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REPORTER'S TRANSCRIPT OF AUDIO RECORDING
OF THE CALIFORNIA DEPARTMENT OF JUSTICE
HEARING ON PROPOSED REGULATIONS FOR
THE CALIFORNIA CONSUMER PRIVACY ACT
WEDNESDAY, DECEMBER 4, 2019

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PAGES 1 - 85

1 REPORTER'S TRANSCRIPT OF AUDIO RECORDING OF THE
2 CALIFORNIA DEPARTMENT OF JUSTICE HEARING ON PROPOSED
3 REGULATIONS FOR THE CALIFORNIA CONSUMER PRIVACY ACT,
4 HELD AT MILTON MARKS CONFERENCE AUDITORIUM, 455
5 GOLDEN GATE AVENUE, SAN FRANCISCO, CALIFORNIA AT
6 10:03 A.M., WEDNESDAY, DECEMBER 4, 2019, TRANSCRIBED
7 BY SHAWNA HOGAN COX, C.S.R. NO. 14038.

8
9
10 APPEARANCES:

11
12 STACEY SCHESSER

13 ATTORNEY GENERAL NICKLAS AKERS

14 DEPUTY ATTORNEY GENERAL LISA KIM

15 ELEANOR BLUME

16 DEPUTY ATTORNEY GENERAL HUEY LONG

17
18 SPEAKERS:

19
20 CURT AUGUSTINE

21 JOHN WILLIAM TEMPLETON

22 JOANNE COOPER

23 JOANNA STOREY

24 DAN JAFFE

25 TODD SMITHLINE

1 SPEAKERS , CONTINUED

2

3

4 ALAN TITUS

5 MAX KORNBLITH

6 HAYLEY TSUKAYAMA

7 EDWARD HU

8 RICK ARNEY

9 JASON MERTZ-PRICKETT

10 KATHLEEN LU

11 EMILY BOROWSKI

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13 EMILY FISHER

14 HENRY LAU

15 CLIFFORD WALDECK

16 PIERLUIGI OLIVERIA

17 BARBARA LAWLER

18 EMILY EMERY

19 ASHKAN SOLTANI

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SAN FRANCISCO, CALIFORNIA

WEDNESDAY, DECEMBER 4, 2019, 10:03 A.M.

--ooOoo--

STACEY SCHESSER: Good morning and thank you for being here.

On behalf of the California Department of Justice and Attorney General Xavier Becerra, I would like to welcome everyone to today's hearing regarding the proposed regulations for the California Consumer Privacy Act. 10:03

My name is Stacey Schesser with the privacy unit of the Department's consumer law section, and I will be the hearing officer for today's proceedings. 10:03

Also present here today with me are Nick Akers, Senior Assistant Attorney General for the consumer law section, Lisa Kim, Deputy Attorney General for the privacy unit, Eleanor Blume, Special Assistant to the Attorney General, and Deputy Attorney General Huey Long, who will also serve as today's timekeeper. 10:03

For the record, today is Wednesday, December 4th, 2019, and the time is 10:03 A.M. We 10:04

1 are at the --

2 UNKNOWN FEMALE: Milton Marks --

3 STACEY SCHESSER: -- Milton Marks Conference

4 Auditorium located at 455 Golden Gate Ave., San

5 Francisco, California. 10:04

6 Before we begin, there are a few points I

7 would like to make. The notice of proposed

8 rulemaking for the CCPA regulations was published in

9 the California Regulatory Notice Register on

10 October 11th, 2019 in Register No. 41-Z starting at 10:04

11 page 1341.

12 The notice and related rulemaking documents

13 were posted on the Attorney General's website on

14 October 10th, 2019 and were mailed to all interested

15 parties who had requested rulemaking notices. 10:04

16 Today is the third of four public hearings

17 that were announced in the notice. The deadline for

18 submitting written comments is this Friday,

19 December 6th, 2019 at 5:00 P.M. Pacific time.

20 We recently posted additional resources on 10:04

21 our website about the DOJ's CCPA rulemaking process

22 including two documents in PDF format entitled "Tips

23 on Submitting Effective Comments" and "Information

24 About the Rulemaking Process." Please visit

25 www.oag.ca.gov/ccpa for more information. 10:05

1 Today's public hearing is quasi-legislative
2 in nature and is being held pursuant to the
3 California Administrative Procedures Act. The
4 California Administrative Procedures Act specifies
5 that the purpose of this hearing is to receive public 10:05
6 comments pertaining to the proposed regulations.

7 If you are speaking today, we ask that you
8 limit your comments to the proposed regulations or
9 the rulemaking procedures that we are following. We
10 do not intend to answer questions or otherwise engage 10:05
11 in dialogue in response to any oral or written
12 comment. However, we may ask that you speak slower
13 or louder or ask a limited follow-up question to
14 clarify a point.

15 Today's hearing is being audio-recorded and 10:05
16 will be transcribed by a court reporter. The
17 transcript of the hearing and any written comments
18 presented during the hearing will be made part of the
19 rulemaking record. Please try your best to speak
20 slowly and clearly to help the court reporter create 10:06
21 the best possible record.

22 If you have brought written comments that
23 you would like to submit during the hearing today,
24 please give them to a staff member at the sign-in
25 table. 10:06

1 After the public comment period ends, the
2 Department will review and consider all relevant
3 comments and recommendations provided at the public
4 hearings and in writing. The Department will then
5 compile a summary of each relevant comment or 10:06
6 recommendation and prepare a response to it, which
7 will be included in the final Statement of Reasons.

8 Once the final Statement of Reasons is
9 complete, the entire rulemaking record will be
10 submitted to the Office of Administrative Law, and a 10:06
11 copy of the final Statement of Reasons, along with a
12 notification of any changes that were made to the
13 proposed regulations, will also be posted on the
14 Attorney General's website.

15 We are required to notify all persons who 10:06
16 provided a comment, and all those otherwise
17 interested, of any revisions to the proposed
18 regulations and any new material relied upon in
19 proposing these rules.

20 Accordingly, there is a check-in table 10:07
21 located outside of this room where speakers and
22 attendees can sign in and provide their contact
23 information. You may sign in to speak without
24 providing your name or contact information; however,
25 please note that we will not then be able to provide 10:07

1 you with notice of any revisions to the rules or
2 other rulemaking activities.

3 If you are intending to speak at today's
4 hearing, you should have received a number when you
5 signed in. When we call your number, please come up 10:07
6 to the microphone, and if you would like to be
7 identified, state and spell your full name and
8 identify the organization you represent, if any. If
9 you have a business card, please provide it to us
10 directly before approaching the microphone. 10:07

11 Each speaker will have five minutes to
12 speak. To assist the speakers, Huey will hold up a
13 card to alert the speaker when they only have
14 30 seconds left to speak. In the interest of time,
15 if you agree with comments made by a prior speaker, 10:08
16 please state that fact and add any new information
17 you feel is pertinent to the issue.

18 Also there is no need to read aloud any
19 written comments submitted. All comments, whether
20 written or oral, will be responded to by our office. 10:08
21 If we have remaining time after all the speakers have
22 had a turn, we will give the speakers the opportunity
23 to take a second turn and add to their remarks.

24 If you would like to make an oral comment
25 today and have not received a number, please go ahead 10:08

1 and do so now outside at the table.

2 Lastly, we will need to take breaks during
3 this proceeding, including at least a 30-minute lunch
4 break. If it appears that we have no speakers
5 waiting for their turn to provide comments, we may 10:08
6 end the hearing.

7 At this time can we please have the first
8 speaker come to the microphone. In addition, if you
9 are in line to speak soon, please feel free to come
10 down to the first row. 10:08

11 You can hand me your card. Thank you so
12 much.

13 Good morning.

14 CURT AUGUSTINE: Good morning.

15 I'm Curt Augustine, that's C-U-R-T 10:09
16 A-U-G-U-S-T-I-N-E, and I'm with the Alliance of
17 Automobile Manufacturers, an organization that
18 represents 12 of the world's largest auto
19 manufacturers. We will be submitting written
20 comments later this week of various general issues, 10:09
21 but I will limit my comments today to six specific
22 auto-related issues that we would like to address in
23 the regulations.

24 The first issue that we would like to --
25 allow for the auto makers to retain and use the 10:09

OSF
1-1

1 Vehicle Information Number for safety and quality
2 performance issues. Auto makers rely on the VINs to
3 link vehicle-related information for purposes for
4 analyzing and addressing safety, quality,
5 performance, and efficiency and security issues. 10:09

6 In order for us to be able to adequately
7 track how vehicles perform over time for these
8 purposes, auto makers need to collect the data on
9 VINs. This VIN-related information is essential to
10 improve not only vehicles and their safety but our 10:10
11 nation's entire transportation network.

12 Although the benefits of such data rely on
13 the use of VINs, other identifiers are typically not
14 necessary. And that's important. So, therefore, the
15 Auto Alliance requir -- requests, pardon me, that the 10:10
16 Attorney General adopt one of the three written
17 proposals that we will submit. But our preference
18 would be that we are given the permission to use data
19 that is stored only with the identification number
20 and that is -- and all data that is not considered 10:10
21 consumer personal information.

22 The second issue would be to allow an
23 exemption for reasonable data-sharing between
24 suppliers, dealers, and manufacturers. As you know,
25 the CCPA exempts from sale opt out requirements on 10:10

OSF
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OSF
1-2

1 the sharing of vehicle and owner information for the
2 purposes of recall repairs. However, vehicle
3 manufacturers, auto dealers, and suppliers routinely
4 use other information for reasonable non-warranty,
5 non-recall purposes that benefit consumers. 10:11

6 Consumers may not recognize that, by asking
7 manufacturers or dealers not to sell their personal
8 information, this sharing of data between these
9 partners will be disrupted in ways that directly
10 affect those customers. 10:11

11 For instance, when traveling, consumers may
12 be surprised to learn that, if they've opted out and
13 they're out of town and -- the dealer there that has
14 their vehicle under warranty may not be able to
15 obtain their past service records. Or when consumers 10:11
16 move, auto makers don't have infor -- privy to that
17 information and are unable to update them on
18 non-safety recall information.

19 So the Alliance respectfully requests that
20 the Attorney General clarify that such data-sharing 10:11
21 practices are not subject to the sales opt out. We
22 have suggested three proposals of which we rank them
23 in our order of preference, and you will see it in
24 our written remarks.

25 Thirdly, the issue of permitting businesses 10:12

OSF
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OSF
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1 to share information with providers of emergency
2 responses. Many businesses, including auto makers,
3 provide emergency response services to consumers. In
4 emergency situations, auto makers provide these
5 services to consumers even if they have not 10:12
6 subscribed to or previously opted out of the
7 services.

