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PUBLIC MEETING ON THE CALIFORNIA CONSUMER PRIVACY ACTS

January 8, 2019

10:20 a.m.

Milton Marks Convention Center
455 Golden Gate Avenue
San Francisco, California

Joan Theresa Cesano, CSR No. 2590

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APPEARANCES OF PANEL

STACEY SCHESSER, SDAG
NICKLAS AKERS, SAAG
Department of Justice
Office of the Attorney General
455 Golden Gate Avenue, Ste. 11000
San Francisco CA 94102



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SAN FRANCISCO, CALIFORNIA;
TUESDAY, JANUARY 8, 2019; 10:20 A.M.

MS. SCHESSER: On behalf of the California Department of Justice and Attorney General Xavier Becerra, welcome to the first public forum on the California Consumer Privacy Acts. We are at the beginning of our rule-making process on the CCPA. These forums are part of an informal period where we want to hear from you. There will be future opportunities for members of the public can continue to be heard including once we draft a text of the regulations and enter the formal rule-making process. Today our role is to listen. We are not going to be able to answer any questions or respond to comments. Before we start I'd like to briefly introduce ourselves.

My name is Stacey Schesser, I am the supervising attorney general for the privacy unit here at the AG's office.

MS. KIM: My name is Lisa Kim, I am a Deputy Attorney General in the Privacy Unit as well.

MR. AKERS: Nick Akers, chief of the Office of Consumer Law Section.

MR. MAUNEY: Devin Mauney, I'm a deputy instead attorney general in the Consumer Law Section.

MS. SCHESSER: We will be beginning the program

1 in just a moment, but we have a process to go over for
2 today's forum.

3 Each speaker will be allotted five minutes. A
4 member of our staff, Devin, is keeping time and he will
5 hold up a card signaling when the speaker has one minute
6 remaining and when time has expired. Please be respectful
7 of the timekeeper and your fellow speakers here today.

8 We also have a Court Reporter -- we also have a
9 Court Reporter who will transcribing comments. Please
10 speak slowly and carefully for her as well.

11 When you registered this morning, if you are a
12 speaker, you should have received a number. People will
13 be called down to the front row, which is reserved for
14 speakers, in factors of ten. Please come up to the
15 microphone. It is requested but not required that you
16 identify yourself when you're offering your public
17 comment. It would helpful if you also have a business card
18 to hand that to the Court Reporter.

19 We also strongly welcome comments by email or
20 mail and you can see that's the email address and the
21 mailing address for you to provide comments to us.

22 Lastly, bathrooms are to the right of this room
23 just down this hall, and we also encourage people to stay
24 informed throughout this process by going to our website
25 at www.OAG.CA.gov/privacy/CCPA.

1 Then quickly before we start, is there any media
2 here present today? Okay. Thank you.

3 CCPA Section 1798.18.5 of the Civil Code
4 identifies specific rule-making responsibilities of the
5 AG. These areas are summarized here in 1 through 7.
6 Please keep in mind these areas when providing your
7 comments today.

8 Should there be additional categories -- whoop --
9 oh the joy of technology, right? Okay. Don't worry, we
10 are going to back to that slide in just a minute. There we
11 go.

12 So category -- topic area number one, categories
13 of personal information: Should there be additional
14 categories of personal information?

15 Number two: Should the definition of unique
16 identifies be updated?

17 Number three: What exceptions should be
18 established to comply with state or Federal law?

19 Number four: How should a consumer submit a
20 request to opt out of the sale of personal information and
21 how should business comply with that consumer's request?

22 Number five: What type of uniform opt out logo
23 or button should be developed for consumers about the
24 right to opt out?

25 Number six: What type of notices and

1 information should businesses be required to provide
2 including those related to financial incentive offering.

3 Number seven: How can consumer or their agents
4 submit a request for information to a business and how
5 should a business reasonably verify these requests?

6 At this time we welcome comments from the
7 public. For those of you with speaker numbers 1 through
8 10, please come down to the front row and we can begin
9 opening up the session for public comment. Thank you very
10 much.

11 MR. MAUNEY: Anyone else want to come down? Don't
12 be shy. All right.

13 MS. SCHESSER: You can step up to the mic.

14 MR. PITZGER: Good morning. My name is Bo
15 Pitzger, I'm an Enterprise security architect for the
16 University of California, however I want to make it clear
17 that I am not a spokes person for the UC and I'm speaking
18 strictly in my personal capacity. That said -- is the
19 microphone not working?

