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CCPA PUBLIC HEARING

MODERATED BY NICKLAS AKERS
TUESDAY, DECEMBER 3, 2019
10:00 A.M.

RONALD REAGAN BUILDING
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JOB NO.: 3609336
REPORTED BY: LUIS VAZQUEZ
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A P P E A R A N C E S

LIST OF ATTENDEES:

NICKLAS AKERS, SENIOR ASSISTANT ATTORNEY GENERAL
MIKE OSGOOD, DEPUTY ATTORNEY GENERAL
LISA KIM, DEPUTY ATTORNEY GENERAL
ELEANOR BLUME, SPECIAL ASSISTANT TO THE ATTORNEY
GENERAL

SPEAKERS:

MARSHA MATHIAS, DIRECT GOVERNMENT RELATIONS, KINECTA
CREDIT UNION
CRYSTAL HAASE, USE CREDIT UNION
NARA HARTMANN, USE CREDIT UNION
STAN STAHL, PHD, SECURETHEVILLAGE
SARAH THOMPSON, SIEMLY GLOBAL
JESSICA GROSS, ATTORNEY
JUSTINE M. PHILLIPS, ATTORNEY, SHEPPARD MULIN
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KURNIT KLEIN & SELZ

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A P P E A R A N C E S (CONT.)

JEFFREY M. DENNIS, PRIVACY ATTORNEY, NEWMAYER DILLION
LEIGH MCMILLAN, CEO, WHITEPAGES
SCOTT MCELROY, PAYLIDIFY
ROMAN HOSSAIN, REVIEW SQUASH
DAVID GRIMALDI, EXECUTIVE VICE PRESIDENT, THE
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KEVIN WALSH, PRINCIPAL, GROOM LAW GROUP
FIELD GARTHWAITE, CO-FOUNDER AND CEO, IRIS.TV
DR. MAXINE HENRY, PRESIDENT, CYVIENT

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P R O C E E D I N G S

MR. AKERS: My name is Nick Akers. I'm the Senior Assistant Attorney General in charge of Consumer Protection in the California Attorney General's Office, and I'll be the hearing officer for today's proceedings. Also present with me here today are Deputy Attorney General, Mike Osgood, Deputy AG Lisa Kim, and Special Assistant to the AG, Eleanor Blume.

For the record, today is the 3rd of December and the time is 10:00 a.m. We are at the Ronald Reagan State Building in the auditorium at 300 South Spring Street, Los Angeles, California.

Before we begin, there are a few points that I'd like to make.

The notice of proposed rule-making for the CCPA regulations was published in the California Regulatory Notice Register on October 11, 2019 in Register No. 41-Z, starting at Page 1341. The notice and relative rule-making documents were posted on the Attorney General's website on October 10, 2019 and were mailed to all interested parties who'd requested rule-making notices. Today is the second of four public hearings that were announced in the notice.

The deadline for submitting written

1 comments is this Friday, December 6, 2019 at 5:00 p.m.
2 Pacific Time. We recently posted additional resources
3 on our website about the DOJ's CCPA rule-making process
4 including two documents in PDF format titled, Tips on
5 Submitting Effective Comments and Information About
6 the Rule-making Process. And if you visit
7 oag.ca.gov/ccpa, they're posted there, and there is
8 further information.

9 Today's public hearing is
10 quasi-legislative in nature, and it's being held
11 pursuant to the California Administrative procedures
12 Act. The Administrative Procedures Act specifies that
13 the purpose of this hearing is to receive public
14 comments pertaining to the proposed regulations.

15 If you're speaking today, we ask that
16 you limit your comments to the proposed regulation or
17 the rule-making procedures that we're following. We
18 do not intend to answer questions or otherwise engage
19 in dialog in response to any oral or written comment,
20 however, we may ask that you speak slower or louder or
21 ask limited follow-up questions just to clarify a
22 point.

23 Today's hearing is being audio
24 recorded, and it's being transcribed by a court
25 reporter. The transcript of hearing and any written

1 comments presented during the hearing will be may part
2 of rule-making record.

3 If you are speaking, please try your
4 best to speak slowly and clearly to help the court
5 reporter to create the best possible record. If you
6 brought written comments that you'd like to submit
7 during the hearing today, please give them to a staff
8 member at the sign-in table.

9 After the public comment period ends,
10 the Department will review and consider all relevant
11 comments and recommendations provided at the public
12 hearings and in writing. The Department will then
13 compile a summary of each relevant comment or
14 recommendation and prepare a response to it, which
15 will be included in the Final Statement of Reasons.
16 Once the Final Statement of Reasons is complete, the
17 entire rule-making record will be submitted to the
18 Office of Administrative Law, and a copy of the Final
19 Statement of Reasons, along with the notification of
20 any changes made to the proposed regulations, will be
21 posted on the Attorney General's website, again, at
22 oag.ca.gov/ccpa.

23 We're required to notify all persons
24 who provided a comment, and all those otherwise
25 interested of any revisions to the proposed

1 regulations, as well as any new material relied upon
2 in proposing these rules. Accordingly, there's a
3 check-in table located outside of this room, just off
4 to the left, where speakers and attendees can sign in
5 and provide their contact information. You may sign
6 in to speak without providing your name or contact
7 information, however, please know that we then will
8 not be able to provide you with notice of revisions to
9 the rules or other rule-making activities.

10 If you intend to speak at today's
11 hearing, you should have received a number when you
12 signed in. When we call your number, please come up
13 to the microphone, and if you'd like to be identified,
14 state and spell your full name and identify any
15 organization you represent. If you have a business
16 card and you could provide a copy of it to the court
17 reporter before approaching the microphone, that would
18 be appreciated.

19 Each speaker will have five minutes to
20 speak. To assist the speakers, Deputy AG Osgood will
21 hold up a card to alert the speaker when they have one
22 minute remaining. In the interest of time, if you
23 agree with comments made via prior speaker, we'd
24 encourage you to just state that fact, and then add
25 any new information you believe is pertinent to the

1 issue.

2 Also, there is no need to read aloud
3 written comments that you're submitting. All
4 comments, whether written or oral, will be reviewed
5 and responded to by our office in the course of the
6 rule-making process.

7 If we have remaining time after all the
8 speakers have had a turn, we'll give speakers an
9 opportunity to take a second turn and add to their
10 remarks.

11 If you'd like to make an oral comment
12 today and have not yet received a number, please go
13 ahead back out to the check-in desk and get a number,
14 and that'll help us keep this organized.

15 Lastly, we'll need to take breaks
16 during the proceeding including at least a 30 minute
17 lunch break for our court reporter. If it appears
18 that we have no speakers waiting for their turn, we
19 also may end the hearing before the lunch break or at
20 some point before the end of day.

21 At this time, if I could have the first
22 speaker come to the microphone.

23 Good morning.

24 MS. MATHIAS: Morning.

25 MR. AKERS: Yes.

1 MS. MATHIAS: Good morning. My name is
2 Marsha Mathias. The spelling is M-A-R-S-H-A, and the
3 last name is, M-A-T-H-I-A-S, and I represent Kinecta
4 Federal Credit Union in Manhattan Beach. And I thank
5 you for hearing our concerns today about the CCPA.

6 Kinecta is a non-profit financial
7 cooperative that serves the financial needs of our
8 247,000 members throughout California and protecting
9 their non-public, private information is very
10 important to us.

11 Our two concerns that I'd like to
12 share -- the first is with the exception of the
13 consumer liability provisions for a data breach of any
14 non-encrypted or non-redacted personal information,
15 the entire CCPA does not apply to personal information
16 collected, processed, sold, or disclosed pursuant to
17 the Federal Gramm Leach Bliley Act or the California
18 Financial Information Privacy Act. The proposed
19 regulations do not incorporate references to this
20 exemption. It's imperative that the final regulations
21 incorporate references to the GLBA and CFIPA
22 exemptions specifically identifying the categories of
23 information not covered under those two -- the GLBA
24 and the CFIPA. Many businesses such as Kinecta have
25 built strong consumer friendly privacy programs based

1 on the requirements set up under the GLBA and the
2 CFIPA, and those companies should be allowed to
3 leverage our existing compliance activities to benefit
4 our members.

5 The second concern regards the four
6 notices that are required under the proposed
7 regulations. For all the required notices, the
8 proposed regulations require that the notices be easy
9 to read and understandable by the average consumer and
10 provide some standards to achieve that. This
11 direction is subjective and does not contemplate a
12 method or metric to assess the readability.

13 Since all businesses need to provide
14 the required notices, the creation of uniform model
15 notices would help to ensure consumers' understanding
16 of the notices. It would simplify the requirements
17 for businesses and create an objective review on
18 whether the businesses' notices meet the required
19 standards.

20 Thank you that's all of my concerns.
21 We'll be submitting written ones as well.

22 MR. AKERS: Thanks very much.

23 MS. MATHIAS: Thank you.

24 MR. AKERS: Speaker No. 2?

25 MS. HAASE: Good morning. My name is

1 Crystal Haase, that's H-A-A-S-E, and I'm here from USE
2 Credit Union, another financial institution similar to
3 Kinecta. We appreciate the opportunity to speak
4 today. I have a couple of comments on the proposed
5 regulations.

6 First, while we fully agree with the
7 concept of consumer rights to request information,
8 operationally, we are concerned with how we will
9 satisfactorily comply with those requests,
10 particularly as it pertains to our non-members -- or,
11 I guess, this would be non-customers for the regular
12 industry. For example, when a non-member uses one of
13 our ATMs, while we gather the necessary data from the
14 individual to process that specific transaction, that
15 data is very limited, and therefore, provides
16 challenges to adequately verify the identity of a
17 requestor of information.

18 And secondly, as far as the notices
19 similarly to Kinecta's comments, with the notices and
20 disclosures required under the CCPA, there is no model
21 language or form notices for those disclosures. It
22 would be helpful for us, not only for businesses to
23 utilize model language, but also to standardize those
24 communications for consumers to more readily
25 understand what is being shared with them. And like

1 with many model notices and sample language, we would
2 like to request some sort of safe harbor if those
3 models are used.

4 Thank you

5 MR. AKERS: Thanks very much. Speaker
6 No. 3, please.

7 Good morning.

8 MS. HARTMAN: Good morning. My name is
9 Nara Hartmann. It's N-A-R-A, Hartmann,
10 H-A-R-T-M-A-N-N. I'm also here from USE Credit Union
11 in San Diego.

12 First, I'd like to say that USE Credit
13 Union is a champion of consumer privacy rights, and we
14 certainly support the enhancement of those rights
15 through bills like the CCPA. The financial industry,
16 of course, has several privacy protection laws in
17 place, and we have for several years. We appreciate
18 that exceptions were built into the proposed rules for
19 CCPA regarding information already covered by GLBA and
20 the CF- -- I'm going to get lost in that -- CFIPA. I
21 think I got it. I like the idea that it's intended to
22 carve out what's already covered and enhance those
23 rules already in place.

24 My concern is that by creating another
25 privacy law, this is going to be another communication

1 that goes out to members. So they already receive a
2 policy and notice under federal law. This -- they
3 already receive one for state law, and this will be a
4 second state communication. So there is already a lot
5 of confusion and questions that come in from members
6 about that. So it's going to be, I think, even harder
7 for them to understand what the rules are and how to
8 really take advantage of their rights under those
9 rules.

