

CALIFORNIA CONSUMER PRIVACY ACT
DEPARTMENT OF JUSTICE
OFFICE OF THE CALIFORNIA ATTORNEY GENERAL

Transcript of proceedings had for
California Consumer Privacy Act, Department of Justice,
Office of the California Attorney General, held at Cesar
Chavez Community Center, 2060 University Avenue,
Riverside, California 92507, on January 24, 2019 at
10:00 a.m.

1 MS. KIM: Hello. Welcome. On behalf of
2 California Department of Justice and the attorney
3 general, Xavier Becerra, we want to welcome you to the
4 third public forum on the California Consumer Policy
5 Act.

6 First, we want to thank the Cesar Chavez
7 Community Center for hosting us at today's event.

8 We want to give you a little bit of background
9 before we get started and let you guys speak to us. We
10 are at the beginning stages of our ruling process on the
11 CCPA. So these forums are an informal period where we
12 want to hear from you.

13 There will be future opportunities where
14 members of the public can be heard including, after we
15 draft the texts of the regulations and enter the formal
16 ruling process.

17 But today our goal here is to listen. We are
18 not able to answer questions or respond to comments.
19 Before we begin, I want to introduce ourselves.

20 My name is Lisa Kim. I am a deputy attorney
21 general in the privacy unit at the AG's office.

22 MR. MAUNEY: I am Devin Mauney. I am a deputy
23 attorney general in Consumer Laws Action at the AG's
24 office.

25 MR BERTONI: And I am Daniel Bertoni. I am an

1 analyst in the AG's office.

2 MS. KIM: So I am going to give you a little
3 background before we get started. I just want to go
4 over a few process points before we get started. Each
5 speaker will have approximately five minutes. I don't
6 think we have a ton of speakers here; so if you go a
7 little over, that's fine; but if you can please be
8 respectful to other people's time.

9 We also have a court reporter here to the right
10 of me, and she will transcribing comments so please
11 speak slowly and clearly. As for the transcript for all
12 of the processing forums, once they are available, they
13 will be posted on our CCPA website. The PowerPoint
14 slides that we present today are also going to be on the
15 CCPA website.

16 If you've registered as a speaker this morning,
17 you should have received a name tag with a number
18 identifying your speaker group. The front row is
19 reserved for speakers -- oh, we're not doing that today.
20 So if you are interested in speaking today, I ask that
21 at the end of my little presentation, you come down to
22 the front row and take your turn at the podium.

23 It's requested but not required that you
24 introduce yourself and identify yourself because these
25 are public hearings. It would be helpful if you have a

1 business card to hand it to the court reporter. I am
2 sure she would appreciate that.

3 We also welcome written comments by e-mail or
4 by mail. You can see our e-mail address on the board
5 and our address as well. Bathrooms are outside to the
6 right and left to this hall.

7 And may I ask if any media is present today, if
8 you can raise your hand.

9 If you would like to stay informed about this
10 ruling process, please visit our website,
11 www.oag.ca.gov/privacy/CCPA. CCPA section 1798.185 of
12 the Civil Code identifies specific responsibilities for
13 ruling by the AG. The areas are summarized here in
14 Numbers 1 through 7. So we can that you please keep
15 these in mind as you are providing comments today.

16 I will go through them. Number 1, should there
17 be any additional categories of personal information.
18 2, should the definition of unique identifiers be
19 updated. 3, what exceptions should be established to
20 comply with state or federal law. 4, how should the
21 consumer submit a request to opt-out of a sale, personal
22 information, and how should a business comply with the
23 consumer's request. 5, what type of uniform opt-out
24 logo or button should developed for consumer's right to
25 opt-out. 6, what type of notices and information should

1 businesses be required to provide including those
2 relating to financial Incentive Offers. 7, how can a
3 consumer or their agent submit a request for information
4 to a business and how can those business reasonably
5 verify these requests.

6 At this time we welcome comments from the
7 public. So if you are registered to speak, if you can
8 please come down to the front row or approach the
9 podium. Thank you.