20 AUDIENCE: It's not on.

21 MR. PITZGER: Okay. Is this better? Okay. One
22 more time for the record. My name is Bo Pitzger, I'm an
23 Enterprise security architecture for the University of
24 California Office of the President, however I'm here
25 strictly in a personal capacity and I am not a

1 spokesperson for the University. That said, the university
2 does have as part of its mission statement public service
3 and so in that spirit I want to offer a few remarks.

4 First of all, with regards to categories of
5 personal information I know there's been comments in the
6 public in regards to limiting the scope of that. I would
7 strongly discourage that. There's been a lot of work at
8 the University and indeed elsewhere on data sets and I
9 want to make it clear the via identification like removing
10 things like names and addresses does not mean you cannot
11 uniquely reidentify individuals.

12 While CCPA does not wholly address the issues of
13 anonymisation, maintaining this broad category role will
14 makes it a little bit more difficult for physical attacks.

15 Second, there are various -- excuse me one moment
16 -- there's various provisions in here that require
17 consumers to give up their rights or not require,
18 encourage them by allowing arbitrary charges if they do
19 not give up their personal information. I think that is a
20 notion that will lead to obvious abuse, I think that
21 paying a thousand dollars for Facebook access unless
22 you're allow them to abuse your personal information.

23 Next, it was not clear to my reading whether in
24 fact paper records and non electronic forms of information
25 were covered by CCPA. I would hope that if there is any

1 ambiguity in this regard that that would be clarified and
2 that public -- paper records would be included. The
3 example being, for instance, the company adequate protects
4 its email but then it gets printed out and is left in a
5 public area. This has a been an issue with HIPAA for
6 quite some time and I suspect we will see similar issues
7 here as well.

8 And I would also note there needs -- there is an
9 implicit standard of care in this and I will add a quick
10 caveat to the lawyers in the room and I'm not a lawyer, so
11 I let you guys define that.

12 But a standard of care for compliance should
13 include explicit references to the AG-defined use of
14 national standards such as NIST (ph), cyber security
15 framework, which is the basis for FISMA and other Federal
16 regulations, as well as industry best practices. Without
17 that there is no way to measure whether the compliances
18 efforts were adequate prior to an occurrence of a breach.

19 So I would encourage the AGSU to have done in
20 other areas to periodically publish an update what you
21 would deem to be the minimum compliance, design
22 requirements.

23 I'd also note, by the way, the University of
24 California at the Berkeley Center For Law and Technology
25 has a lot of resources in this respect and I would suggest

1 that you might want to talk to Paul Schwartz or Diedre
2 Mulligan or some of the others over there who are
3 internationally recognized experts in this regard.

4 I might add that, too, we -- we will find that
5 some of these standards are very explicit about what
6 constitutes PI and its handling and I would think that we
7 need to be more inclusive in this regard.

8 Thank you very much for hearing me out.

9 SPEAKER (seated): So I'm actually speaker number
10 two but the person to my right is representing an
11 organization that we're a part of, so I'm thinking it
12 might make sense for her to speak first, then if there is
13 anything for me to add I would speak out at that time.

14 MS. KARASIK: Good morning. Thank you for the
15 opportunity to provide info regarding the implementation
16 of the CPA. My name is Julie Karasik and I'm a resident
17 of San Francisco, California, and I am the Technologist
18 for the Network Advertising Initiative or the NAI.

19 The NAI is a non-profit the leading self
20 regulatory organization for responsible data collection
21 and use for interest-based advertising.

22 (Court Reporter speaks; off the record)

23 MS. KARASIK:

24 Q I will channel my inner rock star.

25 Our members include a wide range of technology

1 business that form the back bone of the digital
2 advertising ecosystem.

3 The NAI Code of Conduct which is rooted in the
4 Fair Information Privacy Principles requires the NAI
5 members to meet high standards for data collection use
6 including transparency, consumer control and data
7 minimization.

8 The NAI supports many of the underlying goals of
9 the CCPA in particular giving consumers a choice about how
10 data are to be used consistent with CCPA's requirement for
11 an opt-out choice, the NAI has for years maintained an
12 industry wide opt-out choice that empowers consumers to
13 opt out of interest-based advertising. However, we are
14 concerned that the CCPA suffers from ambiguities that are
15 likely to have profound unintended consequences for both
16 consumers and the robust digital economy.