10 Under the proposed rule, verifying the
11 identity of individuals for whom we hold limited
12 information will be a significant challenge. For
13 example, when a beneficiary is listed on an account,
14 we may only have their name. So if we receive a
15 request for information from someone with that same
16 name, we really would have no way to connect that
17 those people are the same person. If the data is
18 being protected in the same manner that we would treat
19 our members data under California privacy laws already
20 in place, the FIPA, will not be sold and cannot be
21 deleted due to retention requirements, then perhaps
22 the confirming for consumer that the information
23 exists is a pretty difficult effort assuming that
24 verification is even possible.

25 Although some exceptions are included,

1 again, for information covered under federal and state
2 laws, there are unique situations that will be very
3 burdensome for us. For example, non-member
4 information collected while processing transactions.
5 Let's talk about, like, the maker of a check. So we
6 receive thousands of checks each day deposited to our
7 members' accounts. The maker information on each of
8 those checks is certainly somebody's private
9 information under the rules. However, we don't have
10 any way to search that information. It information is
11 stored by image only. So if we received a request for
12 information for a 12-month look back period, we would
13 be searching images of every single item for every
14 single day that checks were deposited. That would be
15 pretty -- very, very burdensome.

16 So again, we would just ask that some
17 consideration be made for information that might be on
18 file if it's already protected in the same manner as
19 our members' information that's not able to be deleted
20 or destroyed due to retention requirements and will
21 never be sold.

22 Thank you.

23 MR. AKERS: Thank you. Speaker No. 4,
24 please. Speaker No. 4?

25 Good morning.

1 MR. STAHL: Good morning. My name is
2 Stan Stahl, S-T-A-N, S-T-A-H-L. And I'm -- want to
3 speak about the CCPA, and what one would call minimum
4 reasonable security practices. I speak as the founder
5 and president of a California non-profit, Secure the
6 Village. We're a community of information security
7 practitioners, IT vendors, and MSPs, attorneys with
8 practice in cyber, cyber investigators, insurance and
9 risk management people, law enforcement including the
10 FBI, secret service, both the LA County and Orange
11 County District Attorney's Office are part of our
12 organization and others. In addition to our base here
13 in Los Angeles, our community extends to Orange County
14 and Sacramento.

15 The experience and expertise of our
16 organization's members runs very deep. Speaking
17 personally, I entered the field of computer security
18 in 1980 as a young PhD in mathematical logic from the
19 University of Michigan. In those early years, I was
20 privileged to work securing advanced technology
21 systems for the White House, Strategic Air Command,
22 NASA, and other national assets.

23 Seven teen years ago, I co-founded an
24 information security management firm, Citadel
25 Information Group, to assist mid-market and smaller

1 organizations manage their information security needs.

2 In the nine years prior to founding
3 Secure the Village in 2015, I served as president of
4 the Los Angeles Chapter of the Information Systems
5 Security Association.

6 I speak to you today regarding the
7 CCPA's right of compensation to consumers in the event
8 of a data breach, except when the breached business
9 maintains "reasonable security procedures and
10 practices appropriate to the nature of information
11 being protected." As has been widely discussed,
12 there's a great deal of uncertainty as to exactly what
13 reasonable security procedures and practices is to
14 mean. In response to this uncertainty, Secure the
15 Village has developed and published, as a free public
16 service, a set of, what we consider to be minimum
17 reasonable information security management practices.
18 And these are available on the Secure the Village
19 website, securethevillage.org.

20 For the reasons we describe below, we
21 invite you to use our minimum reasonable information
22 security management practices in assisting California
23 establish appropriate reasonability requirements for
24 organizations to follow in complying with CCPA and
25 other information security management obligations as

1 well. As you know, they exist in other places in the
2 law.

3 We view these minimum reasonable
4 practices as so basic to the responsibility of
5 securing private consumer information that a failure
6 to implement them should be considered prima facie
7 evidence that an organizations information security
8 procedures and practices are not reasonable. We
9 developed them to be commercially reasonable and
10 reasonably achievable for any company subject to CCPA.

11 It's important to note that we're not
12 saying that an organization meeting these minimum
13 practices has reasonable practices. To cite one
14 example, the reasonability requirement for a large
15 telecommunications company or internet service
16 provider is considerably more than our suggested
17 minimum. And even a company that meets our minimum
18 standards might still not have reasonable standards of
19 "appropriate to the nature of the information being
20 protected." Our suggested minimum is designed to
21 establish the floor, not set the bar. That's an
22 important point with what we've done.

23 Our minimum reasonable information
24 security management practices are based upon other
25 existing information security standards. These

1 include the NIST Cyber Security Framework; the
2 International Standards ISO 27001, that whole family;
3 the Center for Internet Security's Critical Controls;
4 the New York State Department of Financial Services
5 cyber security requirements for financial services
6 firms. Does that mean I have a minute?

7 MR. OSGOOD: You have less than a
8 minute.

9 MR. STAHL: Less than a minute, let me
10 go -- okay. So our practices are based on nine
11 elements. I'm not going to go into them. You'll get
12 this later. I just do want to point out that in 2016,
13 as you know, then Attorney General, Kamala Harris, in
14 the California 2016 Breach Report looked at the CIS 20
15 as a minimum. We feel those are both too weak in some
16 cases, and too strong in others. And that's why we
17 much prefer that you use ours -- you know, our
18 standards.

19 And so, just to go on -- I mean, I saw
20 Mike -- your thing -- let me finish then. And just
21 say, please take a look at these. We invite you to
22 look at them, consider them, and include them as
23 you're making decisions as to what is to count as
24 reasonable security practices and procedures.

25 Thank you very much.

1 MR. AKERS: Thank you, sir. Speaker
2 No. 5.

3 MS. THOMPSON: High there. My name is
4 Sarah Thompson. I'm representing Siemly Global, and
5 we are the creators of a platform that helps companies
6 handle consumer privacy requests, so data subject
7 access requests for GDPR and the like. And so we are
8 speaking to a lot of customers and potential
9 customers, a lot of financial institutions regarding
10 this regulation, and there's a few things I want to
11 talk about today.

12 One is about, you know, who should be a
13 covered entity. Identity verification and the
14 execution of Right to Know and deletion requests.

15 So first of all, I'd like to start off
16 with just some, you know -- we're getting some --
17 there is some obvious people there are -- or companies
18 that are covered by CCPA, but there is also some not
19 so obvious. And some of the questions that have come
20 up are businesses that have over 50,000 -- collect
21 over 50,000 consumers' data that do get their profits
22 from things like Google ads. So they could sometimes
23 get 100 percent of their profits from Google ads. In
24 effect, if they are -- their question is are they, in
25 effect, selling that data, and are then they supposed

1 to be covered by CCPA? So that's a big question
2 that's come up.

3 Another question has come up actually
4 from non-profits which is, you know, we know that it
5 states it is a -- you need to be a for-profit business
6 to be covered by CCPA. But non-profits do collect a
7 large amount of information from a large amount of
8 Californians, so there are question about, you know,
9 what, if any, practices or if they have to comply with
10 this in any way. So that's kind of about -- those are
11 my questions regarding who should comply.

12 Now regarding the executions of the
13 Right to Know and deletion requests, there's a few
14 questions that have come up. The ambiguity of some of
15 the language. You know, we have some language that
16 states that, you know, we have to make sure that we
17 transmit our Right to Know, and deletion, and any type
18 of information with the consumer in a secure manner,
19 but that's not really identified, like, what that is.
20 And so, you know, there's questions like is that an
21 email? Is email okay? Or are we -- or businesses,
22 will they need to create a secure login to a
23 third-party platform for them to be able to access
24 information?

25 So what we don't want to do is

1 basically cause a breach by sending emails to
2 consumers which can definitely happen when we're
3 talking about non-customer data. So -- which is
4 something a lot of companies are concerned about. So
5 you just have an email address. You don't have any
6 other secure portal to communicate. How are you
7 supposed to communicate securely? So we'd like some
8 clarity on that.

9 We also have some questions regarding,
10 like, what is the requirements from an organization to
11 remind our -- the consumer to confirm their request?
12 So if a consumer submits a request, there is language
13 that states that they -- if it's a request for
14 deletion, that they have to actually confirm it a
15 second time. If they do not confirm it, does the --
16 does the organization have to remind them? Do they --
17 how many reminders can they send? Can they close the
18 request after a certain period of time? What is their
19 obligation there?

20 Other questions that are coming from
21 execution in regard to deletion of data. It is
22 specified that in reference to archived or backup
23 system, you mentioned that it doesn't need to be
24 deleted until it's next accessed or used, which is an
25 ambiguous term in IT. So that would -- we'd

1 definitely like to have that clarified. We have a lot
2 of customers that are worried about that. As well as,
3 you know, what does it mean to specify the manner in
4 which data is deleted? So what does that mean?

5 Finally, in regards to request for
6 deletion, we have a lot of customers that are third-
7 parties, and they want to know, like, what they can
8 expect when a company receives a right to deletion.
9 Do they need to convey that to the third-party at all?
10 Does the third-party -- are they required to, you
11 know, let the company know that they've complied at
12 all for the deletion request? Or is it -- does the
13 consumer have to make a request to each individual
14 third-party?

15 And finally, what is a reasonable
16 degree of certainty when you're looking at age --
17 identity verification? And I just want to sneak this
18 one in here. Proof of age verification for opt-ins,
19 does that not mean that everyone will have to have a
20 proof of age verification to say that they are indeed
21 a -- they are an age of majority and not a minor? And
22 if so, does that require an actual identity
23 verification tool in order to do so? So how do you
24 actually verify age, or is this simply a check box
25 that they can check? So these are questions that

1 are -- that we'd love to have some clarification on.

2 Thanks very much.

3 MR. AKERS: Thank you. Speaker No. 6,
4 please.

5 Good morning

6 MS. GROSS: Hello, my name is Jessica
7 Gross. I am an attorney helping many, many, many
8 companies try and deal with this law. Thank you very
9 much for the regulations. They add a lot of clarity
10 to what was already tons of inconsistencies and
11 subdivisions to nowhere if anyone's dealing with this.

12 So I'm here to plead and beg for some
13 kind of clarity on what the term "valuable
14 consideration" means. Under 1798191 Subdivision B2 in
15 the CCPA, the Attorney General has the power to adopt
16 regulations that are necessary the further the purpose
17 of the title. In the proposed regulations, we do have
18 some definitions, and the initial statements of
19 reasoning say these definitions were provided to add
20 clarity to ambiguous terms like categories of
21 third-parties, for example.

22 "What is a sale?" is an ambiguous term
23 that I'm sure you've heard. This is argument
24 before -- there's articles all over the place on what
25 kind of a data exchange is going to qualify. It's

1 important because a covered business is going to have
2 to be able to understand how to classify what these
3 third-parties are, what their service providers are --
4 two terms that are also fraught with some
5 inconsistencies. And when are they going to classify
6 those disclosures as something that's a "sale" when
7 they're selling, renting, releasing, disclosing,
8 disseminating, making available, transferring in any
9 way for monetary or other valuable consideration?

10 California Civil Code 1605 defines
11 consideration as, "Any benefit conferred or agreed to
12 by -- conferred to by the promisor or by the
13 promisee." So what separates "valuable consideration"
14 from just consideration? And how are we to deal with
15 situations where the company is paying another company
16 for what appears to be a service, and what is actually
17 listed as a business purpose in 1798.140 Subdivision
18 D, which would be something like verifying the quality
19 of ad impressions and auditing compliance with
20 specifications? Or performing services like providing
21 advertisements, marketing serves, and analytic
22 services. But we've all heard the debate with things
23 like Google analytics, for example, is selling
24 information.