8 However, an accident, a car accident, may
9 automatically trigger communication from the vehicle
10 to an emergency provider. And even though this may 10:12
11 be a direct disclosure from the vehicle to the
12 provider and might not involve a transfer of any
13 personal information to the auto maker, the CCPA's
14 definition of "sales" includes making available
15 personal information. And it is our opinion that 10:13
16 this could limit our ability to actually respond to
17 emergency providers by providing the data of where
18 and how the state of the vehicle is and how consumers
19 can do that.

20 As such, the Alliance requests that the 10:13
21 Attorney General permit businesses, in response to a
22 consumer's request for emergency or roadside
23 assistant services or in response to automated crash
24 notifications, have that personal information be able
25 to be shared with emergency or roadside providers. 10:13

1 We also were concerned regarding the ability
2 of resale issues. The law is quite clear on what
3 needs to be done with personal information when
4 there's a resale. However, with certain connected
5 vehicles, there may not be any displays or can be -- 10:13
6 that can be remotely updated or cleared. We are
7 requesting that the regulations permit a notice at
8 the collection time that supports reasonable
9 compliance and that collection information may change
10 with donors. We will submit that information. 10:14

11 And finally, we are requesting that
12 information that is shared about geolocation be
13 treated under the same rules that the FTC do -- does
14 in terms of sharing geolocation information. We
15 believe that it potentially threatens consumers if 10:14
16 that information is treated in a public manner. And
17 again, we respectfully request the Attorney General
18 follow the FTC's guidelines on that.

19 Thank you.

20 STACEY SCHESSER: Thank you. 10:14

21 Good morning.

22 JOHN WILLIAM TEMPLETON: Good morning.

23 I'm John William Templeton. That's J-O-H-N
24 W-I-L-L-I-A-M T-E-M-P-L-E-T-O-N. I'm a historian and
25 journalist, also cofounder of National Black Business 10:15

OSF
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OSF
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1 Month.

2 And I'd like to focus on the imminent risk
3 to California's African-American population from
4 privacy violations. And we want to encourage the
5 Attorney General to be as aggressive as possible to 10:15
6 use the new tools from the CCPA in addition with
7 existing law regarding unfair business practices,
8 anti-phishing, the Unruh Civil Rights Act, false
9 advertising, antitrust, compliance with existing FTC
10 consent agreements, and European union regulations 10:15
11 because, as the Senate Intelligence Committee and the
12 special counsel have both documented,
13 African-Americans have been specifically targeted in
14 the 2016, 2018 elections with misinformation and also
15 targeting of their data. 10:16

16 I've come to learn about this somewhat
17 serendipitously because I faced the use of my name to
18 steer people to fraudulent sites and to false
19 advertising and had to spend five years filing cease
20 and desist letters and ultimately a federal lawsuit 10:16
21 about it, and so it's given me an education on the
22 limitations of current law and some suggestions on
23 how we can use this new authority better. And that's
24 included in my written remarks that I just left
25 outside. 10:17

1 But I also include several other documents,
2 and I'd like to briefly highlight some of the points.

3 One is from the civil action that was filed
4 by the Department of Housing and Urban Development
5 against Facebook. And in that complaint, it says: 10:17

6 "Because of the way Respondent
7 designed its advertising platform,
8 ads for housing and housing-related
9 services are shown to large audiences
10 that are severely biased based on 10:17
11 characteristics protected by the Act,
12 such as audiences of tens of thousands
13 of users that are nearly all men or
14 all women."

15 I also want to mention a story in USA Today 10:17
16 last week about the employees, the African-American
17 employees, of Facebook, which say:

18 "We are sad, angry, oppressed,
19 depressed, and treated every day
20 through the micro and macro 10:18
21 aggressions as if we don't belong here."

22 So as the NAACP Legal Defense Fund and AI
23 Now Institute are stressing in a program in New York
24 City on December 17th, if you have hyper-segregated
25 organizations that are creating code, then all the 10:18

OSF
2-1
cont

1 evidence is that they're going to create
2 hyper-segregated products that are going to
3 negatively affect large numbers of Californians.

4 So a story in The Guardian in June of 2019
5 says: 10:18

6 "An artificial intelligence tool
7 that has revolutionized the ability
8 of computers to interpret everyday
9 language has been shown to exhibit
10 striking gender and racial biases." 10:19

11 Also it says the AI system was more likely
12 to associate European-American names with pleasant
13 words such as "gift" or "happy" while
14 African-American names were more commonly associated
15 with unpleasant words. 10:19

16 The machine learning tool used in this study
17 was trained on a data set known as the "Common Crawl
18 Corpus," a list of 140 billion words that have been
19 taken as they appear from material posts online.

20 So as a historian, I wrote (the forbearing?) 10:19
21 History of African-Americans in California. A
22 century ago we had a new industry of motion pictures.
23 And the movie The Klansman dominated the next century
24 and actually led to the Red Summer of 1919. So we
25 need to learn from history and make sure that the new 10:20

1 technologies are not used to turn back time.

2 Thank you.

3 STACEY SCHESSER: Thank you.

4 Speaker No. 3.

5 Good morning. Thank you. 10:20

6 JOANNE COOPER: Good morning.

7 My name is Joanne Cooper, J-O-A-N-N-E

8 C-O-O-P-E-R. I am the founder of ID Exchange, an

9 Australian privacy-enhancing technology firm. Coming

10 from Sidney, San Francisco's sister city, I bring a 10:20

11 warm and friendly "g'day."

12 You may be aware that our Australian federal

13 government is currently activating the Australian

14 Consumer Data Right Act, which comes also into effect

15 2020, often referred to as the CDR. 10:21

16 ID Exchange has been developing

17 consumer-centric data consent and access control

18 technologies since 2015. The aim of our technology

19 is to provide consumers with self-determination on

20 how and when their personal data is used. The app 10:21

21 has a consent register that receives and audits the

22 users' notifications and permissions.

23 We are in a global and significant portfolio

24 of opt in and opt out URLs as distribution tools

25 which aim to assist consumers to activate their data 10:21

1 rights by automating privacy and data protection
2 legislation which consumers typically find difficult
3 to navigate and to understand. Our technology seeks
4 to provide granular and receipted consent
5 notifications in a centralized, self-managed way so 10:22
6 the consumers can have verification and these
7 transactions conducted in a secure manner.

8 We work with world-leading data exchange
9 facilitators whereas the secure infrastructure does
10 not see, touch, or hold the individual's data, this 10:22
11 data being PII or sensitive data information. It
12 actually empowers the consumer as the custodian and
13 the full agent of their own data so that they can now
14 enact trusted private sharing services directly with
15 businesses. In fact, we have an opt out app offer in 10:22
16 hand today.

17 We would like to commend the Californian
18 Department of Justice and the Attorney General for
19 your position to increase privacy and human rights
20 across our connected society. I would like to state 10:23
21 the world is watching.

22 Since 2015, ID Exchange has been developing
23 these unified opt in and opt out product
24 technologies. We hold several opt out trademarks in
25 various countries of the world. These are to support 10:23

1 our services.

2 Today we'd like to reference the CCPA
3 proposed regulations referencing Article II, page 6,
4 Section 999.306, the Notice of Right to Opt-Out of
5 the Sale of Personal Information, Item 3, Opt-Out 10:23
6 Button or Logo.

OSF
3-1

7 My commentary today is that we're seeking
8 more information. We'd like to know when the
9 Department is looking to release the design of this
10 opt out button for public comment. 10:23

11 We're also interested to know if the
12 Department is interested in working with solution
13 providers in the area of privacy-enhancing
14 technologies to provide consumer-facing management
15 services for your citizens. It would be good to 10:24
16 understand if there's an accreditation process for
17 service provider designation.

OSF
3-2

18 As a collaborating technology and
19 technologist -- technology firm, I would like to
20 thank you for the time to present today. We look 10:24
21 forward to assisting the formation of a more secure,
22 private, and empowered data economy not only for
23 Californians for but all.

OSF
3-3

24 Thank you.

25 STACEY SCHESSER: Thank you. 10:24

1 Good morning. Thank you.

2 JOANNA STOREY: Good morning.

3 My name is Joanna Storey. That's

4 J-O-A-N-N-A S-T-O-R-E-Y. I'm an attorney with

5 Hinshaw & Culbertson here in San Francisco. I 10:25

6 represent lawyers in risk management -- for risk

7 management advice, and we often do that with our

8 firm.

9 And so our concern here lies with law firms

10 that may not be a covered business but could 10:25

11 unintentionally fall within the service provider

12 definition, 1798.140(v). And the reason I'm here

13 today is because, under proposed regulation

14 999.314(c):

15 "A service provider shall not 10:25

16 use personal information received

17 either from a person or an entity

18 it services for the purpose of

19 providing services to another person

20 or entity." 10:25

21 And when -- a law firm sometimes represents

22 clients that might be a covered business; right? So

23 this regulation might frustrate the nature and

24 purpose of a tripartite relationship between a law

25 firm, its client, and the client's insurance company. 10:26

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4-1

1 For example, if the service provider law
2 firm represents a covered business and the business
3 provides consumers' personal information to the law
4 firm for purposes of prosecuting or defending claims,
5 arguably this proposed regulation prohibits the 10:26
6 service provider law firm from sharing the
7 information with the client's carrier who hired the
8 law firm to defendant's insured.

9 Conversely, if the insurance carrier
10 provides the law firm with personal information that 10:26
11 the carrier obtained during the claim review process,
12 the proposed regulation may prohibit the law firm
13 from sharing those records with the client. And it
14 goes further that the service provider law firm may
15 be prohibited from sharing personal information with 10:26
16 experts who might consult on the case.

17 While 1798.145 provides exceptions for
18 exercising or defending legal claims and to maintain
19 privilege, those exceptions apply by express terms to
20 covered businesses, and there's no provision 10:27
21 extending those exceptions to service providers.
22 Thus the client and its carrier may be able to
23 share information with each other, but the service
24 provider law firm would be placed in the impossible
25 position of not being able to pass information 10:27

1 received from one to the other even though the
2 information may be necessary to prosecute or defend
3 the action.

4 And in the same vein, one thing we noticed
5 is the absence of any proposed regulation regarding 10:27
6 the scope of the exception that I just mentioned when
7 it pertains to covered businesses if a law firm is a
8 covered business.

9 1798.145(a)(4) states that the obligations
10 imposed on a business does not restrict the ability 10:27
11 to exercise or defend claims. But does this mean the
12 business still has to comply to the extent it can?

13 For example, if you're a law firm, if you're a
14 covered law firm, and you receive documents through
15 discovery from opposing counsel and the opposing 10:28
16 counsel provides you with personal information that
17 their client obtained, do you now -- and this isn't
18 privileged information, it's -- because it's

19 information you received through discovery -- do you
20 now have to tell all those people that you have their 10:28
21 personal information when this is a lawsuit? So the
22 absence of a proposed regulation to define the scope
23 of the "exercise or defend claims" exception is
24 important.

25 And finally, the absence of a regulation 10:28

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OSF
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cont

1 with respect to how this affects transaction lawyers
2 and what they do in their day-to-day business.

