

In the Matter Of:
CALIFORNIA CONSUMER PRIVACY ACT

TRANSCRIPT OF PROCEEDINGS

January 25, 2019



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PUBLIC HEARING

CALIFORNIA CONSUMER PRIVACY ACT

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, JANUARY 25, 2019

10:13 A.M.

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REPORTED BY: ALICIA SANTANA, CSR 12824

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1 JANUARY 25, 2019, LOS ANGELES, CALIFORNIA

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3
4 MS. KIM: Hi, everyone. Welcome on behalf
5 of the California Department of Justice and Attorney
6 General Xavier Becerra. Welcome to the fourth public
7 forum on the California Consumer Privacy Act. We are at
8 the beginning of our process on CCPA, so these forums
9 are part of informal process or informal period where we
10 want to hear from you.

11 AUDIENCE: We can't hear you.

12 MS. KIM: I will hold this.

13 So we're at the beginning of CCPA, so
14 these -- these forums are part of the informal period in
15 which we want to hear from you.

16 There will be future opportunities for the
17 members of the public to comment on the regulations
18 after they are adopted, and that will be during the
19 formal rulemaking period. But today our goal here is to
20 listen. We are not able to answer questions or respond
21 to any of your comments.

22 Before we start, I wanted to introduce for
23 you those who are up here on the table, beginning with
24 myself. My name is Lisa Kim. I'm a deputy attorney
25 general in the privacy unit at the DOJ.

1 MS. SCHESSER: Good morning. I'm Stacey
2 Schesser, the supervisor of the privacy unit.

3 MR. MAUNEY: I'm -- I'm Devin Mauney, deputy
4 attorney general in the consumer law section.

5 MR. BERTONI: And I'm Dan Bertoni, an
6 analyst in the attorney general's executive office.

7 MS. KIM: So I want to direct your attention
8 to the PowerPoint presentation behind me so that we can
9 go over a few process points for today's forum.

10 Each speaker will be given approximately
11 five member -- five minutes to speak. A member of the
12 staff is keeping time. We may not have a ton of
13 speakers, but we do ask that you be respectful of other
14 people and their opportunity to speak.

15 We have a court reporter here to my left.
16 She will be transcribing comments, so please speak
17 slowly and clearly. As with the transcripts for all of
18 our preceding forums, once they are available, they will
19 be posted on our CCPA website, as well as these
20 PowerPoint slides are also available on our website.

21 The front row is reserved for speakers.
22 When you come up to the microphone to my left, it is
23 requested, but not required, that you identify yourself
24 when you're offering public comment. It would also be
25 helpful, if you have a business card, to provide that to

1 the court reporter. I believe she would appreciate
2 that.

3 We welcome written comments by email or
4 mail, and so the email address is above as well as our
5 mailing address.

6 Also, bathrooms are available and they are
7 to the right of this room.

8 And if I can ask, are there any media
9 present, if you could raise your hand.

10 Okay. The next slide. If you'd like to
11 stay informed about this process, we have a website,
12 www.oag.ca.gov/privacy/ccpa. All right.

13 So CCPA Section 1798.185 of the Civil Code
14 identifies specific rulemaking responsibility of the
15 attorney general. The areas are summarized here in
16 Numbers 1 through 7. Please keep these in mind when
17 providing your comments today.

18 Number 1, should there be any additional
19 categories of personal information; 2, should the
20 definition of unique identifiers be updated; 3, what
21 exception should be established by the state or federal
22 law; 4, how should a consumer submit a request to opt
23 out of the sale of personal information and how should a
24 business comply with the consumer's request; 5, what
25 type of uniform opt-out logo or button should be

1 developed to inform consumers about the right to opt
2 out; 6, what type of notices and information should
3 businesses be required to provide, including those
4 related to financial incentive offers; 7, how can a
5 consumer or their agent submit a request for information
6 to a business and how can a business reasonably verify
7 these requests.

8 At this time, we welcome comments from the
9 public, so any speakers, please come down to the front
10 row. Thank you.

11 MS. SCHESSER: I'm sorry, could you go back
12 one slide, please. One more.

13 MS. KIM: Sorry about that.

14 To cover Slide 3, the rulemaking process is
15 governed by the California Administrative Procedures
16 Act. During this process, the proposed regulations and
17 supporting documents will be reviewed by various state
18 agencies, including the Department of Finance and the
19 Office of Administrative Law. Right now these public
20 forums are part of the initial preliminary activities.
21 This is the public's opportunity to the address what the
22 regulations should say -- should address and say.

23 We strongly encourage the public to provide
24 oral and written comments, including any proposed
25 regulatory language. Once this informal period ends,

1 there will be additional opportunities for the public to
2 comment on the regulations after proposed rules are
3 published by the Office of Administrative Law. We
4 anticipate starting the formal rulemaking process -- or
5 the formal review process, which is initiated by the
6 five regulatory rulemaking -- or notice of regulatory
7 action in the fall of 2019.

8 The public hearings that take place during
9 the formal rulemaking process will be live webcasted and
10 videotaped. All oral and written comments received
11 during those public hearing will be available through
12 our CCPA web page.

13 So this is the website to stay informed
14 through the process. Again, it's
15 oag.ca.gov/privacy/CCPA. You can also sign up for our
16 mailing list, if you have not already done so.

17 Next slide. There we go, our seven points,
18 areas to keep in mind.

19 So thank you. If you would like to speak
20 today, we welcome you to the front row and you guys can
21 take turns speaking.

22 (Discussion off the record.)

23 MS. LI: Good morning. My name is Lily Li.
24 I am a data privacy attorney based in Orange County. I
25 just had some questions, ideally get some clarification

1 on the law.

2 The first question is --

3 MS. KIM: Could you speak closer into the
4 mic.

5 MS. LI: Sure. There is just a few
6 questions, some clarifications that we would like on the
7 law. One of them is that, right now the law says that
8 companies need to require -- provide information for 12
9 months prior to the date of ever trust; however, the
10 enforcement activity is not going to occur until after
11 the regulations are passed.

12 And so at this point, do companies need to
13 start the recordkeeping requirements this year or will
14 the recordkeeping requirements begin next year?

15 Another point of clarification and kind of
16 unclear is, after a consumer submits a request, what
17 type of records will a company need to keep so that
18 later on if there is litigation, if there is attorney
19 general action, they can show that they complied with
20 the rule?

21 And then another point of clarification is
22 the uniform opt out "Do not sell my information" will
23 the government require this to be an automatic process
24 or will this be something where there can be some
25 back-and-forth with the consumer?

1 So just those points of clarification.

2 THE COURT: What's your name?

3 MS. LI: Lily Li.

4 MS. KIM: Could you repeat the last comment.

5 MS. LI: Oh, sure. For the uniform opt out
6 "Do not sell my information," is the expectation going
7 to be that this is an automatic process or will there be
8 some room for back-and-forth with the consumer and, you
9 know, the length of time that back-and-forth process can
10 occur?

11 Thank you.

12 MS. KIM: Thank you.

13 MR. BERTONI: Anyone?

14 MS. KIM: I'm going to stand here and just
15 let you know if it's too quiet.

16 MR. COLIO: My name is JP Colio. I'm here
17 because I got an alert from Consumer Reports.

18 In recent years, I've been notified by eight
19 or ten different large institutions ranging from UCLA to
20 Home Depot to Equifax that the protection of my personal
21 and financial data has been compromised. These
22 institutions need powerful incentives to make the
23 security of our personal information a high priority.
24 Control of personal and financial information of the
25 public, gathering, cataloging and selling that data.

