



February 20, 2019

Chairman Ed Chau
Privacy and Consumer Protection Committee
Room 156A, Legislative Office Building
1020 N Street
Sacramento, CA 95814

Dear Chairman Chau:

As the nation's leading advertising and marketing trade associations, we write to recommend a set of amendments to the California Consumer Privacy Act ("CCPA") to prevent unintended consequences, including harmful privacy outcomes for California residents.

The undersigned organizations collectively represent thousands of companies in California and across the country, from small businesses to household brands, advertising agencies, and technology providers. Our combined membership includes more than 2,500 companies, is responsible for more than 85 percent of the U.S. advertising spend, and drives more than 80 percent of our nation's digital advertising spend. Locally, our members help generate some \$767.7 billion dollars for the California economy and support more than 2 million jobs in the state.

Our members believe consumers deserve effective and consistent privacy protections supported by reasonable government policies, and we strongly support the objectives of the California Consumer Privacy Act (CCPA), but we have notable concerns around certain negative impacts the law as written will have for California consumers and businesses.

This letter is intended to share some important information about the data-driven and ad-supported online ecosystem, outline ongoing industry efforts to protect privacy, and highlight four fundamental flaws, among others, in the law as it stands today that will ultimately harm consumers. By focusing on these specific issues, we hope policymakers can address them before they have unintended negative effects on consumer privacy, restrict consumer choice, and reduce access to ad-supported digital content and services in California.

I. The Data-Driven and Ad-Supported Online Ecosystem Benefits Consumers and Fuels Economic Growth

The free flow of data online has powered the growth of the Internet by funding innovative tools and services for consumers and businesses to connect and communicate. Data-driven advertising supports and subsidizes most popular digital content and services, including video, news, music, and much more, at little or no cost to the consumer. Companies also collect data for numerous operational purposes including 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 Interactive Advertising Bureau (IAB) by Harvard Business School Professor John Deighton, the U.S. ad-supported Internet created 10.4 million jobs in 2016,¹ 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.²

Consumers enthusiastically embrace the ad-supported model and enjoy the free content and services it enables. They are aware of and support the exchange of value in which data-driven advertising funds the free or reduced cost services they receive. In fact, 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, like news, weather, video content, and social media. A large majority of surveyed consumers (85 percent) like the ad-supported model, and 75 percent said they would greatly decrease their engagement with the Internet were a different model to take its place, a result that the current provisions in the CCPA could engender.

II. Our Members Have Long Been Committed to Strong Consumer Privacy Protections

Consumer trust is vital to our members' ability to successfully operate in the marketplace, and they take that responsibility seriously by engaging in responsible data practices. A prime example of this commitment is through the DAA's YourAdChoices Program.

The DAA created a self-regulatory code for all companies that collect or use data for interest-based advertising, and it has updated that code regularly to keep pace with rapid changes in technology, business models, and consumer behavior.³ The DAA Principles provide consumer transparency and control regarding data collection and use of web viewing data, application use data, precise location data, and personal directory data. Compliance with the code is enforced for all companies across the digital ecosystem – regardless of formal participation in the program – by independent organizations that have taken more than 90 publically announced enforcement actions to date.

The visual centerpiece of the programs is the YourAdChoices icon , which gives consumers access to information and control over interest-based advertising directly from the ads themselves. Served more than a trillion times per month worldwide, the YourAdChoices icon offers a simple and intuitive tool for consumer transparency and choice outside of the privacy policy. 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

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

² *Id.*

³ DAA, *Self-Regulatory Principles for Online Behavioral Advertising* (July 2009) www.aboutads.info/principles; FTC, *FTC Staff Report: Self-Regulatory Principles For Online Behavioral Advertising* (Feb. 2009).



what the YourAdChoices Icon represents.⁴ The effectiveness of the Self-Regulatory Program has also been recognized by the United States government.⁵

III. Consumers Would Benefit from Fixing Four Fundamental Flaws in the CCPA

While our members strongly support the CCPA’s intent to provide consumers with increased transparency and choice, we are concerned about the negative impact certain sections of the CCPA will have on consumers. We believe the law should be improved to provide greater consumer protection and guidance to business to avoid unintended anti-privacy outcomes. Based on our experience crafting effective and consumer-friendly privacy controls, we believe there are four fundamental flaws in the CCPA as drafted that the Committee should examine in order to protect consumers. We highlight these initial issues because they represent the highest level of concern, and we will continue to engage with you on other concerns within the law as it is currently drafted.

1. Forcing business to turn pseudonymous data into identifiable information.

Section 1798.110 of the CCPA requires companies to provide consumers with the “specific pieces” of personal information they collect about a consumer in response to a verifiable consumer request. To comply with the CCPA’s broad definition of personal information, companies may be forced to identify and associate previously pseudonymous information (e.g., data associated with only an IP address or cookie) with the requesting consumer’s name or email address. While the CCPA states that nothing in the law requires a business to “reidentify or otherwise link information that is not maintained in a manner that would be considered personal information,”⁶ inconsistencies in the language of the law, and the need to facilitate consumer rights requests related to pseudonymous data (which the CCPA defines within the term “personal information”), businesses may be forced to identify pseudonymous data, leading to less privacy protective practices in the marketplace.

2. Facilitating unauthorized access to consumer data within a household.

Section 1798.110 allows consumers to request the “specific pieces” of personal information a business collects about a consumer. However, **Section 1798.140(o)(1)** also defines “personal information” to include both consumer and household data. The interlocking nature of these provisions creates the opportunity for any person in a household, like an unrelated roommate or disgruntled partner, to potentially access unauthorized personal information about fellow members of that household. When businesses are unable to determine what household information pertains to a particular consumer, they may deliver information associated with the broader household to the

⁴ 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>.

⁵ The White House recognized the 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.”

⁶ Cal. Civ. Code § 1798.110(d)(2).



requesting consumer in an effort to comply with the law. Put simply, these provisions could create new data leaks and other dangers to consumer privacy in an effort to protect consumer privacy.

3. Failing to provide other effective means to offer “explicit notice” for the sale of data to a third party.

Section 1798.115(d) of the CCPA prevents third parties from selling personal information unless a consumer receives “explicit notice” and has the chance to opt-out of that sale. The law, however, does not define “explicit notice” or how a company without a direct consumer relationship should meet this requirement. Restricting the sale of data in this way will hurt competition – and thus consumers – by making it more difficult for small to mid-size businesses to get access to the data they need to reach consumers with the right message at the right time. The law should recognize contractual assurances between businesses and third parties as meeting this requirement, when one party has fulfilled the “explicit notice” obligation to consumers. Specifically, the business that transfers data to a third party can contractually 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).

4. Forgoing consumers’ options for nuanced and tailored deletion and opt-out choices.

Sections 1798.105 and 1798.120 of the CCPA allow consumers to opt out entirely of the sale of their data or delete all of their data, but the law does not explicitly permit a business to offer consumer the choice of deleting or opting out regarding some, but not all, of their data. The law should clarify that businesses may offer more granular choices 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 preferences.

Without adjustments, these and other concerns with the law will result in reduced choice and privacy for consumers, rather than expanding it, as the law intended. We stand ready to work with you to find solutions to these and other issues.

Sincerely,

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