3 So overall we're just trying to find a way
4 to understand the CCPA and its regulations better in
5 the unique situation of being a law firm. 10:28

6 Thank you for your time.

7 STACEY SCHESSER: Thank you.

8 Speaker No. 5. Good morning.

9 DAN JAFFE: Good morning. Thank you. Thank
10 you for having me. 10:29

11 STACEY SCHESSER: Thank you.

12 DAN JAFFE: Good morning. Thank you very
13 much for providing us this opportunity to testify.

14 My name is Dan Jaffe, J-A-F-F-E, and I am
15 the group executive vice president of government 10:29
16 relations at the Association of National Advertisers,
17 the ANA.

18 The ANA's membership consists of more than
19 1,600 domestic and international companies, including
20 more than 1,000 clients like marketers and nonprofit 10:29
21 fundraisers and 600 marketing solution providers,
22 data science and technology companies and agencies,
23 publishers, media company suppliers, and vendors who
24 do more than \$400 billion in marketing and
25 advertising annually in the U.S. The vast majority 10:29

1 of them, as you would not be surprised, are either
2 headquartered or do substantial business in
3 California.

4 The CCPA represents a highly complex, and in
5 many respects, ambiguous law, and without final rules 10:30
6 to sufficiently clarify its terms in advance of its
7 effective date, the CCPA will prove to be extremely
8 disruptive to consumers and businesses alike.

9 Today we highlight three important issues,
10 and we will be providing more detailed comments on 10:30
11 Friday. These issues are loyalty programs, browser
12 signals that communicate opt out choices, and
13 requiring businesses to pass opt-outs to third
14 parties.

15 First, Section 999.336 of the proposed 10:30
16 regulations repeats the statutory language that a
17 business may offer financial incentives or a price or
18 service difference to a consumer if the difference is
19 reasonably related to the value provided to the
20 business by the consumer's data. This provision will 10:30
21 significantly impact numerous loyalty programs with
22 which we are all familiar, such as gas dollar
23 programs, frequent flier programs, or grocery value
24 customer rewards.

25 Proposed regulations unintentionally 10:31

1 creating the requirements regarding the relationship
2 of the value received from data to the price or
3 difference offered to consumers could well create
4 requirements that many businesses cannot meet,
5 thereby prohibiting businesses from offering these 10:31
6 rewards programs that consumers enjoy and expect.

7 And the proposed regulations directive to
8 provide an estimate of the value of that data and a
9 description of the method used to calculate such
10 value is unworkable and risks exposing businesses, 10:31
11 proprietary processes, and confidential information
12 to the public. We'll provide more detail on that in
13 our more detailed filing later this week.

14 Harming loyalty programs valued by consumers
15 could well undermine their confidence in privacy 10:32
16 protection in general and impose additional costs on
17 them.

18 Accordingly, the ANA urges that the
19 regulation clarifies sufficiently how a business may
20 justify that a price or service difference is 10:32
21 reasonably related to the value provided to the
22 business by the consumer data and remove the
23 requirement to provide an estimate of the value in
24 the method of calculating such value in the notice so
25 that consumers can continue to receive these loyalty 10:32

1 programs that they appreciate and desire.

2 Section -- second, Section 999.315(c) of the
3 proposed regulation states that a business that
4 collects personal information -- that a business
5 collects personal information from consumers online 10:32
6 must treat user-enabled privacy controls such as a
7 browser plug-in privacy setting or other mechanism
8 that communicates or signals the consumer's choice to
9 opt out of the sale of their personal information as
10 a valid request submitted for the browser or device 10:32
11 or, if unknown, for the consumer.

12 This mandate will harm consumers as it could
13 be interpreted to remove their ability to set
14 granular preferences and choose which businesses can
15 and cannot sell personal information. A consumer 10:33
16 very well may want to restrict a specific business's
17 ability to sell personal information, say a car
18 dealership, but allow another different business, for
19 example, a grocery store, to transfer or sell
20 personal information. 10:33

21 The overly broad requirement to honor
22 browser settings on an across-the-board basis would
23 destroy this ability to make granular choices based
24 on individual preferences since they would apply
25 across the entire marketplace. 10:33

1 Furthermore, this requirement goes far
2 beyond the scope of the CCPA because this new
3 business duty is not included in the statute.
4 Therefore, at the least this requirement should be
5 removed or the proposed rule should be revised so 10:33
6 that a business engaged in the sale of personal
7 information has the option either to honor browser
8 plug-ins, privacy settings, or mechanisms or not be
9 required to honor them if the business includes a "do
10 not sell my info" link and offers another mechanism 10:33
11 or protocol for consumers to opt out of the sale of
12 personal information, though our preference is for it
13 to be removed.

14 Third and finally, Section 999.315(f) of the
15 proposed regulation states that, upon receipt of an 10:34
16 opt out request, a business must notify all third
17 parties to whom it has sold the personal information
18 of the consumer within 90 days prior to the request
19 that the consumer has exercised the right to opt out
20 and instruct such third parties not to further sell 10:34
21 the information.

22 This represents a significant new and
23 sweeping requirement not contemplated by the CCPA's
24 language. The new requirement to pass opt out
25 requests along to a potentially broad range of other 10:34

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cont

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1 businesses would take the consumer's express choice
2 with respect to one business, like a retail holiday
3 theme store, and apply that choice across the
4 marketplace to others, such as those less seasonal in
5 nature. 10:34

6 We therefore suggest that this proposed rule
7 be revised so businesses are not required to pass opt
8 out requests along to third parties for when data has
9 been provided in the last 90 days.

10 Thank you very much for your time, and thank 10:35
11 you for this opportunity.

12 STACEY SCHESSER: Thank you.

13 Good morning.

14 TODD SMITHLINE: Hello. Good morning.

15 My name is Todd Smithline, 10:35
16 S-M-I-T-H-L-I-N-E. I'm the managing principle of
17 Smithline P.C., which is a law firm here in San
18 Francisco representing software/SaaS and Internet
19 companies.

20 I've been practicing in this area for 25 10:35
21 years, and for the last 10 years, I've been teaching
22 on these topics at Berkeley Law School.

23 I would like to confine my comments to a
24 single sentence in the proposed regulations, and it
25 is 314(c). And this sentence reads that: 10:35

1 "A service provider shall not
2 use personal information received
3 either from a person or entity it
4 services or from a consumer's direct
5 interaction for the purpose of 10:36
6 providing services to another
7 person or entity."

8 I believe that there is going to be a vast
9 unintended consequence to this decision that the
10 Attorney General has made to rule once and for all 10:36
11 times that a service provider's use of data as part
12 of providing service to another user is necessarily
13 and will always be -- to quote your language --
14 outside the bounds of a necessary and proportionate
15 use. 10:36

16 What has happened here in the regulations
17 that you've promulgated is you have taken the
18 standard that was defined in the statute for a
19 business purpose; that standard was reasonably
20 necessary and proportionate, which was a fact-based 10:36
21 standard against which you, as the enforcers of this
22 statute and against which -- courts which adjudicate
23 this, could apply the facts of a particular
24 circumstance to reach a conclusion; and you have
25 decided by fiat with all due respect for once and all 10:36

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1 time that this type of use could never be reasonably
2 necessary or proportionate.

3 I would like you to please consider that,
4 although this is called the Consumer Privacy Act, you
5 defined -- or the -- excuse me -- the legislature 10:37
6 defined "personal information" so broadly that it
7 includes -- and I will quote now from the statute,
8 "a user's interaction with a website or application,"
9 which means everything a user does within an
10 application is now personal information. 10:37

11 And I would posit that the way most
12 companies now manage their HR and they manage their
13 accounting and they manage their project management
14 and the way that you in the Attorney General office
15 manage your legal research and other activities is 10:37
16 through large SaaS applications full of data
17 collected from users.

18 And I would further posit that the SaaS
19 companies which operate these systems use information
20 about how users use the application in order to 10:37
21 create the applications to make them relevant and
22 useful for all users. And they do that, by the way,
23 without disclosing the information, and they do that
24 without sharing the information.

25 And again, I want to refer you just to this 10:38

1 one sentence. I would really ask that you please
2 reconsider. This sentence says "A service provider
3 shall not use." It does not say "A service provider
4 shall not share." It does not say "A service
5 provider shall not sell." It does not say "A service 10:38
6 provider shall not disclose." It simply says "shall
7 not use."

8 And I believe, quite unintentionally in a
9 statute that is focused on consumer issues and very
10 valid consumer issues, that we have scoped in here 10:38
11 within the regulation activity which does not
12 disclose or put at risk any individual's private
13 information but which, if read strictly in accordance
14 with regulations, would cause a vast amount -- and,
15 you know, the hundreds of billions of dollars' worth 10:38
16 of economic -- productive economic activity, to be
17 called into question.

18 I have a lot of empathy with you -- with
19 this statute, and I, myself, are a firm. We've been
20 holding -- we've now held seven study groups across 10:39
21 ten different companies and five different law firms
22 just to read and understand this statute. And I
23 noticed as you wrote the regs that you really tried
24 to rewrite and re-explain a lot of what was in there
25 because, let's face it, this thing was essentially 10:39

1 written by a broken robot.

2 But I want you to please consider that, in
3 writing these regulations with all good intent, you
4 may have overstepped private contract between an
5 enterprise SaaS provider and an enterprise customer 10:39
6 who have all the consents and notices they need to
7 have put the data into the system and have stepped
8 into that relationship and decided, again, that
9 something could not possibly ever be necessary and
10 proportionate. 10:39

11 So I'd ask you to please reconsider Section
12 314(c). We will be submitting written comments as
13 well where we try to explain this a little more
14 articulately. But I appreciate you listening, and I
15 hope you will reconsider this clause of this 10:39
16 regulation.

17 Thank you very much.

18 STACEY SCHESSER: Thank you.

19 We're going to take a brief five-minute
20 break. 10:39

21 So going off the record, 10:39 A.M. We'll
22 go back on at 10:45 A.M.

23 (Whereupon a recess was taken
24 from 10:39 A.M. to 10:45 A.M.)

25 STACEY SCHESSER: Good morning. We're going 10:40

1 back on the record. The time is 10:45 A.M.

2 And I would like to invite Speaker No. 7 up
3 to the microphone.

4 Good morning.

5 ALAN TITUS: Good morning. 10:45

6 My name is Alan Titus, A-L-A-N T-I-T-U-S
7 from the law firm of Robb & Ross.

8 I come here representing one business, a
9 fairly small family-owned business. It's a card
10 room. A card room is a place where people go and 10:46
11 play cards and gamble. And the card room is subject
12 to a federal law, the Bank Secrecy Act.

13 The Bank Secrecy Act requires a card room to
14 file reports on anyone who comes in with over \$10,000
15 in cash, leaves with over \$10,000 in cash. It also 10:46
16 requires the card room to file what's called
17 suspicious activity reports and to actually do
18 investigation on people that it might be suspicious
19 of. These investigations can be extensive. They are
20 expected by law enforcement, by the federal 10:46
21 government, the financial enforcement -- FinCEN.

