



March 8, 2019

The Honorable Xavier Becerra
California Department of Justice
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Submitted via privacyregulations@doj.ca.gov

RE: California Consumer Privacy Act Regulation

The Interactive Advertising Bureau (“IAB”) provides these comments in advance of the rulemaking by the California Attorney General (“AG”) on the California Consumer Privacy Act (“CCPA”).

Founded in 1996 and headquartered in New York City, the IAB (www.iab.com) represents over 650 leading media and technology companies that are responsible for selling, delivering, and optimizing digital advertising or marketing campaigns. Together, our members account for the vast majority of online advertising in the United States. In California, we contribute \$168 billion to the state gross domestic product and support over 478,000 full-time jobs in the state.¹ Working with our member companies, the IAB develops technical standards and best practices and fields critical research on interactive advertising, while also educating brands, agencies, and the wider business community on the importance of digital marketing. The organization is committed to professional development and elevating the knowledge, skills, expertise, and diversity of the workforce across the industry. Through the work of our public policy office, the IAB advocates for our members and promotes the value of the interactive advertising industry to policymakers and legislators across the country.

The free flow of data online enables the continued economic success of the Internet, creating substantial consumer benefit. Online data-driven advertising has powered the growth of the Internet for decades by funding innovative tools and services for consumers and businesses to use to connect and communicate. Data-driven advertising supports and subsidizes the online content and services consumers expect and rely on, including video, news, music, and much more, at little or no cost to the consumer. Companies also collect data for various operational purposes, such as ad delivery and reporting, fraud prevention, network enhancement, and customization. These uses are necessary for a seamless cross-channel, cross-device consumer experience and a functioning digital economy.

As a result of this advertising-based model, the Internet economy in the United States has rapidly grown to deliver widespread consumer and economic benefits. According to a recent study conducted for the IAB by Harvard Business School Professor John Deighton, the U.S. ad-supported Internet created 10.4 million jobs in 2016, and the data-driven ad industry contributed \$1.121 trillion to the U.S. economy that year, doubling its contribution over just four years and accounting for 6 percent of U.S. gross domestic product. Consumers have enthusiastically

¹John Deighton, *The Economic Impact of California’s Advertising-Supported Internet Ecosystem* (2017), available at <https://www.iab.com/wp-content/uploads/2017/03/Economic-Value-Study-2017-FINAL2.pdf>.

embraced the ad-supported model, and they have actively enjoyed the free content and services it enables. They are increasingly aware that online products and services are enabled by data collected about their interactions and behavior on the web and in mobile applications, and they support that exchange of value. A Zogby survey commissioned by the Digital Advertising Alliance (“DAA”) found that consumers assigned a value of nearly \$1,200 a year to common ad-supported services.² A large majority of surveyed consumers (85 percent) stated they like the ad-supported model, and 75 percent indicated that they would greatly decrease their engagement with the Internet were a different model to take its place.³ It is important that the CCPA and the AG’s rules thereunder do not create an environment that harms the democratization of access to ad-supported goods and services consumers want, such as by creating an environment where paywalls and subscription-based models bar access to those unable to afford to pay.

Legislative and regulatory efforts to empower consumers by giving them increased control over their online data must take into account consumers’ support for the ad-driven Internet model. To that end, in order to assist the AG in developing regulations implementing the CCPA, we provide these comments. IAB broadly supports the purpose and intent of the CCPA—to enhance consumer privacy by giving consumers transparency and choice regarding the use of their personal information. However, a number of provisions in the law are unclear, and some will detract from current effective consumer privacy practices in the marketplace. Myriad research papers, surveys, and reports that we, our members, and sister trades have developed reveal and explain the value of data within the economy, especially in California.⁴ This body of research makes clear that the free flow of data, coupled with appropriate privacy protections, is the economic engine that fuels the data-driven economy providing consumers with benefit. As a result, the AG’s regulation(s) interpreting the CCPA should clarify the law’s terms and remedy its unintended results of reducing consumer choice and privacy rather than expanding it, as the law intended. Below we discuss specific provisions of the CCPA that require the AG’s clarification, and how such changes are supported by the regulatory authority provided to the AG in the CCPA.⁵

² Zogby Analytics, *Public Opinion Survey on Value of the Ad-Supported Internet* (May 2016), available at https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/ZogbyAnalyticsConsumerValueStudy2016.pdf

³ *Id.*

⁴ Please find the following pieces of research: Howard Beales, *The Value of Behavioral Targeting* (2010), available at https://www.networkadvertising.org/pdfs/Beales_NAI_Study.pdf; Ari Goldfarb & Catherine Tucker, *Privacy Regulation and Online Advertising* (2011), available at https://econpapers.repec.org/article/inmormnsc/v_3a57_3ay_3a2011_3ai_3a1_3ap_3a57-71.htm; Howard Beales & Jeffrey Eisenach, *An Empirical Analysis of the Value of Information Sharing in the Market for Online Content* (2014), available at <http://www.aboutads.info/resource/fullvalueinfostudy.pdf>; Yan *et al.*, *How much can Behavioral Targeting Help Online Advertising?* (2009), available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.215.1473&rep=rep1&type=pdf>; Zogby Analytics, *Public Opinion Survey on Value of the Ad-Supported Internet* (May 2016), available at https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/ZogbyAnalyticsConsumerValueStudy2016.pdf; John Deighton, *Economic Value of the Advertising-Supported Internet Ecosystem* (2017), available at <https://www.iab.com/wp-content/uploads/2017/03/Economic-Value-Study-2017-FINAL2.pdf>; Zogby.

