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

Lisa B. Kim, Privacy Regulations Coordinator
California Office of the Attorney General
300 South Spring Street, First Floor
Los Angeles, CA 90013

Email: privacyregulations@doj.ca.gov

March 23, 2020

Dear Attorney General Becerra,

The Insights Association (IA) submits the following comments regarding the proposed regulations implementing the California Consumer Privacy Act (CCPA) (CAL. CIV. CODE, § 1798.100 et seq.), particularly the third draft of the regulations circulated by your office on March 11, 2020.[1]

As previously indicated in comments submitted on December 6, 2019[2] and February 25, 2020[3] regarding the first two drafts of CCPA regulations, both of which are attached hereto (attachments #1 and #2, IA is the leading nonprofit trade association for the marketing research and data analytics industry and represents more than 545 individual and company members in California, with more than 5,500 members in total. Virtually all of these members will fall within the jurisdiction of the CCPA due to the fact that personal information of California residents is collected and transmitted for legitimate purpose by marketing research and data analytics companies and organizations in most instances. Since CCPA will have a profound impact on our industry, we appreciate the opportunity to submit additional recommendations on the latest draft of CCPA regulations.

After explaining who we are and what marketing research is, these comments will cover seven main points

[1] https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-text-of-second-set-mod-031120.pdf

[2] IA comments on 1st draft:
https://www.insightsassociation.org/sites/default/files/misc_files/insights_assoc_ccpa_reg_comments_12-6-19.pdf

[3] IA comments on 2nd draft:
https://www.insightsassociation.org/sites/default/files/misc_files/insights_association_ccpa_comments_to_ag_2-25-20.pdf

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IA's members include both marketing research and data analytics companies and organizations, as well as the research and analytics professionals and departments inside of non-research companies and organizations. They are the world's leading producers of intelligence, analytics and insights defining the needs, attitudes and behaviors of consumers, organizations, employees, students and citizens. With that essential understanding, leaders can make intelligent decisions and deploy strategies and tactics to build trust, inspire innovation, realize the full potential of individuals and teams, and successfully create and promote products, services and ideas.

What is "marketing research"? Marketing research is the collection, use, maintenance, or transfer of personal information as reasonably necessary to investigate the market for or marketing of products, services, or ideas, where the information is not otherwise used, without affirmative express consent, to further contact any particular individual, or to advertise or market to any particular individual.

An older definition of marketing research, used in California S.B. 756 in 2017, was "the collection and analysis of data regarding opinions, needs, awareness, knowledge, views, experiences and behaviors of a population, through the development and administration of surveys, interviews, focus groups, polls, observation, or other research methodologies, in which no sales, promotional or marketing efforts are involved and through which there is no attempt to influence a participant's attitudes or behavior."

1. Clarify the significance of deleting § 999.302 for defining personal information.

In the February 10 edits, your office added § 999.302 to the regulations, which reiterated that CCPA's "personal information" definition "depends on whether the business maintains information in a manner that 'identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular consumer or household.'" The section went on to clarify that IP addresses which could not reasonably be linked to a particular consumer or household would not be personal information. This section was deleted from the March 11 draft.

We respectfully submit that this addition and subsequent deletion create unnecessary confusion, and we request that you clarify your office's position. It is obviously critical for businesses to understand, as well as possible, the contours of CCPA's "personal information" definition. As you're no doubt aware, IP addresses in particular have been a much-discussed and somewhat controversial aspect of "personal information" definitions in other privacy laws. Following these most recent edits, your office's position on IP addresses is especially unclear.

2. Treat notice via telephone differently and at least allow for a short-form option.

The February 10 edits to the regulations clarify in § 999.305(a)(3)(d) that, "[w]hen a business collects personal information over the telephone or in person, it may provide the [collection] notice orally," but as we explained previously, the notices required to be read over the phone might often include not just collection notices, but also opt-out notices and financial incentive notices. Such a lengthy "preamble" to a phone call would be disastrous to research conducted over the phone.