22 And when I look through the CCPA, I try to
23 figure out how these two laws go together. The CCPA
24 at the very end says that it can be preempted by
25 federal law but doesn't explain to what extent, 10:47

1 doesn't explain anything. The regulations do not get
2 into this and do not help me. But there are a number
3 of regulations that I think are not consistent with
4 federal law, and I think there's going to -- there's
5 consistency issues. I'm going to be submitting 10:47
6 comments on this to be --

7 I wonder if there was any thought about this
8 already. I don't know if you're going to answer
9 questions. You've said you're not, but -- I do
10 wonder to what extent this has been thought about, to 10:47
11 what extent it is being thought about.

12 Thank you.

13 STACEY SCHESSER: Thank you.

14 We would like to invite Speaker No. 8.

15 Good morning. 10:48

16 MAX KORNBLITH: Good morning. Good morning.

17 So my name is Max Kornblith. I am a
18 cofounder of the company Radvocate. We're an
19 Oakland-based start-up that assists individual
20 consumers in filing claims against big companies 10:48
21 through the consumer arbitration system.

22 So first, I'd like to thank you for all the
23 hard work that went into this rulemaking process.
24 You know, you're doing something groundbreaking that
25 will benefit consumers in California and around the 10:48

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1 country.

2 I'd also like to note that this oral comment
3 will be accompanied by a written comment that
4 includes more detail on the topics covered.

5 So fundamentally, privacy shouldn't 10:48
6 necessarily be a controversial issue. There seems to
7 be an emerging consensus that new privacy regulation
8 in the U.S. and around the world should build on the
9 protections the GDPR provides to protect your right
10 to choose how your information is used while enabling 10:48
11 companies to use information for safety purposes and
12 to provide services. The reason I say that statement
13 should be relatively uncontroversial, it was a
14 statement made by Mark Zuckerberg on March 30th of
15 this year. 10:49

16 And yet it appears from looking at the
17 legislative and regulatory process that led us to
18 today that corporate interests seem to be looking for
19 any and all opportunities to limit and obfuscate that
20 right to choose how our data is used. 10:49

21 So that's why we're here today to submit
22 public comment on one particular aspect of these
23 regulations. We want to make sure that the public
24 and your office recognize the importance of robustly
25 enforcing the CCPA's definition of what constitutes a 10:49

1 data sale. While it sounds technical, it's not a
2 purely academic argument. Among other things, I'd
3 refer to reporting from the New York Times published
4 a year ago under the headline, "As Facebook Raised a
5 Privacy Wall, it Carved an Opening for Tech Giants." 10:49
6 Internal documents show that the social network gave
7 Microsoft, Amazon, Spotify, and others far greater
8 access to peoples' data than it has disclosed.

9 So we'd like to encourage your office to
10 explicitly articulate and enforce the CCPA in such a 10:50
11 way that all exchanges of data for valuable
12 consideration, such as for other data or to
13 consummate a business alliance, are considered
14 "sales" with the effect being the consumers must have
15 that easy way to opt out of having their data 10:50
16 bartered in that way.

17 The text of the CCPA is clear on this, as
18 you know. The sort of business practices that I just
19 mentioned qualify as "data sales" by the definition
20 given at California Civil Code 1798.140(t)(1). 10:50
21 However, it's an issue that's not mentioned at all in
22 the regulations before us today. And so we would
23 like to draw attention to the importance that these
24 regulations be aggressively enforced in line with the
25 robust and reasonable definition of "sale" that was 10:50

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1 written into the law.

2 I'd also point your attention to an article
3 recently published on the website of the
4 International Association of Privacy Professionals.

5 It was written by lawyers for a firm that works for 10:51
6 Airbnb, Facebook, and Uber, and they embraced these
7 regulations before us today under the headline,
8 quote, "Sale under CCPA may not be as scary as you
9 think."

10 So there's a balance to be drawn in this 10:51
11 process between the interest of California consumers,
12 of which I'm one, and the interest of California
13 corporations, of which I represent as well. But in
14 the case of condoning shadow sales of data, we
15 believe that an outcome that leaves corporations this 10:51
16 satisfied should be scary to the consumers.

17 So thank you again for your time and for
18 your important efforts on this.

19 STACEY SCHESSER: Thank you.

20 I'd like to invite Speaker No. 9. 10:51

21 Good morning.

22 HAYLEY TSUKAYAMA: Good morning.

23 My name is Hayley Tsukayama, that's
24 H-A-Y-L-E-Y T-S-U-K-A-Y-A-M-A, and I'm here to
25 represent the Electronic Frontier Foundation. 10:52

1 EFF is a nonprofit organization comprising
2 lawyers, technologists, and activists dedicated to
3 defending civil liberties in the digital world. It
4 is supported by more than 30,000 dues-paying members,
5 including thousands in California. 10:52

6 We, with the broad coalition of privacy
7 advocates, have been deeply involved in discussions
8 around the CCPA. We thank the Office of the Attorney
9 General for its work and its willingness to listen to
10 all stakeholders, including through today's 10:52
11 opportunity to offer feedback on these regulations.

12 The CCPA entitles consumers to access,
13 delete, and opt out of the sale of their personal
14 information. These draft regulations bring a measure
15 of clarity and practical guidance to implementing 10:52
16 this law. Overall they represent a step forward for
17 consumer privacy.

18 There are, however, some specific draft
19 regulations that require revisions. Others are a
20 step backwards for consumers and should be 10:52
21 eliminated. We will elaborate in written comments,
22 but I would like to take this opportunity to
23 highlight six important points.

24 First, we encourage the Attorney General to
25 ensure ad tech compliance with the CCPA by issuing 10:53

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1 clarifying regulations that sale under this law
2 includes passing information for targeted
3 advertising. Some members of the advertising
4 technology industry have announced plans to interpret
5 the definition of "sale" in a way that deprives 10:53
6 consumers of their critical right to opt out under
7 this law. We also ask the Attorney General's office
8 to make it abundantly clear that Californians may opt
9 out of this most pervasive and invasive form of
10 information sale. 10:53

11 Second, we support the draft regulation
12 directing that browser settings be respected as an
13 opt out of the sale of a consumer's personal
14 information. Thousands of Californians have already
15 installed tools that send privacy signals to the 10:53
16 sites they visit. This regulation builds on widely
17 adopted technical systems and provides people with an
18 assessable, consumer-friendly way to communicate
19 their preferences. We suggest that the regulations
20 be further clarified to take advantage of this 10:53
21 existing infrastructure and ensure that companies
22 respect the choices that consumers have already made
23 to protect their privacy.

24 Third, we appreciate the Attorney General's
25 refusal to weaken the definition of "personal 10:54

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1 information" in the CCPA. The CCPA's definition of
2 "personal information" provides a crucial foundation
3 to the law by stating that everything that is
4 reasonably capable of being associated with a person,
5 not just information that identifies a person, is 10:54
6 covered and protected.

7 Fourth, we request that the Attorney General
8 eliminate an overbroad exception to the right of
9 access because of a risk to security. This
10 additional rule is not necessary for consumer 10:54
11 protection as the draft regulation's verification
12 requirements already offer significant protection for
13 consumers' information. This exception gives
14 businesses undue power to ignore or thwart consumer
15 requests to understand and control the way their data 10:54
16 are used.

17 Fifth, we ask you to eliminate the
18 regulation suggestion that businesses carve out
19 consumers by group and charge different prices to
20 each group. Permitting businesses to price according 10:54
21 to class or group membership has the potential to
22 further harm communities already subject to
23 discrimination.

24 We strongly oppose pay for privacy schemes,
25 which create classes of privacy haves and privacy 10:55

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1 have nots. People's information is most valuable not
2 when they are rich but when they are vulnerable.
3 Privacy is a constitutional right in California. It
4 should not be a premium perk available only to those
5 who can afford it. 10:55

6 Finally, we ask that the regulations ensure
7 consumers have meaningful protections from data
8 brokers. The way that these firms buy and sell
9 consumer profiles and information is totally opaque.

10 Consumers almost never intend to share their 10:55
11 information with data brokers and can have trouble
12 identifying them, let alone understanding their

13 business practices. The Attorney General regulations
14 should not give special exemptions to such companies
15 but instead treat data brokers like other 10:55

16 CCPA-covered businesses and require them to notify
17 people when they collect information about them.

18 Furthermore, any expansion of the definition
19 of "service provider" to those who provide services
20 to non-CCPA businesses should not include data 10:55
21 brokers.

22 Thank you again for your work on these
23 regulations and for the opportunity to provide
24 feedback.

25 STACEY SCHESSER: Thank you. 10:56

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1 Speaker No. 10.

2 Good morning.

3 EDWARD HU: Edward Hu, E-D-W-A-R-D H-U from
4 TrustArc. That's T-R-U-S-T-A-R-C.

5 The CCPA uses the phrase, quote, "categories 10:56
6 of third parties," end quote, in relation to the
7 right to know the third parties with whom a business
8 shares a consumer's personal information, for
9 example, in Section 1798.110, Subsection (a)(4). In
10 the proposed text of the regulations -- and that's 10:56
11 Section 999.301, Subsection (e), categories of third
12 parties is defined as, quote:

13 "Types of entities that do not
14 collect personal information directly
15 from consumers, including, but not 10:56
16 limited to, ad networks, ISPs, data
17 analytics providers, government
18 entities, operating systems and
19 platforms, social networks, and
20 consumer data resellers." 10:57

21 Because many of the examples of, quote,
22 "categories of third parties," end quote, do, in
23 fact, collect personal information directly from the
24 consumers through cookies or tags, the plain meaning
25 of the regulations would appear to allow a business 10:57

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1 to avoid disclosure of the types of entities it
2 shares personal information with if those entities
3 are also collecting personal information directly
4 from the consumers.

5 For example, if a business both, one, 10:57
6 discloses personal information to a social network,
7 and, two, allows that social network to directly
8 collect personal information via cookies on its site,
9 then the plain language of the regulation appears to
10 permit the omission of the disclosure of the sharing 10:57
11 of the personal information to the social network
12 because Subsection (e) of the regulation states that
13 the categories of third parties that must be
14 disclosed are those that, quote, "do not collect
15 personal information directly from the consumers." 10:57

16 As it appears, this is an unintended
17 consequence. I would request the language to clarify
18 whether businesses need to disclose the categories of
19 third parties with whom it shares personal
20 information where those entities are simultaneously 10:58
21 collecting personal information directly from the
22 consumers.

23 Thank you for your time.

24 STACEY SCHESSER: Thank you.

25 Speaker No. 11, I invite you down to the 10:58

1 microphone.

2 RICK ARNEY: Good morning.

3 I'm Rick Arney, vice chair of Californians
4 for Consumer Privacy and coauthor of the CCPA.

5 First of all, I just want to say, super 10:58
6 grateful for the Attorney General's efforts and
7 thoroughness with these proposed regulations. I rise
8 to you today with just some concerns of a few areas.