⁵ See Cal. Civ. Code § 1798.185.

I. Clarify that Data is Personal Information Only When Individuals Act in their Consumer Capacities

The definition of the terms “personal information” and “consumer” in the CCPA appear to cover employee data.⁶ Such a reading of the law could be disruptive of employer-employee relationships and expose proprietary business records to risk. The AG should clarify that the CCPA applies to personal information only when individuals act in their consumer capacities.

Personal information under the CCPA includes “[p]rofessional or employment-related information” if such information is capable of being associated with a consumer.⁷ “Consumer” is defined as “a natural person who is a California resident... however identified.”⁸ These terms could encompass information held in a business-to-business context pertaining to an individual’s status or actions as an employee of a company, not as a “consumer” as the term is traditionally understood. For instance, if personal information includes “professional or employment-related information” that is associated with a California resident in an employee or independent contractor rather than a consumer context, all business contact data and anything “capable of being associated with” such data could be included within the scope of the CCPA’s access, deletion, and opt-out rights. Such an interpretation would risk exposing proprietary business information to a third party access request, pose supply chain disruptions for businesses, and harm employee relationships with employers.

We suggest that the AG issue a rule declaring that “[p]rofessional or employment-related information” excludes information about California residents when they are acting in an employment or business context. The AG may issue such a clarification pursuant to his ability to adopt rules to “updat[e] as needed additional categories of personal information.”⁹ Publishing a rule to clarify that the phrase “[p]rofessional or employment-related information” relates to an individual acting in the capacity of a consumer (as that term is generally understood) and excludes information about an individual acting in the capacity of an employee or in a business context and related business information updates an additional category of personal information by clarifying the types of employment information covered by Section 1798.140(o)(1)(I) of the CCPA, and addresses an obstacle to implementation of the CCPA which the AG is directed to address. Information about business-to-business contacts and transactions is used by businesses for legally required record-keeping, auditing, and research purposes, and should not be included in the definition of personal information pertaining to the consumer.

II. Empower Consumers to Delete or Opt Out from the Sale of Part and All of their Personal Information

While the CCPA enables consumers to delete or opt out from businesses’ sale of their data, it gives consumers no ability to select which data points they would like to delete or restrict from sale. This approach fails to give consumers full control over their data and could limit consumers from accessing particular benefits associated with data use and sale. We therefore

⁶ Employee, in this context, should be understood broadly to include direct employees, contractors, contingent workers, and other employee-employer relationships.

⁷ Cal. Civ. Code § 1798.140(o)(1)(I).

⁸ Cal. Civ. Code § 1798.140(g).

⁹ Cal. Civ. Code § 1798.185(a)(1).

ask the AG to issue a rule recognizing that in addition to all of related personal information, companies can choose to offer consumers the opportunity to delete or opt out from the sale of part of their personal information under the CCPA if the business elects to offer and is capable of offering such granular choices.

The CCPA gives consumers the right to completely opt out of the sale of their data, or fully delete their data from businesses' files.¹⁰ The law, however, does not acknowledge that a consumer may wish to delete or opt out of the sale of only a portion of the personal information a business may maintain about them. Such binary, all-or-nothing choices do not empower consumers to express their true preferences or tailor their requests. Requiring all-or-nothing consumer choices could also deprive consumers of select benefits associated with data sale. The lack of consumer choice in the CCPA surrounding the exact data points they can delete or restrict from sale has the potential to engender consumer confusion and frustration, and allowing companies the option to offer more tailored choices to consumers if they choose to do so would help ease this potential confusion.

We suggest that the AG clarify that businesses are allowed to offer more granular choices to consumers about the types of "sales" they want to opt out of, or the types of data they want deleted, not just provide an all-or-nothing option. This would provide consumers with more valuable and personalized choices that reflect their actual preferences. The AG has authority to clarify this issue pursuant to his directive to establish rules "[t]o facilitate and govern the submission of a request by a consumer to opt-out of the sale of personal information."¹¹ The AG also has authority to interpret and clarify the CCPA's deletion right pursuant to the regulatory authority to issue rules that "further the purposes of [the] title."¹² By providing the option for companies to enable more tailored consumer choices, and create an environment that reflects actual consumer expectations, the AG will promote more effective privacy choices for consumers when they interact with businesses that decide to offer such choices to their customers.

III. Protect Existing Privacy Controls and Enable Flexibility for Effectuating Rights Requests to Promote Privacy Protections for Consumers

We ask the AG to clarify that businesses are not required to identify data that has been pseudonymized. Pseudonymized data sets do not include identifiable information like name, postal address, or email. This type of identifiable information is the type of data that would likely be included in a consumer's request, which is not associated with pseudonymized data sets. Without the requested clarification, the CCPA could be read to compel businesses to link identifiable and non-identifiable information, thereby destroying a common consumer privacy protection. This result is counter to the privacy protective goals of the CCPA, and would also run counter to the CCPA provision that states: "This title shall not be construed to require a business to reidentify or otherwise link information that is not maintained in a manner that would be considered personal information."¹³

¹⁰ Cal. Civ. Code §§ 1798.100, 105, 110, 115, 120.