10 MS. MIRZA: Hi. My name is Sadia Mirza. I am
11 an attorney at the Troutman Sanders in the Orange County
12 Office. We have started trying to operationalize from
13 the tax at the CCPA, and I think we ran in to a few
14 issues that we would like further guidance on.

15 Specifically, I think the issues that we're
16 looking at relate to how -- relate to section -- I think
17 what would like guidance on is really section 130, which
18 seems to be the section that tells businesses how to
19 fulfill certain requests or what the requirements are.
20 Some of them seem to conflict with section 110, which
21 provides the access to certain information, and section
22 115.

23 So to provide an example, in section 110,
24 consumers have the right to request, not only for
25 information that's required in ceratin categories but

1 section 110a5 specifically says they have the right to
2 request specific pieces of personal information
3 collected about that.

4 If you read that, I might add, 130b -- I
5 believe it's 133b. 133b only talks about providing
6 information in terms of categories. So the issue we're
7 facing is do businesses actually need to provide
8 specific pieces of information when complying with a 110
9 request or is it that they would only need to disclose
10 it in terms of categories.

11 Another issue similar to that, also comes into
12 play with section 115, which is the consumers rights to
13 receive information about onward disclosures. When
14 comparing it to section 1304c, which talks about --
15 which also provides additional information about how to
16 fulfill those requests.

17 So 115a, 1 through 3, tell you what information
18 needs to be disclosed. Notably, missing from that list
19 is that you need to disclose categories of third parties
20 with whom selling of information was disclosed for a
21 business purpose. That's not included in section 115a,
22 1 through 3. So if it is a requirement that business
23 disclose, we request that 115A be updated to reflect
24 that.

25 The only other additional consideration at this

1 point that we wanted to share is that there is an
2 exception to 100 and 110. Both seem similar with slight
3 bearing so we are not sure if that was intentional or if
4 it was just inadvertently missed.

5 Specifically, there is a one-time transaction
6 section. In 100e it says that you don't need to --
7 "This section shall not require a business to retain any
8 personal information collected for a single one-time
9 transaction if such information is not sold or
10 retained."

11 If you go to 110 exception -- 110d, it has a
12 similar exception but it only qualifies to provide
13 information that is not retained. There is no similar
14 not sold exception. So whether that was intentional,
15 and if so, what the reasoning behind that. Those are my
16 comments. Thank you.

17 MS. COHEN: Hi. My name is Alison Cohen, and I
18 am attorney at Loeb & Loeb. I'm primarily in the
19 privacy practice at Loeb. We represent a lot of
20 companies that interact with California consumers, and
21 the brands that we represent very much care about
22 respecting the privacy rights of consumers.

23 So that's why I am here today because the
24 comments that I would like to make are to suggest ways
25 in which the regulation could clarify CCPA and help

1 these California companies provide their services to
2 California consumers, services which are intended to
3 benefit those consumers while also fully respecting
4 consumers' privacy rights.

5 So my first comment is really related to the
6 application of the CCPA to employee data. And it
7 appears that the intent of CCPA is to protect consumers
8 and customers of those covered companies, not
9 necessarily employees. Yet, the CCPA does not provide a
10 specific carveout for employees. So as drafted, the
11 CCPA is pulling employees into the scope because they
12 are California residence.

13 It would be helpful to see if the regulations
14 could make two clarifications. The first, in cases
15 where a company is not a consumer-facing business and
16 only has employees. It doesn't have any customers. It
17 doesn't have any consumers. These types of companies
18 should be excluded from CCPA.

19 And then also, in cases where a company is a
20 consumer-facing business, a California consumer as
21 defined under CCPA as it's written, does not make an
22 exception for that employee-employer relationship and
23 personal information that's necessary to support that
24 relationship. So if the regulation could clarify that
25 these employees are not covered by CCPA, since employers

1 have a legitimate business purpose to collect and retain
2 employee personal information, that would be most
3 helpful.