1 The data -- my data and the data of millions
2 of others has made Mark Zuckerberg and other folks
3 billionaires. I have nothing against billionaires, but
4 I urge you to keep the interest of the public rather
5 than Silicon Valley companies and oligarchs in mind when
6 you craft these rules.

7 In the absence of meaningful federal
8 legislation, I would like to see California join the
9 E.U. in clawing back privacy rights of the public.
10 Please ensure us meaningful choices, simple and
11 transparent, to opt out of the sale to third parties of
12 our information. Thank you.

13 MS. HENRY: Hello. My name is Dr. Maxine
14 Henry. I'm a Compliance NGRC expert.

15 My concern is around three specific areas.
16 The first area is concerning a reduction in the amount
17 of revenue for companies that will be in the scope for
18 CCPA. Currently the law states it's \$25 million.
19 However, in compliance, I see a lot of companies that
20 have revenue amounts much smaller than that that are
21 transferring personal information across their systems
22 and as well as interacting with their customers. So
23 that is something that needs to be looked at and
24 considered.

25 And then the other avenue associated with

1 that would be related to any of third party vendors that
2 companies work with, are they going to be in scope even
3 if they are under the \$25 million amount?

4 And the last area is under the protection
5 for HIPAA data, is that still going to be part of the
6 law? Would there be a restriction? So that's something
7 also that comes up a lot when you do consulting, and a
8 lot of companies may have HIPAA data, they may not
9 necessarily be medical companies, but they will have
10 information on their patients or clients.

11 The last area of concern is around a
12 certification process for CCPA. To me, if you're going
13 to put a law in effect, if you're going to have
14 companies that are going to be compliant, they need to
15 have a certification path. And I'm hoping that the
16 attorney general will look at that as well as give the
17 compliance experts and specialists some guidance on how
18 to set that up.

19 MS. BALBER: Hi. My name is Carmen Balber.
20 I'm the executive director of Consumer Watchdog.

21 And as a consumer just said, an overwhelming
22 majorities of consumers in American are concerned about
23 the use of their data and the collection of their data
24 by companies online. 85 percent of Americans
25 consistently say that they want control over the data

1 that companies are collecting about them. And the
2 California Consumer Privacy Act is finally giving
3 Californians the strongest privacy protection in the
4 nation to do just that, control the data that's
5 collected about them, prevent its sale, to review it and
6 take it with them if they choose to, and to hold
7 companies accountable when lapses in security cause data
8 breaches.

9 So we are here to, at the beginning of this
10 process, urge you to make sure that that the
11 implementation of that law and those protections are as
12 protective for consumers as possible. I'm sure we'll
13 have many more comments as the process goes on, but I
14 think we heard a list of the few data breaches.

15 The most recent was announced on Wednesday,
16 that 24 million records of tens of thousands of
17 consumers mortgage and loan data, which included bank
18 account statements and Social Security numbers, every
19 piece of information an identity thief would need to
20 impersonate some was just announced, the latest data
21 breach.

22 So if we need any more examples why this law
23 is so desperately needed and why consumers need the
24 protections to be as strong as possible, we only have to
25 look back two days to Wednesday.

1 On the specific regulations, we have a
2 couple comments now. Starting in a little reverse
3 order, the financial incentives that companies are
4 allowed to offer to consumers in order to entice them to
5 allow them to sell their data, the nondiscrimination
6 rules that you rate, I think may be some of the most
7 important that you write.

8 There are models for many of these other
9 things, but this is unique to California's law. And the
10 law is very clear. You will forgive me if I quote
11 because everyone here doesn't have it in front of them,
12 that it creates "the right of Californians to equal
13 service and price," even if they -- even if they
14 exercise their privacy rights, so even when they chose
15 to opt out, the law says there cannot be a denial of
16 goods or services for any consumer who opts out. And
17 the law says that any financial incentive that a company
18 dreams up to try to convince consumers to, in fact,
19 allow the sale or sharing of their data "cannot be
20 unjust, unreasonable, coercive or usurious."

21 The law, in essence, allows company to offer
22 financial incentives to consumers for the sale or
23 sharing of their data only if those incentives are
24 related to the value of consumers' data. And so that
25 means that any incentives that companies do choose to

1 provide consumers cannot set up a situation where mid
2 income and low income consumers are forced to sell their
3 data, are forced to give up their privacy in order to
4 use a website or service. That means that any
5 difference in price, any disparate level of service has
6 to be connected to the value of the consumers' data.

7 We would suggest that the only way you can
8 do that with any reasonable degree of certainty, either
9 for the AG's Office or for the public, is to require
10 companies perhaps quarterly, but certainly at least once
11 a year, to submit to the Attorney General's Office the
12 revenue they receive from the sale of consumers' data
13 and then show how they use that data to figure out a per
14 consumer price.

15 For example, if a blog chooses to charge a
16 subscription -- well, let me reverse it.

17 If a blog chooses to offer a free
18 subscription to their blog to a consumer in exchange for
19 the sale and sharing of their data, they need to be able
20 to prove to the AG and disclose to the consumer at the
21 point of choosing to opt out the value and how that
22 value is directly related to the revenue that the
23 company is receiving from that consumer's data. We
24 think that is really important to ensure that the kind
25 of discrimination the law explicitly prohibits doesn't

1 occur.

2 On the uniform opt-out button, the law is,
3 of course, very explicit that it needs to say "Do not
4 sell my personal information." And that is to ensure
5 that consumers have a clear and obvious choice about
6 what their -- what they are giving up. We would again
7 urge you to be very explicit about what consumers are
8 agreeing to.

9 However, we think it's very important that
10 we not get stuck in a situation wherein today where a
11 consumer who chooses to, for example, manage their
12 privacy preferences at Google can get glossed over and
13 clicks buttons and explanations, a rabbit hole of
14 information before the consumer gets to the point where
15 they can say please opt me out.

16 And so the -- the button, we believe, once a
17 consumer clicks on the I would like to express my
18 preference to opt out, they should be able to on the
19 very next page make the final decision to opt out of the
20 seller -- sale or sharing of data.

21 Of course, that page needs to explain what
22 consumers are opting out of, but we do not believe
23 companies should be allowed to bury that opt out --
24 final opt-out choice under multiple pages and multiple
25 clicks.

1 Just on an operational front, we think that
2 that button should appear on the home page and on
3 interior pages of a website because anyone who uses a
4 search engine knows that they don't usually go to the
5 home page of a website or frequency start somewhere
6 else, and that should be in a font that is larger than
7 the primary or the typical font of the website page so
8 consumers cannot miss that they have the option to opt
9 out of the sale or use of their data.

10 I guess the last piece -- and we will, of
11 course, have more comments once we see regulations. But
12 the last piece we would just want to put out there is
13 that the law is actually very clear about the types of
14 information that are considered personal information.
15 And that includes any information that can in any way be
16 tied to a particular consumer or a particular household.

17 So that means not only information that a
18 company has said Carmen Balber has done X, Y, Z. But
19 also an IP address and all of the information that they
20 imported off that so there is no justification for
21 limiting the information that a company collects about a
22 consumer that they should be required to disclose to
23 that consumer. I think the law is very clear on that.

24 What we've heard in some of the other forums
25 that companies are seeking to limit the amount of

1 information that might be considered personal
2 information that companies would have to disclose and
3 stop selling and also perhaps the suggestion that
4 somehow the IP address isn't an appropriate unique
5 identifier. And there can be no question that the IP
6 address can be connected to a consumer or a household
7 and is critical personal information when we're talking
8 about data collection online.

9 I will leave it with that.

10 MS. SAVISS: Hi. My name is Alyssa Saviss,
11 litigation attorney.

12 I would urge the Department of Justice to
13 provide more clarity on the applicability of the act,
14 specifically in regards to what constitutes a business.
15 The act currently defines a business as an entity doing
16 business in California that meets one of three
17 thresholds. Now, the act has not provided transparency
18 or a definition in regards to what it means to do
19 business in California.