17 Therefore, the Attorney General plays a critical
18 role in rule-making in this law. In doing so we urge the
19 AG to consider the following key concerns:

20 First, the definition of a sale of personal
21 information is ambiguous and it should be clarified that
22 in most cases it does not apply to the process of serving
23 interest-based advertising.

24 The law's definition contains an exception for
25 business purposes including advertising, but its

1 application to the programmatic ecosystem is unclear and
2 contradictory. In most cases these ad buys are not
3 transactions, but rather auctions of advertising space on
4 web pages or apps where data is not sold from one entity
5 to another.

6 The NAI urges the Attorney General to clarify
7 that a third party providing a targeted ad to a consumer
8 on behalf of the business does not fall under the
9 definition of sales.

10 Second, complying with individual control rights
11 could create substantial challenges for education within
12 the third party advertising industry which seeks to
13 collect as little personal information as possible.

14 We agree individuals should have the ability to
15 exercise control over use of their personal information
16 and that businesses should strive to provide reasonable
17 consumer access to this data.

18 These principles have long been at the core of
19 the NAI's code which incentivizes companies to avoid
20 collecting information that identifies the individual
21 person. But this approach presents challenges with respect
22 to authenticating individuals for purposes of providing
23 control such as access, correction and deletion. It would
24 be an unfortunate outcome if the CCPA is implemented in a
25 way where companies that attempt to limit their collection

1 of non personal information are actually required to also
2 obtain identifying data in order to authenticate a user.
3 Therefore, we urge you, the Attorney General, to clarify
4 application of these rules for businesses that do not
5 collect sufficient data to verify the identify of
6 California residents.

7 Third, it is imperative that the CCPA allow
8 public and service providers to charge a reasonable fee as
9 an alternative to using the current free advertising
10 model. Digital advertising allows companies to provide
11 free or low cost services to consumers.

12 The CCPA states that the business may offer a
13 different price, rate, level or quality of service to an
14 opted-out consumer, but only when the business meets an
15 ambiguous set of requirements. To remain economically
16 viable, online publishers and service providers must be
17 able to charge a reasonable rate as an alternative to
18 offering ad-support content.

19 As such, we urge the AG to clarify a company can
20 always charge reasonable rates as an alternative to
21 providing opt out services.

22 Fourth, the CCPA's requirements for companies to
23 maintain a "do not sell my data" button on their website
24 is ambiguous, potentially requiring companies to add a
25 button to every web page that a company maintains would be

1 redundant and create a poor user experience, especially on
2 mobile platforms. We ask that the AG specify that the
3 homepage would be sufficient.

4 Again, thank you for the opportunity to provide
5 input. The NAI looks forward to submitting detailed,
6 written comments and working with you as you develop
7 implementing regulations for this important law. Thank
8 you.

9 MR. ROSLER: That was a good decision to be able
10 to go quicker. I'm Dan Rosler, I work with a company
11 Flash Talking which is an ad serving technology company.
12 We have offices around the world although I'm based in
13 California.

14 As Julie mentioned so we are a member of NAI and
15 as a member of that organization we are purposed built
16 around consumer privacy. Our platform does not collect
17 any personal identifiable information in any way. We
18 don't trade that information or anything with third
19 parties.

20 So in the contents of the CCPA it seems important
21 to us that if companies are taking the approach of
22 emphasizing user privacy and trying to avoid any personal
23 identifiable information in any way, then there should be
24 exceptions for the fact the only information that they
25 would have on the user would be a random user ID, a

1 character strain that in and of itself doesn't reflect
2 anything about that particular person, and none of the
3 information that can be used to identify that person.

4 To give you some context of examples where this
5 approach in GDPR has created unexpected consequences as
6 Julie noted, we have been receiving in our European
7 counterparts lots of personal identifiable information
8 from people, driver's licenses, names, addresses, phone
9 numbers, emails, all of this information as those
10 consumers try to identify themselves to us, and so now we
11 are the unfortunate position of receiving, although not
12 through our platform or systems, just receiving email and
13 other methods of personal information that we never
14 intended to have in any way, and that creates a lot of
15 challenges for us or constituents.

