

Digital Content Next

Legal and Legislative Committee

July 14, 2020

(will start at 11:05 to allow
attendees to arrive – no audio while
we wait)

Agenda

CCPA Enforcement Begins

DC Tax on Advertising

Review of the Newly-Qualified Ballot Initiative, California Privacy Rights Act

CA AG Becerra sent enforcement letters on 7/1

- Focus on sensitive and children's data
- Press reports say AG focused on proper display of Do Not Sell My Information link
- Companies will have 30 days to fix problems

DCN Next Steps

- New Survey?
- Suggestions?

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DC Council prepared budget that includes 3% sales tax on:

“Advertising Services”

- “the planning, creating, placing, or display of advertising in newspapers, magazines, billboards, broadcasting, and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography, and production supervision.”

”Digital Advertising Services”

- “advertising services related to advertisements displayed on a digital interface, including advertisements in the form of banner advertising, search engine advertising, interstitial advertising, or other comparable advertising.”

“Personal Information”

- names, addresses, Internet Protocol addresses, biometric information, and “browser habits, consumer preferences, and any other data that can be attributed to a person and can be used for marketing, or determining access or costs related to insurance, credit, or health care.”

DCN working with broad coalition

- Led by ANA, DC Chamber of Commerce
- Position paper to council members today
- Meetings with council members this week

City Council to vote later this month (7/21)

- Mayor Bowser opposed new taxes, unclear if she would veto

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DC Tax on Advertising

Review of the Newly-Qualified Ballot Initiative, California Privacy Rights Act

California Privacy Rights Act – Proposed Ballot Initiative

- Establishes a California Privacy Protection Agency for enforcement
- Provides for liability immunity where a business passes a consumer's opt-out consent to an entity authorized by the business to collect personal information
- Limit businesses' use of "sensitive personal information"
- Extends the CCPA's employee and business-to-business exemptions until 2023
- Eliminates CCPA's 30-day period to cure violations after notification of alleged non-compliance
- Imposes limitations on the California Legislature to amend the law

Presentation will focus on first three

California Privacy Protection Agency (CPPA)

CPPA is a five-member commission

- Two appointed by Governor
- One each by the AG, Senate Rules Committee, and Assembly Speaker
- Expertise in technology, privacy and consumer rights

Authority

- Rulemaking
- Investigation and Enforcement
- Guidance on compliance
- Audit

AG retains authority to pursue civil actions and CPPA action must halt action if AG decides to pursue

- AG has rulemaking authority under CCPA to harmonize regulations

Transmission of Opt-Out Notice

Businesses that transmit consumer's opt-out to a downstream entity triggers requirements on the processor:

- May only use PI for the specified purpose
- May not sell or share PI
- May not retain, use or disclose PI

Transmission of opt-out consent provides liability protection from misuses by the processor

- Must not have actual knowledge or reason to believe processor will commit a violation

Text from CPRA

“(f)If a business communicates a consumer's opt-out request to any person authorized by the business to collect personal information, the person shall thereafter only use such consumer's personal Information for a business purpose specified by the business, or as otherwise permitted by this title, and shall be prohibited from:

- (1) selling or sharing the personal Information; or
- (2) retaining, using, or disclosing such consumer's personal information:
 - (A) for any purpose other than for the specific purpose of performing the services offered to the business,
 - (B) outside of the direct business relationship between the person and the business, or
 - (C) for a commercial purpose other than providing the services to the business.”

Text from CPRA

“(g) A business that communicates a consumer's opt-out request to a person pursuant to subdivision (f) shall not be liable under this title if the person receiving the opt-out request violates the restrictions set forth in the title, provided that, at the time of communicating the opt-out request, the business does not have actual knowledge, or reason to believe, that the person intends to commit such a violation. Any provision of a contract or agreement of any kind that purports to waive or limit In any way this subdivision shall be void and unenforceable.”

Sensitive Personal Information

CCPA defines sensitive personal information (SPI) to include:

- Precise geolocation; race; ethnicity; religion; genetic data; union membership; private communications; and certain sexual orientation, health, and biometric information
- Personal information that reveals the contents of a consumer's mail, email, and text messages; a consumer's account log-in, debit card, or credit card number in combination with any password or access credential

Businesses controlling SPI collection must inform consumers, at or before the point of collection

Consumers retain the right to limit a business's use of SPI

Businesses must provide a separate link titled "Limit the Use of My Sensitive Personal Information," enabling consumers to limit the use or disclosure of their SPI

CPRA Timeline for Implementation

January 2021:

- Extension of employee/business-to-business deadline to Jan. 2023
- Funding for the Consumer Privacy Fund
- California Privacy Protection Agency
 - The Agency would begin its rulemaking process “the later of July 1, 2021, or six months after the Agency provides notice to the Attorney General that it is prepared to begin the rulemaking process.”
 - Final regulations due by July 1, 2022

January 2022

- 12-month lookback period begins

January 2023

- All provisions of CPRA in effect
- Extension of employee and business-to-business expires

Other Issues?