20 In addition to that, I would urge the
21 Department of Justice to clarify on the threshold of the
22 \$25 million revenue and whether that revenue is limited
23 to the source of revenue in California or nationally or
24 internationally. Thank you.

25 MS. HOWARD: Good morning. Can you hear me?

1 My name is Melanie Howard. I'm a partner in the
2 Los Angeles office of Loeb & Loeb where I chair the
3 brand protection group and practice in our privacy,
4 security and data innovations group.

5 At Loeb & Loeb, we represent companies that
6 interact with California consumers across many
7 industries and who care very much about respecting the
8 privacy rights of their customers as well as other
9 California consumers. We greatly appreciate the time
10 you have taken out of your busy schedules to hold these
11 open sessions and to listen to the feedback that we have
12 on the California Consumer Privacy Act.

13 My comments today are intended to suggest
14 ways in which the Attorney General's regulations could
15 clarify the CCPA, thus helping California companies and
16 others who provide their services to California
17 consumers, services which are intended to benefit those
18 consumers, fully respect such consumers' privacy rights
19 in running their business. We understand that the
20 attorney general has the authority to adopt additional
21 regulations that are necessary to further the purposes
22 of this California Consumer Privacy Act.

23 My first comment relates to the development
24 of a logo, which we would suggest as opposed to just a
25 button, that would allow companies to place on their

1 home page instead of the express language "Do not sell
2 my information."

3 You're likely familiar with the AdChoices
4 icon that was developed several years ago to provide
5 consumers the ability to opt out of interest based
6 advertising. A similar type of logo in place of the
7 language "Do not sell my information" could be used on
8 the home page as a hyperlink to an opt out page or a
9 specific page that addresses the privacy rights of
10 California consumers such as we've already seen with
11 laws such as "Shine the light."

12 In many cases, companies are not truly
13 selling a consumer customer's information, but are
14 merely sharing it with a third party. The word
15 "selling" has a negative connotation in those situations
16 and may not accurately describe the different types of
17 sharing that would fall into the category of selling as
18 defined under the CCPA. We think that a privacy logo
19 would more effectively communicate the intent to allow a
20 customer's control over how a company is sharing their
21 data.

22 My second comment involves the verification
23 process for consumer requests. We would ask that you
24 consider a written regulation that provides verification
25 processes based on the quantity and quality of data held

1 by the company that is being contacted.

2 For example, a company with whom a
3 California consumer has a customer relationship may have
4 provided the company with their name, address, email,
5 phone number and other points of data. When a company
6 has a profile of this nature, authentication becomes
7 easier. And many companies, including the financial
8 services industry, likely have such authentication
9 processes already in place. An established set of best
10 practices and written guidelines would be helpful in
11 this regard.

12 By contrast, another company may only have a
13 unique identifier of a California consumer, such as a
14 device identifier, which may not relate back to a
15 specific individual. Verifying this California consumer
16 without collecting additional personal information,
17 which is typically considered to be anti-privacy is not
18 ideal. It would be very useful if the regulation could
19 be provided an outline verification process that would
20 not require the collection of additional data simply to
21 verify the consumer. The only information that the
22 company had at the outset was extremely limited and
23 possibly already used online to aggregate in the
24 identified forum.

25 My third comment involves a proposal to

1 consider a notice template in the regulations that could
2 provide a safe harbor. Our clients strive to create
3 notices and privacy policies that are easily understood
4 by consumers and presented in a very transparent and
5 conspicuous manner. We think it would helpful if
6 companies could take advantage of a safe harbor if we
7 use the notice template that could be outlined in a
8 regulation.

9 We note that the CCPA provide express
10 exemptions for companies who are complying with the
11 Gramm-Leach-Bliley Act as well as HIPAA, and it also
12 includes a general catchall regarding compliance with
13 other states or federal regulations and laws. We note
14 that it does not specifically reference the Children's
15 Online Privacy Protection Act. In light of the specific
16 rate for children under the age of 16, which differs
17 from the previously recognized age of 13 under COPPA, it
18 would be helpful for the regulations to expressly
19 address the interaction between the CCPA and COPPA.

20 We would also propose a regulation to
21 explain what the reference to household is intended to
22 capture. As you are likely aware, the reference in the
23 statute expands the definition of an individual's
24 personal information to reach data about other
25 individuals and may do so in ways that were not

1 anticipated by the drafters of the legislation, so
2 further clarification on that point would be helpful in
3 implementing appropriate practices to comply with the
4 intent of the statute.

5 And finally, with regards to the exemption
6 for Gramm-Leach-Bliley, we think that there could be a
7 number of industries, including the financial services
8 industry, who are engaged in businesses that involve the
9 transfer of personal information in connection with an
10 ongoing service or business. Examples might include the
11 sale of a loan portfolio, the sale of delinquent
12 accounts, situations in which personal information is
13 being transferred together with another business line.

14 It's not the peeling out of personal data
15 and the sale of data itself as an asset; however, a
16 strict reading of the statute might bring these types of
17 activities within the definition of sale. We would
18 encourage the attorney general to look at the exemption
19 to sale that deals with the transfer of all or part of a
20 business and consider that these types of activities
21 should really be subsumed within the transfer of a part
22 of the business.

23 Thank you very much for your consideration.

24 MR. GRIMALDI: Good morning. And thank you
25 for the opportunity to adopt the comments here today. I

1 commend the attorney general for holding these important
2 sessions. My name is Dave Grimaldi. I'm executive vice
3 president of the Interactive Advertising Firm. We were
4 founded in 1996 and we represent over 650 media and
5 technology companies that are responsible for selling,
6 delivering and optimizing digital advertising or
7 marketing campaigns.

8 We've long championed transparency and
9 choice and the existing privacy regulatory framework.
10 Based in part on this concept, I've enabled tremendous
11 growth and innovation in the modern economy while
12 protecting consumer privacy and giving consumers
13 meaningful options for what data about them will be
14 used. iab's member companies offer content and services
15 that Americans love and that are accustomed to accessing
16 with little difficulty and at little to no expense.
17 Digital advertising enables that access.

18 Consumer data is integral to the value
19 exchange that exists behind the free ad-supported online
20 ecosystem and the responsible safeguarding of that data
21 is a role that online publishers and ad tech companies
22 take very seriously. However, the CCPA has vividly
23 illustrated how consumer trust of that duty has eroded
24 and Californians are looking for increased transparency
25 into how their online data is used and how it is

1 protected.

2 The lead-up to the enactment of CCPA and the
3 momentum behind it demonstrate how curiosity changed
4 into frustration which then turned into action. The
5 sentiment also took root in Europe and led to that
6 passage of the General Data Protection Regulation, GGPR.
7 And it's also gaining traction in Congress where members
8 of the House and Senate have release privacy-centric
9 bills and there are many more to come.

10 We absolutely agree with the spirit of CCPA
11 and its guiding principles of transparency, control and
12 accountability. Our cross-industry development of the
13 Digital Advertising Alliance, or DAA, was created
14 precisely to address those core conceptions over a
15 decade ago and has gained widespread acclaim from
16 government and public interest groups alike.

17 While the CCPA seeks to enshrine these
18 concepts to increase consumer rights around the use of
19 online data, the bill's language could result in
20 unintended consequence that could run counter to its
21 mission of smart and pragmatic privacy protection. The
22 need to clarify definitions and consider their impact on
23 businesses large and small is critical to promulgating a
24 law that preserves the responsibilities of data and
25 online value exchange between the company and the

1 consumer.

