



January 31, 2019

The Honorable Xavier Becerra
Attorney General, State of California
1300 I Street
Sacramento, CA 95814

Dear Attorney General Becerra:

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies, from small businesses, to household brands, across every segment of the advertising industry, including a significant number of California businesses. Our members engage in responsible data collection and use that benefit consumers and the economy. We believe privacy deserves effective protection in the marketplace.

We strongly support the objectives of the California Consumer Privacy Act (CCPA), but we have notable concerns around the likely negative impact on California consumers and businesses from some of the specific language in the law. We provide this initial comment to provide you with information about the significant importance of a data-driven and ad-supported online ecosystem, industry efforts to protect privacy, and in section III of the letter draw your attention to several areas that can be addressed and improved through the rulemaking process. We will provide more detailed comments over the coming weeks.

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

The free flow of data online fuels the economic engine of the Internet, creating major consumer benefit. For decades, online data-driven advertising 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 the content and services consumers expect and rely on, including video, news, music, and much more, at little or no cost to the consumer. Companies also collect data for 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

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>



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 have enthusiastically embraced the ad-supported model, and they have actively enjoyed the free content and services it enables. They are increasingly aware that those services are enabled by data collected about their interactions and behavior on the web and in mobile applications, and they support that exchange of value. 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) stated they like the ad-supported model, and 75 percent indicated that they would greatly decrease their engagement with the Internet were a different model to take its place.

II. Our Members Have Long Been Champions of Consumer Privacy

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 Digital Advertising Alliance YourAdChoices Program. The DAA created and enforces a self-regulatory code for all companies that collect or use data for interest-based advertising, based on practices recommended by the Federal Trade Commission (FTC) in its 2009 report on online behavioral advertising.³

The Principles in that code provide consumer transparency and control regarding data collection and use of web viewing data, application use data, and precise location data. Importantly, the YourAdChoices Program and the DAA Principles are a novel kind of industry-led initiative whereby *all* companies engaging in the described practices are subject to established privacy safeguard obligations. Also, the DAA Principles are independently monitored and enforced. To date, more than 90 compliance actions have been publicly announced.

The DAA Principles include rules around the collection and use of web viewing data for advertising and restrictions for purposes beyond advertising;⁴ strong prohibitions on the use of such data for eligibility purposes for employment, insurance, credit, and healthcare treatment;⁵ and detailed guidance around the application of the Principles in the mobile⁶ and cross-device⁷ environments. Most recently, to provide users with increased transparency about the source of

² *Id.*

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

⁴ DAA, *Self-Regulatory Principles for Multi-Site Data (MSD)* (Nov. 2011).


⁵ DAA, *MSD*, 4-5 (Nov. 2011); DAA, *Application of Self-Regulatory Principles to the Mobile Environment*, 31-32 (Jul. 2013).

⁶ DAA, *Application of the Self-Regulatory Principles to the Mobile Environment* (Jul. 2013).

⁷ DAA, *Application of the Self-Regulatory Principles of Transparency and Control to Data Used Across Devices* (Nov. 2015).



the political advertising they see online, the DAA released guidance on the application of the Principles of transparency and accountability to political advertising.⁸

The main avenue through which consumers receive disclosures and choices is through the DAA's YourAdChoices icon , which is served in or near ads over a trillion times per month worldwide. The YourAdChoices icon provides transparency outside of the privacy policy, and clicking on it allows consumers to access simple, one-button tools to control the future collection and use of data for interest-based advertising. Consumer awareness and understanding of the program continues to increase, and a 2016 study showed more than three in five consumers (61 percent) recognized and understood what the YourAdChoices Icon represents.⁹

The effectiveness of the Self-Regulatory Program also has been recognized by the United States government. At a 2012 White House event, Obama Administration officials including the then FTC Chairman and Secretary of Commerce publicly praised the DAA's cross-industry initiative. The DAA approach has also garnered kudos from the leadership at the FTC under both recent administrations for the program's pioneering privacy work.¹⁰

III. Consumers & Businesses Would Benefit from Clarification Concerning Certain CCPA Provisions

While our members strongly support the CCPA's intent to give consumers a choice about how their personal data is shared, we are concerned about the negative impact of certain sections of the CCPA and believe the law could be clarified through rulemaking to provide improved consumer protection and guidance to business. Such issues as the scope of the definition of personal information, the potential elimination of loyalty programs due to the non-discrimination requirements, and others continue to be not only problematic for the advertising community, but will also result in unintended harm to consumers. We highlight a few of our concerns here, and will provide more detailed comments on these points and others in the coming weeks.

- **Section 1798.115(d)** of the CCPA prohibits a company from selling consumer personal information that it did not receive directly from the consumer unless the consumer has received "explicit notice" and is provided an opportunity to exercise the right to opt out of that sale. **We urge the AG to recognize that a written assurance of CCPA compliance is sufficient and reasonable.**

⁸ DAA, *Application of Self-Regulatory Principles of Transparency & Accountability to Political Advertising*, (May 2018).

⁹ 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>.

¹⁰ 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."



- **Sections 1798.105 and 1798.120** of the CCPA allow consumers entirely to opt out of the sale of their data or delete their data; but the law does not explicitly permit a business to offer a consumer the choice to delete or opt out regarding some, but not all, of their data. **We request that the AG clarify that businesses may offer reasonable options to consumers to choose the types of “sales” they want to opt out of, the types of data they want deleted, or to completely opt out—and not have to just provide an all-or-nothing option.**
- **Section 1798.110(c)** of the CCPA arguably requires a business’ privacy policy to disclose to a consumer the specific pieces of personal information the business has collected about that consumer. **We ask the AG to clarify that a business does not need to create individualized privacy policies for each consumer to comply with the law.**

Without clarification and adjustments, these and other ambiguities in the law could 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 as you prepare for its implementation. To the extent that there are needed changes in the CCPA to protect consumer privacy and other important interests that cannot be rectified by this rulemaking, but are better suited for legislation, we urge you to make such recommendations to the California Legislature.

Sincerely,

Dan Jaffe
Group EVP, Government Relations
Association of National Advertisers
202-296-2359

Christopher Oswald
SVP, Government Relations
Association of National Advertisers
202-296-2359

Clark Rector
Executive Vice President-Government
Affairs
American Advertising Federation
202-898-0089

David Grimaldi
Executive Vice President, Public Policy
Interactive Advertising Bureau
202-800-0771

Alison Pepper
Senior Vice President
American Association of Advertising
Agencies, 4A's
202-355-4564

David LeDuc
Vice President, Public Policy
Network Advertising Initiative
703-220-5943