25 We, please, ask and request that there

1 is some kind of factor test -- any kind of clarity
2 whatsoever, that describes kind of where that line is
3 between a disclosure for that business purpose. And
4 hopefully, yes, if the company does not further use
5 the information in some way, you could argue perhaps
6 they're a service provider. But if the contract
7 doesn't meet the right specifications, which many
8 service providers do not want to sign, then you don't
9 get to really ride that exception.

10 This creates a really big problem for
11 businesses who now have to put a button on their
12 webpage, or explicitly list in in their privacy policy
13 that they do not sell. That's going to open them up
14 to violations that in the CCPA, if they fail to
15 interpret that correctly, and it could also stand for
16 UCL violations, FTC violations, or other issues of
17 misrepresentations made in a privacy policy.

18 But how are we to make sense of what a
19 "consideration," or "valuable consideration" is when
20 the California Court of Appeal in, In Re Fremont
21 Estate said that, "Value can mean whatever. A
22 peppercorn, a tomtit, or even at a dollar in a hand."

23 Thank you.

24 MR. AKERS: Thank you. Speaker No. 7,
25 please.

1 Good morning

2 MS. PHILLIPS: Good morning. Justine
3 Phillips here, attorney in cyber and employment at the
4 Law Firm of Sheppard Mulin. I want to echo Speaker
5 No. 4 and No. 6's concerns with respect to the need
6 for reasonable security definition and framework.
7 Obviously, New York has selected a regulatory
8 framework and perhaps guidance can be gleaned from
9 that. Also, on the valuable consideration, huge issue
10 that we're also dealing with.

11 The issues with respect to AB25, we
12 understand that the regulations were drafted before
13 AB25 was passed. And, in fact, the day after the
14 regulations were released, AB25 went into effect.
15 AB25 requires that employers give some disclosures on
16 January 1, 2020. This has left certain disclosures
17 and the notice provisions in the current regulations
18 insufficient for guidance for employers to the extent
19 that additional guidance can be given with respect to
20 AB25 and what should be disclosed to employees in the
21 minimal initial at collection can be confusing. The
22 applicants obviously are going to be a separate
23 stand-alone disclosure, likely something to happen
24 during on-boarding or in the application process.
25 With respect to employees, perhaps an employee

1 handbook or policy provision would be sufficient, or
2 perhaps an independent online notice for employees to
3 visit, so they can also provide some notice and
4 disclosure to those third-parties and emergency
5 contacts that are identified by employees. These are
6 two groups of people that are quite difficult to
7 impart a notice to even though they are afforded some
8 protections under CCPA.

9 Thank you.

10 MR. AKERS: Thank you. Speaker No. 8,
11 please.

12 Good morning

13 MR. GREELEY: Good morning. David
14 Greeley. I'm an attorney with Greeley Thompson LLP in
15 San Diego. Just two quick comments.

16 Under the Regulations 999.305D, it
17 provides that a business that does not collect
18 information directly from consumers does not need to
19 provide a notice at collection to the consumer. That
20 regulations makes a lot of sense, and I'd ask that you
21 consider having that same caveat in Regulation
22 999.308, entitled "Privacy Policy." It seems like
23 it's a similar situation. I'd ask you to consider
24 that.

25 Secondly, I just have a comment about

1 service providers. There is a section in 999.314C, it
2 states, "A service provider shall not use personal
3 information received from a person or entity it
4 services, or from a consumer's direct interaction with
5 the service provider, for the purpose of providing
6 services to another person or entity." And I'd ask
7 for clarification that if the service provider also
8 meets the definition of a "business" and such
9 business/service provider otherwise complies with the
10 CCPA, that that limitation would not apply. That
11 that's meant to apply to a service provider that is
12 not a business.

13 Thank you.

14 MR. AKERS: Thank you. Speaker No. 9,
15 please.

16 Good morning.

17 MR. GARIBYAN: Joseph Garibyan. I'm
18 a -- I'm an attorney with the law firm of Styskal
19 Wiese & Melchione. We represent financial
20 institutions primarily credit unions, and I know the
21 first several speakers represented credit unions. And
22 we're -- we would like some -- really clarity on the
23 CCPA's application specifically on credit unions for
24 primarily two reasons.

25 The first one, you know, which was --

1 which struck out to me was from the Attorney General's
2 initial statement of reasons I saw on Page 21. The
3 Attorney General took the position that non-profits
4 are clearly not subject to the CCPA. But the
5 definition of business in the statute defines --
6 includes, "any legal entity that is organized or
7 operated for the profit or financial benefit of its
8 shareholders or other owners."

9 Now credit unions specifically
10 California state Charter Credit Unions are actually
11 formed under the corporation code as non-profit mutual
12 benefit corporations. So you can have non-profits
13 that function and operate for the financial benefit of
14 their owners, which in the credit union space, they're
15 referred to as their members which in banking they
16 would be their depositors. So that has, you know,
17 inserted some confusion about whether or not this
18 particular industry is subject to the CCPA.

19 The second thing is -- which I believe
20 during our last meeting I previously commented on and
21 asked for some clarification, was that the GLBA and
22 the SB-1 exemption -- because the statute currently
23 reads that, "data that is collected pursuant to GLBA
24 and SB-1," which comprises of probably most of the
25 data that financial institutions collect from their

1 depositors. It's a fairly broad statute -- is exempt,
2 but the way it's written is it leaves open the
3 possibility of data that is not collected pursuant to
4 those statutes to be subject to the CCPA.

5 So my question is if we can get some
6 clarification as to whether or not that particular
7 provision was intended to be a financial industry
8 exemption, or are we just talking about data? And in
9 reviewing AB -- I think, 1202, which is, I think, for
10 data sellers, the exemption was much more clear that
11 it applies to financial -- the financial services
12 industry as opposed to the data that they collect
13 specifically. As well as if you can draw from an
14 example from Nevada, they specifically carved out in
15 their privacy regulations financial institutions as a
16 whole.

17 So for this particular industry,
18 particularly credit unions, there are two elements
19 that are adding confusion, and it's very difficult to
20 establish a compliance program where you're dealing
21 with, you know, disclosures under the GLBA, SB-1, CAL
22 OBA, and you have to harmonize all those statutes, and
23 they all to different things with data, and actually
24 disclose to your membership, customers, depositors,
25 the public at larger, what in fact you're doing with

1 your data. Because you're redirecting them to
2 different statutes and policies. So if we can get
3 some classic clarification as to that, it'll, you
4 know, make, you know, the compliance people at these
5 institutions very happy.

6 Thank you.

7 MR. AKERS: Thank you. Speaker No. 10,
8 please.

9 Good morning.

10 MS. HEIGHES: Good morning. My name is
11 Mary-Lou Heighes, and I am the president of Compliance
12 Plus Incorporated, which, as the name implies, I am in
13 charge of compliance training and consulting for
14 credit unions and small community banks.

15 A couple of things that my clients in
16 particular are finding very difficult to deal with in
17 putting these regulations and this law into practice.
18 We already have Gramm Leach Bliley as you know. We
19 already have SB-1 as you know. When we are trying to
20 actually implement -- so it's very different as a
21 speaker when I get up in front of people, and I say
22 you need to do this, and you need to do that, and it's
23 going to be a spreadsheet, and it's going to be a big
24 spreadsheet to having a client walk up it to me and
25 says, "Mary-Lou, you need to come in my office, and

1 you need to do this for me." So I have first-hand
2 experience at trying to get all of these moving parts,
3 and there's a lot of moving parts, together.

4 So a couple of issues that are of
5 particular concern. In your regulations,
6 specifically, 305(e), it talks about offline
7 collection, which I understood from the regulation --
8 I mean from the law immediately, that this law would
9 apply in an online and an offline environment. Then
10 going into an institution and actually finding out all
11 of the different ways that people are collecting
12 information, anything from a raffle ticket or trying
13 to get new account holders by having a referral
14 program, for example. There would be no way to
15 catalog -- we are not keeping this information in an
16 electronic environment -- there would be no way to
17 catalog or even be able to recover that information.

18 Essentially, in these referral
19 programs, for example, we'll have a branch conducting
20 a specific promotion where they will pay an account
21 holder \$10 to refer a family member or friend. If
22 that family member or friend obtains an account, they
23 too get \$10. That goes into, essentially, a box that
24 sits in the branch manager's office. And maybe
25 they'll send out a letter to that person saying, hey

1 you know, you've been referred to the credit union,
2 you've been referred to the community bank. You know,
3 would you like to, you know, come in and open an
4 account, or you can send back this application. And
5 they might hold on to it for three or six months. And
6 then we reach out to them or use it to verify who was
7 the referring party. That information -- there is no
8 way for us to go and get that information later on
9 when we get a request from a consumer. That's going
10 to be very difficult. And there's a number of other
11 examples. I'll be submitting written comments to that
12 effect.

13 The second part of that is, again, the
14 GLBA exception, the SB-1 exemption, that is very
15 important from a financial institution aspect is
16 to -- I'm trying to differentiate for my clients what
17 is information that is covered by those exemptions,
18 and what information is covered by CCPA.

19 So to the extent that we are looking at
20 that, I'm going to reiterate the comments by USE and a
21 couple of other comments that were made, is when we
22 need to process the transaction -- the ATM example is
23 the perfect example, or I'm going to write Mr. Akers a
24 check, and he's going to deposit it at his
25 institution. Now his institution has my personal

1 information on it including my account number. And
2 then when that check gets processed back to my
3 institution, I can see that he cashed that check. And
4 if he wrote his account number on the back of that
5 check, I would then have his name and account number
6 as well as the financial institution where he has an
7 account.

8 So all I'm asking is to reiterate what
9 the previous speaker said and what USE said as far as
10 the GLBA exemption, that it applies to all consumer
11 information that is necessary to process, effect,
12 enforce, or administer a transaction.

13 We also have issues when it comes to
14 collections, for example. When a collector is
15 gathering information much like an investigation or a
16 law enforcement investigation, you have your subject.
17 In our case it would be our borrower. They're a skip.
18 They're not paying. They have a vehicle that we need
19 to repossess, for example. We're getting information
20 from other consumers -- their phone number, their
21 address, or whatever -- in an effort to locate our
22 skip and to locate our vehicle. We get an address for
23 the girlfriend. Well, maybe the car is over there.
24 So now we have information about a consumer, but the
25 only reason why we have the information is to

1 basically effectuate this contract that we have with
2 our consumer who received the GLBA notice, but this
3 other person did not.

4 And so, we want to look for an
5 expansion or a definition, that we were hoping for
6 originally, that would mean that anything that we
7 obtain that is necessary to process or facilitate a
8 transaction is, in fact, covered that transaction when
9 it's not, in fact, shared for any other -- or utilized
10 for any other purpose.

11 So those were the main things. We have
12 things like requirements for a currency transaction
13 report. We have a non-member that walks in, deposits
14 \$11,000 in cash to an account holder's account. We
15 need to collect information, by law, about their
16 driver's license, their name, their address, their
17 taxpayer identification number, but they're not our
18 account holder, and there is no specific exemption for
19 information required by law.

20 My final comment in the last minute,
21 would be that that 45-day and 90-day period for
22 responding to consumer complaint -- or consumers is
23 very important because we do not house -- and I say --
24 we is my clients -- do not house everything in a nice
25 little neat database that we can just go in -- do we

1 have Mary-Lou Heighes on file anywhere? Information
2 is stored in a lot of different places, and it's very
3 difficult to, you know, comply in a shorter timeframe.