16 So in the context of CCPA it would seem there
17 should be a reward or a benefit to organizations like
18 other members of the NAI who are making efforts to avoid
19 any personal identifiable information in their business
20 and being -- attempting to provide consumers access to
21 this information which does not identify them in any way
22 does cause that burden.

23 Another note with respect to GDPR which defines
24 IP address as personal information without getting into
25 technical specifics, the use of IP address as personal

1 identifying information or personal information, I guess,
2 is the definition from GDPR is problematic to the extent I
3 IP addresses do not actually individually identify
4 somebody.

5 Within, for example, a company that may have a
6 single IP address which is being translated out to many
7 users within the company, there is no way of knowing if
8 that IP address attaches to a particular person.

9 Also IP addresses change over time, therefore a
10 given person may have different IP addresses throughout
11 the day, for some reason, they're renewing or refreshing
12 these IP addresses. So we would encourage CCPA to
13 recognize whether that IP address is not actually personal
14 information to the extent the way the Internet works
15 today. It cannot be attached to a person either uniquely
16 or over time. Thank you very much.

17 MR. MAUNEY: Speakers with cards 11 through 20,
18 you're welcome to come down to the front row here and
19 again, if you just now decided you'd like to speak, you
20 can come over to the table and pick up a number for later.

21 MR. SNELL: Good morning. Thanks. My name is Jim
22 Snell, I'm a partner in the data security and privacy
23 group of Perkins Coie in Palo Alto, California. I've been
24 practicing in this area in the privacy law area for 20
25 years. I'm speaking on behalf of myself and a number of

1 clients whom we have been working with on the statute and
2 just wanted to address a couple of points. We will
3 provide more written comments which we're working on but I
4 thought it was important to come here today and just
5 mention a few things.

6 I won't repeat what the spokesperson from NAI
7 already said other than to say we agree with everything
8 that's been said by the NAI with respect to those
9 challenges.

10 With respect to the rule-making, I just want to
11 touch on four points briefly. First, the importance of
12 establishing safe harbors for businesses. The CCPA
13 imposes obligations on businesses, but in many respects
14 lacks detail about how those obligations are to be
15 fulfilled and the Attorney General can and should
16 establish procedures that businesses could follow and safe
17 harbors related to those procedures so that businesses
18 could follow established procedures and honor obligations
19 in ways that do provide safe harbors for their conduct and
20 insulate claims from complying with AG recommended and
21 endorsed proceedings.

22 Second, the non discrimination provisions of the
23 CCPA as currently drafted and contain confusing and
24 conflicting exemptions in our view. He would appreciate
25 some clarification and guidance on interpreting those

1 sections, in particular in building on what prior speakers
2 have said, allowing businesses to provide a different
3 level quality and service to users who exercise their
4 opt-out rights, particularly where data -- if data that's
5 being disabled is needed to provide the original service
6 as necessary, more generally to fund the underlying
7 service. Unless there is clarification we fear that
8 innovation is going to be stifled and that businesses that
9 use as their only source of revenue things, for example,
10 like advertising, are able to survive by charging a
11 reasonable fee for those who want to opt-out.

12 Third, clarifying the obligations with respect to
13 personal information. There's been some suggestion that
14 the definition of PI is so broad it can be argued to
15 require businesses to link data not already linked to an
16 individual. That's problematic. It's anti privacy, it's
17 anti -- it's not in the consumers' interest to require a
18 business to link information that's not already linked to
19 that individual.

20 A good example from a prior speaker is IP
21 addresses, which an IP address can be shared within a
22 household, there can be an IP address with respect to
23 Starbucks. If the CCPA were to be interpreted to require
24 businesses to ferret out and link personal information to
25 individuals in order to fulfil their obligations that

1 would not be in the interest of consumer privacy, it would
2 be an increasable burden on businesses.

3 And last, aligning the CCPA more closely with
4 existing regimes. An example that's been given by some is
5 the GDPR companies that have invested a lot of money in
6 GDPR compliance. The CCPA has some similarity to the GDPR
7 but the obligations differ, and aligning the CCPA with the
8 GDPR and other regimes, other privacy regimes of
9 businesses have already invested in complying with, would
10 be in consumers' interest and businesses' interest, and
11 it's a common sense way to address those who have already
12 been compliant with other regimes.

13 And actually my first comment on safe harbors,
14 was providing safe harbor, for example, for businesses
15 that are GDPR compliant would be in everybody's interests.
16 And with that, I'll rest. Thank you for your time.