Response rates for U.S. telephone surveys are lucky to reach ten (10) percent and adding an extended notice to the front-end of all calls will crater already low response rates. It would likely prove impossible to find respondents willing to sit through such a preamble before finally being given an opportunity to provide their input for a public opinion or political poll or in response to a government-sponsored survey, for example.

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Therefore, we again urgently request that the CCPA regulations allow for a short-form collection and opt-out notice for telephone interactions. For example, a short-form notice might, in simple straightforward terms: (i) alert the consumer that personal information will be collected; (ii) alert consumers of their right to opt out; and (iii) direct users to a privacy policy (likely online) where more information can be found or provide them the opportunity to give their email address and receive it via email.

Such a short-form notice would, by shortening the amount of "legalese" confronting consumers, better serve the goals of the CCPA without unnecessarily inhibiting legitimate research.

3. Loosen restriction on passing through costs of verification to accommodate special circumstances.

While the draft regulations prohibit businesses in § 999.233(d) from "requir[ing] the consumer *or the consumer's authorized agent* to pay a fee for the verification of their request to know or request to delete," the Insights Association's reservations remain.

In cases of death, for example, this provision may unnecessarily increase costs for businesses when dealing with executors, relatives or loved ones who are making requests under CCPA on behalf of the deceased, where such dealings regularly require the provision of a notarized death certificate and executor short form. Limitations need to be set in certain circumstances on the pass-through of verification costs, in order to avoid an undue burden on businesses. To review our previous comments on this issue,[4] please see attached.

4. Expand the email-only option for all requests, and apply to all relationships with consumers that are "exclusively online."

The CCPA draft regulations stipulate in § 999.312(a) that "[a] business that operates exclusively online and has a direct relationship with a consumer from whom it collects personal information shall only be required to provide an email address for submitting requests to know." IA once again urges expanding this email-only option to all requests, not just requests to know, and generally expanded to all relationships between consumers and businesses that are exclusively online, even if the businesses in question operate separately in a non-online context. To review our previous comments on this issue,[5] please see attached.

5. Broaden financial incentive disclosure guidance to contemplate situations where additional, non-monetary consideration is given in exchange for personal information.

The Insights Association also must reiterate that the financial incentive "value" calculation imposes an unrealistic and poorly-suited requirement in situations where financial incentives are not being given in a simple *quid pro quo* for personal information. A person choosing to participate in research is subject to a more complicated mix of motivations or "consideration" someone participating in a typical company loyalty program and the final CCPA regulations should reflect this reality. To review our previous comments on this issue,[6] please see attached.

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[4] Point 5, IA comments on 2nd draft,:
https://www.insightsassociation.org/sites/default/files/misc_files/insights_association_ccpa_comments_to_ag_2-25-20.pdf

[5] Point 2, IA comments on 2nd draft:
https://www.insightsassociation.org/sites/default/files/misc_files/insights_association_ccpa_comments_to_ag_2-25-20.pdf

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6. Clarify the meaning of "reasonably expect" and "just in time" in the mobile notice requirements.

IA respectfully requests that your office further clarify the meaning of "reasonably expect" and "just in time" in § 999.305(a)(4). To review our previous comments on this issue,[7] please see attached.

7. Delay enforcement of CCPA regulations.

The Insights Association previously urged that enforcement be delayed a further six months, until January 1, 2021, given the absence of lag time between the release of final CCPA regulations and the onset of CCPA enforcement this summer. The need for delay has been heightened exponentially due to the ongoing coronavirus pandemic. This was also stressed by a March 20, 2020 letter IA sent with 65 other organizations requesting forbearance.[8]

In many cases right now, businesses are struggling to implement CCPA compliance measures while working remotely. Furthermore, the costs of compliance must also now be balanced against the crushing macroeconomic impacts of the virus, including a looming recession. This delay would give businesses the bare minimum time to analyze the final regulations and respond accordingly and responsibly.

