March 27, 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 Second Set of Modifications to the Text of Proposed Regulations Implementing the California Consumer Privacy Act (CCPA) OAL File No. 2019-1001-05

Dear Attorney General Becerra:

MPA – the Association of Magazine Media (MPA) appreciates the opportunity to submit the following comments on the second set of modifications to the proposed text of the regulations implementing the California Consumer Privacy Act (CCPA). MPA is pleased to offer these comments on behalf of its members, who represent more than 500 magazine media brands that span a vast range of genres across print, digital, mobile, and video media.

Readers trust magazine media brands to provide them informative, enriching, educational, and entertaining content. Delivering trusted content is an especially vital resource in times of public crisis. The responsible use of consumer data is one crucial way that magazine publishers create and maintain the high levels of the reader trust that sustain magazine media brands' relationships with their readers.

The responsible use of consumer data enables magazine media brands to personalize content, understand user preferences and interests, reach new readers, and create new offerings so that the magazine media industry remains accessible to consumers. In turn, businesses, including magazine publishers, require clarity and certainty in regulatory requirements to develop the internal systems and processes meant to protect consumer data.

MPA appreciates the effort undertaken by the California Office of the Attorney General (OAG) to clarify several regulatory requirements in its recent modifications to the proposed rules implementing the CCPA. However, MPA believes that further clarification from the OAG is required to protect consumer privacy and data security and uphold the trusted relationship of magazine media brands with their readers.

Accordingly, MPA raises three areas of concern in the second set of proposed modifications to the regulatory text where clarification from the OAG would be welcome. MPA then asks the OAG to allow a reasonable amount of time for magazine publishers and others to adjust their practices under the proposed rules' new requirements before bringing enforcement actions under the CCPA.

I. The OAG should restore language in section 999.315(d)(1) that recognizes that consumer choice should prevail over default browser behavior.

MPA urges the OAG to restore the language removed from section 999.315(d)(1) that states: "The privacy control shall require that the consumer affirmatively select their choice to opt-out and shall not be designed with any pre-selected settings."

The requirement for businesses to honor default global privacy controls, including browser plugins or privacy settings, without the affirmative confirmation of the consumer, stands in the way of consumers' ability to make individualized choices about their own personal preferences, including determining which magazine publishers or businesses can and cannot sell their personal information.

In the current technological environment, default browser settings broadcast a single opt-out signal to the entire internet marketplace. Because individual businesses, including magazine publishers, would be required to ask consumers to opt-in to the sale of personal information after receiving a global privacy setting broadcast, the effect of this requirement is to inadvertently turn the CCPA's opt-out system into a *de facto* opt-in system. Striking the affirmative selection language result is clearly outside of the scope of what the California legislature intended in providing an opt-out right in the CCPA.

Even if users wish to undo a default browser setting, at best, they may find a frustrating repeated user interface experience, and at worst, they may find the process technically impossible to execute. Because businesses must "respect the global privacy setting" regardless of the consumer's actual expressed preference, businesses will be forced to act on global privacy settings before they can confirm the consumer's choice. The *de facto* result would deprive consumers of their access to valuable content magazine publishers provide, thereby diminishing the reader experience.

MPA respectfully asks the OAG to remove the global privacy control requirement entirely, which is outside of the scope of the CCPA and not in line with legislative intent.

In the alternative, the OAG should clarify that a business *may* honor user-enabled privacy controls *or* provide another mechanism for consumers to submit a request to opt-out of the sale of personal information, such as a "Do Not Sell My Personal Information" link.

At a minimum, the affirmative selection language should be restored. It is an important tool for respecting consumer choice based on preferences that reflect their direct relationship with magazine publishers and other websites.

II. Given the OAG's proposed modifications to Section 999.315(d), the OAG should modify Section 999.315(f) to create a reasonable grace period for requiring the notice of a consumer opt-out request to third parties.

Particularly given the uncertainty caused by the new language proposed in Section 999.315(d), the notification to third parties that a consumer has exercised their right to opt-out imposes new, significant operational challenges with a very short time frame for implementation.

MPA appreciates the clarification in the previous modifications to draft rules in Section 999.315(f) that remove the requirement to notify all third parties of an opt-out within 90 days prior to the customer's submission.

However, the additional added requirement that businesses notify third parties that the consumer has exercised their right to opt-out and the requirement to direct the third parties not to sell that consumer's information imposes a significant operational, logistical and technical challenge for businesses. In practice, the new language of the modified rules would require businesses to create an entirely new tracking and notification process solely to administer a timed notice that could otherwise be administered in a timely but not near-instantaneous fashion, and could otherwise be determined by the third parties through global browser settings.

The extensive technical infrastructure required to create an operable system to accomplish this requirement further supports why a reasonable amount of additional implementation time is needed by magazine publishers and other businesses to understand and effectively and consistently operationalize the modified rules.

MPA recommends striking the notification portion of 999.315(f) while retaining the requirement to comply with the request within 15 business days: "A business shall comply with a request to opt-out as soon as feasibly possible, but no later than 15 business days from the date the business receives the request. ~~If a business sells a consumer's personal information to any third parties after the consumer submits their request but before the business complies with that request, it shall notify those third parties that the consumer has exercised their right to opt-out and shall direct those third parties not to sell that consumer's information.~~"

III. The OAG should again remove the privacy policy disclosure requirements added to section 999.308(d) and 999.308(e) that create significant new technical architecture requirements and could expose proprietary information.

MPA is troubled by the OAG's re-insertion of the previously deleted requirement that privacy policies must identify the categories of sources from which personal information is collected and the business or commercial purpose for collecting or selling personal information.

