

December 28, 2020

The Honorable Xavier Becerra
California Department of Justice
ATTN: Lisa B. Kim, Privacy Regulations Coordinator
300 South Spring Street, First Floor, Los Angeles, CA 90013

Submitted via email to PrivacyRegulations@doj.ca.gov

RE: Comments from MPA – the Association of Magazine Media on the Fourth Set of Proposed Modifications to Text of Regulations to Rulemaking [OAL File No. 2019-1001-05]

Dear Attorney General Becerra:

MPA – the Association of Magazine Media represents over 500 magazine media brands that deliver compelling and engaging content across online, mobile, video, and print media. Having testified on behalf of our members and provided previous rounds of comments on modified language proposed by the Office of the Attorney General (“OAG”), we appreciate the opportunity to offer additional comments on the fourth set of proposed modifications to the regulations implementing the California Consumer Privacy Act (“CCPA”).

On the date of these comments, the rulemaking provisions of the California Privacy Rights Act (“CPRA”) are already in effect. Further, the CCPA implementation process is now in its second year. Our members have devoted significant resources to make good-faith efforts to comply with existing CCPA requirements and will continue to invest in preparing for CPRA compliance. We ask that the OAG keep these efforts in mind when considering any additional proposed changes as businesses seek to simultaneously implement both the impending CPRA privacy framework and modifications to the current framework.

In response to the latest proposed modifications in the sections below, MPA offers the following recommendations concerning requirements for offline notice of right to opt-out, the proposed number of allowable steps for opt-out, and requests made through authorized agents. MPA’s suggested additions are indicated in ***bold italicized underline***.

I. The OAG should clarify in its modifications to Section 999.306(b)(3) that in instances where personal information is collected through a printed form that is to be mailed back to the company, that the offline notice may include a web address that the customer can access to opt-out of the sale of their personal information.

MPA appreciates the clarifying language proposed by the OAG on Section 999.306(b)(3) that makes the notification process for the right to opt-out more evident for businesses seeking to

implement the requirement. In addition to collecting personal information online and at brick-and-mortar locations, the magazine media industry, as with other industries, may collect personal information that consumers complete through a printed form and then submit by mail, such as an order card inserted in a print issue of a magazine.

Magazine readers support and understand that publishers may use the information collected to offer other titles of interest, product recommendations, or in the furtherance of other positive consumer experiences. Publishers support making it easy for a consumer to understand how to opt-out of these offerings, including when a consumer submits information through a printed form that the consumer mails back to the business.

Where businesses like magazine publishers execute the common, expected, and CCPA-compliant practice of leveraging consumer data collected through offline means, the OAG should confirm that to provide notice at the point of collection of personal information, it is sufficient for a business to direct a customer to a web address where the consumer may choose to instruct the business that sells personal information to stop selling their personal information.

MPA made the following recommendation in [comments](#) regarding the third round of proposed modifications and raises it again here: MPA recommends that the OAG modify Section 999.306(b)(3) to include an additional illustrative example:

(c) A business that sells personal information from consumers that it collects through printed forms by mail may provide notice by including on the paper forms that collect the personal information a web address directing consumers to where the consumer may choose to opt-out of the sale of their personal information.

This addition – clarifying that providing a web address on printed material is an offline notice – would aid in compliance for offline printed notices. This illustrative example for printed materials sent through the mail is consistent with Section 999.305(b)(3) in which offline notices may direct consumers to where the “Do Not Sell My Personal Information” webpage can be found online. It is also analogous to the proposed illustrative example in Section 999.306(b)(3)(a) for brick-and-mortar stores (which may post signage).

This method of notice also enhances data privacy and security by minimizing the amount of data a business must collect in printed form to validate and execute a consumer’s request, allowing businesses to standardize operations, including the ability to have a single, centralized location where opt-out information is maintained.

II. The OAG should clarify in Section 999.315 that offers to customers are allowed if the display of such offers adds no additional steps to the opt-out process.

MPA agrees that the steps for submitting a request to opt-out should be minimal and should not subvert consumer intent. Magazine media consumers often benefit from renewal offers that reduce the price of a subscription. Posting notice of an offer of a discounted subscription without

creating an additional required step or friction for the consumer provides value to the consumer without impairing a consumer's ability to execute their request to opt-out. The CCPA regulations should explicitly permit businesses to present a notice of benefits for the consumer should they elect to remain opted-in.