Conclusion

The Insights Association hopes the above comments will be useful to you and your staff as you finalize the CCPA regulations. We look forward to answering any questions you may have about the marketing research and data analytics industry and working with you and your office in furtherance of consumer privacy in California and the concomitant clarity on CCPA compliance.

Sincerely,

Howard Fienberg
Vice President, Advocacy
Insights Association

Stuart L. Pardau
Outside General Counsel
The Insights Association
(and Ponemon Institute Fellow)

[6] Point 3, IA comments on 2nd draft:
https://www.insightsassociation.org/sites/default/files/misc_files/insights_association_ccpa_comments_to_ag_2-25-20.pdf

[7] Point 4, IA comments on 2nd draft:
https://www.insightsassociation.org/sites/default/files/misc_files/insights_association_ccpa_comments_to_ag_2-25-20.pdf

[8] Joint industry letter requesting forbearance:
https://www.insightsassociation.org/sites/default/files/misc_files/joint_industry_letter_requesting_a_delay_in_ccpa_enforcement_-_updated_3.20.2020.pdf

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ATTACHMENT #1

Insights Association comments on 1st CCPA regulations draft

12/6/19

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The Honorable Xavier Becerra
Attorney General, State of California

Privacy Regulations Coordinator
California Office of the Attorney General

Email: privacyregulations@doj.ca.gov

December 6, 2019

Dear Attorney General Becerra

The Insights Association ("IA") submits the following comments regarding the proposed regulations[9] implementing the California Consumer Privacy Act ("CCPA") (CAL. CIV. CODE, § 1798.100 et seq.).

IA represents more than 530 individual and company members in California, with more than 5,300 members in total. Virtually all of these members will fall within the jurisdiction of the CCPA due to the fact that personal information of California residents is collected and transmitted for legitimate purpose by marketing research and data analytics companies and organizations in most instances.

IA is the leading nonprofit trade association for the marketing research and data analytics industry. IA's members are the world's leading producers of intelligence, analytics and insights defining the needs, attitudes and behaviors of consumers, organizations, employees, students and citizens. With that essential understanding, leaders can make intelligent decisions and deploy strategies and tactics to build trust, inspire innovation, realize the full potential of individuals and teams, and successfully create and promote products, services and ideas.

What is "marketing research"? Marketing research is the collection, use, maintenance, or transfer of personal information as reasonably necessary to investigate the market for or marketing of products, services, or ideas, where the information is not otherwise used, without affirmative express consent, to further contact any particular individual, or to advertise or market to any particular individual. An older definition of marketing research, used in California S.B. 756 in 2017, was "the collection and analysis of data regarding opinions, needs, awareness, knowledge, views, experiences and behaviors of a population, through the development and administration of surveys, interviews, focus groups, polls, observation, or other research methodologies, in which no sales, promotional or marketing efforts are involved and through which there is no attempt to influence a participant's attitudes or behavior."

The CCPA will have a profound impact on the business community, including the marketing research and data analytics industry. According to the August 2019 estimate from Berkeley Economic Advising and Research for the Attorney General's office, compliance with CCPA regulations (not including compliance

[9] https://www.oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-proposed-regs.pdf

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with the statute itself) would amount to $467 million to $16.454 billion per year.[10] In this regard, we appreciate the opportunity to submit IA's recommendations on the draft regulations.

Our primary concerns focus on: (1) limiting the "authorized agent" concept to minors, and elderly or incapacitated individuals; (2) exempting marketing research from notices of financial incentives for research participation or, alternatively, providing for an opt-in regime in place of the notices; (3) allowing for email requests in lieu of an interactive webform; (4) clarifying how § 999.315 relates to existing "Do Not Track" requirements, and delaying implementation of this requirement; (5) setting the response times for requests to know or delete and opt-out requests at a uniform 45 days; and (6) issuing further guidance on how CCPA applies to personal information collection via telephone.

