices or rates, or providing a different level or quality of goods or services to the consumer. (Civ. Code Sec. 1798.125(a).)

In the context of smart speaker devices, the CCPA affords the consumer the ability to opt-out of the sale or disclosure of their information by smart speaker devices to others and ensures

that the business would have to honor that request upon receipt of a verifiable consumer request, as specified. The consumer could also ask the business to delete their PI collected from the device, and the business would not only have to delete the information but instruct any service providers¹ to delete the consumer's PI from their records as well. In either scenario, a business could not suddenly retaliate or seek to coerce a consumer to opt back in by disabling the device altogether, as storing or selling the information is not likely reasonably necessary in terms of the functionality of the device itself. Of course, under the CCPA, with respect to the right of deletion, there are some limitations to the right to delete, insofar as it is necessary for the business or service provider to maintain the PI in order to carry out various activities. These include where it is necessary to:

- Complete the transaction for which the PI was collected, provide a good or service requested by the consumer, or reasonably anticipated within the context of a business's ongoing business relationship with the consumer, or to otherwise perform a contract between the business and the consumer.
- Debug to identify and repair errors that impair existing intended functionality.
- Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business. (Civ. Code Sec. 1798.105.)

While the author comments, above, that there is nothing in the CCPA specific to smart speakers to give consumers the option of opting in and or out of these devices passively eavesdropping on private conversations, the CCPA precisely provides for the ability of consumers to opt-out of the sale of their PI, or delete their PI, without naming any technologies or specific businesses. As long as a business is subject to the CCPA (*i.e.*, meets one of the thresholds that would cause the business to fall within the CCPA's definition of "business"), they would have to comply with this data privacy law, subject to certain exemptions. Nonetheless, this bill seeks to prohibit a smart speaker device, or a smart speaker device manufacturer, from saving, storing, or exchanging with a third party any recordings of verbal commands or requests given to the smart speaker device, or verbal conversations heard by the smart speaker device, regardless of whether the smart speaker device was triggered using a key term or phrase, unless a consumer notifies the smart speaker device manufacturer in writing that the consumer requests that their recordings be stored. This would presumably preclude the business from otherwise sharing the information under all circumstances. To avoid any implications that the Legislature intended to address privacy rights for these devices separately from the CCPA, if this Committee were to approve this bill, it may wish to specify that this bill does not in any way erode a consumer's other rights under the CCPA.

To address these concerns, the author offers the following amendment to specify that this bill shall not be construed to limit consumer privacy protections required pursuant to the CCPA:

¹ Under the CCPA, service providers, in contrast to third party businesses, are those entities that provide necessary services to the business to perform the services requested by the consumer, assuming that the consumer has received notice from the business that information is being used or shared in the business's terms and conditions, as specified, and the service provider does not use the PI for any purposes other than assisting the business.

Author's amendment:

On page 2, before line 1, insert: "SECTION 1. It is the intent of the Legislature that this act shall not be construed to limit consumer privacy protections required pursuant to the California Consumer Privacy Act of 2018 (Title 1.81.5 (commencing with Section 1798.100) of Part 4 of Division 3 of the Civil Code)."

- 4) **Smart televisions:** In 2015, this Committee authored a bill that generally prohibited the collection and use of spoken words and conversations captured by internet-connected televisions, commonly known as "connected televisions" or "smart TVs," without first prominently informing either the user or the person designated by the user to initially set up or install the television, during the initial setup or installation of the television.

That bill, AB 1116 (Committee on Privacy and Consumer Protection, Ch. 524, Stats. 2015), further prohibited the use or sale for advertising purposes any spoken words or sounds collected through a connected television for purposes of improving the voice recognition feature. AB 1116 also prohibited the collection of actual recordings of spoken words through the operation of a voice recognition feature for the purposes of improving the voice recognition feature from being sold or used for any advertising purpose. These rights are subject to enforcement by the AG or a district attorney. The law does not expand or limit any other existing private rights of action that may reside at law for the consumer.

For these purposes, the connected television law, as enacted by AB 1116, defines "connected television" to mean a video device designed for home use to receive television signals and reproduce them on an integrated, physical screen display that exceeds 12 inches, except that this term shall not include a personal computer, portable device, or a separate device that connects physically or wirelessly to a television, including, but not limited to, a set-top box, video game console, or digital video recorder. The law defines "voice recognition feature" to mean the function of a connected television that allows the collection, recording, storage, analysis, transmission, interpretation, or other use of spoken words or other sounds, except that this term shall not include voice commands that are not recorded or transmitted beyond the connected television. (Bus. & Prof. Code Sec. 22948.21.)

