

# Overview of CPRA Requirements for Adtech

A Webinar for NAI Members

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AARON BURSTEIN  
Partner

ALYSA HUTNIK  
Partner

LAURA RIPOSO VANDRUFF  
Partner



# Agenda

## *CPRA Changes that Most Impact Adtech*

- When do I need to comply
- What limitations apply to service providers
- What goes in a Notice at Collection
- What's a Sale and/or/vs. Share
- Opt-out signal compliance
- Future developments and timelines

# When do I need to comply?

*"Civil and administrative enforcement of the provisions of law added or amended by this act shall not commence until July 1, 2023, and shall only apply to violations occurring on or after that date." (Cal. Civ. Code § 1798.185(d))*

- 1/1/2023: CPRA statutory provisions are operative
  - Parts of CCPA not amended by CPRA are effective
  - CCPA provisions and regulations amended by CPRA continue to apply leading up to 7/1

- 7/1/2023

- 3 ○ CPRA and CPRA regulations are fully enforceable

# Service Providers

- CCPA requirements for service providers:
  - Written contract governing business purpose(s)
  - No selling by SP
  - Retain/use/disclose only to provide service in contract
  - Do not retain/use/disclose outside of SP-business relationship
- Key changes under CPRA and regs (section 7051)
  - **No combination** of PI from multiple businesses
  - **CCBA ≠ business purpose**
  - **Audit, remediation** rights in contracts
  - **Due diligence** requirements

# Service Provider Limitations: Adtech Impacts

- Limits due to CCBA exclusion from business purpose
  - Service providers cannot target based on a consumer's activity across businesses or distinctly branded sites, apps, services
  - Likely covers interest-based targeting, retargeting, segment creation
- Limits on prohibition on combination
  - Measurement
  - Frequency capping

# Notice at Collection first starts with Purpose Limitations (7002)

- PI collection/use = reasonable expectations and responsibly proportionate (*similar to GDPR legitimate interest balancing test*)
- Disclosure **specificity, explicitness, prominence, and clarity** re: purposes are relevant
- Is it clear to the consumer that others are involved in PI collection/processing
- Business cannot collect PI categories if not disclosed in the N@C

# Notice at Collection in Detail (7012)

- Timely notice at/before PI collected that includes:
  - PI categories (including if sensitive PI)
  - Collection/use/disclosure purposes, and if sold/shared
  - Retention period or criteria for retention
  - Links to DNS/SH and Privacy Policy Link
  - *Not opt in if Notice at Collection meets this objective*
- N@C link can be standalone page or deep link to particular section in privacy policy (no scrolling to find)

# Notice at Collection in Detail (7012)

- Latest version of regulations softened “Third Parties that Control” requirements

*More than one business may control the collection of a consumer's personal information and have an obligation to provide N@C.*

- *1P may allow a 3P to control the collection of PI from consumers browsing the 1P's website.*
- *Both 1P & 3P must provide a N@C but can be a single N@C that includes required information.*
- *No requirement to disclose 3Ps names*



# N@C Takeaways

- Robust obligations for effective disclosures → content and presentation
- If disclosure obligations are met, PI collection and use is **opt out**
- If disclosure obligations are **not** met, PI collection and use is **opt in**
- Underscores publisher compliance and adtech companies' own compliance

# What might a N@C look like?

- Before 7/1/23: likely to continue to see CCPA-style N@Cs
- Leading up to/after 7/1/23:
  - More dedicated N@C links on homepages (or deep links to entire lengthy section in privacy policy)
  - Perhaps served in cookie banners
  - Contracts requiring parties to provide certain disclosures
  - Perhaps industry standard N@C

# Sale vs. Share

- “Sale” = any *transfer* of PI to 3P for monetary or other valuable consideration (example: analytics)
- “Share” = transfer of PI to 3P for CCBA even if no consideration (CCPA = interest based advertising)
- Definitionally “service provider” cannot offer CCBA (and 3P is anyone not a SP or business with which consumer intentionally interacts)
- **Regulator likely position:** “share” = subset of “sale”
  - No examples of “Do Not Share” without “Do Not Sell or Share” in CPRA/regs

# Opt Out Preference Signals (GPC - 7025)

What does updated 7025(c) require?

*When a **business** that collects personal information **from consumers online** receives or detects an opt-out preference signal ...: (1) **The business shall treat the opt-out preference signal as a valid request to opt-out of sale/sharing ... for that browser or device and any consumer profile **associated with** that browser or device, **including pseudonymous profiles**, and, **if known**, the business shall also treat the opt-out preference signal as a valid request to opt-out of sale/sharing for the consumer.***

\*This language suggests cross-device/ compliance identity resolution may be a requirement to apply persistently, but...

# Opt Out Preference Signals (see also CPRA 1798.145(j))

*(j) This title shall not be construed to require a business, service provider, or contractor to:*

*(1) **Reidentify or otherwise link information** that, in the ordinary course of business, is not maintained in a manner that would be considered personal information.*

*(2) **Retain any personal information** about a consumer if, in the ordinary course of business, that information about the consumer would not be retained.*

*(3) **Maintain information in identifiable, linkable, or associable form, or collect, obtain, retain, or access any data or technology, in order to be capable of linking or associating a verifiable consumer request** with personal information.*

# Flow-Down of Consumer Requests

- Businesses must pass through consumer requests:
  - Opt out of sale/sharing
  - Limit use/disclosure of SPI
  - Deletion (3d parties and service providers)
- Open question: How will flow-down work when businesses have different pseudonyms for the same consumer/device?

# Contracts

- Service Provider Addenda
  - entities continue to update terms
  - publicly posted terms will be valuable for benchmarking
- Service Provider Due Diligence
  - contract terms to include ability to assess compliance, including through audits
  - may not be sufficient to rely exclusively on terms
  - standards evolving and NAI's role is important

# What's to Come? What Hasn't the CPPA Addressed Yet?

- Draft regs do not address all of CPRA
  - will miss deadline to adopt regulations for “access and opt-out rights” regarding businesses’ use of **automated decision-making technology**
  - no detail regarding required annual **cybersecurity audits** or regular **privacy risk assessments** for businesses where significant risk to privacy or security



# Compliance Priorities and Timeline



December 2022

- review privacy policy for facial compliance and UDAP
- update contract terms



Q1-Q2 2023

- Q1-Q2 2023
- assure compliance with notice at collection
  - update DNSMPI links



Q3-Q4 2023

- Q3-Q4 2023
- [text]

# Contacts



AARON BURSTEIN  
Partner  
aburstein@kelleydrye.com



ALYSA HUTNIK  
Partner and Chair, Privacy and  
Information Security  
ahutnik@kelleydrye.com



LAURA RIPOSO VANDRUFF  
Partner  
lvandruff@kelleydrye.com