

# Digital Content Next

Legal and Legislative Committee  
April 9, 2019

## Agenda

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### Review DCN Proposed CCPA Amendments

### **Remove “is capable of being associated with”**

- Definition should be focused only on data that is linked to individuals

### **Remove “household”**

- Not all households include related people
- A single household member shouldn't necessarily exercise control of data for all household members

### **Remove “inferences”**

- Could force companies to reveal proprietary algorithms

### **Remove “probabilistic identifiers”**

- Probabilistic identifiers are imprecise. Requiring that this data be disclosed to an individual could lead to businesses disclosing personal information to the wrong person

### **Insert “reasonableness” standard with regard to data portability**

- Businesses should be required to “take only reasonable steps” to make a consumer’s data portable
- Data portability is a new, burdensome requirement for businesses
- GDPR requires portability only “where technically feasible”
- Would remove perverse incentive to over-collect data

### Clarify “sale”

- As currently drafted, “sale” is an exchange for monetary consideration and valuable consideration
- “sale” should include exchange for monetary consideration AND narrow definition of “valuable consideration”
- Transfer of data to service provider does constitute a “sale”

### **Clarify that contextual and 1st party behavioral ads may be served after a consumer opts out**

- “Advertising and marketing services” = business purpose
- Data sharing with a service provider does not constitute a “sale”
- Clarification: contextual and 1<sup>st</sup> party targeted ads allowed with notice and restrictions on service providers
- Clarify that service providers can use data for debugging and security purposes

### **Exclude employees from the definition of “consumer”**

- CCPA not intended to give employees broad rights over data related to their employment
- Clarify that “personal information” does not include data about professional contacts, contractors or workforce of a company



### Improve the carve-outs for journalism

- 1798.140 (f) “Commercial purposes” do not include for the purpose of ~~engaging in speech that state or federal courts have recognized as noncommercial~~ speech **protected under the United States Constitution or the California Constitution**, including political speech and journalism.

### Improve the carve-outs for journalism

- 1798.145 (k) The rights afforded to consumers and the obligations imposed on any **business, service provider, or third party** under this title shall not apply to the extent that they infringe on ~~the noncommercial activities~~ **speech of a person or entity described protected under the United States Constitution or in subdivision (b) of Section 2 of Article I of the California Constitution.**

### Improve the carve-outs for journalism

- 1798.105 (d) A business or a service provider shall not be required to comply with a consumer's request to delete the consumer's personal information if it is necessary for the business or service provider to maintain the consumer's personal information in order to:
  - (4) Exercise free speech **protected under the United States Constitution or the California Constitution**, ensure the right of another consumer to exercise his or her right of free speech, or exercise another right provided for by law.

## Private Right of Action

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### **Oppose any effort to broaden the Private Right of Action**

- Current version of CCPA confines the PROA to data breaches

## Clarify that Publishers can offer free and paid versions

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### **Clarify that publishers can require payment from consumers who don't want to see ads**

- 1798.125 prohibits discrimination against consumers who have exercised CCPA rights
- However, 1798.125 (a)(2) states “Nothing in this subdivision prohibits a business from charging a consumer a different price or rate, or from providing a different level or quality of goods or services to the consumer, if that difference is reasonably related to the value provided to the consumer by the consumer’s data.”
- Clarify that publishers can offer free and paid versions based on consumer preferences for ads

## Other Issues?

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