¹¹ Cal. Civ. Code § 1798.185(a)(4)(A).

¹² Cal. Civ. Code §§ 1798.185(a), (b).

¹³ Cal. Civ. Code § 1798.145(i).

We ask the AG to clarify that companies are not required to identify non-identifiable pseudonymized data, and that they can use flexible tools to provide rights to consumers to protect certain consumer privacy practices. This interpretation is necessary because without it many businesses may be required to make pseudonymous data, to the extent it is personal information under the CCPA, identifiable if they do not have this flexibility. The CCPA suggests this result should not be the case.¹⁴ One such tool to effectuate rights that companies could use if provided with this flexibility is the DAA YourAdChoices Icon  and consumer choice program for data that this program covers.¹⁵ The AG has authority to issue these rules pursuant to his ability to “[e]stablish... rules and procedures... [f]or the development and use of a recognizable and uniform opt-out logo or button by all businesses to promote consumer awareness of the opportunity to opt-out of the sale of personal information,” as well as under his authority to issue rules that further the purpose of the CCPA.¹⁶ The AG should leverage existing tools that have wide consumer recognition to achieve this goal, and allow companies to choose to offer different opt-out choices, as opposed to a single choice, to prevent the reidentification of covered pseudonymized data, and further the law’s goal of providing consumers with privacy controls.¹⁷

IV. Allow Businesses to Reference Privacy Policies to Comply with the Requirement to Provide Consumers with Information “At or Before the Point of Collection”

We request that the AG issue a rule allowing businesses to reference their privacy policies in order to comply with the CCPA requirement to give consumers information about data practices at or before the point of data collection. The CCPA requires “a business that collects a consumer’s personal information” to, “at or before the point of collection, inform consumers as to the categories of personal information to be collected and the purposes for which the categories of personal information shall be used.”¹⁸ The law does not explicitly state the methods by which businesses must give such notice or allow businesses to give consumers the required information at a later point in time. Additionally, online businesses may have difficulty providing this information if they do not collect information directly from consumers but instead collect it through interactions and commercial relationships with other parties, such as third party advertising companies that support first party publishers’ websites and digital properties.

We ask that the AG clarify that businesses may fulfil this requirement by pointing consumers to online privacy policies to access the required information. We also ask the AG to

¹⁴ See Cal. Civ. Code § 1798.145(i).

¹⁵ The White House recognized the DAA Self-Regulatory Program as “an example of the value of industry leadership as a critical part of privacy protection going forward.” The DAA also garnered kudos from then-Acting FTC Chairman Maureen Ohlhausen who stated that the DAA “is one of the great success stories in the [privacy] space.” In its cross-device tracking report, the FTC staff also praised the DAA for having “taken steps to keep up with evolving technologies and provide important guidance to [its] members and the public. [Its] work has improved the level of consumer protection in the marketplace.”

¹⁶ Cal. Civ. Code § 1798.185(a)(4)(C); §§ 1798.185(a), (b).

¹⁷ Consumer awareness and understanding of the program continues to increase, and a 2016 study showed more than three in five consumers (61 percent) recognized and understood what the YourAdChoices Icon represents. DAA, *Consumers' recognition of the AdChoices Icon -- and understanding of how it gives choice for ads based on their interests -- continues to rise* (Sep. 29, 2016) <https://digitaladvertisingalliance.org/blog/icon-you-see-yeah-you-know-me-0>.

¹⁸ Cal. Civ. Code § 1798.100(b).

issue a rule acknowledging that businesses which collect consumer information from other businesses may satisfy the CCPA requirement by disclosing this information in their online privacy policies. The AG has authority to issue these rules pursuant to his ability to establish rules to “facilitate a consumer’s or the consumer’s authorized agent’s ability to obtain information pursuant to Section 1798.130...” and “to ensure that the notices and information that businesses are required to provide pursuant to this title are provided in a manner that may be easily understood by the average consumer.”¹⁹ These rules would facilitate the consumer’s ability to obtain and understand information by providing the required data in an easily accessible, readily available format. Furthermore, these rules would be consistent with other laws, such as California’s Shine the Light law and the California Online Privacy Protection Act, which require businesses to provide particular disclosures to consumers.²⁰

V. Clarify the Household Concept

IAB requests that the AG issue a rule clarifying the term “household” in the law. The CCPA gives consumers the right to access their personal information,²¹ and the law’s definition of personal information includes “household” data.²² However, the law does not define the term “household,” and the CCPA provides no guidance on what constitutes a “household” under the law. For example, it is unclear whether a “household” includes living arrangements involving roommates, college dormitories, or other individuals who may live in a particular home at different points in time potentially with no familial relationship between them. As such, the CCPA’s indefinite language could be interpreted to require a business to disclose information about a consumer within a “household” to another consumer in the household when responding to a consumer access request. This possibility creates privacy concerns, because a business might provide a consumer’s personal information to a household member who should not have access to such data, creating the potential for a data leakage facilitated by a legal obligation.

IAB suggests the AG clarify the definition of “household” to mean information known about the consumer making the request and information about others in the household only if the individual making the request is an authorized representative of such other persons. The AG has authority to issue this clarification pursuant to his authority to “[e]stablish rules and procedures to further the purposes of Sections 1798.110 and 1798.115 and to facilitate a consumer’s...ability to obtain information...”²³ The AG should exercise this authority and create regulations to explain the type of household data that should be provided to a consumer without creating additional privacy concerns.