17 MS. BUO: Good morning. Good morning. My name is
18 Vera Buo and I'm here on behalf of the California Chamber
19 of Commerce. Our goal for the AG rule-making process is
20 to make sure the CCPA is workable for all businesses and
21 to address unintended consequences of hastily passed law,
22 many of which run counter to its privacy goals.

23 Our first request for the AG's office is to keep
24 in mind throughout this process that in addition to data
25 brokers and very large companies CCPA applies to the

1 incredibly broad category of businesses in almost every
2 industry and that's any business that annually receives
3 the personal information of 50,000 more consumers
4 households or devices. It may sound like a high number at
5 first but it's not given CCPA has a very broad definition
6 of personal information which has been discussed, includes
7 IP addresses and so very much more.

8 For example, CCPA applies to businesses of 50,000
9 visitors to their website per year. You divide 50,000 by
10 365 days in a year and if you have on average 137 online
11 visitors are going to meet the threshold. And so you
12 think of all the businesses, many small businesses like
13 convenience stores or restaurants that conduct an average
14 of 137 transactions in a day, it is going to be
15 challenging for them to comply with this law especially as
16 it's currently written.

17 The Cal Chamber, in addition to a number of other
18 industries, are working together to draft comprehensive
19 written comments with specific proposed language for your
20 consideration for regulations. We intend to submit that
21 by the end of month. There are a lot of problems with
22 CCPA, some of which can and should be developed with the
23 role of making progress. As for today we will provide one
24 example, a significant example.

25 The CCPA requires businesses to provide consumers

1 with specific pieces of information the business has
2 collected after receiving a verifiable consumer request
3 and yet the CCPA does not define what specific pieces of
4 information means. It could mean that businesses must
5 transmit incredibly sensitive information like credit card
6 numbers or birth dates back to a consumer, which creates a
7 risk of inadvertent disclosure to a fraudster posing as
8 the consumer making mistakes for verifying consumer
9 requests incredibly high.

10 Additionally, in an effort we believe to
11 encourage privacy protected practices CCAP states the
12 business is not required to relink or reidentify data, yet
13 a business can not provide specific pieces of information
14 back to the consumer without relinking or reidentifying
15 data in order to match it to the person making the
16 request.

17 It's a glaring inconsistency in the law as
18 written and it should be clarified. And all of this runs
19 counter to common sense principles of privacy. Ultimately
20 we know that the AG office's goal in the process is to
21 protect consumers and we have that same goal. We look
22 forward to working with your office throughout this
23 process to meet it. Thank you.

24 MS. GLADSTEIN: Good morning. My name is
25 Margaret Gladstein and I'm here on behalf of California

1 Retailers Association. CRA represents all segments of the
2 retail industry including restaurants, grocery and other
3 mass merchandise retailers.

4 We have -- we appreciate the importance of CCPA
5 and our members are already working on complying with that
6 law. We concur with the previous comments especially the
7 representative from Perkins Coie who spoke about the
8 importance of a safe harbor and the comments just made by
9 Ms. Buo of the Chamber. But our particular concern today
10 will also be submitting written comments has to do with
11 the important of loyalty programs and their continuing
12 existence.

13 80% of all Americans belong to some sort of
14 loyalty program through a retailer or other type of
15 organization. These are very popular with consumers. We
16 believe it is the intent of the law based on the testimony
17 that was presented during the hearings of the legislature
18 that these programs be able to comment to exist, but as
19 previous speakers have stated there is some clarification
20 needed around these programs that they will be able to
21 continue to exist and retailers who offer them, much the
22 same way they do today and consumers can continue to enjoy
23 them in some of the same way they do today.

24 So we will leave, again submitting specific
25 comments, but I wanted to raise these issues today and

1 look forward to working with you as we move forward in
2 this process.

3 MR. MAUNEY: Ready for the next group, those that
4 are numbers 21 through 30, please come down to the front
5 row here.

6 MS. FELICIA: Thank you for hearing from the
7 public today. My name is Elizabeth Felicia and I'm vice
8 president of policy at Common Sense. We are a national
9 advocacy organization representing parents, kids and
10 educators. We're dedicated to improving outcomes and
11 equity for kids and families. Increasingly that means
12 ensuring they are protected online and that their
13 identities and private information are treated
14 responsibly.