4 So my second comment has to do with the GLBA
5 exception and gaining some clarity around that. Many
6 financial institutions regularly sell portfolios within
7 their business. So for example, a credit card portfolio
8 or a loan portfolio, another example would be like a
9 delinquent account portfolio.

10 In those cases the personal information
11 associated with those accounts is transferred with the
12 commercial sale of that portfolio. The terms of that
13 customers' contract don't change. It would really be
14 helpful if the regulations would clarify that selling
15 those types of portfolios -- portfolios of that nature
16 and transferring the corresponding personal information
17 to some commercial purchasers excluded from the
18 definition of sale. These types of commercial sales are
19 common in the financial industry, and they don't impact
20 the customers directly. Those are my two main comments
21 for today. Thank you.

22 MR. LACTIN: Hello everybody. My name Andrew
23 Lactin. I am an attorney. Most of my clients are
24 start-up between 0 to 50 employees. Most of them fall
25 under the exceptions that probably would not fall under

1 this law, but many of them are service providers and as
2 a result may indirectly fall underneath those
3 requirements as well.

4 So there are a couple -- I have been to a
5 couple of these hearings and I've heard some consistent
6 comments. I wanted to reflect of those. This is my
7 first time actually commenting. Mostly I have been
8 listening and covering what has been discussed at some
9 of these.

10 The most bearing exceptions or the problem we
11 found there is the lack of clarity of the exception if
12 you engage in a merger, you can include the data without
13 having to ask consent. However, the statute does not
14 make clear whether there should be exceptions for sale
15 of inline businesses. Obviously there is a little bit
16 of a sticky area where we don't want to sell a list and
17 say that's the list of my business.

18 But at the same time, many transactions occur
19 where you are not selling the entire (inaudible) that
20 you are putting in your company, but you are selling an
21 entire line but you want to be sure that is a covered
22 because that is a problem.

23 There has been discussions about safe harbor
24 provisions. I'm not sure to the extent of what extent
25 the statute actually allows for such safe harbor

1 provisions, but it would seem that the use of
2 certifications -- existing certifications should provide
3 some sort of guidance.

4 GPR, for instance, has provisions that allow
5 for third party certifications to create a standard for
6 compliance as well. And I do understand that we are
7 moving in to new territory here. We don't necessarily
8 know everything that they are doing in GPR, but do
9 understand that companies have spent millions trying to
10 comply with this law already.

11 Unlike with respect to this law, they took a
12 number of years to work out some of the problems and
13 there is nothing wrong with learning from the experience
14 of others, which actually brings to a related issue,
15 which is the issue that has been brought up with respect
16 to what happens to the data that you collect or did you
17 confirm the identity of people who are making data
18 requests -- data subject requests.

19 Perhaps, if it's possible to explore some sort
20 of standardized technology for being able to confirm
21 identities, that might be able to resolve the issue that
22 many companies will be facing with having to collect
23 personal data in order to confirm their right to share
24 personal data.

25 As an example, there are many -- many of you

1 have seen when you are confirming their identity where
2 you get a series of questions where they pull
3 information off their credit report and only you have to
4 chose from a list to confirm, hey, I lived at this
5 place, or this is the city that I grew up in, or
6 something to that effect and something like that; but at
7 the end, the company in question that is providing that
8 information -- that's confirming your identity, doesn't
9 actually get any of that information to confirm who you
10 are. That might be a way to solve those problems.

11 This addresses just a couple of the issues that
12 I have seen so far in some of the flaws that have come
13 up that may -- I think the regulatory process may be
14 able to address within the existing statute.

15 I am going to mention one last thing. I am not
16 sure that this is something that could be handled in the
17 regulatory process, but it does fall into the uniform
18 opt-out logo, which I think is a great idea to have
19 something like that, but I do want to point out the
20 phrase "don't sell client information," doesn't make
21 sense for most of the industry, including companies that
22 would fall under CCPA.