2 iab looks forward to providing more detailed
3 written comments to the attorney general, but today I
4 just want to highlight a few issues which we believe
5 could use extra guidance and clarification to businesses
6 and the media and marketing industries who are actively
7 involved in working to comply with CCPA. I will submit
8 these comments -- I brought extra copies of them, but
9 will be submitting a much longer filing. I have these
10 for you today if you'd like them.

11 First, it's important that CCPA's
12 nondiscrimination provisions do not prevent publishers
13 from charging a reasonable fee as an alternative to
14 using an ad-supported business model. There is a
15 concern the CCPA nondiscrimination proviso will prevent
16 publishers from charging a reasonable fee to access
17 their content for those consumers who would like to opt
18 out.

19 Publishers, especially small ones, rely on
20 third party advertising providers to generate revenue to
21 support their online service and to provide desired
22 content. It's critical that we avoid requiring websites
23 to grant everyone access to their digital sites, even
24 visitors who had opted out, without allowing some paid
25 alternative. Doing so would limit the ability of

1 businesses to pursue their historic business model and
2 would likely result in lost voices across the digital
3 medium.

4 We ask the attorney general to permit a
5 business to charge a reasonable fee as an alternative to
6 using an ad-supported business model.

7 Second, it's important that CCPA provide
8 flexibility for small businesses where consumer requests
9 are cost prohibitive. Small- and medium-size businesses
10 and self-employed individuals rely upon consumer data to
11 improve products and services and to find new customers
12 and business partners.

13 Compared with larger companies, smaller
14 businesses face significant expenses in complying with
15 consumer requests, and CCPA already recognizes that a
16 business may charge a reasonable fee or will refuse to
17 act on a consumer request when consumer requests are
18 manifestly unfounded or excessive. We ask the attorney
19 general to interpret excessive, to include requests that
20 are unreasonably costly relative to the size of the
21 business.

22 And finally today, it's important that CCPA
23 provide the needed flexibility for businesses to verify
24 consumer requests. In many scenarios in the digital
25 advertising industry, businesses have limited ability to

1 verify the legitimacy of consumer requests under the
2 CCPA. This difficulty in determining which requests are
3 legitimate and which are fraudulent puts consumers and
4 their data at risk from unauthorized requests.

5 We ask that the attorney general recognize
6 that verifying consumer requests may take many forms and
7 should refrain from enforcement actions when companies
8 make commercially reasonable efforts to verify a
9 consumer. We also ask that the attorney general
10 distinguish between parties that hold that is purely
11 synonymous and have no means of connecting it to an
12 actual person.

13 I appreciate the opportunity to be here
14 today and speak to you. As I mentioned, we'll be filing
15 longer comments, but I will leave a few here for you.
16 Thank you.

17 MS. TAKATSUKI: Hi. I'm Yuli Takatsuki.
18 I'm here today for the privacy attorney at Field Fisher.

19 I just have one question regarding the right
20 to data access and portability and would like some
21 clarification on the portability provision. In the act,
22 it says that requests which are filed electronically
23 shall be provided in a portable and to the extent
24 technically feasible in a readily usable format.

25 I would just like some clarification on the

1 meaning of "technically feasible." So, you know, to
2 what extent does an organization have to make efforts to
3 make the information available in a readily usable
4 format? For example, is there technology that already
5 exists within the company or do they have to go to some
6 engineering effort, if it is possible from an
7 engineering perspective, to create it in that format?

8 Secondly, just to seek some clarification on
9 the scope of that right. So what information does it
10 cover? Is it just information that has provided by the
11 consumer that needs to be provided in a portable format?
12 Or does it need to cover all data that is held by the
13 organization? So anything from analytics to marketing
14 data, you know, service usage data, all of that stuff.
15 And so some clarification on that would be, yeah, very
16 much welcome. Thank you.

17 MS. SHARP: Good morning, you guys. I'm
18 Linda Sharp from ZL Technologies. We're a software
19 company out of the Silicon Valley area.

20 One of the things we struggle with on a
21 regular basis is working with clients on managing
22 content. So as we look whether it's GDPR, CCPA, the
23 Brazilian regulations or regulations coming out of China
24 and Japan and all over the place unfortunately makes it
25 very difficult for large organizations to actually

1 manage their data and provide -- actually meet these
2 regulations and requirements.

3 So some of the things to try to keep in mind
4 as you're looking at changes or notes you might be
5 making to the CCPA is understanding how content moves
6 within an organization and how they store that data with
7 third party providers.

8 So, for example, under GDPR, it talks about
9 controllers versus processors, although the definition
10 of processor is extremely broad. So that individual,
11 that company may actually be hosting content and
12 actually not processing that content. So making sure we
13 actually have the ability from a technology standpoint
14 to meet the requirements you are setting under CCPA.

15 One of the other areas I wanted to talk
16 about a little bit is we really focus very heavily on
17 information that is gained over a website or an internet
18 access. So a consumer logs in, puts in their personal
19 information or their URL address is being tracked when,
20 in fact, that information may be gathered through the
21 company in multiple different way.

22 For example, maybe that same individual
23 happened to attend a trade show. So how are we supposed
24 to triangulate that that same logon from a person in
25 California or Europe coming in to a California company

1 versus maybe they attended a trade show, how are we
2 supposed to keep track of all of those data points for
3 those specific individuals?

4 So those are some of the technology issues
5 that we're facing.

6 In addition to that, under CCPA and also
7 adds on the issue around former employees and existing
8 employees and management of their content. So I ask
9 that you just take a look and think about all the
10 different places within your business day where you
11 store information. It could be sitting in file share
12 SharePoint sites, email systems, SAP systems, accounting
13 record, all across the board within the organization.
14 It's very difficult to actually try to find all the
15 disparate locations of this information.

16 So as attorneys, we're creating these
17 regulations and setting these policies in place and
18 imposing tremendous fines when, in fact, the technology
19 is not there to meet the obligations that we've defined.

20 My last statement would be that, as a
21 country, I think it's very important, and I'm excited
22 for California, we're on the cutting edge, as we always
23 are, but there is also, as the gentleman before me
24 stated, federal regulations that we're looking at today
25 that, as a country, maybe we should mirror what they've

1 done under -- in Europe and actually move as a country
2 approach as a opposed to a state-by-state approach.

3 With that, thank you so much for your time
4 today.

5 MR. LACHMAN: Hello. Good to see you all
6 again. This is a much better drive, I imagine, for you
7 than going to Riverside. I was there yesterday. My
8 name is Andrew Lachman. I am the owner of Lachman Law.
9 We are a law firm that focuses on technology and data
10 privacy.

11 By way of my own background, I cofounded
12 realtor.com's privacy committee when I was -- worked for
13 them back in the early 2000s; sat on Viacom's privacy
14 committee when I worked for Paramount Pictures. Then
15 went to work on Capitol Hill and I worked one of the
16 four computer science majors, Congressman Ted Lieu, was
17 his legislative director and cofounded the congressional
18 tech staff association.

19 So I got into it because -- into the public
20 service aspect of the because I felt there was a
21 shortage of people who really understood how the
22 technology worked as much as the policy impacts that
23 were there today.

24 And most of the clients that I serve make
25 well under 25 million a year. They're startups.

1 Frankly, none of them have really asked me to advocate
2 for them today. This is just based on my own
3 experience.

4 Some things have been brought up, and I just
5 wanted to add to some of them in some general comments.

6 First of all, with respect to IP addresses,
7 I think there is only one country in the world, in
8 Europe that says an IP address by itself is considered
9 identifiable information, that's the Netherlands. Most
10 European countries have said that an IP address by
11 itself, if combined with other personal data, would be
12 considered personal data.

