

# THE JOURNAL RECORD

## Gavel to Gavel: What businesses need to know about the California Invasion of Privacy Act

By : Joseph W. Lang //March 12, 2025



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If your business' website uses Meta or other marketing pixels, you either have been—or likely will be—the target of a California Invasion of Privacy Act (CIPA) lawsuit or arbitration claim. Originally enacted in 1967 to prevent wiretapping and eavesdropping on telegraph, telephone, or wire communications, CIPA has been expanded to cover website data collection technology following a recent Ninth Circuit decision in *Javier v. Assurance IQ*, 2022 WL 1744107 (9th Cir. May 31, 2022).

Since then, plaintiffs' attorneys have exploited this nascent body of law, sending demand letters en masse to businesses across the country with demands to pay \$5,000 or more in statutory penalties. As one California court lamented, “[t]he Ninth Circuit’s unpublished decision ... appears to have opened the floodgates for these cases ....” *Licea v. Caraway Home Inc.*, 655 F. Supp. 3d 954, 964 n. 3 (C.D. Cal. 2023). Indeed, the floodgates have opened, presenting a very real legal risk to any business whose website is accessed by California residents. Here’s what businesses should know about CIPA:

### 1. Liability

CIPA prohibits recording or intercepting communications without explicit user consent. This applies not only to phone calls, but also to:

- Marketing pixels (e.g., Meta, Google, LinkedIn)
- Website chat features
- Session replay technologies
- Contact forms

Businesses using session replay software to track keystrokes, clicks, and browsing behavior must inform users and obtain their consent before collecting or sharing data. Failing to do so could result in costly litigation.

### 2. Damages

CIPA allows plaintiffs to seek the greater of \$5,000 per violation or three times actual damages. This means even small businesses could face massive financial liability in class-action lawsuits—even if no actual harm occurred.

### 3. Compliance

To mitigate legal risks, businesses should:

- **Implement clear privacy policies** that disclose any monitoring or recording of website activity, including tracking pixels such as Meta, Google, LinkedIn, or TiKTok.
- **Obtain user consent by requiring users to select their agreement (clickwrap)** before using data collection technologies.
- **Use disclaimers on phone calls and live chats** stating that the conversation may be recorded.
- **Ensure third-party vendors** handling customer data comply with CIPA regulations.

As with most things, prevention is essential, and finding an attorney to assist with your website's privacy policy and terms of use is the best thing you can do. But if your business receives a CIPA demand letter, it is critical to contact an attorney with experience in litigating these claims.

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