

## Calif. Privacy Law Limits Consumers' Choices, Ad Groups Say

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Law360 (January 31, 2019, 10:37 PM EST) -- A coalition of major advertising trade associations is pushing California's attorney general to craft rules that would ease some of the stringent data sale restrictions and disclosure requirements under the state's landmark consumer privacy law, arguing that inaction would reduce consumers' choices and harm online advertising activities that fuel the internet.

Feedback has been pouring in from a wide range of business groups, privacy advocates and other stakeholders since lawmakers [last June hastily enacted](#) the California Consumer Privacy Act. The law — which is the first of its kind in the U.S. — hands consumers the ability to control how companies use and share their personal information online, to request the deletion of this information and to opt out of the sale of their data to third parties.

California Attorney General Xavier Becerra has been tasked with developing and publishing rules implementing the law, which is slated to take effect on Jan. 1, 2020. The [American Association of Advertising Agencies](#), American Advertising Federation, Association of National Advertisers, Interactive Advertising Bureau and Network Advertising Initiative urged the attorney general in a letter Thursday to take this opportunity to address and improve several areas that the associations allege are likely to be problematic for both consumers and the advertising community.

"While our members strongly support the CCPA's intent to give consumers a choice about how their personal data is shared, we are concerned about the negative impact of certain sections of the CCPA and believe the law could be clarified through rulemaking to provide improved consumer protection and guidance to business," the groups argued.

The associations generally referenced concerns raised by other business groups, including the law's broad definition of personal information and the stringent non-discrimination requirements that could potentially lead to the demise of loyalty programs, while proposing three specific clarifications that the attorney general could make through the rulemaking process.

Two of the suggestions relate to the law's requirements around the sale and deletion of consumer data.

Under the CCPA, companies are barred from selling personal information that they didn't receive directly from the consumer unless that individual has received "explicit notice" and has been given the opportunity to opt out of that sale. The law also makes the choice for consumers to opt out of this sale or to request the deletion of their data an all-or-nothing proposition, rather than allowing companies to offer the choice for consumers to delete or restrict the sale of some but not all of their data.

The ad groups urged the California AG to recognize that a written assurance of CCPA compliance is sufficient and reasonable to constitute the "explicit notice" necessary to sell consumer data and to clarify that businesses may offer "reasonable options" to consumers that would enable them to either choose the types of sales they want to opt out of or the types of data they want deleted, or to completely opt out.

The letter also asked the AG to make clear that a business does not need to create individualized privacy policies for each consumer in order to comply with the law's requirement that such policies disclose to a consumer the specific pieces of personal information the business has collected about that consumer.

"Without clarification and adjustments, these and other ambiguities in the law could result in reduced choice and privacy for consumers, rather than expanding it, as the law intended," the groups said.

These purported shortcomings are also likely to harm the vibrant online data-driven advertising ecosystem, which the groups said has "powered the growth of the Internet by funding innovative tools and services for consumers and businesses to connect and communicate."

The groups asserted that consumers have "enthusiastically embraced" the Internet's ad-supported model — which the industry polices through the novel self-regulatory YourAdChoices Program created and enforced by the Digital Advertising Alliance — and have "actively enjoyed" the free content and services that such data-driven advertising supports.

Citing a Zogby survey commissioned by DAA, the associations noted that a "large majority" of consumers — 85 percent of those surveyed — like the ad-supported model, and that three-

quarters of respondents indicated "that they would greatly decrease their engagement with the Internet were a different model to take its place."

The ad groups' letter comes in the midst of a series of six public forums that Becerra is holding throughout January and February to provide "an initial opportunity" for a wide range of stakeholders to participate in the CCPA rulemaking process.

Both the business and privacy communities have been staking out their positions with the AG and lawmakers for months, with the California Chamber of Commerce and other industry groups [arguing that the law's](#) broad definition of personal information and some of its other more "unworkable" aspects need to be reigned in and the American Civil Liberties of California and other advocacy groups [pushing against efforts](#) to water down the statute.

A group of California-based privacy professionals — including attorneys from [Cooley LLP](#), [BakerHostetler](#), [Morrison & Foerster LLP](#), [Frankfurt Kurnit Klein & Selz PC](#), [Rutan & Tucker LLP](#), [Hopkins & Carley](#) and [Loeb & Loeb](#) — has also weighed in, arguing in a recent letter to state lawmakers that the statute's inconsistencies with the EU General Data Protection Regulation, compliance costs for small businesses, "overbroad" statutory definitions and several other aspects need to be fixed before the law takes effect next year.

"Everyone has acknowledged that the CCPA remains a work-in-progress, but there may be some misapprehensions about the scope and scale of the required changes still remaining," the privacy professionals said in their Jan. 17 letter. "In our view, the CCPA needs many substantial changes before it becomes a law that truly benefits California."