13 As an example, there's two different kinds
14 of IP addresses. There are static ones and there are
15 dynamic ones. Most the ones that we all have in our
16 phone or at home DSL, you don't have your own IP
17 address. You probably share it with several hundreds,
18 if not thousands of people, who would use the same IP
19 address. Even if you have one in your own domain,
20 your -- you may rotate IP addresses. So, therefore,
21 making sure that the regulations reflect the actual way
22 technology works is going to be very important.

23 Secondly, I think some further discussion in
24 the regulations may be necessary about what kind -- what
25 constitutes sale of information. As I mentioned, a lot

1 of client companies, including my clients, none of my
2 clients actually sell information that they collect
3 directly from data sources -- from the data subjects.
4 And so -- but many of them are required to share that
5 information in order to provide their service, and I
6 think that to make that a part of CCPA would go well
7 beyond what is normally used in this industry.

8 To go back to the notice, I think the logo
9 idea is a great idea. Again, none of my clients sell
10 information, but they all now have -- many of them will
11 have to have this comment that will create some
12 confusion. I do think though that some of the guidance
13 that has come out of the WP 29 group may be particularly
14 helpful in coming up with these regulations.

15 As an example, the consumer watchdog folks
16 brought up some very good points about making sure that
17 the privacy policy and the opt-out rights are easily
18 available. WP 29 group says they should be within two
19 clicks of the home page. That would be a very good
20 suggestion.

21 I'm going to bring up one last thing today,
22 and I just want to give this as an example of how the
23 situation could be abused. A lawyer a while back wrote
24 an example letter of what they said was a nightmare GDPR
25 request. It can be found on LinkedIn, and I'm just

1 going to read a small part of it, just an example of how
2 the situation if not -- regulation are not put together
3 reasonably can get out of control.

4 It says here I would like to -- "I need a
5 reply within one month as required under Article 12,
6 which I will be forwarding in my inquiry to the
7 appropriate data protection authority. Please advise me
8 of the following. Please confirm with me whether or not
9 my personal data is being process. If it is, provide me
10 with the categories of data that you have in your
11 databases. In particular, please" -- this is the next
12 point -- "tell me what you know about in your
13 information systems whether or not contained in
14 databases or voice or media you may store.
15 Additionally, please advise me which countries my data
16 is stored in, in case you make use of cloud services
17 that store or process my data, and where those servers
18 are located in the last 12 months. Please provide me
19 with data that you are currently processing. Please
20 provide me with a detailed accounting of the specific
21 usage you have made for my data." Most of this is
22 already in privacy policies, by the way. "Please
23 provide me with all third parties which you may have
24 shared my data, personal data. If you cannot identify
25 the third parties, please provide a list of third

1 parties who you may have shared or disclosed my data.
2 Please identify which jurisdictions you have identified
3 in which third parties can access my personal data.
4 Please provide insight as to legal grounds for
5 transferring my data. Additionally, I would like to
6 know what safeguards you've put in place in relation to
7 these third parties and then you have identified in
8 relation to the transfer of my data. Please tell me how
9 long you have stored my data and if retention is based
10 on category of personal data. If you are additionally
11 collecting personal data about any source from me,
12 please tell me what that source is. If you are making
13 automated decisions about me, please provide me with the
14 information concerning for the logic for making such
15 decisions. And I would also like to know whether it has
16 been disclosed any time inadvertently in the past. If
17 so, please tell me each individual breach that has
18 occurred, the time, the date, the source, the details of
19 what information was disclosed, and also tell me whether
20 my data has been encrypted with strategies."

21 This could go on for a while. This is about
22 two pages.

23 Before you say this is just an extreme
24 situation, I want you to know that I have at least one
25 client that has received this letter. It does happen.

1 So the regulations that you all been putting forward are
2 going to be very important to make sure that they are
3 based on the reality of how technologies in these
4 companies work. And I think many of the insights that
5 we've seen today will reflect some of those realities.

6 In closing and as my final point in this, I
7 do think that some regulation with respect to article --
8 GDPR Article 13 and 14, collectors, those who collect
9 data from public sources may need to be clarified as
10 well because those do fall, I think, more squarely than
11 the intent of the legislation just to go after data
12 brokers, not small companies that would buy or sell data
13 in one particular way or another or that would merely
14 process data, which is really what probably most of the
15 companies that are people in this room are -- do as
16 well.

17 So thank you again so much for your time.
18 This is a very granular area to have to learn about very
19 quickly, and I really appreciate the effort that you all
20 have put in putting together all of these hearings.
21 Thank you very much.

22 MR. NAULLS: Hello. My name is Ron Naulls.
23 I'm from Protiviti, a cyber security and privacy
24 consulting. Wanted to get some clarification or
25 probably some awareness on the CCPA in regards to the

1 minimum level of security that's defined by the attorney
2 general, the minimum level of security that a business
3 must have in place if they process or store personal
4 information.

5 And a lot of the engagements that I have
6 been on are not aware of the minimum security standards
7 for personal information. The attorney general, Kamala
8 Harris, expressed in 2016 that since the CCPA stresses
9 that under the California professional business code, if
10 you process or store information, then you must have the
11 minimum level of security as defined by the CIS top 20.

12 And so I just think there should be some
13 clarification around the minimum security standards or
14 they should be stressed or there should be some
15 awareness for organizations to put in place proper
16 security measures in that whether or not -- if they
17 don't have those minimum security measures in place,
18 will that constitute willful negligence or will that
19 constitute some level of liability for the organization,
20 just as a -- as a default for not having the minimum
21 level of security in place? And that's it.

22 MR. CHANDRA: Hi. My name is Ashok Chandra.
23 I'm a data privacy attorney at an advertising agency.

24 I just want to briefly reiterate what
25 several speakers before have mentioned, the use of

1 AdChoices icon that the DDA has created. It's been
2 about five or six years, I think, and it's widely used.
3 I think that would integrate fantastically with the opt
4 out in 1798.185 Section 5. So I would like to encourage
5 you all to consider integration and not necessarily
6 recreating the wheel, but using what we already use in
7 business.

8 If you see that on almost every IDC, you see
9 a little blue arrow at the top right-hand side. I think
10 that as an industry we need to educate the consumer, but
11 there are opt-outs out there that are usable at this
12 point. Thanks.

13 MS. HOBBS: Good morning. My name Linda
14 Hobbs. I'm 70 years old, a graduate of UCLA. I'm a
15 community volunteer, a strong supporter of Jamie Court
16 and Consumer Watchdog.

17 I'd like to address categories 1 and 6 very,
18 very briefly. In November of 2018, my question is why
19 did Apple collect millions of customers' fingerprints
20 and five day later lock us out of our phones and iPads?

21 A November 11, 2018 episode of 60 Minutes,
22 attorney Matt Schems, S-C-H-E-M-S, the key force in
23 creating Europe's General Data Protection Regulation
24 stated data should be owned by consumers. But because a
25 tech company, Apple being the largest in America,

1 controls data, Apple owns our fingerprints. Attorney
2 Schems stated tech companies use coercion, force consent
3 and take-it-or-leave-it approach.

4 In my case, there was no warning that Apple
5 was going to be collecting my fingerprint, although I
6 called the tech support department on my cell phone,
7 because I have proof of that, and I asked them about
8 this -- this upgrade. In the middle of this, it says
9 "Fingerprint." I'm a senior. I didn't know what to do
10 and I needed to use my phone, so I had no option but to
11 continue with it.

12 I'm going to wrap this up because I don't
13 want it take too much time, just 30 seconds more.

14 Because I'm a community volunteer, I needed
15 the 300 phone contacts of the people that I volunteer
16 for, the text messages, the notes. And when I went to
17 Apple, Apple said I had to do a reset, which I could
18 lose all of that data. I pay -- millions of customers
19 like myself, we pay Apple money each month to store
20 information in the clouds. But with the reset, Apple
21 does not guarantee that.