VI. Provide Flexibility for Verifying and Executing Consumer Requests

IAB asks the AG to issue a rule to clarify that: (a) a business may use commercially reasonable methods to verify a consumer’s request, and (b) if data is maintained in a pseudonymous manner, businesses have no obligation to identify such data to effectuate the

¹⁹ Cal. Civ. Code §§ 1798.185(a)(6), (7).

²⁰ Cal. Civ. Code § 1798.83; Cal. Bus. & Prof. Code §§ 22575 - 22579.

²¹ Consumers have “the right to request that a business that collects personal information about the consumer disclose to the consumer...the categories [and]... specific pieces of personal information it has collected about that consumer.” Cal. Civ. Code § 1798.110(a).

²² Cal. Civ. Code §§ 1798.110; 140(o)(1).

²³ Cal. Civ. Code § 1798.185(a)(7).

consumer rights under the law. The CCPA relies on the concept of a “verifiable consumer request” to trigger businesses to act on any of the rights granted to consumers. However, businesses will have difficulty verifying a consumer’s request in incidences where the information businesses maintain is not directly identifiable to an individual consumer. Digital advertisers often collect and pseudonymize data, associating it with a unique identifier, as a privacy protective practice. The pseudonymized information is thereafter not tied to a consumer’s name or other identifying information. As a result, verifying a consumer’s request, and associating non-identifiable information with a consumer, could be technologically difficult under the CCPA without the business’s ability to request additional information from the consumer or require that pseudonymized data be made identifiable, thereby undermining consumer privacy.²⁴ A similar problem exists for verifying authorized representatives who may submit CCPA requests on behalf of consumers.²⁵ One possible path for solving this difficult issue will be for companies to store all information in an identifiable form, thereby reducing privacy protections for Californians in direct competition with the CCPA’s stated goals.

We ask the AG to issue a rule stating that a business may use commercially reasonable methods to verify a consumer request, and if such methods fail that the request is not a verifiable consumer request. The AG can issue these clarifications pursuant to his authority to establish “rules and procedures... to facilitate a consumer’s... ability to obtain information pursuant to Section 1798.130....”²⁶ The AG can also make this interpretation pursuant to his specific authority to adopt rules related to verifiable consumer requests as articulated in the CCPA’s definition of a “verifiable consumer request.”²⁷

VII. Clarify “Explicit Notice”

In order for third parties to sell a consumer’s personal information under the CCPA, third parties must ensure that consumers received “explicit notice” of the sale and an opportunity to opt out.²⁸ However, third parties typically do not directly interface with consumers in a way that would allow them to provide such explicit notice directly. We therefore ask the AG to clarify via regulation that third parties have the choice to rely on contractual, written, or other assurances from businesses selling data to the third party that the CCPA-required “explicit notice” has been provided as one method of providing “explicit notice.”

The CCPA’s “explicit notice” requirement is not clearly defined. Third parties, generally defined by the CCPA as entities who do not fit the description of a business or a service provider,²⁹ may not be able to provide consumers with explicit notice because they usually have no direct contact with the consumer. As a result, third parties may be prohibited from selling

²⁴ The only approved method under the CCPA for confirming consumer identities assumes the consumer maintains an account with the entity to which the request is directed. Cal. Civ. Code § 1798.185(a)(7).

²⁵ Cal. Civ. Code §§ 1798.135(a)(1), (c), 140(y).

²⁶ Cal. Civ. Code § 1798.185(a)(7).

²⁷ Cal. Civ. Code § 1798.140(y) (A verifiable consumer request is “a request that...the business can reasonably verify, pursuant to regulations adopted by the AG pursuant to paragraph (7) of subdivision (a) of Section 1798.185 to be the consumer about whom the business has collected personal information.”).

²⁸ Cal. Civ. Code § 1798.115(d).

²⁹ Cal. Civ. Code § 1798.140(w) (“Third party” means a person who is not... [t]he business that collects personal information from consumers under this title... [or a] person to whom the business discloses a consumer’s personal information for a business purpose pursuant to a written contract....”).

personal information all together due to the fact they cannot provide explicit notice of this practice to consumers. The CCPA, therefore, would have the unintended effect of rendering third parties entirely unable to sell consumers' personal information. This result could undermine competition and threaten the general availability of online products, services, and content that consumers value, as advertisers' ability to fiscally support publishers' free online offerings would be inhibited. The data-driven advertisers that help provide these digital goods and services collect information from publisher websites, and often do not directly interact with a consumer in order to provide "explicit notice," and this could lead to such advertisers abandoning publishers due to the unclear nature of the "explicit notice" requirement.

To rectify this practical problem in a way that aligns with the spirit of the CCPA, we urge the AG issue a rule stating that contractual, written, or other assurances between businesses and third parties is one method for satisfying the requirements of the law when one party has fulfilled the "explicit notice" obligation to consumers. Specifically, the business that transfers data to a third party can represent, and the third party can rely upon such representations, that the consumer has been offered "explicit notice," thereby satisfying the obligation under Section 1798.115(d). The AG has authority to issue this rule pursuant to his ability to create rules to "facilitate a consumer's or the consumer's authorized agent's ability to obtain information pursuant to Section 1798.130."³⁰ A business that has a direct relationship with a consumer could help facilitate providing explicit notice to consumers rather than third parties that lack such a relationship, and in instances where this relationship occurs companies should be able to choose to agree how they will provide explicit notice. Issuing a rule allowing businesses to meet the requirement to provide explicit notice in this manner will help ensure that opt-out disclosures are provided to consumers by the entities that have a direct relationship with them. Without such an interpretation of the law, many products and services in the digital economy are threatened, as the data transfers needed to create or deliver those products could be impeded.

