LEGISLATIVE ALERT

NEW LAW GOVERNING COMMERCIAL WEB SITES AND ONLINE SERVICE PROVIDERS IN CALIFORNIA:

“CALIFORNIA ONLINE PRIVACY PROTECTION ACT”

There is a new law that affects many operators of commercial Web sites and online service providers. The “California Online Privacy Protection Act” requires operators that collect personal information from California consumers to include a privacy policy on their sites and outlines specific items that each privacy policy must include. The new law took effect on July 1, 2004.

The following alert highlights some of the major requirements the Act imposes on many commercial Web sites and online service providers that collect personal information from California consumers. If you operate a commercial Web site or provide an online service that collects personal information from California consumers, you should familiarize yourself with the requirements imposed by this Act so that you can help your business comply with these new laws.

Should you require further assistance or information, please call Public Counsel’s Community Development Project at (213) 385-2977, extension 200. Our attorneys provide free legal assistance to qualified nonprofit organizations and small businesses.

This alert should not be construed as legal advice. This alert is designed as a highlight of the new law and will not be updated. There are numerous other laws and reporting requirements to which California nonprofit organizations and small businesses are subject that are not included in this alert. Please contact an attorney if you need legal advice about developing a Web site or providing an online service or otherwise.
What Web sites and online service providers are affected by the Act?

The Act applies to all operators of commercial Web sites and online service providers that collect personally identifiable information through the Internet about individual consumers who reside in California. “Personally identifiable information” means information about an individual consumer that an operator collects online and maintains in an accessible form. This includes contact information, including first and last name, mailing and/or street address, e-mail address, telephone number and any other identifier that permits the physical or online contacting of a specific individual. Moreover, the Act governs the collection of personal information, including a social security number and any other information collected and maintained in personally identifiable form in combination with other identifying information.

What must affected operators do to comply with the Act?

Web site operators that are subject to the Act must conspicuously post a privacy policy on their Web sites. Operators that provide an online service must make a privacy policy available by any reasonably accessible means. The privacy policy must:

1. Identify the categories of personally identifiable information that the operator collects via the Web site or online service about individual consumers and the categories of third-party persons or entities with whom the operator may share that information.
2. If the operator maintains a process for an individual consumer to review and request changes to any of his or her personally identifiable information that is collected, provide a description of that process.
3. Describe the process by which the operator notifies consumers who use or visit its Web site or online service of material changes to the operator’s privacy policy.
4. Identify its effective date.

A privacy policy is considered “conspicuously posted” if it is posted on the homepage (or the first significant page after entering the site), or if on that page there is an icon hyperlink or text link that is easily distinguishable from the other items on the page that contains the word “privacy,” or any other hyperlink that that a reasonable person would notice.

Who is considered in violation of the Act?

An operator is in violation of the Act if it does not properly post a privacy policy that meets the Act's requirements within 30 days after being notified of noncompliance.