9 Also just historical context, we're in the Hiram
10 Johnson office building, and this all began as an 10:58
11 initiative. We collected over 600,000 signatures,
12 which, of course, led to a negotiation with the
13 legislature which lead to the CCPA.

14 It was interesting, a previous speaker
15 referred to the authors as "broken robots." That's a 10:58
16 new one for me, but I appreciate it. Lots of things
17 have been said about us, but anyway, we're real happy
18 to be here.

19 And so I'll just start with the notice at
20 point of collection, Section 999.305. It specifies 10:59
21 the notice businesses are required to provide when
22 they collect consumers' personal information. The
23 regulations should clarify that, when a business
24 collects a consumer's personal information while a
25 consumer is physically present at the business's 10:59

1 physical premises, such as by collecting information
2 from the consumer's device while the consumer shops,
3 then the notice requirement should include a detailed
4 physical notice at the point of collection rather
5 than a notice that is limited to a web address where 10:59
6 consumers can get information. This is much like
7 going to a restaurant and you get the ratings of A,
8 B, and C, something like that that would be very
9 clear and obvious.

10 The second point I wanted to make is about 10:59
11 Section 999.315 (a), which is the opt out through a
12 global setting. That section right now allows
13 consumers to opt out of the sale of their personal
14 information through a minimum of two or more methods,
15 including a browser plug-in or privacy setting. 11:00

16 But the regulation should clarify that this
17 includes a global device or browsing setting.
18 Businesses should not be able to preclude consumers
19 from exercising their right to opt out through a
20 global setting as authorized by Civil Code Section 11:00
21 1798.135(c) by limiting consumers to two less
22 convenient opt out methods.

23 We should really consider -- perhaps an idea
24 here is the idea of "do not track" as a current
25 setting that, you know, we would ask the EG to 11:00

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1 consider that, if a consumer actually opts for "do
2 not track," that that could be actually used to be an
3 opt out of sale 'cause it's an existing technology,
4 it's an existing choice that can be made in a
5 browser. 11:00

6 So they should consider clarifying or
7 perhaps blessing the specific signals that are in the
8 marketplace already today, such as "do not track,"
9 and many consumers and businesses rely on that signal
10 already. 11:00

11 The third point is immediate implementation
12 of opt out requests. This is Section 999.315(d). It
13 gives businesses a 15-day grace period after receipt
14 of a consumer's opt out request before the business
15 must stop selling the consumer's personal 11:01
16 information. Although the CCPA provides businesses
17 with a 45-day period to respond to requests for
18 information and deletion, there's no corollary for
19 the right to opt out, which was intended to take
20 effect immediately. 11:01

21 While we understand that it may be -- may
22 take a short period of time for a business to
23 implement a consumer's opt out request, it should be
24 no more than 72 hours, and the burden should be
25 flipped so that the business must stop selling the 11:01

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1 consumer's personal information immediately upon
2 receipt of the consumer's opt out request unless it
3 is not feasible to do so, and in no event may the
4 business continue selling the consumer's personal
5 information more than 72 hours after receipt of the 11:01
6 opt out request.

7 The bottom line is information is valuable
8 now. This should be as short as possible. If a
9 company can start selling immediately, they should be
10 able to stop selling immediately as well. 11:02

11 Next point, access to highly sensitive
12 information, Section 999.313(c)(4), this imposes an
13 absolute bar on consumer's access to certainly highly
14 sensitive information, such as social security number
15 or health insurance number, et cetera. While we 11:02
16 recognize that more care must be taken with respect
17 to requests for certain highly sensitive information,
18 rather than banning such access completely, the
19 regulation should allow businesses to impose higher
20 standards for verification of requests for access to 11:02
21 highly sensitive information.

22 And then the last few points, expansion of
23 service provider exception to include service
24 providers to government agencies. This is Section
25 999.314, which expands the definition of a, quote, 11:02

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1 "service provider" to include a person or entity that
2 provides services to a person or organization that is
3 not a business.

4 Although the CCPA does not directly regulate
5 government agencies, it is clear -- it clearly limits 11:02
6 the exception for service providers to entities that
7 provide services to businesses. Therefore, an
8 organization that qualifies as a business under the
9 CCPA should not escape the reach of the CCPA when it
10 processes information on behalf of a government 11:03
11 agency and, like other businesses, should be required
12 to comply with consumer requests under the CCPA.
13 There's no statutory basis for the exception that has
14 been created in this regulation.

15 And finally, a quick point, the CCPA exempts 11:03
16 from the definition of "sale" information a consumer
17 directs a business to share or sell to another party.
18 Many of the concerns raised here today would be
19 covered by that except -- exemption, excuse me --
20 particularly the restriction of a service provider to 11:03
21 not use information it receives from one business for
22 its own behalf or on behalf of another business.

23 Thank you so much and very much appreciate
24 taking our comments today and look forward to talking
25 soon. 11:03

1 STACEY SCHESSER: Thank you.

2 Speaker No. 12, we invite you to the
3 microphone.

4 Good morning.

5 JASON MERTZ-PRICKETT: Good morning. 11:04

6 My name is Jason Mertz-Prickett, J-A-S-O-N
7 M-E-R-T-Z hyphen P-R-I-C-K-E-T-T.

8 I am the vice president of operations at
9 Upward Credit Union. We are a small community-based
10 credit union serving the health care community of San 11:04
11 Mateo County, and we have done so since 1956.

12 Currently we have 16 staff members in the
13 entire organization operating one branch and two
14 satellite offices. Our concerns and comments about
15 the CCPA fall into three main areas. 11:04

16 The first is the effective date. With an
17 entire staff of 16 operating a full-service financial
18 institution, our internal resources are sparse,
19 especially when it comes to compliance. Creating a
20 comprehensive compliance program and implementing 11:04
21 regulatory changes such as CCPA take time and
22 significant resources. Considering the extensive
23 detail in the proposed regulation and the broadness
24 of the statute, there is a lot of room for
25 interpretation and ambiguity. 11:05

1 While we are confident that we will meet
2 these new regulatory requirements, we ask for more
3 time. Extending the effective date to January 1st,
4 2022 will provide credit unions like Upward and
5 hundreds of others throughout California the 11:05
6 opportunity to develop compliance programs that will
7 not only conform to CCPA but also serve our members
8 in the most productive and sufficient way.

9 The second area of concern is sample and
10 model notices and training. Notice at or before 11:05
11 collection, right to opt out, notice of financial
12 incentives, and revised privacy notices are what will
13 be required under the proposed regulations. These
14 notices are in conjunction with the required
15 responses to requests to know and requests to delete. 11:05
16 These notices and responses are required to be easily
17 read and understandable by the average consumer.

18 With no guidance on what that means or
19 provided examples, methods, or metrics to gauge these
20 on, it makes it extremely difficult to develop these 11:06
21 notices. With most, if not all, businesses needing
22 to provide such notices, samples or uniform notices
23 would not only help just small credit unions but all
24 financial institutions and businesses across
25 California. 11:06

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1 In addition to sample models and notices --
2 excuse me -- the State is in a position to offer
3 comprehensive training on the CCPA similar to the
4 resources that are offered by the controller's office
5 in regards to California's requirements regarding 11:06
6 escheatment.

7 And the third and final area of concern is
8 the GLBA exemptions. Both the Gramm-Leach-Bliley
9 Act, GLBA, and the California Financial Information
10 Privacy Act, the CFIPA, use the term "nonpublic 11:07
11 personal information," and it's defined to mean
12 personally identifiable information. The CCPA uses
13 the term "personal information" as defined in
14 California Civil Code 1798.145 and is much broader
15 than the GLBA and CFIPA's definition of "nonpublic 11:07
16 information."

17 With the current definition as used in the
18 CCPA, personal information collected could pertain to
19 any situation, even when there is no financial
20 transaction involved. As a credit union, we could 11:07
21 find ourselves in situations where a clear exemption
22 exists under CCPA, such as a financial transaction,
23 as opposed to an interaction that does not result in
24 a formal transaction.

25 With many interpretations being offered on 11:07

1 how the CCPA relates or coexists with GLBA or CFIPA,
2 it is imperative that the Attorney General's office
3 put forth regulations that clarify these distinctions
4 and the proper exemptions.

5 In conclusion I am requesting due time once 11:08
6 the final regulations are enacted to cultivate a CCPA
7 compliance program that meets the regulatory
8 requirements. This includes the required notices but
9 also best suits the needs of the institution of our
10 size. Therefore, we request a continuance until 11:08
11 January 1st, 2022. I truly believe the CCPA was born
12 out of good intentions. Why not take the time and
13 get it right the first time?

14 Thank you.

15 STACEY SCHESSER: Thank you. 11:08

16 Speaker 13, we invite you down.

17 Good morning.

18 KATHLEEN LU: Good morning. Thank you.

19 My name is Kathleen Lu. That is
20 K-A-T-H-L-E-E-N L-U, and I am here on behalf of my 11:08
21 employer, Mapbox, M-A-P-B-O-X.

22 We will be submitting written comments, but
23 I wanted to take the time today to identify one issue
24 that I think has not gotten enough attention, and
25 that is the requirement of a toll-free number as an 11:09

1 opt out method.

2 The proposed regulations state that a
3 business shall provide two or more designated methods
4 including, at a minimum, a toll-free number.

5 STACEY SCHESSER: I'm sorry. Could you 11:09
6 speak a little bit closer to the microphone?

7 KATHLEEN LU: Sorry about that.

8 This regulation appears to be out of date
9 because the amendments of the CCPA specified that a
10 business that operates exclusively online and has a 11:09
11 direct relationship with a consumer from whom it
12 collects personal information shall only be required
13 to provide an e-mail address. I believe that the
14 regulations should be updated to address the change
15 from the statutory amendments. 11:10

16 In addition, the examples don't appear to
17 quite match up to what the draft regulations say; so
18 the first example of an opt out is the business is an
19 online retailer, and it says that at least one method
20 by which the consumer may submit requests should be 11:10
21 through the business's retail website.

22 Now, logically this makes sense, which is
23 that, if a business is collecting information online,
24 that the method of opt out should also be online.
25 But the example says nothing about a toll-free 11:10

1 number.

2 The second example is an example of a
3 website -- of a business that operates a website but
4 also interacts with consumers at a retail location.

5 Now, that example says that the business should also 11:10
6 include off-line methods of opt out requests,
7 including a toll-free number and an interactive -- a
8 toll-free number, the website, as well as in person
9 at the retail location.

10 Now, these examples seem to suggest that the 11:11
11 methods of requests of opt out should match up to how
12 the business is collecting information. But that
13 doesn't match up to the language of the draft
14 proposals.

