



December 11, 2023

Colorado Department of Law  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 10th Floor  
Denver, Colorado 80203

**RE: Joint Ad Trade Letter – Comments on Global Privacy Control Application**

Dear Colorado Department of Law:

On behalf of the advertising industry, we provide these comments on Global Privacy Control (“GPC”) UOOM’s application to become a recognized universal opt-out mechanism (“UOOM”). As explained below, GPC does not meet authentication requirements established by the Colorado Privacy Act (“CPA”) and its implementing regulations and provides no assurances it will not be set by default in contravention of the CPA and implementing regulations. Controllers should thus have the option of whether or not to recognize opt-out requests sent via GPC.

As the nation’s leading advertising and marketing trade associations, we collectively represent thousands of companies across the country. These companies range from small businesses to household brands, long-standing and emerging publishers, advertising agencies, and technology providers. Our combined membership includes more than 2,500 companies that power the commercial Internet, which accounted for 12 percent of total U.S. gross domestic product (“GDP”) in 2020.<sup>1</sup> By one estimate, over 150,000 jobs in Colorado are related to the ad-subsidized Internet.<sup>2</sup> We welcome the opportunity to engage with you further on the non-exhaustive list of issues with the GPC UOOM application that we outline here.

According to the CPA and its implementing regulations, consumers must be allowed to make an informed decision about their opt-out rights, and no UOOM mechanism may transmit an “opt-out” signal for the user by default.<sup>3</sup> GPC’s UOOM application does not describe how it will prevent such a scenario, nor does it make any commitments to abide by the CPA’s requirements that an UOOM may not operate as a default setting. The Opt-Out Machine could consequently enable an entity to make an opt-out choice *for* the consumer rather than ensuring the choice is one that is made *by* the consumer. This result would undermine the consumer’s rights under the statute. UOOM candidates should be required to clarify how they will protect against opt-out mechanisms being set by default to conform with the CPA’s requirements for user transparency and control related to opt-out requests.

GPC also does not provide sufficient authentication mechanisms that would allow a controller to authenticate a consumer as a Colorado resident. The CPA does not require controllers

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<sup>1</sup> John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 15 (Oct. 18, 2021), located [here](#).

<sup>2</sup> *Id.* at 123.

<sup>3</sup> Colo. Rev. Stat. §§ 6-1-1313(2)(b), (c); 4 C.C.R. 903-4, Rule 5.04.

to comply with an opt-out request unless that request can be authenticated.<sup>4</sup> Furthermore, the CPA explicitly requires that a recognized UOOM “permit the controller to accurately authenticate the consumer as a resident of [Colorado].”<sup>5</sup> Although GPC is not itself required to authenticate that a consumer is a Colorado resident, GPC is still required to permit controllers to do so.<sup>6</sup> GPC’s application proposes that the Department should “interpret the [CPA] to mean that estimating residency based on IP address is generally sufficient for determining residency and legitimacy for purposes of the CPA, unless the company has a good faith basis to determine that a particular device is not associated with a Colorado resident or is otherwise illegitimate.”<sup>7</sup>

An IP address is not a sufficient data point to authenticate an individual’s residency or the legitimacy of an opt-out request. To start, an IP address does not equate to residency. For example, non-Colorado residents can easily access a Colorado IP address via a VPN. At best, an IP address allows controllers to guess where a particular consumer may reside. In reality, IP addresses provide information related to the location from which a consumer may be accessing the Internet at a particular point in time. Such information is not indicative of residency, as consumers travel across state lines often and may access the Internet from nearly any state or country in the world. The residency authentication standard proposed by GPC is thus insufficient.

Including a proposed UOOM that does not sufficiently allow for authentication on the list of required UOOMs would read out of the text of the CPA important provisions related to controller authentication of consumer requests. The regime contemplated by GPC would force controllers to honor opt-out requests they otherwise would not without first obtaining important authenticating information from the consumer. In this way, GPC’s proposal conflicts with the authentication provisions in the statutory text of the CPA. Thus, rather than requiring controllers to honor all GPC opt-out requests, the Department should allow controllers to choose whether to honor a GPC opt-out request if the controller is unable to authenticate the request.

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<sup>4</sup> Colo. Rev. Stat. § 6-1-1306(2)(d).

<sup>5</sup> *Id.* § 6-1-1313(2)(f); 4 C.C.R. 903-4, Rule 5.06(D).

<sup>6</sup> Compare 4 C.C.R. 903-4, Rule 5.03(C) (stating UOOM providers are not obligated to authenticate that a user is a Colorado resident), with Colo. Rev. Stat. § 6-1-1313(2)(f) (requiring the UOOM permit the controller to accurately authenticate the user as a Colorado resident).

<sup>7</sup> Global Privacy Control Application, Colo. Dept. of Law, at 4, available at <https://coag.gov/app/uploads/2023/11/Global-Privacy-Control-Application.pdf>.

Thank you for the opportunity to submit comments on this important topic. Please do not hesitate to contact us with questions regarding this submission.

Sincerely,

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