



November 5, 2019

Interactive Advertising Bureau
888 17th Street NW
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Washington, DC 20006

Re: IAB CCPA Compliance Framework for Publishers & Technology Companies

The undersigned consumer and privacy groups are writing to comment on the Interactive Advertising Bureau's (IAB) recently-published draft compliance framework for the California Consumer Privacy Act (CCPA),¹ the landmark privacy legislation set to go into effect in January 2020.² We are disappointed that IAB appears to adopt contorted legal interpretations of the CCPA in order to avoid making *any* meaningful changes to the ad tech data sharing practices that were the fundamental motivation behind the law.³

At the *very least*, consumers should expect that sending a "Do Not Sell" instruction would turn off third-party behavioral advertising based on that publisher's data on that device. But the IAB framework offers publishers several options to circumvent that primary purpose of the CCPA. Instead, IAB purports to send consumers to existing failed self-regulatory mechanisms to

¹ *IAB CCPA Compliance Framework for Publishers & Technology Companies*, INTERACTIVE ADVERTISING BUREAU (Oct. 2019), https://www.iab.com/wp-content/uploads/2019/10/IAB_CCPA_Compliance_Framework_Draft_for_Public_Comment_Oct-2019.pdf [hereinafter "IAB Framework"].

² Cal. Civ. Code § 1798.100 et seq.

³ Nicholas Confessore, *The Unlikely Activists Who Took on Silicon Valley -- and Won*, N.Y. TIMES (Aug. 14, 2018), <https://www.nytimes.com/2018/08/14/magazine/facebook-google-privacy-data.html>.

exercise choices about targeted advertising⁴—despite the fact that the ineffectiveness of those programs was the reason for regulatory intervention.⁵

The IAB guidance explicitly advances several dubious legal interpretations that run counter to the text—and certainly the spirit—of the CCPA, including (1) that commercial data transfers between publishers and ad tech vendors are not “sales,”⁶ (2) that third party ad tech vendors may be considered “businesses” collecting data directly from consumers,⁷ and that (3) hundreds of unknown companies may be considered “service providers” of a publisher for any given ad impression.⁸ And even if companies do consider those transfers a sale, under the framework, they can still target ads based on information collected prior to the opt out, or from other sites.⁹

This is a bad faith interpretation of the CCPA. The CCPA has a broad definition of sale that more than accommodates the transfer of data between unrelated companies for advertising purposes.¹⁰ “Valuable consideration” clearly covers the benefits and incentives for transferring data to publishers to show ads. Indeed, the primary protections around the CCPA reflect the concept of “sale,” the transfer of information to third parties. While the CCPA places no limits on websites’ abilities to advertise to their own visitors, it works to put limits on the tracking of consumer behavior across the web in order to show ads.

Further, while the IAB framework offers guidance to companies on how to circumvent the CCPA, it says nothing about how to process and forward global and legally binding “Do Not Sell” instructions so that consumers can easily opt-out of the sale of their information by all companies. The California Attorney General’s proposed regulations clarify that if a business collects information online, it must accept privacy signals on a browser setting as an opt out.¹¹ The AG’s guidance with respect to universal opt-outs further underlines that the CCPA is intended to enable consumers to stop the transfer of data in order to show ads.

Nor does the framework provide guidance about data minimization to comply with the CCPA’s requirement that data shared with service providers for business purposes must be “reasonably

⁴ IAB Framework, *supra* note 1, at (III)(d)(5).

⁵ Understanding the Digital Advertising Ecosystem: Hearing Before the House Subcomm. on Digital Commerce and Consumer Protection, 115th Cong. 11-12 (2018) (Statement of Justin Brookman), <https://docs.house.gov/meetings/IF/IF17/20180614/108413/HHRG-115-IF17-Wstate-BrookmanJ-20180614.pdf>.

⁶ IAB Framework, *supra* note 1, at (II)(3).

⁷ *Id.* at (II)(6).

⁸ *Id.* at (IV)(2).

⁹ *Id.* at (IV)(2)(d).

¹⁰ Cal. Civ. Code § 1798.140(t)(1).

¹¹ See California Department of Justice, Proposed Regulations, California Consumer Privacy Act at § 999.315(c) (Oct. 11, 2019), <https://www.oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-proposed-regs.pdf> [hereinafter “AG Proposed Regulations”].

necessary and proportionate” to achieve those purposes.¹² Indeed, it is difficult to square this requirement with the IAB proposal that any one ad request may lead to the sharing of personal data with hundreds of downstream “service providers.”