22 And I would like to see that Apple in the
23 future is required to pay for any damages. I had to buy
24 a new phone, I had to pay the double phone services.
25 And they have to give us notice 30 days in advance

1 before they are going to collect our fingerprints.

2 Thank you.

3 MS. GROSS: I've got a couple. I thought
4 there would be much more participation so I'm not really
5 prepared, but as -- I'm Jessica Gross, just here as a
6 person who is interested, not on anyone's behalf.

7 It seems that you are kind of limited in the
8 things that are you able to do in this law. And it's
9 also very clear from many of the comments that we heard
10 that the law itself has problems with the way it's
11 written, the way the definitions are, the way the scope
12 might actually be applied. So I don't know how much of
13 this is for you or for the legislature, but I know that
14 Attorney General Becerra has given some comments to the
15 legislature in the past.

16 I would recommend using these public
17 comments as another way to push what the attorney
18 general might not have the ability to do back to the
19 legislature because from a compliance perspective, it's
20 a nightmare. It's not really clear what companies may
21 have to do.

22 The number one question we always get is,
23 I'm GDPR compliant, is that good enough? And I know
24 that in some of these public forums, people have asked
25 for an exemption or exception for GDPR compliance.

1 Whether or not that meets the same goals is something
2 ultimately for the lawmakers to decide.

3 And from that very moving comment we just
4 heard made me think about personal information unique
5 identifiers. It could be really valuable to separate
6 out two categories in the way that GDPR has done, to put
7 aside some of the more sensitive types of information,
8 maybe like fingerprints, DNA and, you know, medical
9 data, things that we're a little more concerned about as
10 opposed to an IP address or an online identifier that
11 has to be kind of put together with a couple pieces of
12 information, and maybe you only get a name or something
13 from that.

14 So thinking about ways to truly protect what
15 we're most concerned about and require reasonable
16 security over those types of information would be
17 valuable.

18 The other thing I would note is the
19 seemingly conflicting definition of personal information
20 in CCPA and what personal information was PII
21 historically. And the breach section of CCPA does refer
22 to the historic PII definition as the type of
23 information being subject to reasonable security. It
24 should be all personal information that's sensitive, not
25 just maybe your name and social, but your fingerprint or

1 other pieces of information that could really expose you
2 to identity theft or other issues.

3 And I guess that's. Everybody's had good
4 comments. Good luck.

5 MR. GRUDEN: Hi. My name is Joseph Gruden
6 (phonetic). I'm a financial institutions attorney.
7 Thank you for providing us the opportunity comment on
8 the proposed regulations today. The question I have is
9 the scope of the GLBA SB-1 exemption.

10 Now, the questions I'm receiving from a lot
11 of my clients is, is this an industry exemption? Are we
12 out of the regulation? Or is this just part of the data
13 that we process, collect, use, share, process?

14 So GLBA and SB-1, the way they're really
15 defined is tied to the consumer relationship. The
16 financial institutions collect a broader scope of data,
17 for example, marketing materials, one example, and there
18 are other different regulatory frameworks. So, for
19 example, if there's a firm offer of credit extended, the
20 way that data is obtained through the FCRA framework,
21 which isn't mentioned in the regulation, but it's an
22 important facet of the way financial institutions
23 conduct there business and market their products and
24 services.

25 Also number of ways there is employee data

1 that is outside the scope. You may have employees that
2 aren't financial institution customers. You can get
3 data from -- you know, if you're doing a commercial loan
4 and you get individual guarantors that aren't customers,
5 you're not taking that data under the framework of GLBA
6 or SB-1. So I can think of a number of other frameworks
7 and data that is collected that isn't necessarily
8 subject to SB-1 or GLBA.

9 So if we can get some clarification as to,
10 you know, the scope of that exemption, I think that
11 would be very helpful for us to determine, you know,
12 what -- how to comply with your regulation and what we
13 need to do in advance before -- before an effective date
14 of the regulation. Thank you.

15 MS. KESSLER: Good morning. My name is Kyle
16 Kessler and I'm an attorney with the cyber, privacy and
17 data innovations unit of Orrick, Herrington & Sutcliffe.
18 Thank you to the Attorney General's Office for being
19 here and taking comments.

20 In relation to CCPA, we have a couple of
21 things that, as mentioned before by several of the
22 members here, things that keep coming up with our
23 clients. So a little clarification on some guidance on
24 some of these matters might be helpful.

25 In terms of other regulatory bodies and

1 other regulations, we would love to get more clarity on
2 the impact and conflict with FERPA, California SOPIPA,
3 all of those other Shine the Light. We have several
4 conflicting or overlapping regulations that we're
5 currently working with with our clients for compliance.
6 So that's a recurring question we're getting, How does
7 CCPA overlap or become in compliance with some of these
8 regulations that have no mention within the act? And
9 for those that do, how do they interact?

10 In relation to public compliance opting
11 consent for children 13 through 16, clarity on to -- as
12 far as the age requirement, is that 16 and under or is
13 it under 16? Also, the nature of consent mechanism, are
14 we asking individuals to provide affirmative obligation
15 to screen for age? What does that look like? Are we in
16 compliance with COPPA using similar mechanisms? Or what
17 is the -- what does that look like, essentially?

18 Now, we work with several ad tech providers
19 and we have iab present as well. Welcome. We would
20 like to know the impact on compliance for bills
21 providers. When it comes to opt-out requirements, who
22 is responsible for those opt outs? We've seen that
23 there may be an overlapping responsibility for the
24 actual providers. But ultimately it's not very clear
25 where that line can be drawn. Do we have an industry on

1 opt-out solution similar to what we have now within that
2 exist in NIA mechanism.

3 For -- specifically I'm actually going back
4 to conflicting relations or current realtor framework
5 for Ed tech providers, specifically similar to ad tech,
6 Ed tech. So we have a lot of providers who work with
7 schools. What does that look like? Do they fall within
8 the exceptions/exemptions? Or any of those frameworks
9 is -- again, we have FERPA.

10 For their final consumer request, clear
11 mechanisms for what that looks like? Again, that's one
12 of the questions we get from clients as well, what does
13 it mean to verify the consent? Once we verify it, what
14 does it mean to provide disclosures?

15 Will the AG -- as far as the disclosure
16 requirement for the privacy policy, will the AG be
17 providing guidance or template language that can be used
18 for those disclosures?

19 In connection with definitions, do we
20 have -- the current definition of what constitutes a
21 sale of data is very broad. It could be interpreted to
22 include even standard disclosures that a business
23 doesn't necessarily have a direct monetary benefit to
24 the company. But because we have such a broad
25 definition, it could be any benefit. So what does that

1 really look like? Is there any way to narrow down
2 definition that is now all-encompassing of any sharing
3 of data for any benefit.

4 Everything else has already been mentioned.
5 Thank you so much.

6 MS. KIM: We're going to take a brief break
7 to let our court reporter just have a moment for a rest
8 and reconvene in about five minutes.

9 (Recess.)

10 MS. KIM: Speakers, if you would like to
11 come down and provide a comment.

12 Problems with the mic.

13 (Discussion off the record.)

14 MR. COHEN: So my name is Greg Cohn. I'm
15 the cofounder and CEO of a consumer mobile application
16 company that makes an app called Burner, which is a
17 consumer privacy focused app. And so -- and we have
18 been in business five-plus years. We are a category
19 leader in both the Apple app store and the Google Play
20 store from the revenue point of view.