This bill seeks to address a very similar issue, in how smart speaker devices, such as the Amazon Alexa or Google Home, can similarly listen for and respond to consumer commands.

Arguably, this bill should, instead, of establishing a separate law, amend the connected television statutes to instead apply more generally to connected devices with voice recognition features. To this end, it is unclear why this bill currently applies to any wireless speaker and voice command device sold in this state with an integrated virtual assistant that offers interactive actions and hands-free activation, while also excluding from the bill any cellular telephone, tablet, or laptop computer with mobile data access, or a pager – even though many cellphones and tablets today share the same types of voice recognition features that rely on voice commands or prompts from the user. If this Committee were to approve this bill, it may wish, in addition to requiring the amendment in Comment 4, above, to strike the provisions of the bill and expand the connected television statutes to capture any such connected device equipped with a voice recognition feature, as suggested below. Such a term would include a wireless speaker and voice command device sold in this state with an

integrated virtual assistant that offers interactive actions and hands-free activation, as well as a cellular telephone, tablet, or other device sold in this state with an integrated virtual assistant that offers interactive actions and hands-free activation.

The author offers the following amendments to achieve this objective:

Author's amendment:

On page 2, strike out lines 1-25, inclusive, and instead Amend CHAPTER 35. Connected Televisions [22948.20 - 22948.25] (Chapter 35 added by Stats. 2015, Ch. 524, Sec. 1.) as follows:

22948.20.

(a) A person or entity shall not provide the operation of a voice recognition feature within this state without prominently informing, during the initial setup or installation of a connected television *or other connected device with a voice recognition feature*, either the user or the person designated by the user to perform the initial setup or installation of the connected television *or other connected device with a voice recognition feature*.

(b) Any actual recordings of spoken word collected through the operation of a voice recognition feature by the manufacturer of a connected television *or of a connected device with a voice recognition feature* for the purpose of improving the voice recognition feature, including, but not limited to, the operation of an accessible user interface for people with disabilities, shall not be ~~sold or~~ used for any advertising purpose, *stored, or shared or sold with a third party, unless the consumer provides written consent*.

(c) Any actual recordings of spoken word collected through the operation of a voice recognition feature by a third party contracting with a manufacturer for the purpose of improving the voice recognition feature, including, but not limited to, the operation of an accessible user interface for people with disabilities, shall not be ~~sold or~~ used for any advertising purpose, *stored, or shared or sold with a third party, unless the consumer provides written consent*.

(d) A person or entity shall not compel a manufacturer or other entity providing the operation of a voice recognition feature to build specific features for the purpose of allowing an investigative or law enforcement officer to monitor communications through that feature.

(e) A manufacturer shall only be liable for functionality provided at the time of the original sale of a connected television *or other connected device with a voice recognition feature* and shall not be liable for functionality provided by applications that the user chooses to use in the cloud or are downloaded and installed by a user.

(f) This chapter shall not apply to any product or service provided by a company covered under Section 637.5 of the Penal Code.

22948.21.

For purposes of this chapter, the following definitions shall apply:

(a) “Connected television” means a video device designed for home use to receive television signals and reproduce them on an integrated, physical screen display that exceeds 12 inches, except that this term shall not include a personal computer, portable device, or a separate device that connects physically or wirelessly to a television, including, but not limited to, a set-top box, video game console, or digital video recorder.

(b) “Other connected device with a voice recognition feature” means any device equipped with voice recognition feature sold in this state, including, but not limited to, a wireless speaker and voice command device sold in this state with an integrated virtual assistant that offers interactive actions and hands-free activation, or a cellular telephone, tablet, or other device sold in this state with an integrated virtual assistant that offers interactive actions and hands-free activation.

~~(b)~~ (c) “User” means a person who originally purchases, leases, or takes ownership of a connected television ***or other connected device with a voice recognition feature***. A person who is incidentally recorded when a voice recognition feature is activated by a user shall not be deemed to be a user.