VIII. Clarify that the CCPA Does Not Require Individualized Privacy Policies

IAB requests that the AG clarify that a business is not required to list the specific pieces of information it has collected about that consumer in a personalized privacy policy. The CCPA suggests that a business must disclose "specific pieces of personal information the business has collected about that consumer" in its privacy policies.³¹ However, this requirement appears in a section of the law that sets forth a consumer's right to access their data, which could mean that businesses only need to disclose "specific pieces of personal information" in response to consumer access requests. As currently written, the requirement is unclear, but if it applies to privacy policies provided online to the general public, it would be onerous for businesses and detrimental to consumer privacy. Businesses would need to create individualized privacy policies for each California consumer who visits their website or engages with their products or services to

³⁰ Cal. Civ. Code § 1798.185(a)(7).

³¹ Cal. Civ. Code § 1798.110(c) ("A business that collects personal information about consumers shall disclose, pursuant to subparagraph (B) of paragraph (5) of subdivision (a) of Section 1798.130: (5) The specific pieces of personal information the business has collected about that consumer."); Cal. Civ. Code § 1798.130(a)(5)(B) ("In order to comply with [Section]... 1798.110... a business shall, in a form that is reasonably accessible to consumers... [d]isclose... in its online privacy policy... [f]or purposes of subdivision (c) of Section 1798.110, a list of the categories of personal information it has collected about consumers in the preceding 12 months by reference to the enumerated category or categories in subdivision (c) that most closely describe the personal information collected.").

comply with the CCPA or risk a personal data breach. Aside from the fact that this requirement presents an impossible obligation for businesses, creating such individualized privacy policies would likely increase the possibility that consumers' personal information would be accidentally disclosed to individuals who should not have access to such information. This would detract from consumer privacy rather than advance it.³²

We urge the AG to clarify that specific pieces of information should be provided to consumers only in response to a verifiable consumer access request and that a business need not create individualized privacy policies for each California consumer to comply with the CCPA. The CCPA gives the AG authority to “[e]stablish rules and procedures to further the purposes of Sections 1798.110 and 1798.115 and to facilitate a consumer’s...ability to obtain information...”³³ In creating rules that explain when “specific pieces of information” should be provided to a consumer, the AG can facilitate a consumer’s ability to obtain information under the law, and ease compliance without detracting from the goals of the CCPA.

IX. Clarify that “Aggregate Consumer Information,” and “Deidentified” Information Are Not “Personal Information” or Are Fully Exempt from the CCPA

We ask that the AG issue a rule clarifying that deidentified information and aggregate consumer information are not personal information or are fully exempt from the CCPA. We make this request because there is language in the CCPA that has the unintended consequence of potentially sweeping in deidentified information and aggregate consumer information into the coverage of the law. Without this clarity, companies and consumers alike will be uncertain what rights apply to these two data types, and it will create unintentional confusion about how the CCPA should be implemented.

First, the CCPA broadly defines personal information as “information that... is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.”³⁴ The law attempts to carve out deidentified and aggregate consumer information by creating separate definitions for each data set.³⁵ The definitions suggest that each data set is exempted from the definition of personal information, but no explicit carve out for deidentified information and aggregate consumer information is stated. Thus, any minor or technical difference in the definitions could be inappropriately interpreted to mean that deidentified information or aggregate information is covered by the definition of personal information.

Second, the CCPA provides a broad exception for the deidentified and aggregate consumer information when it states, “The obligations imposed on businesses by this title shall

³² Furthermore, in a survey of 1,039 California adults conducted by the DAA via SurveyMonkey from January 29-30, 2019, over 87% of individuals surveyed indicated they would prefer to receive generic information from a business based on broad interest and demographic categories rather than detailed information based on the individual’s specific activities, identity, and interests. DAA, *California Perspectives on Privacy Issues* (Jan. 2019), available at https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/DAA_CA_privacy_survey_January_2019.pdf.

³³ Cal. Civ. Code § 1798.185(a)(7).

³⁴ Cal. Civ. Code § 1798.140(o)(1).

³⁵ Cal. Civ. Code § 1798.140(h); 1798.140(a).

not restrict a business's ability to...(5) Collect, use, retain, sell, or disclose consumer information that is deidentified or in the aggregate consumer information,"³⁶ but this exception is vaguely drafted and does not explicitly state that de-identified and aggregate consumer information is not covered by the CCPA since it has no bearing on consumer privacy.

Combining the two issues above, an inappropriate interpretation of the definition of personal information could include deidentified information and aggregate consumer information. And since the full exemption for deidentified information and aggregate consumer information elsewhere in the law is vaguely worded, the unintentional result could be consumer requests not to share deidentified and aggregate consumer information, or claims of price or service discrimination based on these data sets after a consumer exercises their deletion or opt-out rights under the CCPA, which are all tied to the definition of personal information.