4 Thank you very much.

5 MR. AKERS: Thank you. Speaker No. 11,
6 please.

7 Good morning

8 MR. WATSON: Good morning. My name is
9 Peter Watson, P-E-T-E-R, W-A-T-S-O-N. I'm the General
10 Counsel for US Storage Centers, a privately owned
11 self-storage management company, as well as a member
12 of Board of Directors of the California Self Storage
13 Association, CSSA, which is a non-profit association
14 predominantly comprised of self-storage owners,
15 operators, and vendors. I'm presenting my comments
16 today as a representative of both entities. I want to
17 focus my limited time on really one threshold issue,
18 and if there is more time to touch on a couple of
19 regulations, I'll try and do so.

20 Specifically, I'd like the Attorney
21 General to consider limiting the scope of the defined
22 term, quote/on quote "personal information," solely as
23 that term applies to the 50,000 consumer threshold set
24 forth in Civil Code Section 1798.140 Subdivision CB.
25 As currently drafted, the general consensus is that

1 any California resident that accesses a business'
2 website will automatically be considered a consumer
3 providing personal information under the Act simply
4 because the IP address utilized to access such website
5 will be cached by the business. To use a basic
6 hypothetical specific to the self-storage industry,
7 imagine the self-storage property management company
8 that receives annual website traffic from 50,000 IP
9 addresses but only services and collects non-IP
10 address personal information from, say, 10,000
11 consumers. Those would be their tenants, prospective
12 tenants, folks that go online and provide their email
13 address or contact information to be contacted for any
14 reason. Those are the 10,000. Should this smaller
15 size operator with 10,000 customers be subject to the
16 CCPA? More importantly, how does this company know
17 whether they're subject to the CCPA? Do they have the
18 ability to find out how many IP addresses their
19 website has received in any given year? And if so,
20 than can they take that list of IP addresses and
21 determine which of those IP addresses are California
22 IP addresses? Assuming yes, can they then determine
23 which of those California IP addresses are not also
24 their existing tenant base? Most folks that are
25 accessing the website could very well be the tenants,

1 and you don't want to have a double counting situation
2 to determine whether or not you're subject to the law.

3 It seems to me that this hypothetical
4 company is not the intended target of the CCPA. It's
5 far removed from the larger businesses and types of
6 businesses that, I believe, the CCPA was enacted to
7 govern. Nevertheless, the mere receipt of IP
8 addresses arguably brings this company under the CCPA
9 purview. I refer to this situation as the
10 quote/unquote "IP address-only consumer scenario," and
11 imagine that this issue and concern is at the
12 forefront of a vast number of many smaller to medium
13 sized businesses that are scrambling to determine
14 whether they need to comply with the CCPA as a result
15 of the quote/unquote "IP address-only consumer
16 scenario," and, of course, determining the best way to
17 comply in a timely fashion.

18 Under this context, I urge the Attorney
19 General to consider and hopefully implement one of the
20 following proposed regulations:

21 The first proposal, and the preferred
22 approach, would be to specifically exclude IP
23 addresses from the definition of personal information
24 solely as it pertains to calculating the 50,000
25 consumer threshold. This would not remove IP

1 addresses from the definition generally, again, only
2 from the 50,000 threshold calculation. This proposal,
3 if implemented, would eliminate the IP address with
4 respect to the "IP address-only consumer scenario" and
5 provide clarity for businesses that are unable to
6 determine if they are subject to the CCPA.

7 As an alternative to the first
8 proposal, I would ask that the AG consider removing
9 the consumer's right to request deletion of personal
10 information for businesses that would not qualify
11 under the 50,000 consumer threshold, but for the mere
12 collection of IP address-only consumers. Under the
13 second alternative, the consumer will still have the
14 Right to Know via the business' privacy policy.
15 However, the consumer will no longer have the right to
16 request deletion. Okay. Thank you.

17 Now as for a couple of other
18 regulations. The definition of household, the one
19 comment here would be to perhaps clarify the situation
20 where you have a mixed use -- or not mixed use, but
21 mixed residency house who have people from California,
22 people from other states, and how to treat those folks
23 from other states that are within that particular
24 household.

25 Section 999.312C, I ask that the CCPA

1 should not treat businesses differently. Businesses
2 that have an online presence and a brick and mortar
3 presence versus those that have just one or the other,
4 it seems that under that particular section, there is
5 two different standards.

6 Thank you for your time.

7 MR. AKERS: Thanks very much. Speaker
8 No. 12, please.

9 Good morning.

10 MS. FORSHEIT: Good morning.

11 Tanya Forsheit, Frankfurt Kurnit Klein & Selz. I'm
12 the chair of the privacy group. I'm here actually
13 today testifying on behalf of my client, The News
14 Media Alliance. The News Media Alliance represents
15 nearly 2,000 diverse news organizations in the United
16 States from the largest and international outlets to
17 hyperlocal news sources both digital and print.

18 When businesses succeed at CCPA
19 compliance, consumers will win. As such, the Attorney
20 General should approach the regulations in a manner
21 that is designed to help businesses succeed. The
22 alliance's comments today are focused on those areas
23 where the regulations make compliance much more
24 difficult than what is anticipated in the statute, if
25 not impossible in some cases. Most of these issues

1 arise in situations where the draft regulations impose
2 new obligations that were not set forth in the statute
3 itself. I'm going to provide just a few examples that
4 are of particular interest to The alliance.

5 First is the notice at collection
6 requirement, which is set forth in the regulations.
7 This is new. It's not in the statute, and it is
8 unclear, particularly for publishers, will make things
9 even more complicated for consumers who already have
10 to navigate a number of links and notices on websites.
11 The language would require a new link. This would be
12 in addition to the privacy policy, as we understand it
13 as set forth in the draft regulations. So consumers
14 will not understand the difference between the two,
15 privacy policy, notice at collection. I mean, the
16 privacy policy does, of course, include information
17 about how information is collected. It's required to
18 do so. It will normally have a subheading to that
19 effect. This would also be in addition to the "do not
20 sell my personal information" link. So what we're
21 already imaging is privacy policy, notice at
22 collection, "do not sell my personal information,"
23 never mind all the stuff that's already out there
24 about ad choices etc. It's not clear where this link
25 should be placed, the notice at collection link, if

1 that's what's required. And whether it should appear
2 at or before the time of collection. And there's some
3 inconsistent language in the regs as to whether it's
4 at or before.

5 So respectfully, The alliance submits
6 that there's no need for an additional link. If it is
7 required, it should be at and not before the time of
8 collection. Before would essentially create and
9 opt-in obligation, which is inconsistent with the
10 statute. And if it is required, the obligation to
11 post should be delayed -- in other words, if there is
12 a link requirement -- a separate link, that should be
13 delayed until January 1st, 2021, given that the regs
14 won't be finalized until the summer.

15 If a business -- so that's the point
16 about the notice at collection. Second point, if a
17 business is not selling information, and I'm not going
18 to get into what's a sale, but if it's not selling, it
19 should not be required to post a "do not sell my
20 personal information" link. There is some language in
21 the regulation suggesting that if you might, in the
22 future, sell information, you need to have that link.
23 That, of course, would be extremely confusing to
24 consumers and also not provide transparency. Any
25 business might theoretically start selling information

1 in the future. They shouldn't have to have a link if
2 they don't do it. Of course, if they change their
3 practices, they should put one in place before they
4 start doing it.

5 Number three, the regulations should
6 not require that an unverified deletion request be
7 treated as an opt-out of sale. That is not in the
8 law. It's also fraught with potential for abuse from
9 automated bot attacks to submit thousands of
10 unverified deletion requests that would theoretically
11 have to be treated as opt-outs. What if the business
12 doesn't sell information? And how are they supposed
13 to effectuate the opt-out if they can't verify where
14 these are coming from if they're automated bot
15 attacks. There shouldn't be a separate requirement to
16 treat those as opt-outs. If you can't verify a
17 deletion request, you shouldn't be required to honor
18 it.

19 Next, the do not sell request should be
20 honored when a consumer clicks on do not sell. There
21 is language, of course, in the regulations about
22 having to treat things like user privacy controls or
23 browser controls as a do not sell request. This is
24 not in the statute. Also, it would be extremely
25 confusing because businesses can't possibly

1 operationalize it. It should be simple. A consumer
2 clicks on do not sell, that means do not sell.
3 There's an opt-out. That would conflict. What if
4 they later click on the other browser control, or
5 they're using a do not track, or whatever it is,
6 impossible to operationalize if both are required and
7 confusing for consumers.

8 Service providers, that was mentioned
9 by some others, but as long as the service provider is
10 only using information to provide service for
11 businesses purpose -- my time is up -- it shouldn't
12 matter if they're using the same information from two
13 different businesses. That's not in the statute. IP
14 addresses are frequently used from two different
15 businesses. For example, for frequency capping and
16 advertising. That's a consumer protective service.
17 If you can't be a service provider for that purpose,
18 and you require that to be an opt-out, that creates
19 complete chaos.

20 I'm out of time. Thank you very much.
21 I appreciate it.

22 MR. AKERS: Thank you. Speaker No. 13,
23 please.

24 MR. DENNIS: Good morning.

25 MR. AKERS: Good morning.

1 MR. DENNIS: My name is Jeff Dennis,
2 D-E-N-N-I-S. I'm a privacy attorney with the law firm
3 Newmeyer Dillion in Orange County representing a
4 number of companies who seek to comply with the CCPA.
5 I have a few just brief comments and thoughts. I
6 appreciate the opportunity to be here and present to
7 all of you this morning.

8 Well, California consumer rights are
9 certainly important. There can be little debate that
10 the CCPA does, in fact, place a significant burden on
11 businesses doing -- conducting business in the State
12 of California. In addition to this high cost,
13 confusion and lack of clarity in the original language
14 of the CCPA and -- which carries over into some of the
15 proposed Attorney General regulations adds a further
16 burden to companies who want to truly comply with the
17 CCPA.

18 I will focus very briefly on four
19 provisions that I think should be modified, some
20 slightly, some in more detail as well as one
21 additional regulations which I believe should be
22 added.

23 First of all, a number of sections use
24 the word "accessibility" as a requirement under the
25 CCPA, talking about accessibility to consumers with

1 disabilities. The question becomes what does
2 accessible mean in the context of the CCPA? Is it
3 something more in line with the American Disabilities
4 Act, the ADA, or is it a different standard? Given
5 the great uncertainty that exists in the court system
6 today with respect to website ADA compliance, I
7 believe some further definition of this term within
8 the CCPA should be considered. Rather than leaving
9 businesses trying to guess what compliance means, I
10 think it would be more helpful to spell it out.

11 Secondly, I think that there is an
12 easier, more clean way to streamline requests --
13 methods for submitting requests. If you look at
14 proposed Regulation 999.312, Sections A and B, there
15 are two different standards for submitting either a
16 request to know, or a request to delete. As you know,
17 312A requires a toll-free number plus a web form,
18 while Section B offers several alternatives including
19 a toll-free number, web form, and several other
20 standards.

21 I will be submitting written comments
22 which have more, sort of, robust language, but my
23 suggestion to the group is rather than having two
24 different standards, combine them into one and provide
25 two opportunities: One, I'll call a tech savvy

1 opportunity, whether that be an online form, an email
2 address; and for the non-tech savvy consumer, they
3 have the option of a toll-free number, submitting a
4 form in-person, or providing a letter.

5 Now requiring businesses to choose one
6 from each of these categories still provides two
7 methods to make these requests, but it clarifies and,
8 again, we're not adding -- we're taking burdens way
9 from these companies that are truly trying to comply
10 with this. And again, this was mentioned briefly by
11 Speaker No. 11, so I won't spend much more time on
12 that.