Consumers may also benefit from electing to opt-out of certain services or offerings while not opting-out entirely. Businesses should be permitted to enhance the consumer experience and better serve consumer intent by providing an easy opt-out process that allows the consumer to indicate his or her desired preferences. Businesses should be allowed to display an interface that enables the consumer to effectuate a full or partial opt-out or select/de-select from a listing where multiple offerings exist as long as one of the de-selection options is inclusive of all of the business' use of consumer data.

MPA made the following recommendation in [comments](#) regarding the third round of proposed modifications, and again in these comments: MPA urges the OAG to add the following clarification to Section 999.315(h)(3):

(3) Except as permitted by these regulations, a business shall not require consumers to click through or listen to reasons why they should not submit a request to opt-out before confirming their request. *A business may display information that provides context to enable a consumer to reconsider their interest in opt-out or to elect a partial opt-out provided that display does not require additional steps or subvert or impair a consumer's choice to opt-out. A display that provides an offer of additional goods or services shall not count in the number of steps to opt-out if the consumer is not required to take an additional step if they do not wish to take advantage of the offer.*

III. In Section 999.326(a) on authorized agents, the OAG should restore businesses' ability to make good-faith efforts to engage with the consumer to both directly verify their identity and confirm with the consumer that they have authorized an agent's request.

MPA welcomes the additional clarifying text from the OAG that businesses may require the authorized agent to provide proof that the consumer gave the agent signed permission to submit the request.

MPA urges the OAG to make an additional modification to the proposed text that would further improve businesses' ability to make good-faith efforts to protect consumers' data privacy and security.

The statutory CCPA text allows businesses to authenticate "right to know" and data deletion requests filed by consumers directly or through authorized agents and to do so by presenting the same interface online for either method. For example, businesses currently commonly utilize a consumer's email address to map to an account and process a request.

Since the effective date of the CCPA, many businesses have identified troubling practices by authorized agents that undermine consumers' data privacy and security, and these unauthorized

requests continue to escalate. Therefore, MPA is concerned that in precluding businesses' ability to seek both verification and confirmation of authorization, the proposed language in Section 999.326(a) will impede necessary steps that businesses would take to respond to suspected consumer fraud instances perpetrated by entities improperly representing themselves as authorized agents.

Maximizing consumer data protection requires that businesses may both directly verify identity with the person to whom the request is related and confirm that the consumer provided the agent's authorization to submit the request. While MPA appreciates the addition of requiring a consumer to provide signed permission to the authorized agent, the most secure verification method remains in allowing a business to have direct contact with the consumer to both confirm identity and confirm that the consumer granted permission to an authorized agent.

If a business can only verify the consumer's identity, they're not able to alert the customer to a potentially unauthorized request. If a business can only confirm that an individual granted authorization, the unverified respondent of such an authorization request could still be the perpetrator of the unauthorized request. Both of these scenarios imperil consumers' data.

Requiring both steps is necessary for data security best practices, and businesses can execute both steps in a single correspondence to minimize inconvenience for the consumer.

MPA made the following recommendation in [comments](#) regarding the third round of proposed modifications, and again in these comments. MPA urges the OAG to restore the enacted text that allows businesses to exercise both verification methods:

(a) When a consumer uses an authorized agent to submit a request to know or a request to delete, a business may require the authorized agent to provide proof that the consumer gave the agent signed permission to submit the request. The business may also require the consumer to ~~do either of the following~~:

(1) Verify their own identity directly with the business.

(2) Directly confirm with the business that they provided the authorized agent permission to submit the request.

MPA again notes the critical role that direct first-party engagement with consumers can have in enhancing data security, protecting privacy, and preventing fraudulent activity.

MPA and our members appreciate the opportunity to provide our views for your consideration.

In adopting the clarifications proposed above, the OAG will enhance the magazine media industry's ability to operationalize consistent privacy-protective practices that enhance reader trust, preserve the viability of media resources that consumers enjoy, and sustain vital journalism on which consumers rely for critical information.

Respectfully submitted,

Brigitte Schmidt Gwyn
President and Chief Executive Officer

Rita Cohen
Senior Vice President, Legislative and Regulatory Policy

Emily Emery
Director, Digital Policy