We urge the AG to clarify that "deidentified" information and "aggregate consumer information," are not "personal information" and are fully exempt from the CCPA. The AG has authority to promulgate such a rule pursuant to his ability to issue regulations to "further the purposes of [the CCPA]."³⁷ This interpretation would further the purposes of the CCPA by ensuring that the law remains focused on protecting consumer privacy and does not unintentionally hinder the collection, use, and sharing of non-personal information. A rule clarifying that these kinds of data are not personal information is consistent with the language of the CCPA, and furthers the spirit and intent of the law.

X. Interpret the Non-Discrimination Section So Businesses May Charge Consumers who Opt Out of Data Sharing a Reasonable Fee to Access Content

IAB asks the AG to allow businesses to charge a reasonable subscription fee to consumers who have opted out from businesses' sale of their data. The CCPA's non-discrimination section prohibits businesses from offering consumers who have exercised CCPA rights different prices for goods or services or a different quality or level of goods or services than that which would be offered to a customer who did not exercise CCPA rights.³⁸ However, the law explicitly allows a business to charge different prices or provide a different quality or level of goods or services "if [the] difference is reasonably related to the value provided to the consumer by the consumer's data."³⁹ The CCPA offers no information regarding how a businesses should understand when a charge is "reasonably related to the value provided to the consumer by the consumer's data." The law also allows businesses to offer "financial incentives" for the collection, sale, or deletion of personal information, which may not be "unjust, unreasonable, coercive or usurious in nature," and for businesses to offer different prices, levels, or qualities of goods or services if the "price or difference is directly related to the value provided to the consumer by the consumer's data."⁴⁰ Although the CCPA creates these abilities and requirements for businesses, it offers no definition of "financial incentive," no guidance for how businesses should interpret "directly related to the value provided to the

³⁶ Cal. Civ. Code § 1798.145(a)(5).

³⁷ Cal. Civ. Code §§ 1798.185(a), (b).

³⁸ Cal. Civ. Code § 1798.125(a)(1).

³⁹ Cal. Civ. Code § 1798.125(a)(2).

⁴⁰ Cal. Civ. Code §§ 1798.125(b)(1), (4).

consumer by the consumer’s data,” and no clarity regarding what constitutes an unjust, unreasonable, coercive, or usurious financial incentive.

Without clarification, the non-discrimination provision could prevent publishers and others from charging consumers who have opted out of data sharing a reasonable fee or rate for access to content, or otherwise offering a different experience that is reasonably related to the choices a consumer has made. Developers of media rely on third-party advertisers to generate revenue to produce and provide sought-after information and content. When consumers opt out of the ability to share their data, many publishers will not be able to generate sufficient revenue and may need to turn to subscription models to continue to function. However, an overly-broad interpretation of the CCPA’s non-discrimination provision could preclude the use of subscription models and jeopardize the existence of these publishers. Interpreting the CCPA in this manner ultimately harms consumers, as the availability of free and varied online content would inevitably shrink due to publishers’ inability to create revenue from their content, products, and services.

IAB urges the AG to issue a rule clarifying that businesses may charge consumers who have opted out of data sharing a reasonable subscription fee or rate as an alternative to using advertising-supported services, and that such a reasonable subscription fee is *per se* directly related to the value provided to the consumer based on the consumer’s data. The AG has authority to issue such a rule pursuant to his ability to “further the purposes of [the] title.”⁴¹ The rule we seek would further the purposes of the title because as it is currently written, the non-discrimination provision is vague and may conflict with Section 1798.145 of the CCPA, which states: “[t]he rights afforded to consumers and the obligations imposed on the business in this title shall not adversely affect the rights and freedoms of other consumers.”⁴² Without a rule clarifying that reasonable subscription fees do not conflict with the CCPA’s anti-discrimination provision, the accumulation of individual decisions by consumers to delete or opt out of data sharing would threaten the availability of free online content for all, which will adversely affect the rights of other consumers that desire to access free, ad-supported content.

XI. Make Clear that the CCPA Does Not Create a Data Retention Requirement

We ask the AG to issue a rule stating that the CCPA does not indirectly create a data retention requirement. The CCPA requires businesses to disclose and deliver information to a consumer covering “the 12-month period preceding the business’s receipt of the verifiable consumer request...”⁴³ The law does not, however, note whether this means that businesses must begin retaining data before the law’s enforcement date to comply with a potential consumer access request that could occur on January 1, 2020.⁴⁴ Such an interpretation would effectively impose an immediate 12-month data retention requirement on businesses, even though no data retention requirement is explicitly created by the law and businesses will not create CCPA compliance processes until the final rules interpreting the law have been issued.

⁴¹ Cal. Civ. Code §§ 1798.185(a), (b).

⁴² Cal. Civ. Code § 1798.145(j).

⁴³ Cal. Civ. Code § 1798.130(a)(2).

⁴⁴ Cal. Civ. Code § 1798.198(a) notes that the CCPA “shall be operative on January 1, 2020.”

We urge the AG to clarify that businesses do not need to retain data collected 12 months before the enforcement date of the CCPA as no such data retention requirement exists in the law. The AG may regulate these issues based on his authority to adopt rules to “further the purposes of [the] title.”⁴⁵ Clarifying that businesses need not retain data would further the purposes of the CCPA by allowing companies to delete data that is no longer needed.