13 The third thing, I believe that
14 proposed regulations 313A, which requires a business
15 to confirm receipt within ten days. I believe that
16 language can be very easily adapted to say, ten
17 business days. The reason being is we all know with
18 holidays and especially this time of year, you can
19 submit a request on the Wednesday before Thanksgiving,
20 and a business may not see it until the following
21 Monday, thereby providing them with literally five
22 business days to comply. I think that that -- adding
23 the term "business" maintains the integrity behind
24 that regulation without adding increased pressure on
25 compliance.

1 The last language issue that I'll cite
2 to you is the 15 day requirement in 999.315 E and F,
3 which really detail a very challenging timeline for
4 businesses when they receive an opt-out request.
5 Trying to turnaround an opt-out request maybe very
6 challenging particularly with a 90-day look back. And
7 given that there's a 90-day look back, I don't see the
8 need to have 15 days as opposed to the normal 45 plus
9 45 day standards which appear in other sections of the
10 CCPA. At a minimum for large businesses, 15 plus 15
11 should be considered.

12 Lastly -- this will be my last point.
13 I believe an additional regulation should be added to
14 the Attorney General regs that really clarify that the
15 enforcement action lies with, and only with, the
16 California Attorney General with respect to privacy
17 violations. There is a real concern in the business
18 community that you will see folks trying to use
19 pocket-type claims, private Attorney General actions,
20 and/or the Unruh Act to expand the CCPA and its
21 privacy violations beyond which it is intended to be
22 by the legislature. I believe that that language --
23 adding this language to the regs will bring much
24 needed assurances to business leaders that the CCPA
25 will not lead to a land slide of ill-advised lawsuits

1 in this action.

2 Thank you very much for your time.

3 MR. AKERS: Thank you. Speaker No. 14,
4 please.

5 MS. MCMILLAN: Good morning. My name
6 is Leigh McMillan. It's L-E-I-G-H, M-C-M-I-L-L-A-N,
7 and I am the CEO of Whitepages, which started 23 years
8 ago as an online directory.

9 Today Whitepages is used by more than
10 30 million consumers and small businesses every month
11 to meet a number of needs, chief among them is fraud
12 prevention, scam call detection, and personal safety.
13 We meet these needs by aggregating data from diverse
14 sources and making it fully transparent and easy to
15 access and navigate. We also strive to make it easy
16 for individuals to request removal of their
17 information and are constantly working to improve this
18 process which involves matching data points across
19 multiple sources and verifying requestor's information
20 with limited data point as was highlighted by previous
21 speakers.

22 I'm here today, first, to voice support
23 for the goals and spirit of CCPA. We believe that
24 individuals have the right to know how personal
25 information they provide to companies is used and

1 should have reasonably and meaningful controls over
2 how it's collected, used, and shared.

3 Whitepages extensive experience with
4 data management and fraud prevention at scale informs
5 the second purpose for my limited comments today,
6 which is to speak to the practicalities and potential
7 for fraudulent actions associated with the notice at
8 collection of personal information.

9 Section 999.305 appears to say that
10 short of securing after the fact written attestation
11 from originators of the data, businesses that sell or
12 make available personal information not collected
13 directly from consumers must notify them of its
14 existence and the right to opt-out. This notification
15 requirement will flood consumers with potentially
16 confusing notifications from legitimate companies with
17 legitimate services. As evidenced with the
18 misunderstandings of direct marketing requirements
19 under the GDPR, that led to a flood of opt-in requests
20 prior to May of 2018. The request will -- the result
21 will be consumer fatigue and irritation all while
22 creating a ripe environment for fraud.

23 Fraudsters adept at impersonating
24 legitimate companies will take advantage of the flood
25 of notifications that use calls to action that

1 consumers expect to see whether clicking on a link or
2 supplying personal data to entice individuals to
3 provide the exact information that CCPA is trying to
4 protect.

5 The notice of opt-out from sales in the
6 form of a "please do not sell my personal information"
7 button to be prominently displayed on websites was
8 determined by the legislature to be clear and
9 sufficient. Moreover, the Data Broker Registry, with
10 its current very broad definition of what constitutes
11 a data broker, will allow consumers to verify, find,
12 and easily select those entities from which they wish
13 to opt-out of -- from.

14 Likewise, requests for information
15 associated with households or frequently shared
16 identifiers, such as street address or IP address,
17 raise substantial privacy concerns. These requests
18 can easily be exploited by identity thieves and
19 abusers.

20 James, Paver, a PhD student in Oxford
21 provides a real world example of this vulnerability.
22 While sitting at an airport gate, he and his fiancé
23 began an experiment to see what data could be
24 extracted from companies under GDPR. Over a two month
25 period, Paver sent out 150 GDPR requests in his

1 fiancé's name asking for all data associated with her.
2 Twenty-four percent of the respondents provided all
3 files associated with his fiancé based on just two
4 pieces of data, an email address and a phone number.

5 To help reduce these risks, we applaud
6 requiring agents operating on a consumer's behalf to
7 register with the Attorney General's office so
8 companies can better verify third-party requests. We
9 also strongly encourage a risk based approach to
10 request verification that gives businesses the
11 flexibility to adopt verification solutions that are
12 contextually relevant to their business and the data
13 being requested, and not only disincentivize
14 fraudulent requests but prevent them.

15 As noted by a prior speaker, consumers
16 win if businesses are successful at implementing CCPA.
17 We believe that privacy reform will bring significant
18 benefits to consumers, but the details are critically
19 important. We hope the concerns expressed here will
20 be helpful to you and plan to submit additional
21 written testimony.

22 Thank you for the opportunity to share
23 from our perspective and experience.

24 MR. AKERS: Thank you. We've been
25 going for about an hour. Let's plan to take a

1 ten-minute break at this point to give our court
2 reporter a chance to rest his fingers. It is
3 currently 11:03. Let's come back at 11:13. Thanks
4 all.

5 (Off the record.)

6 MR. MCELROY: Good morning.

7 MR. AKERS: Good morning.

8 MR. MCELROY: My name is Scott McElroy.
9 That's spelled S-C-O-T-T, M-C-E-L-R-O-Y. I'm
10 representing a company called Paylidify. We're a
11 multinational payment -- merchant payment processor.

12 So we're looking for just a few
13 clarifications. So first off, it would be very
14 helpful if specifics were provided on exactly how a
15 business is to actually verify a verifiable consumer
16 request. As a follow-up, it would be helpful if
17 examples were provided of data elements of businesses
18 required to collect from a consumer in order to
19 confirm that their request to opt-out is actually
20 verifiable. Next up, would a business that meets the
21 CCPA threshold criteria be in violation if that
22 business does not have a link on their website to
23 allow a consumer to opt-out of data collection
24 mechanisms? And finally, how many days does the
25 business have to complete on opt-out request?

1 That's it.

2 MR. AKERS: Thank you, sir.

3 MR. MCELROY: Thank you.

4 MR. AKERS: All right. Speaker No. 16,
5 please.

6 Good morning.

7 MR. HOSSAIN: Good morning. My name is
8 Roman Hossain. That's R-O-M-A-N, last name,
9 H-O-S-S-A-I-N. I represent a company called Review
10 Squash. We are a small business digital marketing
11 agency, and my comments are both sides -- both from
12 the business side and the consumer side. So this
13 will -- this will add to also Speaker No. 11's IP
14 address only issue.

15 According to law firm Perkins Coie and
16 a recent Microsoft webinar on CCPA, 140 visits a day
17 by California consumers on a website which collects
18 cookies and other information would cause a small
19 business to meet the threshold of 50,000 records and
20 be subject to CCPA in a year. This now opens CCPA
21 enforcement of small businesses such as doctors,
22 lawyers, CPA's, plumbers, AC repairmen, beauty
23 suppliers, and hundreds more. And these businesses
24 will unlikely have the technical resources to comply
25 with CCPA. So this -- the question is was this the

1 intent of the law to apply to such small businesses,
2 many with revenues of less than a million dollars a
3 year?

4 For example, one of the things that our
5 agency does is create Facebook ad campaigns for these
6 small businesses. Well, the way the Facebook data
7 works and by installing a Google pixel code onto their
8 website, it opens up a database of all of Facebook's
9 potential consumers. And as a result, 90 percent of
10 my small businesses run Facebook campaigns. So
11 theoretically, they would be subject to the CCPA
12 because they've got access to well over 50,000 records
13 on their advertising campaign. And on any given
14 advertising campaign, we collect anywhere between 50
15 to 100,000 impressions for less than \$500 on an
16 advertising campaign.

17 So the question is is there going to be
18 some clarification as to what a consumer record is?
19 And the IP address only issue is one issue, but a
20 cookie issue and a Google pixel -- or -- or the
21 Facebook pixel issue is a whole other issue as to what
22 records are collected.

23 Secondly, I'd like to bring up the
24 fact of on a consumer point, in going to the current
25 AG's website, it's unclear where someone would even go

1 to report a violation. And so, I'm not sure if that's
2 something that is going to be addressed in 2020, but
3 at the current state, there's obviously numerous
4 sections on the AG's website for numerous other
5 business complaints, and there is a general business
6 complaint section. But it would help if that was
7 clarified, or if there was a specific button for that.

8 The next issue is what will the AG's
9 enforcement actions look like for small businesses
10 that violate CCPA unknowingly? And although there is
11 been some guidelines of a letter being sent, and there
12 is about seven days to comply, and then a fine of
13 \$2,500 and then another fine of \$7,500. But who are
14 the contacts? Is there any sort of mediation? Or if
15 the action is corrected, or if the business shows that
16 action as being in progress of being corrected, what
17 are kind of the repercussions of such?

18 And those are all my comments.

19 MR. AKERS: Thank you. Speaker No. 17,
20 please. Speaker No. 17. Okay. No seeing 17. Moving
21 on to 18. 19?

22 Good morning.

23 MR. GRIMALDI: Good morning. Thank you
24 all for doing this. I appreciated the opportunity to
25 be here earlier in the year for your first session and

1 found it informative hearing all the comments, and I'm
2 glad to be back. So thank you.

3 My name is Dave Grimaldi, and I'm
4 Executive Vice President of the Interactive
5 Advertising Bureau. Founded in 1996, we represent
6 over 650 leading media and technology companies that
7 are responsible for selling, delivering, and
8 optimizing digital advertising campaigns. Working
9 with our member companies, the IAB develops technical
10 standards and best practices and fields critical
11 research on interactive advertising while also
12 educating brands, agencies, and the wider business
13 community on the importance of digital marketing.

14 We are committed to professional
15 development and elevating the knowledge, skills, and
16 expertise, and diversity of the workforce across the
17 industry. IAB strongly supports the principles of the
18 California Consumer Privacy Act, namely transparency,
19 control, accountability, and choice. As the CCPA
20 states, "California consumers should be able to
21 exercise control over their personal information, and
22 they want to be certain that there are safeguards
23 against misuse of their personal information." And we
24 agree. Our cross industry development of the Digital
25 Advertising Alliance, or the DAA, was created

1 precisely to address those core concepts and has
2 gained widespread acclaim from government and public
3 interest groups alike.

4 Our commitment to these principles is
5 also visible through our ongoing work to help industry
6 comply with CCPA through the IAB CCPA Compliance
7 Framework for publishers and technology companies.
8 This compliance framework is intended to provide
9 companies with the technical and contractual tools to
10 help them fulfill consumer opt-out requests, and
11 ultimately our goal with this framework is to increase
12 compliance with CCPA and IAB's over 600 member
13 companies.