21 So we are not public about our numbers per
22 se, but sort of on the order of millions of downloads,
23 hundreds of thousands of paying customers scale. So
24 sort of in the category of people here who are likely to
25 be regulated, but also somewhat, if I may, a subject

1 matter expert on consumer demand for privacy-related
2 products, things that they are willing to pay for and to
3 some degree what they're caring about in the realm of
4 protecting their own privacy.

5 There are obviously lots of others in a
6 similar space. And I apologize for having just arrived
7 here, I don't know if these, hopefully, brief remarks I
8 will make will be repetitive with others or exactly the
9 right level of sort of legal expertise or
10 sophistication. I'm not an attorney, so bear with me.

11 I'm really coming from the point of view of
12 a company that will likely be subject to regulation.
13 Certainly under GDPR in Europe, we are subject when
14 active in Europe and so CCPA would ostensibly apply to
15 us. And also as somebody who wants to see more consumer
16 protections around privacy and hopes to see that kind of
17 worked out in the right way.

18 So I guess first I would like to say thanks
19 for having this seminar and the opportunity to speak and
20 for what I know if a lot of hard work going into revving
21 the legislation which is kind of well underway. And
22 also to say while I'm not personally a technical expert,
23 I am very knowledgeable and there are a lot of very real
24 technical experts on the nuances of various aspects of
25 the way the mobile app ecosystem works, the mobile

1 advertising ecosystem work. And I just -- I hope that
2 the folks -- the stakeholders in this legislation
3 process are availing themselves of that sort of
4 technical expertise where appropriate and to make myself
5 available as useful and help identify others who could
6 be where needed.

7 In a more concrete set of things, I guess,
8 you know, just a few recommendations to make. One being
9 to say, first of all, consumers are increasingly aware
10 of privacy issues and I think understand that their data
11 is being sold, traded, targeted, et cetera, including
12 understanding some of the nuances of those things as to
13 how they play out, not just very high level.

14 So, for example, you know, if I'm a consumer
15 availing myself of a sleep tracker app or pregnancy
16 tracker app, there is a clear understanding -- and
17 particularly if that app is free, there is an
18 understanding that I'm entering data that might be
19 sensitive data, certainly personal identifiable data
20 into a system that is being run by a company and that
21 that company is going to provide me services, you know,
22 that respond to that data, but at the same time very
23 uncomfortable with the idea that suddenly I'm targeted
24 all over the universe based on that data or Facebook
25 knows I'm pregnant or what have you.

1 And I think on the technical side, there is
2 also an important distinction to make and one that I'm
3 not sure is clear in the draft legislation that I've
4 seen around the need for explicit distinction between
5 data that is shared with a third party who is acting
6 under the direct sort of control, if you will, of the
7 developer. So if I'm collecting data as an application
8 developer, I might have fairly granular data being
9 collected about a user and put it into a third party
10 metrics system that is under my control that I can
11 delete, that is not commingled with other people's data,
12 but might be -- you know, might be sort of scary in a
13 disclosure or in a privacy policy if it's not clearly
14 delineated as under my control as distinct from that,
15 there are systems I can put data into that are -- where
16 they are commingled.

17 There's a paper that recently came out, and
18 I could provide that reference if needed, that goes into
19 technical detail about how the Facebook mobile SDK
20 operates to collect data, you know, from mobile app
21 experiences. And in that paper, there are specific
22 details. I think, for example, they go into a travel
23 search example whereby literally -- I believe it's
24 Kayak, not to throw them under the bus, I think that's
25 industry standard practice -- is sending an event when a

1 customer does a search for an airline ticket to Hawaii
2 on a set of dates with an originating airport, and that
3 search is made at a certain time.

4 Like that level of granularity of data is
5 actually getting sent in through the Facebook SDK into
6 Facebook and then is becoming both available as an ad
7 targeting model for that developer, but is clearly, at
8 least potentially being commingled with other data. And
9 at least up until the GDPR and the period thereafter,
10 there was no real opt out, even if there was disclosure.
11 And I think Facebook has made some changes to that SDK.

12 But that's just example of a whole class of
13 things particularly involving the ads ecosystem whereby
14 a real distinction could be made to whether, you know --
15 I would like the ability to handle my user data in a way
16 where I'm being a good custodian, but that might involve
17 some third parties. And I think that's importantly
18 distinction from when I'm being cavalier about the set
19 of third parties that receive it.

20 And, you know, the simple sort disclosure
21 where there's a big pop-up that says we accept this
22 isn't really enough. That doesn't make a meaningful
23 distinction to a consumer to a world where everybody
24 continues to do all the same things, but now there is
25 lots of disclosures and buttons to click to accept terms

1 of service I don't think really solves the problem that
2 consumers would like to see solved that has developed
3 into an ecosystem that we would like to see solved.

4 To go one click deeper on that, as it were,
5 as a developer in participating in these ecosystems and
6 other software applications that are marketing to
7 potential new customers, it's very difficult to compete
8 without using the Facebook SDK and similar kinds of
9 things. Almost like significant percentage of
10 advertising spend in the mobile ecosystem is driven by,
11 you know, performance-based marketing. Performance
12 meaning I'm paying per install or per event subsequent
13 to an install as opposed to I'm paying just for the
14 impression of my -- my ads showing up on a page.

15 So in order to measure the actual events,
16 there needs to be something in the app, typically a
17 software development kit, or SDK, that is connecting
18 those dots. So if I want to advertise on Facebook, I
19 want to give Facebook a budget of dollars a month and
20 say please find me the people that are most likely to
21 subscribe to my product or please find me new people who
22 are most like my best customers, I have to provide to
23 them access to that SDK. There is no other way to
24 participate in that ecosystem on a performance basis.

25 And so if I choose to opt out of that as a

1 developer in order to be a good citizen or in order to
2 have a higher privacy standard of care with my
3 customers, then I am at a great disadvantage to my
4 competitors because they are marketing in that system.
5 So they stick a button on their app that has a
6 disclosure and then they get to do all that.

7 And that's not really what consumers want.
8 Consumers don't necessarily want Facebook to know that
9 they are installing a pregnancy tracker or pay to
10 convert to subscriber status or all these other events
11 that like kind of do get thrown to Facebook or to Google
12 or other programatic networks throughout the known ad
13 universe.

14 That's a level of distinction I don't know
15 that I've sort of seen in the dialogue around this
16 space. Perhaps it is, and that's great. But I wanted
17 to bring that to this group's attention. Sorry, my
18 notes are on my phone and it keeps closing.

19 And I guess I think there is potentially an
20 opportunity to make this a -- in this example, and I
21 definitely, you know, don't mean to single out Facebook,
22 because I think they are among a number of actors in
23 this, but to carry through with this as an example,
24 there is an opportunity to solve this problem at the
25 Facebook level and at the Apple and Google level who do

1 gate and have the ability to control what is in mobile
2 applications that are sent on their -- that are, you
3 know, distributed by their networks.

4 So Apple, for example, has recently cracked
5 down on location data being collected without consumer
6 consent. I think a lot of people are happy to see that,
7 myself included. But again, this problem of an uneven
8 playing field for people who are compliant with these
9 things is something that could be solved at the Apple
10 level and certainly from a regulatory burden and from a
11 risk of, you know, consumer class act lawsuit and so
12 forth, the stakes are much larger and the larger players
13 at the Apple scale have the ability to enforce those
14 things more -- both more rigorously from a technical
15 point of view. And frankly, I think you have a bigger
16 stick with which to force them to enforce it than I
17 think some of the, you know, sort of the size and the
18 thresholds and size, you know.