The CCPA statutory requirement in Cal. Civ Code § 1798.110(a)(2) allows an individual consumer the right to request a business disclose to the consumer the categories of sources and business or commercial purpose, specifically responsive to a consumer's request. The statutory language does not require businesses to include these in the publicly posted privacy policy, and the OAG should not either.

From a technical perspective, the re-introduction of such disclosure requirements creates an entirely new technical process for the collection, analysis and reporting of such information, with very little time for implementation.

In addition to the disclosure requirements being operationally burdensome, the latter definition "business or commercial purpose" is subject to interpretation. Without further clarification from the OAG, disclosure language could be perceived as overly broad, or if required to be overly specific, could lead to the disclosure of proprietary business information or trade secrets.

MPA urges the OAG to again remove the requirement to identify categories of sources of personal information and the business or commercial purpose for collecting or selling personal information where the requirement set forth in section 999.308(d) to identify "the categories of personal information the business has collected about consumers" should suffice.

IV. The OAG should add language in section 999.323 that affirmatively permits businesses to first engage directly with consumers to verify the validity of access and deletion requests made by authorized agents before any fees for verification are incurred.

Given the unique and long-standing first-party relationship between a magazine brand and its reader, MPA takes particular notice of the role of authorized agents in the CCPA as a potential and significant risk vector for fraudulent activity and data security concerns.

While MPA appreciates the additional clarifications made by the OAG in section 999.323 in the previous round of modifications, the OAG's addition of language indicating that an authorized agent should not be required to pay a fee requires further language to safeguard requests from likely fraud and abuse. MPA urges the OAG to further clarify that a business may revert to the consumer directly before any verification costs can be incurred by an authorized agent in order to confirm that the request is legitimate and that the consumer has, in fact, authorized the agent's request on their behalf.

The second round of modifications clarifies that a business may not charge a consumer or a consumer's authorized agent a fee for verification, including associated with notarization, but the new language does not anticipate potentially abusive or fraudulent requests purportedly made on behalf of consumers. Without further clarification from the OAG of adequate technological methods for making direct consumer verifications of such requests, businesses may be inundated with demands from authorized agents that seek reimbursement for proof of authorization, while lacking a clear mechanism to confirm such requests have been legitimately issued by a consumer to the requestor.

First, the OAG should clarify that a business may directly confirm with the consumer that they have authorized the agent to issue an access or deletion request before an authorized agent can incur or seek reimbursement for any costs that might be directed to a business in obtaining proof of authorization.

Second, the OAG should clarify that an authorized agent should not incur or seek reimbursement for proof of authorization where a business offers an alternative verification method that is free to the consumer. For example, if an entity that acts as an authorized agent routinely gathers

notarized identification from consumers, and the authorized agent submits a notarized document to a business that does not require a notarized document to process the underlying consumer request, the authorized agent should not be able to seek reimbursement from the business where the verification was not requested or required by the business in order to comply.

Finally, in light of this proposed modification, MPA again notes the important role that direct first-party engagement with consumers can have in preventing fraudulent activity. Accordingly, MPA again urges the OAG to allow businesses discretion in section 999.315(h) by including language to permit the business to notify the consumer directly, and not merely the requestor, in instances where there exists a good-faith belief that the request made by an authorized agent to opt-out is fraudulent. Such a change would help ensure it is consumers themselves who receive notice of fraudulent requests so they can take steps to protect information associated with them from nefarious parties who may be attempting to access it.

V. The OAG should postpone enforcement in order to provide a reasonable amount of time for businesses to update their practices for the revised regulations.

The CCPA became operative on January 1, 2020. However, regulated entities still do not have access to finalized regulations to implement the law, and additional technical clarifications are needed to maximize the success of businesses making good-faith efforts to comply with the regulations. Simultaneously, the global coronavirus (COVID-19) pandemic has had a dramatic impact on the day-to-day operations of businesses, including the departments tasked with the legal, operational and technical preparations required for CCPA compliance efforts.

As a result, businesses, including magazine publishers, are attempting to structure processes, policies, and systems to further compliance efforts with regulations that continue to reflect significant changes and increase in complexity. In light of shelter in place requirements like those issued by Governor Gavin Newsom, these efforts are now taking place remotely across distributed workforces.

Even absent the challenges presented to businesses responding to the coronavirus (COVID-19) pandemic, the CCPA is complex, and the implementing rules could materially change again in further revisions before the law's enforcement date of July 1, 2020. The magnitude of uncertainty and complexity strongly suggests that despite making significant investments toward good-faith efforts to uphold consumer data protection, many businesses may not have sufficient time to operationalize the final rules before enforcement.

MPA urges the OAG to exercise discretion and allow a reasonable amount of additional time for businesses, including magazine publishers, to review and operationalize the final rules before enforcement begins.

Extra implementation time will enable businesses like magazine publishers to understand and effectively operationalize the rules, helping consumers to more seamlessly exercise the rights afforded under the new law.

MPA members strongly support the underlying goals of the CCPA. However, given the enormous logistical challenges faced by businesses in the current environment, and the outstanding uncertainty of the final regulatory text, the OAG should postpone enforcement of the CCPA until January 1, 2021.

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MPA appreciates the OAG's continued efforts to solicit feedback on proposed modifications to the CCPA rulemaking and the office's efforts to address outstanding CCPA implementation concerns. We appreciate the opportunity to provide our views on areas needing further guidance and the need for postponed enforcement. Greater clarity is needed from the OAG to ensure that businesses like magazine publishers can successfully implement these new and expanded requirements, uphold reader trust, and preserve the viability of the magazine media brands that consumers enjoy.

Sincerely,

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