1. Limit the "authorized agent" concept to minors, and elderly or incapacitated individuals.

Under the draft regulations, a consumer may designate an authorized agent[11] to submit opt-out requests, and requests to know and delete. Per § 999.326, when a consumer makes a request through an authorized agent, "the business may require that the consumer: (1) Provide the authorized agent written permission to do so; and (2) Verify their own identity directly with the business."

As currently drafted, there would be no tangible limitation on this procedure; anyone could submit a request through an authorized agent.
This option will be unnecessary in most cases, increase paperwork associated with the verification process, and open the door for fraudulent requests. Except in cases where the consumer is a minor, or someone who genuinely needs an authorized agent to submit a request (such as an elderly or incapacitated individual), requiring requests to be submitted by consumers themselves would better serve CCPA's purpose.

2. Exempt marketing research from notices of financial incentives for research participation or, alternatively, provide for an opt-in regime in place of the notices.

Under § 999.307, businesses would need to give notice of financial incentives for the purpose of explaining to the consumer "each financial incentive or price or service difference a business may offer in exchange for the retention or sale of a consumer's personal information so that the consumer may make an informed decision on whether to participate."[12] The notice would have to include a "good faith

[10] "Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations." August 2019.
http://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/CCPA_Regulations-SRIA-DOF.pdf

[11] As defined by § 999.301, an "authorized agent" is "a natural person or a business entity registered with the Secretary of State that a consumer has authorized to act on their behalf subject to the requirements set forth in section 999.326."

[12] § 999.307. "Notice of Financial Incentive (a) Purpose and General Principles (1) The purpose of the notice of financial incentive is to explain to the consumer each financial incentive or price or service difference a business may offer in exchange for the retention or sale of a consumer's personal information so that the consumer may make an informed decision on whether to participate. (2) The notice of financial incentive shall be designed and presented to the consumer in a way that is easy to read and understandable to an average consumer. The notice shall: a. Use plain, straightforward language and avoid technical or legal jargon. b. Use a format that draws the consumer's attention to the notice and makes the notice readable, including on smaller screens, if applicable. c. Be available in the languages in which the business in its ordinary course provides contracts, disclaimers, sale announcements, and other information to consumers. d. Be accessible to consumers with disabilities. At a minimum, provide information

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estimate of the value of the consumer's data that forms the basis for offering the financial incentive." Section 999.337 spells out eight different methods for calculating that value.[13]

The regulations requiring notice of financial incentives seem primarily designed to deal with situations where companies offer some discount or free service in return for the sharing or sale of the consumer's personal information. Such situations often involve passive data collection under terms that are not entirely transparent.

Financial incentives in marketing research are different.

Marketing research requires robust participation and representation to be effective. IA members frequently achieve this by offering financial incentives to research participants (also known as respondents). For example, a doctor may be offered an honorarium to complete a survey about various pharmaceuticals, or an individual may be offered a gift card to participate in a half-day focus group about important public policy issues in their community.

In these and other similar cases, research respondents often participate for a variety of non-monetary reasons, including a desire to share opinions that will help improve product/service quality or simply on subject matter that a respondent may be passionate about. People care about the issues our members ask about, and like giving their opinions. Nevertheless, because of the costs sometimes associated with fielding a research study, insights professionals cannot afford to take participation for granted. Financial incentives of various kinds help complete research as quickly and effectively as possible.
Many exchanges between businesses and consumers involving personal information (such as those between researcher and respondent) are complicated interactions motivated by a variety of reasons. Often, there is no simple *quid pro quo* involving money for information.