15 As co-sponsors of the CCPA we believe many of the
16 expressed concerns about the bill can and will be resolved
17 in this rule-making process. The Attorney General will
18 establish the rules of the road for this historic law, we
19 appreciate the time and effort this office is taking to
20 fulfill its essential role.

21 Since we're all here today to hear from the
22 public let's remember what the public has voiced time
23 again, that they are concerned about their privacy online.
24 We asked parents and teens in a national survey last year
25 and nearly all teens, 87% and parents, 93% feel it's

1 important for sites to ask permission before selling or
2 sharing their personal information and more than 90% said
3 it's important that sites clearly label data they collect
4 and how it will be used. This law responds directly to
5 consumer demands and the AG's office will help ensure
6 meaningful, robust set of protections for kids and all
7 consumers.

8 There is more work to be done in legislature, we
9 need to expand it to strengthen protection such as
10 minimizing overuse of consumer data and we need to
11 guarantee departments like yours have resources that you
12 need. That's for another day. So today we thank you for
13 hearing from the public and for your leadership.

14 MR. MEDIATE: Hello. My name is Trevor Mediate
15 and I'm a data privacy consultant with Grant Thornton.
16 Today I speak in a personal capacity and not representing
17 the company.

18 Regarding the right to access, consumer's are
19 permitted to receive a copy of personal information
20 businesses collected and are maintaining on them. However,
21 an existing point of ambiguity and contention under the
22 similar law as the GDPR, is whether inferences businesses
23 collect based on personal information must be shared with
24 the consumer. Businesses have a vested interest in
25 collecting inferences on consumers to improve and inform

1 their own services, to better target advertising, and to
2 enrich data sets sold to or shared with other
3 organizations.

4 However, the prescriptive nature of these
5 inferences arguably make their use more consequential to
6 consumers than directly identifiable personal information.
7 As they reveal unparalleled insights into how consumers
8 make decisions and present opportunities to exploit those
9 insights according to the unknown goals of any party with
10 the competence to do so, expressly recognizing and
11 addressing the disclosure of the inferences derived from
12 personal information resolved several issues regarding the
13 definition of personal information.

14 Increasingly, businesses are collecting what is
15 traditionally considered non personal information to
16 recognize and track individual devices with full knowledge
17 that a deep understanding of consumers' Internet connected
18 device reveals equally deep knowledge about the consumer
19 who owns them.

20 We hear often that business organizations want to
21 avoid compliance challenges that come with collecting
22 personal information, but simultaneously, desire the
23 benefit that targeted marketing and more opaque data
24 management practices bring.

25 What I ask is that the definition of personal

1 information within the CCPA expressly culls out not only
2 information related to an individual but also any
3 conclusions that are drawn from that collective
4 information and that that information is accessible and
5 able to be shared with consumers in a format which they
6 may understand, under existing data reportable
7 requirements in the CCPA.

8 I feel giving consumers this information and
9 understanding how businesses see them as a consumer that
10 makes decisions, can help offset the impact of influence
11 campaigns, can empower consumers to make their own
12 decisions, and make the practice of data privacy more
13 tangible and allow consumers to take ownership over that
14 aspect of their lives that is increasingly consequential
15 in 2019 and in every year to come. Thank you.

16 MR. CARLSON: My name is Steve Carlson, I
17 represent CTIA which is the wireless industry trade
18 association of device manufacturers, carriers and the
19 like. We associate ourselves with some of the earlier
20 comments concerning the need for a safe harbor, the
21 difficulty and dangers of requiring specific pieces of
22 information as opposed to categories of information which
23 is the -- which is protocol in other areas of our state
24 law, but as the wireless industry of particular concern is
25 the definition of information concerning household device

1 and family. Because relatively uniquely, but not only,
2 there are usually many account holders under the primary
3 account in the wireless industry, and if you cannot link a
4 particular individual with a particular set of data, you
5 are at great risk. I think we have cyber security risks
6 which are overwhelming and really need to be considered,
7 as well as other non attended consequences which we will
8 explore later in our comments.

9 So we would urge the Attorney General to look at
10 these things. We want this to be workable. We want this
11 to be privacy, but smart privacy. Thank you.