14 But as the Attorney General's
15 regulatory impact assessment highlights, the cost of
16 complying with CCPA have been, and will continue to
17 be, significant. So it's crucial that the Attorney
18 General's office work diligently to further the
19 purpose of CCPA without creating unnecessary
20 compliance costs for businesses that will limit
21 product and service availability for California
22 consumers. IAB will be submitting detailed written
23 comments to the Attorney General's office this week,
24 but today I'll like to highlight just a few issues
25 that we feel could provide guidance and clarification

1 to businesses in the media and marketing industries as
2 they work to comply with CCPA.

3 First, IAB asked the Attorney General
4 to clarify that using personal information received
5 from a person or entity to service another person or
6 entity could constitute a permissible quote/unquote
7 "business purpose" under CCPA. So long as such use is
8 for the benefit of the entity providing the
9 information and is set forth in the required contract
10 between the business and the service provider and is
11 otherwise consistent with the requirements of CCPA.
12 Such an acknowledgement would better align the
13 regulations with the text of CCPA which explicitly
14 permits disclosures to service providers for a list of
15 enumerated business purposes under the statute. It
16 would also better align with CCPA's definition of
17 business purpose which includes both a business' or a
18 service provider's operational purposes or other
19 notified purposes.

20 Second, IAB asked the AG to allow
21 companies the option of honoring browser settings or
22 including a 'do not sell my personal information' link
23 on its website. The proposed regulations state that
24 "browser plug-ins and other mechanisms must constitute
25 a valid request to opt-out by the consumer." That was

1 not included in the text of CCPA and could risk
2 undermining consumer choice. We believe it's
3 important for consumers to have granular controls over
4 the selling of their personal information, and the
5 current proposed regulations risk limiting that
6 control absent further clarification and limitations
7 on such mechanisms.

8 I appreciate the opportunity to be able
9 to speak with you today. You will see our filing by
10 Friday. And thank you again for holding this forum.

11 MR. AKERS: Thank you. Speaker No. 20,
12 please.

13 Good morning.

14 MR. KIM: Good morning. My name is Bo
15 Kim, Senior Privacy Counsel at Perkins Coie and
16 Counsel for the California Chamber of Commerce. Thank
17 you for the hearing today.

18 Businesses want to comply with the
19 CCPA. Significant investments have been made by
20 industry to comply with the CCPA as written. For
21 these reasons, we would suggest that an enforcement
22 based upon the regulations be delayed until January
23 2021 to give businesses an opportunity to conform to
24 the regulations.

25 The California Chamber will be

1 submitting detailed comments later this week. Some
2 highlights of those comments are as follows with other
3 areas to follow in the write-up.

4 Beyond the effective date, the
5 overarching concerns center around the fact that draft
6 regulations go substantially beyond CCPA requirements
7 in a number of respects that will be detailed in our
8 letter. A few salient examples are the following:

9 First, proposed Section 315 regarding
10 opt-outs: The regulations regarding tech
11 technological mechanisms that would communicate a
12 consumers intent to opt-out of sale under the CCPA
13 lack clarity. It is unclear as businesses would be
14 required to do should such mechanisms be developed.
15 It must be assured that consumers actually intended to
16 exercise the right to opt-out of sale under the CCPA.
17 We are concerned that mechanisms may be developed that
18 may not, in fact, reflect user choice. Furthermore,
19 there is no industry accepted technical standard
20 regarding opt-out via a browser mechanism. The
21 requirement to notify all third-parties to whom a
22 business has sold personal information can be
23 tremendously burdensome. It may not be feasible
24 considering the broad definition of sale under the
25 CCPA. Given the breadth of the CCPA definition of

1 sale under Section 1798.140 T, it may be difficult for
2 companies to identify parties that may be considered
3 part of an exchange for valuable consideration where
4 they lack privity or otherwise. Businesses may not
5 have the ability to contract parties -- I'm sorry --
6 contact parties to whom data was made available for
7 valuable consideration as maybe construed by the AG's
8 office in connection with Section 1798.120. Also the
9 requirement to opt-out users within 15 days of the
10 request under proposed Section 315E shortens the time
11 for the businesses to respond to opt-out requests that
12 exist in the CCPA now.

13 Second, proposed Sections 307 and 337
14 regarding financial incentives: The requirement to
15 give notice of financial incentives for every
16 incentive contained in proposed Section 307 is
17 extremely burdensome and onerous. Just imagine the
18 impracticality of a grocery store that wants to
19 provide daily or weekly coupons to valued loyalty
20 customers having to give notice of privacy for every
21 offering. Moreover, as far as proposed Section 337,
22 the vast majority of companies impacted by the CCPA
23 utilize technology but are not tech companies. As
24 such, there is no particular value of data allocated
25 on any existing balance sheet or for public companies

1 10K or 10Q filing. The requirement to create a data
2 valuation under Section 337 would be artificial in the
3 sense that value calculations for data are not the way
4 businesses operate, and the proposed calculations
5 exceed the statutory construct.

6 Third, proposed Section 313 regarding
7 responding to requests to know and requests to delete:
8 Here again, there are areas where the proposed
9 regulations exceeded scope of the CCPA. This includes
10 the fact that unverifiable requests to delete should
11 not be treated as sale opt-outs because adding
12 unverified requests undermines the legislation which
13 clearly provides only verified consumer requests the
14 ability to ask for deletion as previously mentioned by
15 other speakers. It also changes the consumers intent,
16 increases cost, and exacerbates difficulties with
17 deleting data from archives or backups. The Chamber
18 also has comments on the service provider language in
19 Section 314 and the definitions contained in
20 Section 301 that will be in our written comments. For
21 the sake of time, I will not repeat them here.

22 Thank you very much.

23 MR. AKERS: Thank you. Speaker No. 21,
24 please. Good morning.

25 MR. RECHT: Good morning to you.

1 Philip Recht of the Mayer Brown Law Firm. Our firm
2 represents a coalition of companies that provide
3 background reports, fraud detection, and other people
4 search services. These services are widely used by an
5 array of California and other law enforcement,
6 government agencies, businesses, individuals, and
7 families alike. The companies do not collect PI
8 directly from consumers, but instead collect it from a
9 host of public and other third-party sources. The PI
10 they collect is almost always already in the public
11 domain, and the revenue from these companies derives
12 almost exclusively from the sale of reports containing
13 this PI. These companies strongly support the CCPA.
14 In fact, they have been pioneers in the use and the
15 provision of opt-out rights and a lot of the other
16 rights that are the CCPA on a voluntary basis for
17 years and years and years. However, they have
18 concerns with three provisions in the proposed
19 regulations.

20 The first item of concern is the notice
21 of collection provision that has been addressed by
22 some other speakers. This, from our vantage point,
23 would relieve companies like ours of the need to
24 provide what we call the "pre-collection notice," the
25 notice required at or before the collection of PI.

1 Instead it would require these companies to do one of
2 two things: Either provide direct notice before they
3 sell the PI of a consumer, or instead obtain an
4 attestation from the original source of the PI that
5 that source provided a direct notice to the consumer.

6 This proposal is problematic in any
7 number of ways. First and foremost, no matter how
8 well intended, an administrative regulation simply
9 cannot override or eliminate a clear statutory
10 requirement such as the need to provide notice at or
11 before collection. Even if it could, the alternative
12 compliance options are simply unworkable for our
13 companies. The direct notice option doesn't work
14 because in many instances the PI that we collect
15 doesn't even contain contact information. And when it
16 does, that information often is incorrect or unusable.
17 Other speakers are going to come after me and explain
18 other problems with this as well.

19 The attestation option doesn't work
20 because in the vast majority of cases, almost all
21 cases, our PI sources themselves are indirect sources
22 of the PI, and they cannot provide direct notice. And
23 even if they could, they will not agree to attest to
24 anything in compliance with the law and expose
25 themselves to new legal liabilities.

1 Since neither option is workable for
2 us, the upshot of this proposal is it makes it
3 impossible for us to comply with the CCPA, and it
4 effectively puts us out of business in the State of
5 California, at least with respect to California
6 consumers. And, of course, we all know, the law will
7 never tolerate such a harsh result when there are
8 reasonable alternatives on this topic. And the good
9 news here is there is a very reasonable alternative
10 which is to allow these companies to provide the
11 pre-collection notice on their internet homepages.
12 It's the only practicable way for them to do it. It's
13 consistent with the way CCPA mandates opt-out and
14 other notices. This is how consumers search for
15 online company disclosures. It's consistent with the
16 approach of the new Data Broker Registry that you just
17 heard mentioned of a moment ago. And this registry
18 was developed to address the exact concern that I
19 think underlines your proposal here. It's consistent
20 with the new California Privacy Rights Act -- the new
21 initiative, which specifically allows these companies
22 to provide the pre-collection notice on their internet
23 homepages. And lastly, it's consistent with the fact
24 that the collection and sale of public domain data is
25 constitutionally protected commercial speech. And as

1 we know that kind of speech can only be abridged if
2 there's a compelling reason to do so, and clearly a
3 proposal that would outlaw these activities, when less
4 onerous alternatives exist, could never meet the
5 standard.

6 So for all these reasons, we would
7 request that this Section 305D be amended to allow
8 companies to provide the pre-collection notice on
9 their internet homepages.

10 I have two other issues I'd like to
11 address, but if it's possible, I think I'll wait till
12 the end, and it'll take two or three minutes. I don't
13 want to go over my time.

14 Thank you very much.

15 MR. AKERS: Thank you. Speaker No. 22.

16 MR. COHEN: I would just like to
17 thank -- say that I very much appreciate the
18 opportunity to address the public through this open
19 forum today, so thank you very much to the panel.

20 My name is Ross Cohen, and I co-founded
21 our company, BeenVerified, nearly 14 years ago with
22 the mission of bringing publicly available data to the
23 average and everyday consumer. Back then during the
24 nascency of the internet, we saw that in order for the
25 internet to grow and evolve, there would need to be a

1 certain level of trust, comfort, and confidence that
2 deeper level of connections could be made whether in
3 the context of dating, person-to person commerce,
4 neighborhood relationships, and even the simple right
5 to better know who may be driving my daughter's
6 carpool.

7 Over these last 14 years, we've
8 received emails and letters from our countless
9 families and long lost friends that have successfully
10 reconnected using our people search engine. We
11 witnessed myriad moving reunions such as the story of
12 an NFL linebacker named Ahmad Thomas who used to
13 locate and reunite his biological parents. With just
14 their full names to go on, this once separated family
15 found each other and formed a lasting bond that was
16 over two decades in the making. This is just one
17 public example of so many who have experienced this
18 type of incredible reunion.

19 From BeenVerified's inception, we've
20 helped millions of consumers and have tried to balance
21 the responsibility of third-party public data we
22 collect with the privacy of individuals. We've given
23 individuals the right and the ability to opt-out their
24 data for the last ten years using a clear link right
25 from our homepage. However, I stand here to cite a

1 number of issues as well as a giant problem of
2 unintended consequences that come along with the
3 pre-collection notice requirement under CCPA.

4 First, the ability for companies like
5 ours to provide direct notification to consumers with
6 whom we lack a direct relationship is impractical, and
7 at or before the point of collection because we lack
8 any useable contact information at this time.

9 Secondly, even if companies were
10 somehow to be able to provide consumers with direct
11 notice at or before collection, it becomes an enormous
12 problem for many reasons. Such notices would entail
13 us contacting literally tens of millions of California
14 residents with whom we have no direct relationship.
15 This would be akin to the spam emails and robocalls
16 that consumers are not only fed up with, but also
17 opens the door to identity theft scammers to pretend
18 that they are one of the thousands of legitimate
19 companies who will need to provide pre-collection
20 notice when instead these opportunities -- these
21 opportunists will use the name of CCPA notice
22 provision as a tool to further scam and request Social
23 Security numbers and other private data this law was
24 intended to protect.