15 And this is -- one of the reasons that I 11:11
16 wanted to raise this is because toll-free numbers are
17 actually quite expensive for a business to operate if
18 they do not already have toll-free numbers. We have
19 heard from a vendor that operating one toll-free
20 number would cost \$25 per month even if it is never 11:11
21 dialed.

22 So we are an online business. All the
23 information that we get from our customers comes
24 through online methods. We do not really expect
25 people to be dialing a toll-free number to give us 11:12

1 their e-mail address to say, you know, "We don't want
2 your newsletter anymore." But it's \$25 a month base
3 plus 5.9 cents per minute. So that's \$300 annual
4 cost to each affected business in California even if
5 that number is never used. 11:12

6 And there is another problem, which is that
7 the Federal Communications Commission has been
8 looking into the issue of toll-free number fraud. So
9 what happens is there are robocalls made to toll-free
10 numbers just designed to tie up the line and rack up 11:12
11 the number of minutes. The charges are to the
12 carrier and to the business that has the toll-free
13 number, and then the money goes to the originating
14 carrier, who then sends a kickback to the robocaller.
15 This type of fraud is pervasive. The FCC held -- you 11:13
16 know, asked for comments on this from the major
17 carriers. And it's very hard for a small business to
18 stop it.

19 The problem with requiring a toll-free
20 number for every California business that complies 11:13
21 with CCPA is that we will probably all be sitting
22 ducks for this type of fraud. The potential costs of
23 this could be massive. The Department of Justice
24 estimated that up to 570,000 California businesses
25 would need to comply with CCPA. At \$300 per 11:13

1 business, that would be \$171 million just for the
2 costs of the toll-free number, even assuming that
3 there is no toll-free number fraud.

4 We ask that the Attorney General's office
5 redraft this section to make clear that businesses 11:14
6 that only collect personal information through online
7 methods need not provide off-line methods of
8 receiving opt out and disclosure requests.

9 Thank you.

10 STACEY SCHESSER: Thank you. 11:14

11 Speaker 14, we invite you to the microphone.

12 Good morning.

13 EMILY BOROWSKI: Thank you.

14 Thank you for the opportunity to share my
15 comments. 11:14

16 My name is Emily Borowski, E-M-I-L-Y B as in
17 boy O-R-O-W-S-K-I, and I oversee the day-to-day
18 regulatory compliance effort of the San Francisco
19 Fire Credit Union.

20 We are a State-chartered, privately ensured, 11:15
21 not-for-private financial cooperative. We have
22 served the local firefighting community since 1951,
23 and in the late '90s, we began to serve anyone,
24 including family members who live, work, or attend
25 school in San Francisco, San Mateo, or Marin 11:15

1 Counties. We serve about 72,000 members. We have
2 four branches, employ about 240 employees, and our
3 asset size is approximately \$1.4 billion.

4 Our concerns with the implementation of the
5 CCPA include the following: the effective date, lack 11:15
6 of a model notice, and confusion with existing laws.

7 My first topic is the effective date in that
8 we believe 88 days, which is actually 54 work days,
9 is neither a reasonable or adequate time to
10 understand the requirements of this statute and the 11:15
11 proposed regulations prior to designing and
12 implementing a comprehensive compliance program, let
13 alone the time frame for the final regulation and our
14 response to that.

15 Given how general the statute is and how 11:16
16 detailed the proposed regulations are, we believe
17 that the effective date should be extended. And we
18 do recommend that the Attorney General and governor
19 delay that by two years.

20 With regard to the model notices and 11:16
21 training, for all required notices, the proposed
22 regulations require them to be easy to read and
23 understandable by the average consumer and provide
24 some standards to achieve that; yet it is subjective
25 and does not contemplate a method of how to measure 11:16

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1 that or gauge our success on assessing the
2 readability.

3 And since all affected businesses need to
4 provide the required notices, an employee training
5 program and standardized model notices would help 11:16
6 ensure the consumer's understanding of the notices,
7 simplify the requirements for businesses, and create
8 an objective review on whether our notices and
9 employee training programs are meeting these required
10 standards. 11:17

11 With regard to the Gramm-Leach-Bliley Act,
12 the federal law, and the California Financial
13 Institution Privacy Act Exemptions, we have
14 significant confusion regarding the definition of
15 "personal information" and that the term is defined 11:17
16 much more broadly in this new CCPA than in these
17 federal and existing State requirements.

18 And because of the inconsistent terms, the
19 exemption that's provided in the California Civil
20 Code that was previously stated is unclear. But that 11:17
21 can be -- the interpretations can be done in
22 different ways.

23 The first one is just personal information
24 on its face. Personal information is collected from
25 a consumer in connection with us providing a 11:17

1 financial product or service pursuant to the GLBA and
2 CFIPA. Then the personal information is exempt from
3 the requirements of the CFIPA. Okay.

4 The second interpretation could be if
5 personal information is in the same category as 11:18
6 personally identifiable financial information under
7 the GLBA is covered by the exemption, but it's not
8 subject to the CCPA.

9 And then the most confusing, third, is that
10 we could find ourselves exempt from the CCPA in some 11:18
11 instances but not others on the same data that is
12 collected in the same manner from the same source.

13 And that pertains around the idea of whether a
14 transaction was performed or not. So if a
15 transaction is performed, the personally identifiable 11:18
16 information could be exempt from the CCPA, but if a
17 transaction is not, then it's in fair play for that
18 and subject to the requirements.

19 So due to the inconsistent terminology and
20 the interpretations and the manner in which the 11:19
21 exemption is written in the statute, we're asking for
22 the final regulation to be more consistent or, you
23 know, give us some more guidance with that.

24 So to conclude, we respectfully request a
25 more reasonable time frame to develop our compliance 11:19

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1 program once the regulation is final. We ask for
2 guidance from the Attorney General that helps our
3 not-for-profit credit union with model forms and
4 training aids so that we can be confident in our
5 effort to comply. We would like consistency in the 11:19
6 "personal information" definition between the final
7 implementing regulation for CCPA and the existing
8 federal and State requirements, which will help us
9 confidently interpret the final regulation.

10 Thank you very much for the opportunity to 11:20
11 share our thoughts on this important and timely
12 regulation.

13 STACEY SCHESSER: Thank you.

14 Speaker 15.

15 UNKNOWN FEMALE: Thank you. 11:20

16 STACEY SCHESSER: Good morning.

17 WAYNE SISK: Good morning. Good morning.

18 My name is Wayne Sisk, W-A-Y-N-E S-I-S-K. I
19 work for a small start-up, Celigo.com -- or Celigo,
20 Inc., and I am the senior manager of security and 11:20
21 compliance.

22 First off, I just wanted to remind you that
23 we definitely need the graphics of this button that
24 is required. I think everybody's anxiously waiting
25 on that. I saw that there's going to be another 11:21

1 hearing. I think this is going to push things out,
2 regardless of the request for two years, in terms of
3 being able to implement in a timely fashion.
4 January 1st is weeks away. Some of us have proceeded
5 based on the laws and are refining based on the 11:21
6 regulations; so we're trying to be ready January 1st.
7 I don't see that happening right now with the lack of
8 solid information both in the regulations and the
9 button.

10 My primary areas that I want to focus on 11:21
11 is --

12 Oh, I missed a point.

13 STACEY SCHESSER: I'm sorry. Could you just
14 speak closer to the microphone?

15 WAYNE SISK: Sorry. Maybe that'll help. 11:21

16 In the definitions they did not define
17 either a consumer or what constitutes personal
18 information. They did in the law, and the
19 regulations refer to that, but it makes it obscure.
20 It's hard enough to navigate any State law that 11:22
21 California passes because it's scattered so badly.
22 The only definition they gave was "typical consumer,"
23 and that reads:

24 "Typical consumer means natural
25 person residing in the United States." 11:22

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1 Everything about this law was that this
2 was -- the consumers were going to be California
3 residents. And I think that should read
4 "California," not "the United States."

5 I'd like to primarily focus on separation 11:22
6 between personal information and the information
7 about a corporate persona. There's no question that
8 johndoe@gmail.com or yahoo.com or hotmail or
9 what-have-you is personal information. Any other
10 public e-mail system, as well as my personal phone 11:23
11 number, all of that is definitely part of someone's
12 personal profile. It is PII granted.

13 E-mail is an endemic part of doing business
14 today. So is johndoe@celigo.com a person and my
15 personal info? I don't believe so. It's a corporate 11:23
16 persona. It's disposable. I use it for as long as
17 I'm employed there. I have probably been employed at
18 60 or 70 different companies where I've had e-mails.
19 These come and go and are deleted. I don't care, and
20 I don't think anybody cares if that e-mail is public 11:23
21 anywhere.

22 The address of the business, the business
23 phone number, these aren't me. This should be about
24 me as a personal individual, not as a corporate
25 persona. They should be defined and excluded from 11:24

1 this whole notion of PII. It's just not needed to
2 regulate information that's not truly personal.

3 A good example of this exclusion, Canada has
4 passed some of their privacy legislation. They
5 excluded business use -- if you've got 11:24
6 business-to-business information going on, that's
7 fine. If you've got personal-to-business, that
8 should be included, no question. But
9 business-to-business is not personal information.

10 For e-mail, it's easy. It's a corporate 11:24
11 e-mail. For phone numbers, I know it's common today
12 for people to use their personal cell phone for
13 business use. It's also very easy and very
14 inexpensive to get a second phone number for the
15 company. I would submit that, if they use their 11:25
16 personal phone number in a business fashion, they've
17 abandoned the concept of this is personal
18 information. It's not public. It's now part of
19 their corporation.

20 It's not clear about deleting information 11:25
21 about employees. Employees are not consumers. Would
22 that be included in this legislation? I don't
23 believe so, but it's not clear. It needs
24 clarification.

25 That's all I have time for. I'll submit the 11:25

1 rest of my comments in writing.

2 Thank you.

3 STACEY SCHESSER: Thank you.

4 Speaker 16.

5 UNKNOWN FEMALE: Thank you. 11:26

6 STACEY SCHESSER: Good morning.

7 EMILY FISHER: Good morning. Excuse me.

8 My name is Emily Fisher, and I represent the
9 Public Advocates Office, which is an independent
10 consumer advocacy organization within the California 11:26
11 Public Utilities Commission.

12 And Public Advocates advocates for utility
13 customers to obtain the lowest possible rates for
14 service consistent with reliable and safe energy,
15 water, and communication services. So just a little 11:26
16 about who we are.

17 Implementation and enforcement of the CCPA
18 will have significant impact on the consumers that
19 the Public Advocates Office represents as well as on
20 businesses that are regulated by the CPUC. We are 11:26
21 submitting written comments later this week with
22 specific proposed new language for your
23 implementation convenience.