12 MS. ROSENBERG: Good morning. My name is Tracy
13 Rosenberg and I'm with Media Alliance. We are the
14 Northern California Democratic communications advocate. I
15 hear a large number of people speaking on behalf of the
16 business community and I want to make it clear I'm here to
17 speak on behalf of consumers, specifically lower income
18 and marginalized communities, whose needs need to be
19 considered in this law. I specifically want to address
20 some of the non discrimination clauses in CCPA.

21 As we talked about, they are a little confusing
22 at best, we don't know what the value of the data to a
23 consumer or to a business actually is and there is some
24 clarification of the language that you're going to have to
25 do, but the existing language regarding disadvantageous

1 pricing and these relate to the value of data. I'm not
2 insensitive to the needs of business, but I think that we
3 need to think clearly what this means to the pocketbooks
4 of consumers, especially consumers who in a state with an
5 extremely high cost of living, are struggling to pay their
6 rent, pay their mortgages, and whose wages are not going
7 up.

8 We all do business with a huge variety of
9 providers, or ISP, our wireless company, any number of
10 online applications, and websites that we visit, and a
11 significant amount of shopping. That's what people do.
12 So potentially I am entering into transactions with
13 hundreds of companies each year, many of which will be
14 covered by CCPA. If each and every one of those companies
15 is going to charge me an amount to opt out of the sale of
16 my data, that's going to add up over the course of a year,
17 and we get into a situation where we potentially run a
18 risk of kind of two tier privacy law: One that works for
19 the rich, who can kind absorb these fees on an ongoing
20 basis and one that for poorer people, often frankly people
21 who like me, I'm a non-profit worker, and I don't make big
22 bucks, and my rent is a significant chunk of my salary and
23 if you asked me to add a privacy budget each month or each
24 year, it's going to be pretty limited, and the reality is
25 I'm a privacy advocate, this is really important to me,

1 but the ability to be able to afford basically to act on
2 your desires to prevent the sale of your data that in most
3 cases people didn't even know about, but because of CCPA
4 they will and they will have a choice, requires the
5 ability to financially act on that choice.

6 We submitted to you some comments or some sort of
7 regulatory protocols that you could consider in order to
8 sort of balance these interests of people being able to
9 afford to use the law and the legitimate concerns of
10 businesses that are offering basically free services in
11 exchange for data. I think we can meet that balance, but
12 I want to be clear in what I wanted to sort of come here
13 to say is it is a balance and the role of consumers that
14 don't have unlimited resources for privacy, really needs
15 to be front and center in your process. Thanks.

16 MR. MAUNEY: Any we are ready for comments in the
17 30s? If you have a comment card, 31 through 40, I
18 suppose -- would you come on down to the front? As a
19 reminder if you now decide you'd like to make comment,
20 feel free to go and take a number and we can get you in
21 later.

22 MS. SHELTON: Good morning. My name is
23 (inaudible) Shelton and I'm a partner at Perkins Coie and
24 first of all I want to echo comments that my partner, Jim
25 Snell, just shared with you about the law.

1 In addition, one aspect I think that the AG's
2 office regulations can help clarify is application or non
3 application of CCPA to purely employee related data and HR
4 data. So there's confusion about the scope of the statute
5 given that the definition of consumer's borrowed from the
6 tax code and applies to the definition of residents into
7 the tax code which is basically anybody in California for
8 non temporary purpose, but when you look at the
9 legislative history as well you know, talking to the
10 components of statute and those are involved in the
11 proposition pre-dated the statute, the focus was really on
12 the consumer related issue and not management of personal
13 data from an HR perspective. That's the area that I think
14 regulation can be very helpful in clarifying and certainly
15 a compliance standpoint for those companies who are not
16 marketing their own employees. Some clarification on that
17 issue would be very helpful.

18 In addition -- I know I won't take time here, we
19 will be submitting comments on the specific items with
20 respect to notices and a sort of making -- allowing for a
21 safe harbor for businesses that are provided in the format
22 that the AG's office might actually promote or set forth
23 as to provide guidance so that companies are not subject
24 to enforcement active or litigation activity, at least if
25 they are not sort of a safe harbor with respect to the

1 notice of procedures and with that I will conclude my
2 statement. Thank you so much.

3 MR. MAUNEY: Anybody else in the 30s? People are
4 being surprisingly shy for a privacy forum here.

5 40s? Cards? Speakers? Go right ahead.