25 Look no further than the GDPR notice

1 provision similar to CCPA's, and the countless victims
2 who have received spam emails from scammers posing and
3 companies such as Airbnb, in the name of privacy under
4 GDPR requesting private information. In one such
5 case, outlined in an article by The Sun, a UK
6 publication, an elderly man said he had 4,000 pounds
7 robbed from his account after a scam GDPR email fooled
8 him into offering up his personal info. And stories
9 like this are not an isolated incident either. I urge
10 each and every one of you here to Google GDPR email
11 scams, and you will clearly see that these sometimes
12 even good intentions could have very unintended
13 consequences.

14 The direct notice requirement could
15 create a breeding ground in California for spammer and
16 scammers to extract the very data that we're trying to
17 protect. In fact, at BeenVerified, we also collect
18 user generated robocall phone complaints and just
19 recently concluded an in depth study in part with
20 Forbes.com on the rise of Social Security scam
21 robocalls. This phone scam was by far the most common
22 phone scam this year, accounting for nearly 10 percent
23 of all fraudulent calls according to our nationwide
24 analysis of more than 200,000 spam call reports.
25 Victims wire money, send gift cards, or surrender

1 personal information to scammers. Last year, this
2 type of fraud cost Americans \$19 million according to
3 the Federal Trade Commission. Were you to require
4 direct notice to all Californians whose PI has been
5 collected, this will actually open the door and give
6 scammers exactly the next opportunity to perpetuate
7 their next attacks.

8 For these reasons, we are confident
9 that the answer to privacy protection surely cannot be
10 sending out millions upon millions of emails or
11 postcards from hundreds or thousands of companies.
12 But rather should be done through both the California
13 Data Broker Registry as clearly and conspicuously on
14 our homepages of our companies. And we've already
15 been offering opt-out requests for over the past ten
16 years.

17 I appreciate your time.

18 MR. AKERS: Thank you. Speaker No. 23,
19 please. Good morning.

20 MR. MATTHES: Thank you for the
21 opportunity to speak to you today. I'm Jason Matthes.
22 I'm the General Counsel of Spokeo, and we're a member
23 of the People Search Services Coalition as well. Like
24 other companies that have testified previously, Spokeo
25 uses publicly available information to enable millions

1 of consumers each month to connect with others,
2 reunite, long lost friends and family and relatives,
3 to protect themselves and their families from harm and
4 scams. We also help businesses fight fraud. And
5 lastly, we help law enforcement to find fugitives,
6 suspects, and witnesses. As I said we do this all
7 with publicly available data. Examples of type of
8 data that we collect are Whitepage phone directory
9 data; voluntary survey -- marketing survey results;
10 and public social media profiles.

11 I'm here to talk about three aspects of
12 the regulations that are unworkable for, not only
13 businesses similar to Spokeo, but many other
14 businesses. Many of the speakers previously have
15 talked about Section 305D, which would require for
16 businesses that don't have a direct relationship with
17 consumers to either provide direct notice at the time
18 of sale of information or alternatively obtain the
19 attestation. As other speakers have said whether
20 direct notice is required at the time of collection as
21 the statute actually requires, or whether this
22 alternate scheme is adopted that enables notification
23 at the time of sale. In our case, direct notice is
24 simply not possible for many of the reasons that have
25 been previously testified to and also would create a

1 very bad result for consumers and create opportunities
2 for scams.

3 The attestation is likely unworkable
4 for our companies as was previously testified. The
5 data that we collect being publicly available often
6 comes from aggregators themselves who could not
7 provide an attestation that notice was given. Also
8 the sources from which we obtain the data may have
9 actually collected it before CCPA comes into effect,
10 in which case, how could they provide an attestation
11 around giving a disclosure to consumers that, frankly,
12 was not required at the time that they collected it?

13 The solution that we would suggest is
14 consistent with what you've heard today. That is to
15 allow notice to be given to consumers via the Data
16 Broker Registry and likewise by conspicuous notice.

17 The second regulations that I'd like to
18 discuss today is 315 F which requires notification of
19 opt-out downstream to those to whom data has been sold
20 within the last 90 days. Members of our coalition and
21 likely other companies have resale relationships --
22 reseller relationships which is not a prohibited
23 commercial arrangement under any statutory scheme
24 whatsoever. The regulation -- the proposed regulation
25 would require us to breach these already existing

1 relationships -- to breach these contracts and notify
2 downstream recipients that they're not going to be
3 able to exercise contractual rights that they've
4 already acquired. So it -- the proposed regulation
5 effectively, you know, walks companies into a scenario
6 where they actually have to breach contracts that are
7 already entered into. Furthermore, this downstream
8 notification would impose significant cost to the
9 point that it's tantamount to prohibiting resale
10 relationships. It's very possible that those
11 receiving data downstream are not of the size or of
12 the scope that are regulated by CCPA. Therefore, upon
13 receipt of a notification of an opt-out, they may not
14 have a mechanism in place to actually address handling
15 no longer being able to resell that data. So for
16 those reasons, the regulation of -- proposed
17 regulations 315 F, and likely -- likewise unworkable.

18 The final regulations that I'd like to
19 discuss is 317 G which singles out companies who
20 process more than five million records per year to
21 publish public statistics about CCPA activities.
22 First, I'd point out that the -- what needs to be
23 reported on is ambiguous in and of itself. I'm not
24 sure -- there is no definition in the regulation about
25 how companies are to determine whether they've

1 complied, in whole or in part, with CCPA requests. I
2 don't really understand what a complying in part with
3 the CCPA request would actually be. So it makes
4 reporting on these statistics very difficult. But
5 more importantly, the -- there's -- as many others
6 have testified, it's a significant investment for
7 businesses to adopt CCPA compliance to get to the
8 standard of CCPA compliance.

9 Like others, Spokeo supports the CCPA.
10 The right to opt-out, we've been doing it for many
11 years as well. But we should not compound an already
12 significant investment with a further burden that's
13 actually not in the statute.

14 Thank you very much.

15 MR. AKERS: Thank you. Speaker No. 24,
16 please.

17 MR. LEVINE: Good morning. You've got
18 a tag team for a little bit of humor.

19 MR. AKERS: Welcome.

20 MR. LEVINE: I'm David Levine This is
21 my colleague, Kevin Walsh. We're principals of Groom
22 Law Group in Washington, D.C. We're a law firm
23 focused on employee benefits and benefits programs.
24 We work with employers and service providers.

25 Today you've heard a lot about credit

1 unions and other organizations. We're here to talk,
2 like one of the earlier speakers, about the employment
3 universe that's caught up in CCPA.

4 We're here to testify on behalf of The
5 SPARK Institute, which is a provider to a wide range
6 of retirement plans and other benefit programs. It
7 represents over a hundred million 401k accounts, so a
8 large proportion of the U.S. population with assets
9 that conservatively are north of \$10 trillion that are
10 impacted by CCPA. While we appreciate greatly the
11 efforts that have been taken with the regulations at
12 this point, we're here to testify about the need for
13 some more clarification especially in light of
14 enactment of AB25 at this point.

15 We recognize that the regulations came
16 out right before AB25 and don't integrate the two.
17 But we think that given, as the prior speaker
18 mentioned this morning, that employers have
19 notification obligations, we need some urgent guidance
20 and clarification to make this work because the
21 employment space is very different especially in
22 benefits. It's not just this typical consumer type of
23 service provider. Here, you have an employer and
24 their people, and there's many differently levels that
25 operate differently than your normal business to

1 consumer environment. As a result, employers have a
2 big regulatory burden. Do they carry the
3 responsibility for notification? Do other people do?
4 Who handles it? And so, employers are really
5 struggling.

6 So we have seven sort of key ideas, and
7 Kevin's going to walk them through.

8 MR. WALSH: Yeah. So we -- we suggest
9 kind of seven areas of clarifying guidance, and I'm
10 going to race through them because we've got five
11 minutes and there's two speakers.

12 So first, I mean, really the key here
13 is we would love a model employer-employee disclosure
14 to be provided as part of final regulations. It would
15 make it easy. AB25 sunsets after a year in its
16 current form. If there is not a model, I mean, it's a
17 lot of compliance costs for not a lot of return.

18 Second, and we really ask and recommend
19 that guidance define benefits broadly for purposes of
20 AB25. So when I think about benefits, I think
21 retirement -- I think health. But more recently,
22 we've been more and more employers wanting to do
23 things like help employees pay their student loans.
24 So if benefits is defined narrowly, we risk kind of
25 providing access for kind of vital services or things

1 that really could help employee populations out.

2 Third, we ask and recommend that
3 guidance -- that personal information -- you know,
4 that it stays within the scope of AB25, whether it's
5 gathered by the employer, whether it's gathered by a
6 service provider, whether it's used by the employer,
7 whether it's used by a service provider in the context
8 of benefits. So it shouldn't matter who's getting it
9 -- who's using it for AB25.

10 MR. LEVINE: A lot of this is
11 outsourced, which is why we raise that point.

12 MR. WALSH: Fourth, and this is kind of
13 a pretty basic one, and I think if benefits people had
14 been writing CCPA with be this is would have been in
15 there. But when we're thinking about benefits, we
16 can't just think about employees and employers. We
17 need to include beneficiaries -- so the spouse. They
18 should fit within AB25, even though the text of it
19 doesn't mention beneficiary because otherwise it
20 doesn't hang together.

21 Now fifth, we recommend that a notice
22 provided to an employee satisfy the disclosure
23 requirement for a notice provided to a dependent -- to
24 a spouse because you're going to need information
25 about beneficiaries and spouses to operate these

1 plans. And that's kind of works with IRS or ERISA.

2 Sixth, because employers won't always
3 have a complete data -- I mixed one up. We recommend
4 that if a disclosure provided by the employer, that it
5 satisfies the disclosure requirement for any service
6 provider that might interact with the employee or
7 beneficiary directly.

8 And then last, the business uses in
9 CCPA -- they provided seven examples of business uses,
10 and the regulatory community is kind of hung up on
11 which of those seven uses they fit under -- that
12 benefits could be its own business use, just make that
13 clear. This would be helpful. I mean, I think
14 everyone wants to see benefits programs succeed.
15 There is no reason why California should have worse
16 benefits than anyone else.

17 So those are the things we'd love to
18 see.

19 MR. LEVINE: So putting these things
20 together, I think we appreciate the opportunity to
21 bring these up. We think these are clarifications.
22 We recognize that that things sunset at the end of
23 next year, and we'll have to see where they land, and
24 we can't predict. But these types of items will make
25 it easier because right now, employers are saying how

1 do we put this square peg of, like, the CCPA sort of
2 standard framework into an employment relationship
3 especially in benefits, and they're having trouble.
4 And who can handle the notices is a huge challenge.
5 We work at SPARK with service providers who are
6 saying, are we supposed to do it -- and employers, are we
7 supposed to do it?

8 If we can have something that allows us
9 a framework to say someone can do it. As Kevin said,
10 this is how other regulators on the federal side do
11 it, so that's why we recommend it.