19 So I think in the thresholds that were in
20 the latest legislation draft, we would be qualified to
21 have to comply with CCPA, and yet we would have to, you
22 know, figure out how to resource that and do a lot of
23 work and you would have to regulate a bunch of people
24 our size. And I think that's probably lot less
25 efficient way than getting one large player or one or

1 two ecosystems largely to be compliant with this model.

2 So that would be, I think, my feedback on
3 that on that point.

4 A number of commentators about GDPR have
5 said both in the run-up to that legislation being passed
6 and taking effect and posting in effect have said that
7 some aspects of it help incumbents because it's -- you
8 know, they've established their audiences and new
9 emerging players have a harder time meeting the burdens
10 of the regulation. And I think there's some truth to
11 that.

12 So I think as somebody who employs people
13 and, you know, pays taxes in the State of California, I
14 think the innovation economy is driven by startups and
15 investment and growth so I would -- you know, I would
16 identify that as a very real factor in terms of the
17 ability for smaller and emerging and growing businesses
18 within -- within the pool of people who would be
19 potentially subject to this regulation as compared to
20 the larger players who now have these large mass of
21 audience.

22 And then finally, you know, I think, again,
23 I would just come back to what I hear from customers and
24 consumers, which is that, you know, the real issue is
25 selling and transferring our data, not whether, you

1 know, in any particular experience there is disclosure.
2 And so I think, you know, the work that is going into
3 this in the realm of electronic and web and mobile
4 software and applications, you know, is a little bit
5 moot if any direct mail house can also sell the fact
6 that I'm pregnant or someone in my family is and all of
7 that sort of, you know, end user experience can be
8 appended behind the scenes without the disclosure or any
9 other way.

10 And so I think that, again, I would just,
11 you know, at the risk of repeating myself, sort of urge
12 anyone involved in this as a stakeholder to consider
13 what the consumer really wants here, thank you, is
14 ultimately to not have their data, you know, being
15 transferred around with or without disclosure.

16 Thank you very much.

17 (Discussion off the record.)

18 MR. OLSTHORN: My name is Steve Olsthorn and
19 I'm, as many other folks in here, a cyber security
20 assessment specialist. And there is just a couple of
21 minor points -- well, maybe not minor points, but points
22 that I didn't hear yet that I would like to also pass on
23 for consideration. It's around HR data and whether this
24 falls under a key umbrella, if that can be clarified.

25 We heard about -- we've heard about a better

1 interpretation around can't discriminate and I think
2 there needs to be a lot more clarity there.

3 One thing from an assessment perspective, if
4 we can get some guidance clarity on what the auditors
5 will be seeking once an investigation is started or
6 what, you know, the company should be keeping ahead of
7 time, especially with the 12-month lookback.

8 The other piece too is the suppressing of
9 rights by location may also be an issue, if there could
10 be clarification there. So a Californian living
11 temporarily, let's say, in Florida or Alabama, some
12 guidance on how companies should consider that.

13 And then finally some guidance on mergers
14 and acquisitions for companies that are doing acquiring,
15 what kind of notice has to be given to the folks that
16 are in that data source that is being acquired.

17 Thank you.

18 MS. ROBINSON: This comment might be coming
19 out of left field a little bit, but I have been hearing
20 a lot from participants today that a lot of people are
21 very concerned with the cost of compliance for this new
22 regulation and all of the requirements that are going
23 into effect. And I'm kind of taking this out to the
24 federal level almost where a lot of federal agencies are
25 now granting safe harbors or regulatory sandboxes, so to

1 speak, for firms hoping to take a more innovative
2 approach to compliance.

3 Wondering whether the AG's Office might be
4 considering something like that for firms that are
5 hoping to take more innovative approaches, namely
6 artificial intelligence or machine learning, since the
7 cost of compliance could be so great with all of the
8 nuances of the regulation. So just wondering whether or
9 not innovative approaches might be seen as something
10 that is desirable in the field.

11 THE REPORTER: Can I get your name, please?

12 MS. ROBINSON: Leah Robinson.

13 MS. SCHESSER: We're going to keep the forum
14 going a little bit longer because we want to make sure
15 everybody who wants the opportunity to speak provides
16 comments today. So although it seems rather awkward
17 that we're just sitting up here and looking out at the
18 crowd, we're just giving everyone the opportunity to
19 make sure they are absolutely heard. So by all means,
20 step up to the microphone. If you want to leave, that's
21 okay too, but we're just going to hang tight up here.

22 MR. MYERS: I know nobody has been saying
23 anything for quite a while. I just want to say a couple
24 small items.

25 My name is Robert Myers -- testing, testing.

1 Can you hear me now? All right.

2 Since we haven't had anyone talk for a
3 while, I thought I should just make a couple comments
4 that I kept thinking about over and over again. My name
5 is Robert Myers. I come from the cyber security side.

6 One of the things that I just really want to
7 ask your team to really keep an eye on is under Category
8 6. We need to make sure that everyone gets privacy, has
9 the opportunity for privacy, that people know what
10 they're getting into that's simple, easy to understand.
11 A lot of times you have people that don't have the
12 technical understanding, they just click through things.
13 They don't know what they're clicking.

14 How many people have clicked through a user
15 license? Has anybody read a hundred page user license
16 other than me? We have someone. A couple of them.

17 It's nice, but the fact of the matter is it
18 gets so complicated and people always look at saying,
19 well, I fulfilled the requirement of the law, but they
20 don't actually fulfill the whole point of the law.
21 People have the option for privacy and not just if you
22 can afford it. The other -- so I just want to make sure
23 people have privacy, not just those who can afford it.

24 The other thing is under personal
25 information. Personal information is a broad topic.

1 Category of personal information, oddly enough as
2 convoluted as the GDPR did, they did a pretty good job.
3 They opened it up. But it's like I was having a
4 conversation earlier, it goes back to those IP
5 addresses. If I have an IP address and a time, I can
6 track down who that is. Anyone can. That's how law
7 enforcement does it every day.

8 But as long as you have two pieces, you can
9 take two pieces of data and identify a person or a
10 household very, very rapidly. It's a lot easier than
11 people think. And please consider that when you are
12 looking at your categories of data. Thank you much.

13 MS. SCHESSER: Would anybody else like to
14 speak?

15 (No response.)

16 MS. SCHESSER: Okay. Thank you so much for
17 coming. You can sign up, check the website, submit
18 written comments to privacy regulations at doj.ca.gov.
19 You can also use mail. We have a mailing address as
20 well. Of course, I'm speaking, it's not up on the slide
21 because that's how it rolls. Thank you so much for
22 coming and we hope to hear further feedback from people
23 if they would like to provide comments to us regarding
24 the regulations. Thank you.

25 (Proceedings concluded at 12:19 p.m.)

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I, ALICIA SANTANA, CSR NO. 12824, A CERTIFIED SHORTHAND REPORTER FOR THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

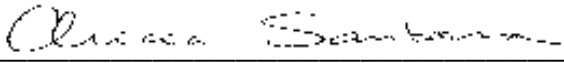
THAT THE FOREGOING TRANSCRIPT OF PROCEEDINGS WAS TAKEN BEFORE ME ON FRIDAY, JANUARY 25, 2019, AT THE TIME AND PLACE THEREIN SET FORTH; AND WAS TAKEN DOWN BY ME IN SHORTHAND, AND THEREAFTER TRANSCRIBED INTO TYPEWRITING UNDER MY DIRECTION AND SUPERVISION.

AND I HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT OF PROCEEDINGS IS A FULL, TRUE AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES SO TAKEN.

I FURTHER CERTIFY THAT I AM NOT A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OF THE PARTIES, NOR FINANCIALLY INTERESTED IN THE ACTION.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

DATED THIS 11TH DAY OF FEBRUARY, 2019.



ALICIA SANTANA, CSR NO. 12824

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