6 MR. OROZCO: Good morning. I'm Bernie Orozco on
7 behalf the California Cable and Telecommunications
8 Association, a trade association of members companies that
9 provide video, voice and Internet service to millions of
10 customers in California.

11 CCPA has been actively engaged in legislative
12 activity related to the California Consumer Privacy Act
13 and appreciates the opportunity to participate in these
14 public hearings and the formal Attorney General
15 rule-making that will follow.

16 At the outset I want to emphasize that CCTA and
17 our member companies are committed to protecting customer
18 privacy. Our goal has been and continues to be working
19 with policy makers and learning from our customers to
20 ensure CCPA is workable and will actually improve privacy
21 protections.

22 We recognize that this AG rule-making and the
23 2019 legislative session will be underway simultaneously
24 and that both offer opportunities for improved privacy
25 protection under the CCPA.

1 Through additional legislative changes to the
2 CCPA and through regulations we want to address
3 significant operational issues that our member companies
4 face to comply with the new law. We believe that a clear
5 understanding of the operational and technical issues that
6 result in regulations that are more feasible to implement
7 and better protect consumers.

8 CCTA will be submitting written comments during
9 this initial public participation phase and will
10 participate when the Attorney General issues the formal
11 notice of rule. Thank you.

12 MR. MAUNEY: Do we have anyone else who is
13 prepared to make a comment?

14 MR. HOLMAN: Eric Holman from Santa Clara School
15 of Law. I apologize, I'm not going to stick to the list
16 that you have on the board but I don't think it makes
17 (inaudible) among my peers here. I am a little surprised
18 we don't have more comments because there is a lot of
19 people who have plenty to say about this law. I've
20 actually picked a topic that is not on this list, number
21 one, target perspective for AG rule-making, clarify
22 definition of business and when non California activity is
23 counted towards the quantity threshold.

24 Right now, for example, the law applies to
25 businesses that have 25 million dollars in revenue. It is

1 unclear if that means all 25 must be in California or if
2 it means a single dollar comes from the California
3 resident but all revenue is outside of the state.
4 Similarly with the 50,000 consumers, it's unclear if that
5 covers one consumer from California but 49,999 consumers
6 from somewhere else.

7 So getting some clarity about when, in fact,
8 you're counting activity outside of California toward this
9 threshold would improve clarity about when non California
10 businesses must comply.

11 A second tier issue I'm flagging for you, it is
12 unclear if there is a ramp up time for compliance. Assume
13 for a moment a business is at \$24 million of revenue and
14 then in a year it hits the \$25 million threshold. Must
15 they be in compliance on that day at which they hit 25
16 million dollars in revenue? And how would they do so?
17 What if that revenue keeps fluctuating up and down? Must
18 they always be prepared to be compliant when they're below
19 the threshold? I would advocate for a period of time when
20 someone hits the quantity threshold for the first time to
21 phase in the requirements. That's not currently in the
22 statute. I appreciate your time and attention and your
23 hard work on this matter. Thank you.

24 MS. LANGSHEL: Good morning, Ellen Langshel,
25 General Counsel for California Workers' Compensation

1 Institute. I shouldn't be here. This law should not apply
2 to Workers' Compensation and yet it does. Workers'
3 Compensation is already a heavily regulated industry and
4 our members, which include both private insurers as well
5 as self insured employers for Workers' Compensation are
6 very concerns about the absence of a safe harbor and
7 definition of sale, consumer and business. Thank you.

8 MR. MAUNEY: Anyone else like to come up?

9 MS. SCHESSER: We thought there would be more
10 people who would be speaking but if nobody else would like
11 to offer public comments I would like to reiterate again
12 that you can always submit written comments to us at the
13 privacy regulations at DOJ.CA.GOV mailbox as well as
14 sending it to us via mail. Here's the address. And thank
15 you all for coming and we look forward to continuing to
16 hear from members of the public about our rule-making
17 applications. Thank you.

18 (Public hearing ended at 11:08 a.m.)
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REPORTER'S CERTIFICATION

I, Joan Theresa Cesano, Certified Shorthand Reporter, in and for the State of California, do hereby certify:

That the foregoing meeting was then taken before me at the time and place herein set forth; that the proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the proceedings taken at that time.

IN WITNESS WHEREON, I have subscribed my name, this 22nd day of January, 2019.



Joan Theresa Cesano, CSR No. 2590