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on how a consumer with a disability may access the notice in an alternative format. e. Be available online or other physical location where consumers will see it before opting into the financial incentive or price or service difference. (3) If the business offers the financial incentive or price of service difference online, the notice may be given by providing a link to the section of a business's privacy policy that contains the information required in subsection (b). (b) A business shall include the following in its notice of financial incentive: (1) A succinct summary of the financial incentive or price or service difference offered; (2) A description of the material terms of the financial incentive or price of service difference, including the categories of personal information that are implicated by the financial incentive or price or service difference; (3) How the consumer can opt-in to the financial incentive or price or service difference; (4) Notification of the consumer's right to withdraw from the financial incentive at any time and how the consumer may exercise that right; and (5) An explanation of why the financial incentive or price or service difference is permitted under the CCPA, including: a. A good-faith estimate of the value of the consumer's data that forms the basis for offering the financial incentive or price or service difference; and b. A description of the method the business used to calculate the value of the consumer's data."

[13] § 999.337 "(b) To estimate the value of the consumer's data, a business offering a financial incentive or price or service difference subject to Civil Code section 1798.125 shall use and document a reasonable and good faith method for calculating the value of the consumer's data. The business shall use one or more of the following: (1) The marginal value to the business of the sale, collection, or deletion of a consumer's data or a typical consumer's data; (2) The average value to the business of the sale, collection, or deletion of a consumer's data or a typical consumer's data; (3) Revenue or profit generated by the business from separate tiers, categories, or classes of consumers or typical consumers whose data provides differing value; (4) Revenue generated by the business from sale, collection, or retention of consumers' personal information; (5) Expenses related to the sale, collection, or retention of consumers' personal information; (6) Expenses related to the offer, provision, or imposition of any financial incentive or price or service difference; (7) Profit generated by the business from sale, collection, or retention of consumers' personal information; and (8) Any other practical and reliable method of calculation used in good-faith."

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These exchanges are also, at least in the research context, generally entered into freely by both parties. If consumers knowingly consent to a financial incentive like those described in the marketing research scenarios described above, the CCPA's drafters likely did not intend to interfere in such a relationship.

The regulations do not appear to have been written with marketing research in mind and would inhibit research in an unintended way. Accordingly, the regulations should exempt marketing research participation from notices of financial incentives.

In the alternative, if such an exemption is not feasible, the regulations should provide an opt-in regime whereby the amount of the financial incentive (if any) will be disclosed prior to the commencement of the marketing research, and the respondent (or individual whose information is being used for marketing research purposes) will have the sole option to determine whether their personal information will be used for research or not.

3. Allow for email requests in lieu of an interactive webform.

Under Sections 999.312 and 999.315 of the draft CCPA regulations, businesses must provide two or more designated methods for submitting requests to know and opt-out, including, at a minimum, a toll-free telephone number and, if the business operates a website, an "interactive webform" accessible through the business's website.

Many California businesses, including many of our members, have limited resources, both in terms of personnel and technological expertise. Requiring these businesses to launch an interactive webform imposes new burdens without furthering CCPA's purposes. As such, email correspondence would better serve CCPA's purposes by allowing consumers to state their questions and concerns directly, and to start a conversation regarding their privacy on their own terms.

4. Clarify how § 999.315 relates to existing "Do Not Track" requirements, and delay implementation of this requirement.

Under § 999.315, "[i]f a business collects personal information from consumers online, the business shall treat user-enabled privacy controls, such as a browser plugin or privacy setting or other mechanism, that communicate or signal the consumer's choice to opt-out of the sale of their personal information as a valid [opt-out] request."

IA seeks clarification on how this regulation relates to existing requirements related to "Do Not Track" signals. Under current California law, businesses are required to disclose in their privacy policies how they respond to such signals, but are not required to honor them. Would the regulations require that businesses honor "Do Not Track" signals, or would the regulations only apply to "a browser plugin or privacy setting" which more specifically communicates a consumer's desire that a business not *sell* their personal information?

A "Do Not Track" signal is not the same as a "do not sell" request. For example, a consumer may set her browser to "Do Not Track" because she does not want businesses tracking her browsing activities (and perhaps serving her with targeted ads), but it does *not* necessarily follow that the consumer would want to opt out of the sale of her information in every scenario.

