

Designing research and services for possible use in consumer protection enforcement

Maggie Oates - ConPro 2024

We ❤️ enforcement



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[About Me →](#)

December 17, 2020

CR Digital Lab Investigates Privacy Practices of Mental Health Apps



These apps are a growing industry. COVID-19 have negatively affected health—creating barriers for accessing mental illness and depression.

Today, we're sharing our findings from a comparative privacy evaluation of seven mental health [full report](#)

Why do these practices

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Rebecca Kelly Slaughter
Alvaro M. Bedoya

In the Matter of

**BETTERHELP, INC., a corporation,
also d/b/a
COMPILE, INC.,
also d/b/a MYTHERAPIST,
also d/b/a TEEN COUNSELING,
also d/b/a FAITHFUL COUNSELING,
also d/b/a PRIDE COUNSELING,
also d/b/a ICOUNSELING,
also d/b/a REGAIN,
also d/b/a TERAPEUTA.**

DOCKET NO. C-4796

Strategic considerations

- **What enforcer has jurisdiction?**
 - US state agencies, AGs
 - US Federal agencies (FTC, CFPB, Bureau of Con Pro)
 - EU & national agencies (out of my expertise)
- **Is your target strategic?**
 - Look for signs that your topic is a priority
 - When does your law go into effect? When does enforcement start?
 - Does the enforcer currently have the skillset to investigate your topic?
- **Have you invested in relationships with regulators or enforcers?**

EXAMPLE

FTC press releases & recent cases can give hints about commission's priorities.



The screenshot shows a web page from the Federal Trade Commission (FTC) website. The header includes the FTC logo and the text "FEDERAL TRADE COMMISSION" and "PROTECTING AMERICA'S CONSUMERS". The navigation bar at the top right includes "Home", "News and Events", "News", and "Press Releases". A blue button labeled "For Release" is visible. The main content area features a large title "FTC Releases 2023 Privacy and Data Security Update" in bold black text. Below the title, a subtext reads "The update details agency actions related to AI, health privacy, and other key areas". At the bottom of the page, there is a footer with the date "March 28, 2024" and social media icons for Facebook, Twitter, and LinkedIn.

Ethical considerations

- **Are your participants on board?**
 - Are you exposing consumers to known risks?
 - Avoid pressuring your team into using personal accounts for testing
 - Sharing PII often required or helpful
- **Consider reaching out to offending parties before filing complaints.**
- **Avoid compromising your central goal for the sake of legal evidence**
 - “Going fishing” is often not appropriate in science

EXAMPLE

Permission Slip is Consumer Report's app for managing consumer data rights.

PERMISSION SLIP

By Consumer Reports

Privacy Policy

With privacy-sensitive users, we really want to make sure no one is surprised to be included in a regulatory complaint.

Evidentiary considerations

- **Is your data legally relevant?**
 - Collected from people in the relevant jurisdiction?
 - Does evidence match the letter of the law & regs?
 - Document religiously (screenshots, timestamps)
- **Can you articulate a harm?**
 - Helpful for complex enforcement arguments
 - Qualitative components are useful - one strong story could be enough for a case
 - Can you word a survey question to articulate harm?
- **Do you need evidence representing real people?**

EXAMPLE

Virginia CDPA only covers businesses that process 100K+ Virginian data. Sometimes unclear whether health-related businesses in our study are covered.



Practical considerations

- Can you get in-house lawyers/IRB on board?
- Are you willing to wait?
 - Enforcers often require confidentiality, for strategic or legal reasons
- Are you willing to go under the radar?
 - Respect confidentiality norms to maintain relationships
 - Many states have “right to cure” violations
 - You may not receive public credit

EXAMPLE

CPPA complaint form accepts unsworn or sworn complaints.

7. Do you wish to submit this complaint as an unsworn complaint, or a sworn complaint?*

Firstrand knowledge. A sworn complaint means that you are attesting to the truth of the allegations under penalty of perjury in a court of law, and that you are authorizing the Agency to contact the business(es) or person(s) mentioned. See [Cal. Code Regs. tit. 11, § 7300](#).

Unsworn complaint
 Sworn complaint

Do the thing!

1. Consider alternatives

- a. Grassroots & consumer power
- b. Class action or private litigation (private right of action")
- c. Media pressure

2. Identify enforcers & build relationships

3. Design UX/study with evidentiary & ethical concerns in mind

4. Gather evidence

5. File a complaint

6. Wait

Ahead of Data Privacy Day, Attorney General Bonta Focuses on Mobile Applications' Compliance with the California Consumer Privacy Act

Press Release / *Ahead of Data Privacy Day, Attorney General Bonta Focuses on...*



Friday, January 27, 2023

Contact: (916) 210-6000, agpressoffice@doj.ca.gov

OAKLAND – Ahead of Data Privacy Day, California Attorney General Rob Bonta today announced an investigative sweep, sending letters to businesses with mobile apps that fail to comply with the California Consumer Privacy Act (CCPA). This year's sweep focuses on popular apps in the retail, travel, and food service industries that allegedly fail to comply with consumer opt-out requests or do not offer any mechanism for consumers who want to stop the sale of their data. The sweep also focuses on businesses that failed to process consumer requests submitted via an authorized agent, as required by the CCPA. Requests submitted by authorized agents include those sent by Permission Slip, a mobile application developed by Consumer Reports that allows consumers to send requests to opt-out and delete their personal information.

Questions for discussion

- What stops you from working with enforcers?
- What questions do you have about the enforcement processes?
- For those with expertise outside the US, what is your experience and advice?

Off-topic topics for later

- Baseball teams & facial recognition
- Let me convince you that the most understudied topic in privacy & consumer protection: sex industry & sex workers
- The federal APRA committee meeting happening as we speak!
- Loyalty programs, financial incentives