~~(c)~~ (d) “Voice recognition feature” means the function of a connected television ***or other connected device with a voice recognition feature*** that allows the collection, recording, storage, analysis, transmission, interpretation, or other use of spoken words or other sounds, except that this term shall not include voice commands that are not recorded or transmitted beyond the connected television ***or other connected device with a voice recognition feature***.

22948.22.

Any waiver of the provisions of this chapter is contrary to public policy and void and unenforceable.

22948.23.

(a) Actions for relief pursuant to this chapter may be prosecuted exclusively in a court of competent jurisdiction in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney. This chapter shall not be deemed to create a private right of action, or limit any existing private right of action.

(b) A court may enjoin a person who knowingly engages, has engaged, or proposes to engage, in a violation of this chapter. The court may make any orders or judgments as may be necessary to prevent a violation of this chapter.

(c) A person who knowingly engages, has engaged, or proposes to engage, in a violation of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each connected television ***or other connected device with a voice recognition feature*** sold or leased in violation of this chapter. If the action is brought by

the Attorney General, the penalty shall be deposited into the General Fund. If the action is brought by a district attorney, the penalty shall be paid to the treasurer of the county in which the judgment was entered.

22948.24.

The remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of the state.

22948.25.

The provisions of this chapter are severable. If any provision of this chapter or its application are held to be invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

- 5) **Arguments in support:** In support of this bill, as in print, the California Civil Liberties Advocacy writes:

Bloomberg recently reported that recordings from these devices are transcribed and annotated by live people before being fed back into the software. The purpose is to eliminate gaps in the voice assistant's understanding of human speech so it can better respond to commands. Workers sometimes pick up things that the users would probably rather be private, such as people singing in the shower or a child screaming. Interestingly, Bloomberg goes on to report that the teams who review these recordings use an internal chat room to share files when they need help determining certain words or when they "come across an amusing recording." Two workers reported that they picked what they believed was a sexual assault. The article did not elaborate but this poses a serious privacy issue.

Whether or not criminal conduct is taking place, the privacy of someone's dwelling is sacred and neither governments nor corporations have a right to spy on citizens. What if the workers were wrong or misinterpreting the situation? We already know that Amazon and other tech companies are sharing facial recognition data with law enforcement, an issue the CCLA has been trying to bring to the attention of members of this Legislature to no avail for nearly three years. And as of the day of this writing, there have been reports in the media that Amazon Alexa workers can access users' home address information. It is starting to seem that every day there is a new report about some tech giant like Amazon, Google, or others invading consumers' privacy.

- 6) **Arguments in opposition:** TechNet, California Chamber of Commerce, Internet Association, and CompTIA write in opposition to this bill, as in print:

This bill is unnecessary and its requirements remain confusing. Robust California privacy protections, including in last year's California Consumer Protection Act (CCPA) and in last year's groundbreaking law setting security standards for the Internet of Things, SB 327 (Jackson), already exist for these types of devices. Manufacturers of "smart speakers" must secure personally identifiable information or risk violating the law and consumers can exercise their rights under CCPA to get access to or delete or prevent the sale of personal information that manufacturers collect about them. The definition of

personal information in the CCPA is sweeping and, for example, includes products purchased by a consumer, search history, audio and visual information, and many other identifiers. Further, the CCPA was written to cover all industries, all technologies, and all consumers in California. Yet, AB 1395 creates additional, separate, overlapping, and conflicting requirements for a specific technology - and this is not necessary or helpful to consumers.

In addition to California law, manufacturers of these devices already give customers control over them. Consumers can already access, manage, and delete recordings associated with their account. Manufacturers of these devices store this information, according to California law, to answer questions, fulfill requests, and improve the consumer experience. Smart devices are designed to get smarter every day. The more the device is used, the more the service adapts to the consumer's speech patterns, vocabulary, and personal preferences. This also helps ensure these devices work for everyone. Finally, recordings are only stored if the device's wake word or hot word is detected. Devices do not record all of a consumer's conversations and, again, consumers can ensure this by accessing their accounts and viewing the recordings associated with their account. And, again, in addition to businesses proactively ensuring consumers have control over this data, consumers also have the right to delete any or all of these recordings at any time under the CCPA.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Civil Liberties Advocacy

Opposition

California Chamber of Commerce
Computing Technology Industry Association
Internet Association
TechNet

Analysis Prepared by: Ronak Daylami / P. & C.P. / (916) 319-2200