23 I have represented close to 50 different
24 companies who I have done privacy policies and handled
25 privacy regulations in the last year, not one of them

1 sells information. Most companies don't and by having
2 that information, it creates an environment of
3 irrational fear that information might be sold, and it's
4 not.

5 To be clear, we should hold those companies
6 that are brokers that would sell data, they need to be
7 held accountable. We have a right to know about this
8 information or the right to control our information; but
9 the way the statute is drafted, it pulls in a whole bunch
10 of companies that have nothing to do with it but still
11 will have to put that non-sensible phrase that doesn't
12 make any sense with the businesses that they are in.

13 I hope this is all helpful and appreciate all
14 of the work that you all are doing traveling all over
15 the state. I have been there in San Diego and San
16 Francisco and still working out how I am going to get to
17 Fresno, but I think the work that you are doing is very
18 important and this is an area which is a bit arcane at
19 times, except for those of us who needs a 12-step
20 program because we care about this. So thank you very
21 much for doing what you do.

22 MR. DIAZ: Good morning. My name is Anthony
23 Diaz, and I am the chief compliance officer at Schools
24 First Federal Credit Union here in California serving
25 nearly 850,000 members. Schools First appreciates the

1 signing of the new law section 1121, which was an act
2 subsequent to the passage of 375 and effectively served
3 the purpose of cleaning up the uncertainty that was
4 created for financial institutions in the original bill.
5 Specifically SP 1121 clarified that with regard to
6 financial institutions subject to the act and/or the
7 financial privacy act, information that was collected
8 pursuant to either of those statutes by a private entity
9 is exempt from CCPA.

10 However, there is still quite a bit of
11 confusions surrounding this exemption which truly needs
12 to be clarified. One of the key items that need to be
13 clarified in our opinion is the inconsistent terminology
14 that is found throughout the CCPA which makes it
15 difficult for institutions to understand what
16 information is not subject to the GOBP or the SFIPA
17 subject to the protection of the act.

18 In other words, a credit union or financial
19 institution obtaining employed application information
20 from prospective employees, is it truly the intent of
21 the CCPA to be so expansive that this information would
22 be covered by the act even though other information
23 received by the credit union or bank is not. We would
24 like clarification on this point in order to facilitate
25 our compliance.

1 Also, the CCPA finds personal information to
2 include in part, quote, information that identifies,
3 relates to, describes, capable of being associated with
4 particular (inaudible) household, end quote. However,
5 there is no example provided in this statute as to what
6 might be reasonable constitute household or examples of
7 what might reasonable be linked.

8 Therefore, we would also request additional
9 information on this in order to facilitate our
10 compliance.

11 And lastly, we would request clarification
12 provided in the regulations as to the scope of the
13 examples of personal information that are provided in
14 the statute. Most importantly, as to those that appear
15 to be outside the scope of the GOBA, such as audio
16 regarding information. Is it the intent that recorded
17 telephone calls, for example, be included in this
18 example. In other words, it would enhance the ability
19 of entities to comply if we were to be provided
20 sufficient details in the final regulations to enable us
21 to make these decisions.

22 I would like to thank you for the opportunity
23 to comment. I fully understand the importance of
24 protecting the rights of the residence of our state.
25 Thank you.

1 MS. KIM: Did we have any other additional
2 speakers? We will give you a few minutes in case you
3 want to gather your thoughts.

4 All right. If there are no other additional
5 speakers, I just want to remind people that you can send
6 written comments to the e-mail address that's listed
7 here as well as mail them if you would like to mail them
8 to the address above. Stay updated on our ruling and
9 activities by going and signing up for updates via our
10 CCPA website.

11 Thank you for coming, and we appreciate all of
12 your comments. Have a good day.

REPORTER'S CERTIFICATION

I, Keisha Robinson, a Certified Shorthand Reporter
in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn;
that the deposition was then taken before me at the time
and place herein set forth; that the testimony and
proceedings were reported stenographically by me and
later transcribed into typewriting under my direction;
that the foregoing is a true record of the testimony and
proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this
5th day of February, 2019.



Keisha Robinson, CSR No. 14214