XII. Clarify “Publicly Available” Information

We ask the AG to issue a regulation clarifying that businesses may use “publicly available” information unless other legal requirements explicitly prohibit a particular use of such information. The CCPA excludes “publicly available” information from the definition of “personal information” without clearly defining what comprises publicly available information.⁴⁶ Although the law states that “information is not publicly available unless it is used for the purpose for which it was made available in a government record,”⁴⁷ this phrase does not provide sufficient clarity, and in fact creates additional ambiguity regarding what constitutes publicly available information, as government records often do not disclose the reasons why they were released. This ambiguity creates an open question of how businesses should treat information that is publicly available when the reason for the release of such information is not explicitly disclosed.

We urge the AG to clarify that information made available by government disclosures can be used even if no purpose for such information’s release is disclosed, unless a particular use of the information is expressly prohibited in other laws. The AG can issue this rule under his authority to adopt regulations to further the purposes of the CCPA.⁴⁸ Making a consumer’s rights to information contingent on whether a business’s use of the information was for the purpose for which the government made the information available creates arbitrary and confusing restrictions on the ability for consumers to exercise their rights under the CCPA. Clarifying that publicly available information includes information made public by the government for any purpose, unless other laws directly prohibit a particular use of such information, will further the intent of the CCPA by decreasing consumer confusion and allowing businesses to streamline responses to consumer requests.

XIII. Allow for Additional “Business Purposes”

The CCPA’s definition of “business purpose” includes seven enumerated, permissible purposes. The AG should clarify that these listed business purposes are merely exemplary and do not constitute an exclusive list of allowable business purposes under the law. The CCPA defines the term “business purpose” as “the use of personal information for the business’s or a service provider’s operational purposes, or other notified purposes, provided that the use of personal information shall be reasonably necessary and proportionate to achieve the operational purpose for which the personal information was collected or processed or for another operational purpose that is compatible with the context in which the personal information was collected.”⁴⁹

⁴⁵ Cal. Civ. Code §§ 1798.185(a), (b).

⁴⁶ Cal. Civ. Code § 1798.140(o)(2).

⁴⁷ *Id.*

⁴⁸ Cal. Civ. Code §§ 1798.185(a), (b).

⁴⁹ Cal. Civ. Code § 1798.140(d).

After defining the term, the CCPA states, “Business purposes are:” and lists seven permissible purposes.⁵⁰ This language could be read to limit the definition of “business purpose” to the seven enumerated examples in the law. This drafting poses a practical problem for businesses, because they often share information with service providers for business purposes that are not enumerated in the CCPA, and new business purposes are created over time in the innovative digital economy.

We urge the AG to clarify that the seven listed categories of “business purposes” are examples instead of the only acceptable business purposes that may fit within the definition of the term. The AG can issue such a rule based on his authority to adopt rules to “further the purposes of [the] title.”⁵¹ The general definition of business purpose that precedes the seven examples suggests that the term was intended to encompass more than what is expressly listed in the text of the law, and that those seven examples are not the only “business purposes” that the legislature intended to cover. Otherwise, the legislature would have omitted the general description of business purposes and only provided the seven examples. Therefore, understanding the listed business purposes as examples rather than the only allowable business purposes under the definition would further the purposes of the title by aligning with legislative intent.

XIV. Clarify the Deletion Right and Consumer Rights Related to Backup and Archived Data

IAB asks the AG to clarify (1) the exception to the deletion rule so that businesses may provide expected subscription messages to consumers that are reasonably anticipated within the context of the business’s ongoing relationship with such consumer and (2) information held in backup or archival storage need not be subject to a consumer request. The CCPA requires businesses to delete “any personal information about the consumer which the business has collected from the consumer” upon receipt of a verifiable consumer request.⁵² Although the law exempts businesses from the need to delete personal information if maintaining it is necessary for the business to “provide a good or service... reasonably anticipated within the context of a business’s ongoing business relationship with the consumer, or otherwise perform a contract with the consumer,” it does not explain what conduct can be considered “reasonably anticipated” within an “ongoing business relationship” with a consumer. The CCPA also creates an exception for requests that are “manifestly unfounded” or “excessive” but not define these terms, which creates uncertainty for the application of a consumer request related to backup and archived data.⁵³

We urge the AG to clarify what is “reasonably anticipated within the context of a business’s ongoing business relationship with the consumer.” Such a regulation should confirm that expected subscription messages are reasonably anticipated within an ongoing business relationship with a consumer that maintains a subscription with the company following a deletion request. The AG may issue these rules pursuant to his authority to further the purposes

⁵⁰ *Id.*

⁵¹ Cal. Civ. Code §§ 1798.185(a), (b).

⁵² Cal. Civ. Code §§ 1798.105(a), (c).

⁵³ Cal. Civ. Code §§ 1798.145(g)(3).

of the CCPA,⁵⁴ as such interpretations would advance consumer privacy by helping fulfil the consumer rights listed in the law and reduce uncertainty around the kinds of data businesses must delete in response to a verifiable request.

We also urge the AG to clarify that “manifestly unfounded” or “excessive” includes a response to consumer request related to backup or archival data. If consumer requests can reach the data held on backup or archival systems, the costs associated with these requests would be excessive and, in the specific circumstance of a deletion request, businesses’ ability to rebound from data failures and comply with legal obligations would be severely limited. Further, in the case of a deletion right or opt-out right for backup or archived data, clarity is needed to ensure that businesses can mitigate data loss issues without having to contact the consumer for assistance in restoring (or gaining the ability to share) necessary information from a backup or archived file.