Irrespective of this desired clarification, IA requests that the Attorney General's office delays implementation of any regulation related to a "browser plugin or privacy setting or other mechanism" for

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an additional year. As discussed above, many of our members are smaller companies with limited technological capabilities. This concern is obviously not just limited to the marketing research and data analytics industry. We believe such smaller businesses will need additional time to work out the complicated implementation and response procedures related to this question.

5. Set the response times for requests to know or delete and opt-out requests at a uniform 45 days.

Under §999.313 of the draft CCPA regulations, businesses must confirm receipt of requests to know or delete information within 10 days, and respond substantively to the requests within 45 days. Under § 999.315, businesses must "act upon [an opt-out] request as soon as feasibly possible, but no later than 15 days from the date the business receives the request."

These deadlines are unnecessarily complicated. The timeframe to respond to all requests should be set at a uniform 45 days.

However, the extension to 90 days under § 999.313 ("provided that the business provides the consumer with notice and an explanation of the reason that the business will take more than 45 days to respond to the request") and the requirement under § 999.315 that third parties be notified of opt-out requests within 90 days should both remain unchanged.

6. Issue further guidance on how CCPA applies to personal information collection via telephone.

Finally, the CCPA applies to the collection of all personal information, by whatever means, but does not give any guidance on unique compliance issues with different modes of collection.

In particular, the current draft regulations do not efficiently address information collection via telephone. For example, in a marketing research phone call where a financial incentive is involved, the caller would have to verbally read out the contents of three different notices: the notice at collection, notice of the opt-out right, and the notice of financial incentive. Such a three-part notice, delivered at the outset of the call, would be unduly cumbersome and likely result in significantly fewer respondents ever completing a research interaction via telephone (current response rates for U.S. telephone surveys rarely break 10 percent already). Such an outcome would not further the purposes of the CCPA.

As an alternative, the finalized regulations could require instead that, where information is collected via telephone, listeners may be directed to a URL where the required notices are posted, or callers may read out a short-form version of the notices.

Conclusion

The Insights Association hopes that the above comments will be useful to you and your staff.

We look forward to answering any questions you or your staff may have about the marketing research and data analytics industry, and working with you and your office in furtherance of consumer privacy in California.

Sincerely,

Howard Fienberg
Vice President, Advocacy
Insights Association

Stuart L. Pardau
Outside General Counsel
Insights Association (and Ponemon Institute Fellow)

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ATTACHMENT #2

Insights Association comments on 2nd CCPA regulations draft

2/25/20

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The Honorable Xavier Becerra
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California Office of the Attorney General
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February 25, 2020

Dear Attorney General Becerra

The Insights Association ("IA") submits the following comments regarding the proposed regulations implementing the California Consumer Privacy Act ("CCPA") (CAL. CIV. CODE, § 1798.100 et seq.), particularly the most recent edits to the regulations circulated by your office on February 10, 2020.[14]

IA represents more than 545 individual and company members in California, with more than 5,500 members in total (and many of those non-California-based businesses driving revenue for the state through investment, travel and research and analytics studies in California). Virtually all of these members will fall within the jurisdiction of the CCPA due to the fact that personal information of California residents is collected and transmitted for legitimate purpose by marketing research and data analytics companies and organizations in most instances.

IA is the leading nonprofit trade association for the marketing research and data analytics industry. IA's members include both marketing research and data analytics companies and organizations, as well as the research and analytics professionals and departments inside of non-research companies and organizations. They are the world's leading producers of intelligence, analytics and insights defining the needs, attitudes and behaviors of consumers, organizations, employees, students and citizens. With that essential understanding, leaders can make intelligent decisions and deploy strategies and tactics to build trust, inspire innovation, realize the full potential of individuals and teams, and successfully create and promote products, services and ideas.