12 And thank you for your time.

13 MR. WALSH: Thank you very much.

14 MR. AKERS: Thank you. Speaker No. 25.
15 Number 25. Okay. Is there a No. 26?

16 MR. GARTHWAITE: Good morning.

17 MR. AKERS: Good morning.

18 MR. GARTHWAITE: My name is Field
19 Garthwaite. I'm the Co-founder and CEO of a company,
20 IRIS.TV, based here in LA. We work with hundreds of
21 publishers and broadcasters, and something that I
22 think we've heard from many of the comments this
23 morning is that this law disproportionately effects
24 small businesses, which I think in the context of the
25 major tech companies that exist in this state, you can

1 say anything under annual revenues of a billion
2 dollars.

3 And it appears that the authors of this
4 legislation did not have clear goals when it relates
5 to the elephant in the room, which is how to do we
6 address Google, Facebook, Amazon, and a small handful
7 of companies -- which appear to be growing ever larger
8 -- while other businesses are affected by these laws -
9 - disproportionately and have teams, you know, focused
10 on them? But, you know, the companies I just
11 mentioned have groups larger than everyone in this
12 room focused on these changes, and as we've noticed,
13 you know, they're not here today.

14 So what I'd like to say is that there
15 are a couple of opportunities in the legislation where
16 there are opportunities to actually affect companies
17 with levels of revenue of say, over ten billion, over
18 a 100 billion, or of a certain level of market
19 capitalization -- where the revenue received from
20 digital transactions -- and reduce restrictions on
21 those who're providing valuable services to consumers
22 like many of those who have testified today of smaller
23 size, so we reduce the effect on small businesses that
24 focus on investing and producing -- in the case of our
25 customers, journalism, information, and you know, the

1 very things that we depend on as an informed
2 democracy. I know these are things that we all value.

3 Businesses such as the LA Times, for
4 example, did not operate in the EU for months, and
5 thousands of publishers were affected in this way
6 following GDPR. So I hope that everyone takes note of
7 that. The restrictions on these companies in CCPA is
8 lesser, so I doubt that that will be the case as
9 there's a better warning system. But that's a company
10 that formerly was located a block way, and had many
11 cash flow issues, and it forced a sale to a
12 billionaire. There is been more loss of journalism
13 jobs in this country than coal mining over the last 20
14 years.

15 So specifically in sections such as
16 337, calculating the value of consumer data, I just
17 want to point out there in Article 6, that the law has
18 an opportunity to put more onus, regulation, and
19 transparency on the largest companies in the market
20 and help consumers understand the distributed value
21 that we each contribute in driving their market value.
22 Which as of today, Facebook's market value is over
23 half a trillion dollars at \$564 billion; Google's is
24 \$890 billion. And here were standing in a room
25 hearing companies such as small businesses -- you

1 know, it just seems disproportionate the way that this
2 affects everyone.

3 So thank you for your time.

4 MR. AKERS: Thank you. Speaker No. 27,
5 please.

6 UNIDENTIFIED SPEAKER: Hello everyone.
7 And hello Ms. Blume, Ms. Akers, Ms. Kim, and
8 Mr. Osgood. I am going to either say -- because it's
9 so close to noon, a very late good morning or a very
10 earlier good afternoon.

11 I'm going to defer to all of the
12 speakers that have spoken representing businesses
13 because I am a CEO and founder of a very small
14 start-up. So I wear that hat; I also wear another hat
15 of a consumer; and I wear on more hat as a Safe at
16 Home program participant in the State of California.
17 And I'm showing you the card that I have of a Safe at
18 Home program participant, which gives me and thousands
19 of other up and down this state, certain protections
20 of privacy from data brokers, data mining companies,
21 and data aggregators.

22 Google is not helping. I'm going to
23 get into that in a minute. I'm trying to finish up
24 long before the one minute poster is showing. So we
25 know that Apple's CEO, Tim Cook, is a big advocate

1 about privacy, but he is not dealing with the CCPA,
2 the DOJ is.

3 So I'm going to briefly mention, as
4 wearing the hats of three different entities, that I
5 have -- when I was listening to all the speakers, I
6 pretty much summed it up with the three C's: There's
7 cost to comply for the businesses; there's confusion
8 for the businesses; and there's in need of clarity and
9 clarification for the businesses. I'm going to need
10 that as well because I have that small start-up
11 business hat on. And as a consumer, I became an
12 expert in removing PII, personally identifiable
13 information, offline that was asked to be a speaker
14 several years ago at Digital Hollywood, a three-day
15 event held at the Skirball Cultural Center twice at a
16 year. It's also held in New York twice a year. But I
17 was, just two weeks ago, the moderator because I
18 became an expert in removing PII offline. And I
19 figured out all of the problems, all of the hassles,
20 all of the inconsistencies among the data brokers,
21 data aggregators, data mining companies, which are
22 affecting millions of consumers across the country.

23 But CCPA is for the folks in
24 California. So the millions of people in California
25 are going to experience even worse problems than I

1 did. So I'm here -- and I appreciate your time, and
2 your interest, and your thoughtfulness. I'm here to
3 tell you that the Privacy Enforcement and Protection
4 Unit at the DOJ, they need to step up to the plate in
5 terms of the Safe at Home program participants. I've
6 been extremely disappointed with them, not only for
7 their opt-out written demand form, but they're
8 ridiculous -- and please forgive me -- directory to
9 remove their PII offline through snail
10 mail -- antiquated, outdated, and many of it, not all,
11 but many of it incorrect.

12 So I don't know who's in charge of that
13 specifically, at the DOJ in the Privacy Enforcement
14 and Protection Unit because they never give any names,
15 never provide a phone number, never really do much of
16 anything in terms of authenticity or transparency,
17 which is a problem when you're a Safe at Home member.
18 And that -- so I was going to say and that means that
19 the Privacy Enforcement and Protection Unit in
20 San Francisco needs to connect with the Safe at Home
21 Department in Sacramento, and also the executive
22 office for the Secretary of State because Secretary of
23 State is in charge of Safe at Home program.

24 All right. So on that note, I want to
25 thank you, and I'm going to be done before the minute

1 bell is off and ask you to please -- the last thing,
2 you've got to -- you've got to deal with Google
3 because they're -- Google is not respecting at least
4 the Safe at Home program participants. They don't
5 know how, and they make it impossible to provide any
6 information for Safe at Home people to get their
7 information removed offline. And consumers need to
8 have control over what they -- what they want online
9 and what they don't because I know a lot of businesses
10 have said if they're -- they may lose their business,
11 but people have been threatened with rape, and death,
12 and killings because their information was put online.

13 Thank you very much for your time and
14 look forward to hearing from all of you very shortly.

15 MR. AKERS: Thank you. Speaker No. 28,
16 please.

17 Good morning

18 DR. HENRY: Good morning. I'm
19 Dr. Maxine Henry, and I'm the President of Cyvient.
20 My organization is responsible for implementing and
21 consulting services for companies in the need of
22 governance, risk, and compliance. So essentially, we
23 are the company that helps companies comply with the
24 regulation.

25 I'm here today to speak on two sections

1 or two provisions of the proposed law,
2 Section 999.313, and notable Item C5, which is the
3 sections that deals with the denial requests. My ask
4 here is that there be a time period specified for the
5 denial request, if that be possible.

6 And then the second area is Item 6,
7 under that same section is "businesses shall use
8 reasonable security measures when transmitting
9 personal information to the consumer." We ask that
10 you be specific about what "reasonable" means.
11 Because reasonable to one company may be differently
12 to another. And also, additional here would be to ask
13 to provide some guidance. When your implementing
14 aspects of the law, it would be helpful to have some
15 information or some guidelines around particular
16 security measures. This comes up whenever I talk to a
17 customer. They ask what does that actually mean, and
18 my interpretation is to provide some direction from
19 either ISO 27001 & 2, or 27701 or either NIST 53,
20 Revision 5. So if that be possible to provide some
21 guidelines and some more specific language around what
22 security measures that would be helpful.

23 Thank you for your time. Appreciate
24 it.

25 MR. AKERS: Thank you. Speaker No. 29,

1 please. Do we have a Speaker No. 29?

2 Okay. I believe we may have exhausted
3 our speakers. Are there -- is there anybody else who
4 has a number to speak? Are there any speakers that
5 would want -- who have spoken who wish a few more
6 minutes to extend their comments?

7 Sir, please, come on up. And if,
8 again, if you could keep the further comments under
9 five minutes.

10 MR. RECHT: Thank you. Again, Phil
11 Recht of the Mayer Brown Law Firm representing a
12 coalition of people search service companies. This
13 should only take about two minutes.

14 I want to address the two other issues
15 of concern to our group. You just heard from Mr.
16 Matthes this a while back. He addressed them from an
17 operational standpoint. Let me try to address them
18 from a legal standpoint.

19 The first one -- the first section is
20 Section 315F. That's the section that would require
21 the seller of personal information that receives an

22 -
23 optout request to provide downstream notice to the
24 buyer -- the recent buyers of that PI instructing them
25 not to resell the PI. And then going back and
informing the opting-out consumer that these tasks

1 have been performed. From a legal standpoint, this is
2 problematic for two reasons. First, there is nothing
3 in the CCPA itself, the underlying statute, that
4 requires any similar downstream notice of consumer
5 opt-outs, let alone imposing any limits on the resale
6 of a consumer's PI. And for what it's worth, the same
7 is true of the new initiative, the CPRA.

8 Secondly, because nothing in the CCPA
9 prevents the resale of a consumer's PI, the proposal
10 would, from a legal standpoint, impair the contract
11 rights of buyers, and as we know, this violates the
12 contract clauses of both the US and California
13 constitutions. So for these reasons, from a legal
14 standpoint and additionally from an operational
15 standpoint, we ask that this provision be deleted.

16 The last section I want to mention is
17 Section 317G. And this is the section that requires
18 businesses that process five million or more consumer
19 records per year to compile data -- excuse me -- about
20 how many consumer requests they collect, how they
21 handle the requests -- deny or to process in part or
22 in total -- how long it takes to do so, and then to
23 publish that data in their privacy policies or on
24 their websites. Again, from a legal standpoint, this
25 is problematic. First, once again, there is nothing

1 in the CCPA, the underlying statute, that requires any
2 similar data collection and publication exercise. And
3 for data brokers in particular, the mandatory nature
4 of this requirement conflicts with the permissive
5 nature of the Data Broker Registry, which allows, but
6 does not require -- but which allows listed companies
7 to publish whatever additional data or information
8 they want concerning their data collection practices.
9 So again, we would, once again, ask that this
10 requirement be removed.

11 Thank you so much for your attention.
12 We'll be providing detailed written comments by this
13 Friday.

14 MR. AKERS: Thank you. Are there any
15 further speakers?

16 Okay. Seeing none at this time, as it
17 appears that there are no more persons present to make
18 oral comments, I'm going to close this hearing at
19 12:03 p.m. on the proposed California Consumer Privacy
20 Act regulations. Again, you're more than welcome to
21 submit written comments. The written comments period
22 ends on December the 6th, 2019 at 5 p.m. And written
23 comments may be emailed to our website -- or submitted
24 via our website or emailed to privacyregulations --
25 one word -- @doj.ca.gov.

1 On behalf of Department of Justice,
2 thank you for your time today and participating in the
3 rule-making process.

4 (Whereupon, the meeting concluded at
5 12:04 p.m.)

CERTIFICATE OF NOTARY PUBLIC

I, LUIS VAZQUEZ, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Dated: December 12, 2019

A handwritten signature in blue ink, appearing to be 'LV' with a stylized flourish, is placed over a faint rectangular notary seal.

LUIS VAZQUEZ

Notary Public in and for the
State of California

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CERTIFICATE OF TRANSCRIBER

I, DONNA CAPOLONGO, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Dated: December 12, 2019



DONNA CAPOLONGO

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