Consumers who dislike ad tracking and targeted advertising will be frustrated if sending CCPA “Do Not Sell” instructions has no practical effect. Consumers in Europe have already experienced this following widespread noncompliance with GDPR as websites force consumers through coercive consent dialogs to justify perpetuating existing data practices.¹³ But regulators are expected to push back over time, both in Europe and California. Complaints about tracking abuses have been filed with European regulators.¹⁴ And the Information Commissioner’s Office (ICO), which is the UK GDPR regulator, has declared industry real-time bidding (RTB) behaviors—when publishers auction off a space to advertisers, based on your past internet activity, in a fraction of a second—to be violative of GDPR.¹⁵

The CCPA gives consumers the right to opt out of tracking. By default, under the CCPA, there are no restrictions on the use of consumer data for tracking and advertising purposes. It’s only when a consumer actively indicates their desire to opt out of the sale of information that these protections kick in. And effectively exercising these preferences is no easy task: the consumer would have to figure out every company that’s selling their information and ask to opt-out.¹⁶ To exploit questionable legal ambiguities to avoid responsibilities under the CCPA would directly counter consumers’ explicit instructions and clear expectations.

For many consumers, behavioral advertising is a serious abuse of their personal privacy. Not only does the widespread collection of data involved in this tracking leave consumers vulnerable to security breaches and inadvertent disclosure of damaging information, but it also reveals more about consumers than they might want to share with others: their sexual preferences, health issues, and political activities. It can also perpetuate historic inequalities by facilitating

¹² Cal. Civ. Code § 1798.140(d).

¹³ Kate Fazzini, *Europe’s Sweeping Privacy Rule Was Supposed to Change the Internet, but so Far It’s Mostly Created Frustration for Users, Companies, and Regulators*, CNBC (May 5, 2019), <https://www.cnbc.com/2019/05/04/gdpr-has-frustrated-users-and-regulators.html>.

¹⁴ Steven Melendez, *How Google is Breaking EU Privacy Law, According To a New Complaint*, FAST COMPANY (Sept. 13, 2018), <https://www.fastcompany.com/90236273/google-faces-gdpr-privacy-complaint-over-its-targeted-ads-from-brave-browser>; Natasha Lomas, *Google and IAB Ad Category Lists Show ‘Massive Leakage of Highly Intimate Data,’ GDPR Complaint Claims* (Jan. 27, 2019), TECHCRUNCH, <https://techcrunch.com/2019/01/27/google-and-iab-ad-category-lists-show-massive-leakage-of-highly-intimate-data-gdpr-complaint-claims/>.

¹⁵ *Update Report into Adtech and Real Time Bidding*, INFORMATION COMMISSIONER’S OFFICE (Jun. 20, 2019), <https://ico.org.uk/media/about-the-ico/documents/2615156/adtech-real-time-bidding-report-201906.pdf>.

¹⁶ If the AG formalizes proposed rules that require online companies to accept browser signals as opt-outs, then it would be easier for consumers to exercise their opt-out preferences under the CCPA. See AG Proposed Regulations, *supra* note 11.

differential pricing¹⁷ and allowing companies to target job or housing offers to members of specific groups.¹⁸ Finally, most people just don't want their personal information sold to countless strangers without their knowledge,¹⁹ and at the very least companies should be required to honor affirmative efforts to opt out of the ad tech ecosystem.

This inappropriate interpretation of the CCPA will not only negate consumer preferences but will leave IAB members vulnerable to CCPA challenges. We will continue to push through regulatory channels and through legislative fixes to further clarify that advertisers must honor opt-outs of third-party advertising and that first parties cannot exploit ambiguities in the CCPA to use consumer data for completely unrelated purposes.

Respectfully submitted,

Center for Digital Democracy
Consumer Federation of America
Consumer Reports
Media Alliance
Oakland Privacy

¹⁷ *Big Data and Differential Pricing*, EXECUTIVE OFFICE OF THE PRESIDENT OF THE UNITED STATES at 10-13 (Feb. 2015), https://obamawhitehouse.archives.gov/sites/default/files/whitehouse_files/docs/Big_Data_Report_Nonembargo_v2.pdf.

¹⁸ Noam Scheiber and Mike Isaac, *Facebook Halts Ad Targeting Cited in Bias Complaints*, N.Y. TIMES (Mar. 19, 2019), <https://www.nytimes.com/2019/03/19/technology/facebook-discrimination-ads.html>.

¹⁹ Mary Madden and Lee Rainie, *Americans' Attitudes About Privacy, Security and Surveillance*, PEW RESEARCH CTR. (May 20, 2015), <https://www.pewresearch.org/internet/2015/05/20/americans-attitudes-about-privacy-security-and-surveillance/>; Joseph Turow et al., *The Tradeoff Fallacy: How Marketers are Misrepresenting American Consumers and Opening Them Up to Exploitation*, Annenberg School for Communication, University of Pennsylvania (Jun. 2015), https://www.asc.upenn.edu/sites/default/files/TradeoffFallacy_1.pdf; Joseph Turow and Chris Jay Hoofnagle, *Mark Zuckerberg's Delusion of Consumer Consent*, N.Y. TIMES (Jan. 29, 2019), <https://www.nytimes.com/2019/01/29/opinion/zuckerberg-facebook-ads.html>.