What is "marketing research"? Marketing research is the collection, use, maintenance, or transfer of personal information as reasonably necessary to investigate the market for or marketing of products, services, or ideas, where the information is not otherwise used, without affirmative express consent, to further contact any particular individual, or to advertise or market to any particular individual. An older definition of marketing research, used in California S.B. 756 in 2017, was "the collection and analysis of data regarding opinions, needs, awareness, knowledge, views, experiences and behaviors of a population,

[14] https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-text-of-mod-redline-020720.pdf

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through the development and administration of surveys, interviews, focus groups, polls, observation, or other research methodologies, in which no sales, promotional or marketing efforts are involved and through which there is no attempt to influence a participant's attitudes or behavior."

As IA indicated in comments submitted on December 6, 2019 regarding the first draft of CCPA regulation,[15] the CCPA will have a profound impact on the business community, including the marketing research and data analytics industry. In this regard, we appreciate the opportunity to submit additional recommendations on the latest draft CCPA regulations.

1. Promulgate additional clarification on telephone notices, including a short-form option.

The most recent edits to the regulations clarify in § 999.305(a)(3)(d) that, "[w]hen a business collects personal information over the telephone or in person, it may provide the [collection] notice orally."

As we argued in previous comments, in many cases the notices required to be read over the phone would include not only collection notices, but also opt-out notices and, potentially, financial incentive notices as well. This extended "preamble" to a phone call would be significantly detrimental to phone researchers. Response rates for U.S. telephone surveys rarely exceeds ten (10) percent. The addition of an extended notice to the front-end of all calls will likely result in significant drop-off rates from these already low rates. It would likely prove impossible to find respondents willing to sit through such a preamble before finally being given an opportunity to provide their opinion for a public opinion or political poll or in response to a government-sponsored survey.

As such, we urgently request that the finalized regulations allow for a short-form collection and opt-out notice for telephone interactions. For example, a short-form notice might, in simple straightforward terms: (i) alert the consumer that personal information will be collected; (ii) alert consumers of their right to opt out; and (iii) direct users to a privacy policy (likely online) where more information can be found or provide them the opportunity to give their email address and receive it via email.

We believe such a short-form notice would, by shortening the amount of "legalese" confronting consumers, better further the goals of the CCPA without unnecessarily inhibiting legitimate research.

2. Expand the email-only option for all requests, and apply to all relationships with consumers that are "exclusively online."

The recent edits also stipulate in § 999.312(a) that "[a] business that operates exclusively online and has a direct relationship with a consumer from whom it collects personal information shall only be required to provide an email address for submitting requests to know."

While IA lauds this edit, we suggest the following two additional changes which would better streamline the request process for both consumers and businesses:

First, this email-only option should be expanded to all requests, not just requests to know.

Second, the email-only option should be expanded to all *relationships* between consumers and businesses that are exclusively online, even if the business itself operates separately in a non-online context.

[15] https://www.insightsassociation.org/sites/default/files/misc_files/insights_assoc_ccpa_reg_comments_12-6-19.pdf

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The reason for this second request is simple. In the marketing research and data analytics industry, as many other industries, firms often have relationships with individual consumers that are exclusively online, but relationships with other consumers that are not. For example, a marketing research firm may operate an online survey panel, but also conduct phone research. As the regulations are currently drafted, a firm that engaged both these modalities would not be able to avail itself of the email-only option with respect to its online survey panel, even though email is a perfectly viable, and indeed the most appropriate, option for communicating with those panel members, who are already accustomed to online interaction with the firm.

3. Broaden financial incentive disclosure guidance to contemplate situations where additional, non-monetary consideration is given in exchange for personal information.

Following the latest edits to the draft regulations, the financial incentive notice remains problematic for the marketing research and data analytics industry. In particular, the "value" calculation imposes an unrealistic and poorly-suited requirement in situations where financial incentives are not being given in a simple *quid pro quo* for personal information, as in a traditional loyalty program.