24 For purposes of this hearing, however, I'd
25 like to address one of the main concerns we have with 11:27

1 implementation of the CCPA, which is the impact of
2 otherwise allowable financial incentives on utility
3 and communication services customers. Where
4 customers have limited alternatives for obtaining
5 these essential services, whether they are 11:27
6 electricity, gas, water, wire line or wireless phone,
7 or Internet access, the financial incentives will
8 create undue pressure, especially for lower income
9 and rural consumers to opt in in order to obtain the
10 benefit of the financial incentive. And this is 11:27
11 likely to have a coercive effect, which is
12 specifically prohibited by the CCPA and Civil Code
13 Section 1798(b)(4) prohibiting coercive financial
14 incentives.

15 So for this reason, businesses that provide 11:28
16 the services of a public utility, whether defined in
17 Public Utilities Code Section 216, including
18 communication services, should be restricted from
19 offering financial incentives in exchange for
20 consumer opt in. The CPUC already has oversight over 11:28
21 most of the businesses providing these essential
22 services and will also be providing its own separate
23 comments on issues of CPUC regulatory authority in
24 regard to the CCPA.

25 So therefore, Public Advocates proposes that 11:28

1 requiring businesses who provide these essential
2 services under CPUC jurisdiction -- requiring them to
3 apply for permission to implement a financial
4 incentive will help prevent coercive financial
5 incentives that could have a disparate impact on low 11:28
6 income and rural consumers while still allowing these
7 businesses an opportunity to show that their proposed
8 financial incentive will not have such an impact.

9 Without this additional safeguard,
10 consumers' rights to make meaningful choices about 11:29
11 the use of their personal information will be
12 impaired whenever they set up a new electricity, gas,
13 wireless phone, or Internet account. The majority of
14 California households no longer have a wire line or a
15 landline phone; so there's really no question that 11:29
16 wireless services are an essential utility service.

17 As I said, specific proposed language for
18 this provision will be in our written comments coming
19 later this week.

20 Thank you. 11:29

21 STACEY SCHESSER: Thank you.

22 Speaker 18. Sorry. Speaker 17.

23 UNKNOWN FEMALE: Thank you.

24 STACEY SCHESSER: Sorry about that. Good
25 morning. 11:30

1 HENRY LAU: Good morning.

2 My name is Henry Lau, it's L-A-U, and I'm a
3 cofounder of a company called Privolta.

4 We have taken a contrarian strategy in the
5 marketplace by focusing on advertising and marketing 11:30
6 products that do not require the use of personally
7 identifiable information.

8 I wanted to bring up to two key concerns in
9 relation to the CCPA. The first concern is related
10 to how companies, including Google, have implemented 11:30
11 dark patterns in their consent collection processes
12 in European jurisdictions due to the GDPR.

13 We have conducted a study of the top 50
14 websites in the U.K. and found that, across all of
15 them, the process of opting out was significantly 11:30
16 more difficult than opting in to data collection.
17 Using Google as an example once again, our study
18 found that the process of opting out took 17 clicks
19 and at least three minutes, while opting in took less
20 than two seconds and only one click. By declaring 11:30
21 psychological warfare on consumers who wish to opt
22 out, these practices violate the spirit of privacy
23 laws, and we'd like to sound the alarm before these
24 practices are allowed to go unhindered here as well.

25 The pervasive use of dark patterns currently 11:31

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1 by California-based companies and others have led
2 some consent management platforms to brag about
3 90 percent consent rates. Careful rulemaking around
4 the deployment of the opt out button should prevent
5 these practices from crossing over. 11:31

6 Secondly, as reported by the Wall Street
7 Journal and others, Facebook has used privacy as an
8 excuse to lock their platform out from companies they
9 found to be competitive. And we want to ensure that
10 these regulations such as the CCPA do not provide 11:31
11 cover for anticompetitive practices in the future.

12 Thank you for your time.

13 STACEY SCHESSER: Thank you.

14 Speaker 18. Good morning.

15 CLIFFORD WALDECK: Hi. My name is Clifford 11:32
16 Waldeck, W-A-L-D-E-C-K, and I have my own consulting
17 company that does a lot of different things.

18 And I just want to ask -- I just hope that
19 there will be clear guidance on how the CCPA will be
20 regulated and the resources that will be behind that. 11:32
21 And I know you can't answer that, but I wanted to get
22 that in there 'cause I think it's an important thing
23 to everybody in the room here.

24 Thank you.

25 STACEY SCHESSER: Thank you. 11:33

1 Speaker 19.

2 Speaker 19? Okay.

3 Speaker 20. Good morning.

4 PIERLUIGI OLIVERIO: Good morning.

5 Pierluigi Oliverio, P-I-E-R-L-U-I-G-I 11:33

6 space --

7 STACEY SCHESSER: I'm sorry.

8 PIERLUIGI OLIVERIO: What's that?

9 STACEY SCHESSER: Can you slow down and say

10 it one more time? 11:33

11 PIERLUIGI OLIVERIO: Fair enough.

12 Pierluigi Oliverio, spelling

13 P-I-E-R-L-U-I-G-I space O-L-I-V-E-R-I-O.

14 And I will submit something through your

15 website for written comment, but I just wanted to 11:33

16 make a few comments now.

17 So I'm representing myself as a data privacy

18 advocate. I want to thank you for your service and

19 thank you for holding the four hearings. The City of

20 San Jose would likely be happy to host future 11:34

21 hearings at the City Hall Council Chambers, which

22 holds 300 people.

23 As a former elected official for ten years

24 in San Jose, we spent a considerable amount of money

25 as a city and personnel time to protect PII data. We 11:34

1 did so not because it was required but because it was
2 the right thing to do. I've spoken to numerous
3 C-level IT leaders, both large and small, public and
4 private, and overall I would say the attitude is
5 cavalier, and they will wait till a company is fined. 11:34

6 One CIO told me that, if they don't -- told me that,
7 if they do not know about it, then they essentially
8 have plausible deniability. Another CI told me they
9 were retiring and don't want to take it on, it'll be
10 someone else's problem. 11:34

11 When talking to global companies about GDPR,
12 which they're responsible for as well, companies say,
13 "It's a mess. I just hope I don't get any requests."
14 So I find that there's just a lot of ill-prepared
15 organizations. 11:34

16 And I'm reading off my phone, so I
17 apologize, as I wrote a little message here.

18 I wanted to go on and say that, you know,
19 the technology exists today for companies to comply,
20 and organizations should take this seriously and 11:35
21 govern and secure their data now as responsible
22 companies have done with GDPR.

23 I would encourage the Department of Justice
24 to notify CEOs of the law and of their
25 responsibilities to the Franchise Tax Board as that 11:35

1 would be an economically efficient method to notify
2 them and would also be broad-based.

3 I would encourage the Department of Justice
4 to have CEOs and CIOs certify that the company has
5 adequate controls to comply, and reporting structures 11:35
6 ensure that such certifying officers are involved in
7 and are responsible for decisions that impact the
8 entity's compliance.

9 As the law evolves and professional staff
10 will have to make decisions on implementation, I 11:35
11 would suggest the law be enforced tighter rather than
12 more lenient without delay. Data privacy will only
13 become more important and not less so; so please
14 utilize this opportunity to protect consumer and
15 employee data with strict enforcement of CCPA so 11:36
16 companies are truly responsive.

17 Thank you for your time.

18 STACEY SCHESSER: Thank you.

19 And Speaker 21.

20 Good morning. 11:36

21 BARBARA LAWLER: Good morning.

22 My name is Barbara Lawler, B-A-R-B-A-R-A,
23 Lawler, L-A-W-L-E-R.

24 First I want to thank the Attorney General
25 and his staff for holding this forum so that we could 11:36

1 provide feedback on the proposed regulations.

2 Currently I'm the chief privacy and data
3 ethics officer for Looker based in Santa Cruz. I'm
4 providing this feedback as a 20-plus year privacy
5 leader and as a California native. And as a native, 11:36
6 I applaud my home state's ongoing efforts to provide
7 meaningful privacy protections to its citizens.

8 My feedback today, which will also be
9 included in writing, reflects that 20-plus years of
10 building and implementing ethical world-class privacy 11:37
11 programs, including as the former CPO of
12 Hewlett-Packard and of Intuit where I was known and
13 my teams were known for operational excellence and
14 innovative approaches with the goal of honoring the
15 new rights enshrined in California consumers and 11:37
16 enabling effective compliance for businesses of all
17 sizes and industries and a focus on achieving
18 positive privacy outcomes for California consumers, I
19 offer three foundational suggestions.

20 First, clarify the definitions and 11:37
21 relationships between a business, a service provider,
22 and a third party. These definitions drive all
23 strategic and tactical contracting arrangements and
24 negotiations. The range of interpretations I've seen
25 so far run the gamut from no change in terms to the 11:38

1 same exact type of company, one calling themselves a
2 service provider, another a third party. I think
3 there's an incredible range of interpretation. Some
4 will sign CCPA addendums and some won't. What's the
5 right answer? 11:38

6 So with regard to the definitions in Section
7 301(d), sources, and 301(e), categories of third
8 parties, the latter would clearly seem to indicate
9 that service providers are subject to third party
10 roles and vice versa. And we've heard multiple 11:38
11 interpretations along those lines, and so they don't
12 really seem to ally with Section 314(a), (c), and
13 (d).

14 Internally we've developed a table to map
15 the relationships, but even with a team of experts, 11:38
16 advisors, and peers, I'm still not sure we've got it
17 right, and I'm not sure a lot of other companies are
18 either, even though they are absolutely trying. So I
19 disagree with the previous speaker on his premise
20 that companies don't care. 11:38

21 Second, streamline the intertwined CCPA
22 notice and privacy policy requirements, also a
23 fundamental. Did you intend multiple separate
24 notices that link to a privacy policy or a privacy
25 policy that includes multiple notices? Both? So 11:39

1 many notices, so many nested linking. It's almost
2 like "Privacy Notice Inception."

3 Historically the terms "privacy notice" and
4 "policy" are often used interchangeably. So
5 honestly, as an old-timer, these sections kind of 11:39
6 gave me a headache, and it feels also like a step
7 backwards. So the content is important; so I think
8 there's an opportunity to streamline here.

9 In the same vein but with a different focus,
10 No. 3, consider reducing unintended friction for 11:39
11 consumers making legitimate data deletion and right
12 to know requests. Based on 18 months of GDPR
13 experience, our data says 99 percent of data rights
14 requests are for deletion only, and they come to the
15 privacy e-mail box. No one wants to call. No one 11:40
16 wants to fill out a form.

17 Now, forms are great for metrics, which
18 happens to be something in analytics that my
19 company's good at. But most individuals feel like
20 filling out forms are actually friction and create 11:40
21 the perception that those requirements are actually
22 slowing down and inhibiting their ability to exercise
23 their privacy rights rather than enabling them. So I
24 think there's an opportunity to simplify.

25 In addition to my written comments, I'll 11:40

1 address some positive additional thoughts, including
2 the need for positive incentives and accountability
3 frameworks for organizations striving daily to be
4 compliant and do the right thing. Similar to the
5 EU-U.S. privacy shield, codes of conduct identified 11:40
6 in the GDPR, security certifications, privacy seals,
7 or similar. The need for decision tools, templates,
8 and checklists to guide compliance. They're easy to
9 read and understand by the average individual.