XV. Clarify the Definition of “Research”

We ask the AG to clarify that the definition of “research” is not limited to studies conducted “in the area of public health.” According to the CCPA, research means “scientific, systematic study and observation, including basic research or applied research that is in the public interest and that adheres to all other applicable ethics and privacy laws or studies conducted in the public interest *in the area of public health.*”⁵⁵ An overly limited interpretation would find that “in the area of public health” is the only area of allowable research, even though the definition states that research means “scientific, systematic study and observation” and then states that it “includes” studies in the area of public health.” As a result of an overly narrow interpretation, studies in the area of public safety or otherwise in the public interest would not be included.

To ensure that “research” remains a viable concept in the CCPA for a variety of purposes, and to avoid stifling innovation, we urge the AG to clarify that the use of personal information for research outside the area of public health is permissible. The AG has authority to issue such a rule pursuant to his ability to “further the purposes of [the] title.”⁵⁶ Such an interpretation would further the purposes of the title by making sure the concept of research retains meaning and usefulness under the law.

XVI. Clarify the Definition of “Business”

We ask the AG to clarify what it means to “do business” in the state of California and explain that the terms “household” and “device” only apply households and devices associated with California residents. To qualify as a “business” that is subject to the requirements of the CCPA, a legal entity must do business in California and satisfy certain revenue or data processing thresholds. One such threshold deems a legal entity a business if it “[a]lone or in combination, annually buys, receives for the business’s commercial purposes, sells, or shares for commercial purposes, alone or in combination, the personal information of 50,000 or more

⁵⁴ Cal. Civ. Code §§ 1798.185(a), (b).

⁵⁵ Cal. Civ. Code § 1798.140(s) (emphasis added).

⁵⁶ Cal. Civ. Code §§ 1798.185(a), (b).

consumers, households, or devices.”⁵⁷ While the CCPA defines “consumer” as California residents,⁵⁸ the law does not define the term “household” and the definition of the term “device” is not limited to devices associated with California residents.⁵⁹ As a result, these terms could be interpreted to include any household or device—not just those located in or associated with California residents or consumers. This imprecise drafting could have the effect of subjecting more legal entities than intended to the bounds of the CCPA, and could sweep in businesses that have minimal operations in California or even the United States.

IAB urges the AG to clarify (1) what it means to “do business” in the state of California and (2) that the use of the terms “household” and “device” throughout the CCPA only applies to households in California or devices of California residents. The AG may issue these rules based on his authority to “further the purposes of [the] title,”⁶⁰ as such regulations would further the intent of the law to only apply to businesses that do business in California and collect or process Californians’ data. This will help businesses respond to actual Californian requests in a timely and efficient manner, without a backlog of non-covered requests related to non-California households and devices.

XVII. Clarify the Time Period for Businesses to Comply with Consumer Requests

We request that the AG clarify that businesses may invoke both of the extension periods listed in the CCPA before responding to a consumer request under the law. The CCPA states: “In order to comply with... [the access, deletion, and opt-out rights]... a business shall, in a form that is reasonably accessible to consumers... [d]isclose and deliver the required information free of charge within 45 days of receiving a verifiable consumer request from the consumer.”⁶¹ The CCPA also states that “[t]he time period to provide the required information may be extended once by an additional 45 days when reasonably necessary...”⁶² It later allows for the “time period for a business to respond to any verified consumer request” to “be extended by up to 90 additional days where necessary.”⁶³ Because two sections in the CCPA address the potential for extending time for businesses to comply with consumer requests, clarity from the AG is needed to harmonize the sections and ensure businesses are able to comply with CCPA requests in the required time frame and within the allowable time extensions. Also, with respect to the deletion right, even though the CCPA requires a business to “disclose and deliver” information within a certain timeframe, there will be no information for the business to “disclose and deliver” to the consumer, because businesses will delete information rather than provide it to a consumer.

IAB therefore urges the AG to clarify how the two extension periods allowed for in the law apply to businesses effectuating consumers’ CCPA requests. We ask the AG to clarify that both extension periods—the 45 day extension mentioned in Section 1798.130 and the 90 day extension mentioned in Section 1798.145—apply where necessary when the business informs the consumer of such extension within 45 days of receiving a CCPA request. We also ask the AG to confirm in its interpretation of the law that that a company does not need to provide any personal

⁵⁷ Cal. Civ. Code § 1798.140(c)(1)(B).

⁵⁸ Cal. Civ. Code § 1798.140(g).

⁵⁹ Cal. Civ. Code § 1798.140(j).

⁶⁰ Cal. Civ. Code §§ 1798.185(a), (b).

⁶¹ Cal. Civ. Code § 1798.130(a)(2).

⁶² *Id.*

⁶³ Cal. Civ. Code § 1798.145(g)(1)

information to a consumer in response to a deletion request. The AG has authority to interpret all of these provisions per his authority to “facilitate a consumer’s or the consumer’s authorized agent’s ability to obtain information pursuant to Section 1798.130,” including taking into account the burden placed on the business.⁶⁴

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We appreciate the opportunity to submit these comments, and we look forward to working with the AG on developing regulations to interpret the CCPA. If you have questions, please contact us.

Respectfully submitted,

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⁶⁴ Cal. Civ. Code § 1798.185(a)(7).