In our industry, financial incentives, such as a gift card or reward points (which are usually small in value), are frequently offered to encourage participation in a survey or other research study. These incentives are *not* designed to be simple compensation for a participant's services or his or her personal information. Instead, these small incentives are designed to sweeten the value proposition for a potential participant just slightly in an effort to bolster participation rates. Participants generally enjoy participating in research studies and giving their opinions. Indeed, participants often elect to respond without additional financial incentive at all.

In other words, there is a more complicated mix of motivations or "consideration" at play when a person chooses to participate in research. The finalized CCPA regulations should reflect this reality. While the Insights Association understands the need for some kind of notice, such notice should be flexible enough to accommodate more complex situations. For example, the following text could be added at the end of your most recent addition at § 999.337(b) of the draft regulations: "*In its notice of financial incentive, a business may also identify any additional consideration the consumer is receiving aside from the incentive, and request the consumer's acknowledgement that the incentive and additional consideration together constitute fair value for the personal information."*

Insights produced by our industry, often utilizing participant incentives in the development process, drive decisions across all sectors of the economy, including government.

4. Clarify mobile notice requirements, particularly the meanings of "reasonably expect" and "just-in-time."

The updated draft regulations specify in § 999.305(a)(4) that "[w]hen a business collects personal information from a consumer's mobile device for a purpose that the consumer would not *reasonably expect*, it shall provide a *just-in-time notice* containing a summary of the categories of personal information being collected and a link to the full notice at collection."

The Insights Association respectfully requests that your office further clarify the meaning of "reasonably expect" in the above edit. The example added in the latest edits, related to the flashlight application, is helpful, but still incomplete and therefore unsatisfactory. For example, must the notification appear each time the app is used? Solely the first instance of collection?

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Likewise, IA requests further clarification on the meaning of "just-in-time." Is a pop-up notification the only way to comply with this requirement? Does the notification need to be presented every time an application is opened, or only the first time a consumer uses the application? We believe these and similar questions remain open, after the edits.

5. Loosen restriction on passing through costs of verification to accommodate special circumstances.

The draft regulations also now prohibit businesses in § 999.233(d) from "requir[ing] the consumer to pay a fee for the verification of their request to know or request to delete." The regulations go on to explain that a business may not, for example, "require a consumer to provide a notarized affidavit to verify their identity unless the business compensates the consumer for the cost of notarization."

While this requirement is perhaps necessary as a general rule, it may also be problematic for businesses in certain special cases where the only way to verify a person's identity or an authorized agent's authority is through a notarized document. In cases of death, for example, this provision may unnecessarily increase costs for businesses when dealing with executors, relatives or loved ones who are making requests under CCPA on behalf of the deceased, where such dealings regularly require the provision of a notarized death certificate and executor short form.

This provision is also potentially ripe for abuse. When a consumer submits an erasure request on behalf of a friend or relative, for example, how would the consumer prove they are who they claim to be and that they are in fact acting on behalf of another consumer? All of this would require official documents of some form, such as a birth certificate (or a death certificate, as in the prior example), and would require authentication via an apostile or notary, the services of which will not be provided for free. Since the regulations prevent passing such costs on to the party seeking verification, this could quickly become an undue burden on businesses.

6. Provide Time for Businesses to Comply Before Enforcement.

Given the absence of lag time between the release of final CCPA regulations and the onset of CCPA enforcement this summer, the Insights Association urges that CCPA enforcement be delayed until January 1, 2021. This would give businesses the minimum amount of time to comply with these complex new privacy requirements – many of which were not in the original statute or were changed in various ways by the regulation – and ensure that consumers are duly protected and accommodated.

Conclusion

The Insights Association hopes the above comments will be useful to you and your staff. We look forward to answering any questions you may have about the marketing research and data analytics industry and working with you and your office in furtherance of consumer privacy in California and streamlining CCPA compliance for both businesses and consumers.

Sincerely,

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