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10 Prioritize guidance for reasonable security 11:40
11 expectations, especially for small and medium
12 businesses. Clarification for cloud-based and (BDB?)
13 services, which seem to be either largely
14 misunderstood or overlooked in the CCPA context. The
15 need for an authorized State-provided resource for 11:41
16 businesses to confirm the validity of registered
17 authorized agents as described in 301(c) and 326(a)
18 and (b).

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19 And finally, clarifying the policy and
20 regulatory purposes and intended uses of published 11:41
21 training metrics and calculated value of consumer
22 data in Section 317 and 337, respectively, as these
23 feel like confidential trade secret IP or financial
24 reporting information.

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25 So again, thank you for the opportunity to 11:41

1 give feedback and please feel free to reach out to me
2 for deeper discussions on any of my recommendations.

3 STACEY SCHESSER: Thank you.

4 Speaker 22.

5 EMILY EMERY: Are we still in morning? In 11:42
6 the morning time?

7 STACEY SCHESSER: Yes.

8 EMILY EMERY: Good morning then to --

9 STACEY SCHESSER: Good morning.

10 EMILY EMERY: -- coming from the East Coast. 11:42

11 My name is Emily Emory, E-M-I-L-Y E-M-E-R-Y,
12 and I'm honored to speak with you this morning on
13 behalf of MPA - the Association of Magazine Media,
14 where I serve as the director of digital policy.

15 MPA represents more than 500 magazine media 11:42

16 brands that span a vast range of genres across print,
17 online, mobile, and video media. MPA members publish
18 some of the nation's best known, well-trusted, and
19 loved magazines. More than 90 percent of all U.S.

20 adults are informed, inspired, and entertained 11:42

21 through the print and digital magazine media titles
22 that they trust and value most.

23 Readers trust magazine media, and in order
24 to sustain that trust and create the enduring

25 relationship between magazine publishers and their 11:42

1 readers, they must have a high degree of confidence
2 that their data will be protected. And this
3 confidence and trust is preserved by magazine media
4 publishers through time-tested adherence to best
5 practices in data privacy and security across print, 11:43
6 digital, and in emerging technologies.

7 Preserving reader trust compels MPA and our
8 members to advocate on behalf of strong consumer
9 privacy protections, and we're here to testify today
10 to commend you for the underlying principles behind 11:43
11 the California Consumer Privacy Act. I also would
12 like to note the significant impact that CCPA could
13 have on consumers of magazine media, availability of
14 magazine content, and the visibility of magazine
15 brands. And we look forward to further guidance from 11:43
16 the Attorney General's office on three specific
17 sections of provisions.

18 First, MPA's concerned that consumer choice
19 could be circumvented given the Attorney General's
20 direction to businesses to treat a browser plug-in or 11:43
21 privacy setting or other mechanism as a valid opt
22 in -- out -- excuse me -- opt out of sale request in
23 999.315. Especially for businesses like magazine
24 publishers that have a direct trusted relationship
25 with their readers, consumer choice could best be 11:43

1 reflected by directing consumers to a "do not sell my
2 info" link, which serves as a far better indicator of
3 consumer intent. We ask the Attorney General office
4 to reconsider the browsing setting requirement to
5 enable consumers to opt out of personal information 11:44
6 sale by some businesses and not others.

7 Second, MPA asks the Attorney General office
8 to explicitly affirm in 999.313 that businesses may
9 retain suppression records in order to honor a
10 consumer's deletion request and prevent the 11:44
11 re-addition of a consumer to the business's system
12 should the business receive personal information
13 about the consumer's data in the future from another
14 party.

15 Third, MPA notes the importance of tiered 11:44
16 subscription offers and metered pay walls in
17 sustaining magazine media revenue models. The
18 proposed regulations do not fully account for these
19 methods of consumer engagement with content and could
20 impede brands from offering such beneficial models to 11:44
21 consumers. And we see a potential conflict with the
22 statute outlined in 999.307.

23 We'd ask the Attorney General's office to
24 reconsider these requirements that magazine brands
25 can confidently continue to provide beneficial 11:44

OSF
22-1
cont

OSF
22-2

OSF
22-3

1 offerings in content across -- to California
2 consumers.

OSF
22-3
cont

3 And last, the risk for technical
4 implementation issues where guidance from the
5 Attorney General's office could facilitate 11:45
6 businesses' CCPA implementation efforts. That was a
7 mouthful.

OSF
22-4

8 First, we seek further guidance on possible
9 alternative format businesses may use to provide
10 required notices to consumers with disability. 11:45

11 Second, we seek further guidance on notice
12 at collection requirements given the innovative and
13 evolving user interactions that people have with
14 online media.

OSF
22-5

15 Third, we'd ask for further guidance from 11:45
16 the Attorney General on implementing the outstanding
17 opt out button and logo instructions.

OSF
22-6

18 And last, we recommend raising the
19 additional reporting requirement threshold from
20 4 million to 10 million consumers to provide relief 11:45
21 to small and mid market businesses.

OSF
22-7

22 I thank the Attorney General's office for
23 the tremendous work that you've done and the
24 privacy-forward approach to this important
25 regulation. We'll look forward to filing our 11:45

1 comments and would just simply note that further
2 clarification would greatly assist businesses like
3 magazine publishers in their efforts to further
4 successfully comply with CCPA and further that
5 relationship with consumer trust and, in the case of 11:46
6 magazine publishers, maintaining that reader trust.

7 Thank you so much.

8 STACEY SCHESSER: Thank you.

9 So this concludes our preregistered
10 speakers. We don't have any further speakers signed 11:46
11 up; so I'd like to now open it up to anybody who
12 would like to come down and speak at the microphone.

13 MAX KORNBLITH: I already spoke today.

14 STACEY SCHESSER: That's okay. You can come
15 back. 11:46

16 MAX KORNBLITH: Great. Thanks.

17 Again, Max Kornblith. And for -- I'm
18 actually just making this comment as an individual
19 but prompted by interesting points made by a couple
20 of people who spoke previously. 11:46

21 I would -- if you're not already, I would
22 encourage you folks to consult with user experience
23 design professionals because I think one of the
24 things that's come up here is the practical effects
25 of these regulations will have a lot to do with how 11:47

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OSF
8-4

1 they are implemented on the page of a website.

2 So there's been a lot of talk about what
3 will that button look like? How will that be
4 apparent to people? I think the mention of dark
5 patterns was particularly apt. 11:47

6 And then that question of an e-mail address,
7 so, you know, experience working in tech companies,
8 working with people trying to sort through complex
9 contracts that the companies give them, any e-mail
10 address that's buried somewhere in a longer 11:47
11 agreement, such as your privacy policy, is much less
12 likely to be used versus a button or a listing of the
13 address up front or, you know, having the button sent
14 in an e-mail versus having to go through a separate
15 channel. 11:48

16 And then -- what else? Oh.

17 And any -- like, generally an indication of
18 an e-mail address, unless it tells you what's going
19 to happen next, as a consumer, like, I personally
20 would take that to mean it's unlikely that much is 11:48
21 going to happen, and it may not even be monitored.

22 So again, I'd encourage you to consult
23 actually with professionals on that 'cause I'm not a
24 user experience professional, but how that's
25 implemented in actual, like, web terms and what's 11:48

1 required of people because companies will find a way
2 to bury it if it's not explicit, that it has to be,
3 you know, put up front. And I think that's the
4 intent very wisely of the opt out button.

5 STACEY SCHESSER: Thank you. 11:48

6 ASHKAN SOLTANI: Hi. Ashkan Soltani. I'm
7 an independent consultant and a researcher. I'm also
8 advising the CA privacy folks on the initial ballot
9 initiative and the more recent CPRA.

10 Two just really quick comments, one on the 11:49

11 browser-based setting. So I agree that it'd be
12 important that the AG clarify what browser or
13 platform controls would be adequate for allowing
14 consumers to express their opt out preferences.

15 Particularly of note would be to make sure that, in 11:49

16 addition to providing granular perhaps "opt back in"
17 permissions, it should also not conflict with other
18 browser privacy settings and controls.

19 So there's been a number of proposals to
20 require, say, persistent tokens or cryptographic 11:49

21 tokens that would more robustly identify the user in
22 order to effectuate their opt out. That would run
23 contrary to a privacy interest since it now would
24 allow -- or would conflict with, say, third-party

25 cookie blocking or other privacy-blocking tools. So 11:50

1 I think just two points that the AG could -- that the
2 regulation could bless particular protocols, and it
3 could also specify that they shouldn't conflict with
4 other privacy settings and controls.

5 The other is a quick comment on the 999.337 11:50
6 in terms of calculating the value of consumer data.

7 I do think it would be important to clarify that the
8 value of the calculation should be related to the opt
9 out -- directly to the opt out right -- or the right
10 that's enacted; right? So if you, for example, enact 11:50
11 your right to delete, right, that would be -- that
12 value would be different than, say, opting out of
13 sale; right?

14 So a consumer -- a company might be able to
15 still monetize a consumer's data on a first-party 11:50
16 basis when they opt out of sale whereas a company may
17 not be able to monetize the data at all if a consumer
18 deletes their information. And therefore, that
19 calculation, in terms of the financial incentive
20 provided, would be different in those two cases. 11:51

21 So those are the two quick points I would
22 like to make. And thank you so much for your effort
23 on this. This is fantastic.

24 STACEY SCHESSER: Thank you.

25 Would anybody else like to speak? 11:51

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23-3

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Seeing that there are no more persons present that would like to make any oral comments, I hereby close this hearing on the Proposed California Consumer Privacy Act Regulations. The written comment period ends on December 6th, 2019 at 11:51 5:00 P.M. Pacific time. Written comments can also be e-mailed to us directly at privacyregulations@doj.ca.gov.

On behalf of the Department of Justice, thank you for participating in the rulemaking process. 11:52

The time is 11:52 A.M., and the hearing is closed.

(Whereupon at 11:52 A.M., the audio concluded.)

--ooOoo--

1 STATE OF CALIFORNIA)

2 COUNTY OF LOS ANGELES)

3

4 I, Shawna Hogan Cox, C.S.R. No. 14038, in
5 and for the State of California, do hereby certify:

6 That the foregoing transcription was
7 transcribed by me, that the transcription was
8 recorded stenographically by me, was thereafter
9 transcribed under my direction and supervision, and
10 that the foregoing is a true record of same.

11 I further certify that I am neither counsel
12 for nor related to any party to said action nor in
13 any way interested in the outcome thereof.

14 IN WITNESS WHEREOF, I have subscribed my
15 name this 16th day of December, 2019.

16

17

18

19

20

21

Shawna Cox

22

Certified Shorthand

23

Reporter for the

24

State of California

25

[& - act]

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[giants - identifiable]

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[identification - interest]

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[interested - lies]

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