



June 25, 2024

California Privacy Protection Agency
2101 Arena Boulevard
Sacramento, CA 95834

RE: Preliminary Comment DROP 06-24 – Joint Ad Trade Letter: Initial Comments on Proposed Rulemaking under Senate Bill 362 (California Delete Act)

Dear California Privacy Protection Agency:

On behalf of the advertising industry, we provide these comments in response to the California Privacy Protection Agency's ("CPPA") request for preliminary comment ("RFC") on the proposed rulemaking under Senate Bill 362 ("California Delete Act").¹ We and the companies we represent, many of whom do substantial business in California, strongly believe consumers deserve meaningful privacy protections supported by reasonable laws and responsible industry policies. We provide these initial, non-exhaustive comments with the goal of informing the CPPA of potential unforeseen consequences the California Delete Act regulations could create and advocating for strong yet flexible rules to help ensure Californians' choices are accurately carried out and data brokers are functionally able to process deletion requests made through the Data Broker Delete Requests and Opt-Out Platform ("DROP"). We thank you for the opportunity to participate in this regulatory process.

Below we provide comments on five discrete areas the CPPA should consider as it develops draft rules: (1) validating the authority of authorized agents to act on behalf of consumers; (2) establishing important safeguards for requests submitted through authorized agents; (3) consumer verification processes for requests submitted through the DROP; (4) clarifying the California Delete Act's applicability to data used to provide critical anti-fraud products and services; and (5) the CPPA's potential changes to the definition of "data broker" under California law. We highlight certain issues that may be created by the regulations unless they are carefully crafted to be consistent with the CCPA and existing implementing regulations. Our goal is for any new regulation to be protective of consumers while remaining workable for data brokers and the businesses and nonprofits who rely on data for mission-critical decisions and consumer and contributor engagement.

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies across the country, including California. These companies range from small businesses to household brands, nonprofits, 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")

¹ See *Invitation for Preliminary Comments on Proposed Rulemaking Under Senate Bill 362*, CALIFORNIA PRIVACY PROTECTION AGENCY BOARD (May 31, 2024), available [here](#). See also California Delete Act, available [here](#).

in 2020.² Our group has more than a decade’s worth of hands-on experience it can bring to bear on matters related to consumer privacy and controls. We would welcome the opportunity to engage with the CPPA further on the points we discuss in this letter.

I. The CPPA should issue regulations that outline the procedure for validating the authority of authorized agents to act on behalf of consumers.

The California Delete Act states that the accessible deletion mechanism constructed by the CPPA must “support the ability of a consumer’s authorized agents to aid in the deletion request.”³ However, the statute sets forth no guardrails to guide how the agency should ensure that requests it receives through authorized agents are expressions of consumers’ *actual* choices, or that an agent *actually* received authority from the consumer to submit a request on their behalf. The proposed regulations must avoid establishing an incentive for gaming the DROP system with dictionary or “white pages” attacks by ill-intentioned or competitive actors purporting to act on consumers’ requests when consumers did not in fact authorize them to act. The CPPA should issue a regulation explicitly stating that the requirements, or similar requirements, for validating authorized agents’ authority to submit requests under the CCPA regulations also extend to authorized agent requests related to the deletion mechanism.

a. CPPA regulations related to validating agents’ authority to act should explicitly protect consumer rights from potential abuse by intermediaries.

Under CCPA regulations, if a consumer uses an authorized agent to submit a deletion request, the business may require the agent to provide signed proof that the consumer gave the agent permission to submit the request *in addition to* asking the consumer to directly confirm their identity with the business or directly confirm that they granted the agent permission to make the request.⁴ Any proposed rules to implement the California Delete Act must provide legally and functionally consistent, clear direction on the interactions between the CPPA, data brokers, consumers, and authorized agents to efficiently manage and process deletion requests made through the DROP. Accordingly, the CPPA will serve as an entrusted intermediary between consumers, authorized agents, and data brokers, facilitating deletion requests submitted through the DROP and maintaining an important clearinghouse function to ensure that requests were actually initiated by consumers, that consumers provided informed consent to authorize the agent to act on their behalf, and choices expressed through the DROP were actually desired by the consumer.

As part of the DROP, the CPPA will directly receive requests from authorized agents who claim to act on behalf of consumers. To help minimize the possibility of fraudulent requests made

² John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 15 (Oct. 18, 2021), located at https://www.iab.com/wp-content/uploads/2021/10/IAB_Economic_Impact_of_the_Market-Making_Internet_Study_2021-10.pdf (hereinafter, “Deighton & Kornfeld 2021”).

³ See Cal. Civ. Code § 1798.99.86(b)(8).

⁴ See Cal. Code Regs. tit. 11 § 7063(a).

through agents that were not duly authorized to act by a consumer, the CPPA should draft rules that mandate that authorized agents provide signed proof of their authority to act and consumers confirm directly with the CPPA that they have authorized an agent to submit a deletion request on their behalf. This approach aligns with the authorized agent authority validation process outlined in CCPA regulations.⁵ Without a robust process to verify that authorized agents have obtained evidence of consumers' genuine intent to make choices through them, these agents or market competitors could, for example, potentially submit requests to the CPPA requiring competitors to delete and opt out their datasets. The need for robust requirements to check agents' authority to submit requests on behalf of consumers warrants careful consideration.

b. The CPPA should consider a separate regulatory process to define processes for validating authorized agents' authority to act.

If the CPPA does not harmonize its authorized agent rules under the California Delete Act with existing CCPA regulations, the CPPA should ensure it issues regulations to determine a robust process to verify authorized agents' authority to act on behalf of consumers. The CPPA should potentially consider issuing such regulations through another, agent-specific regulatory process, and declining to receive requests through authorized agents until such a process is defined.

To minimize unintended results for Californians and foster consistency with requirements in other contexts, we encourage the CPPA to provide rules that explicitly prohibit agents from being able to self-certify their authority to act on behalf of a consumer. The rules should also state that informed consent to use an authorized agent is required. Authorized agents should be subject to the same requirements business and data brokers are required to meet when seeking authorization from consumers. Specifically, authorized agents should be required to acquire consumer consent to act on the consumer's behalf in accordance with the CCPA. The CCPA's definition of "consent" requires a specific, informed, and unambiguous indication of a consumer's wishes and strictly proscribes the use of general or broad terms of use, or a similar document, to obtain consent.⁶ The same policy principles should be carried through in the context of authorized agent requests under the California Delete Act. In the draft rules, the CPPA should mandate evidence that consumers provided affirmative, informed consent for an agent to act on their behalf. Otherwise, there will be exposure to the risk of frivolous litigation and other unintended consequences from those seeking to exploit consumer rights for profit, rather than protecting consumers.

Instances of this type of agent behavior are playing out nationwide, most notably in relation to New Jersey's Daniel's Law and the important protections the law was intended to provide for New Jersey civil servants.⁷ As enacted, the law has created unintended consequences for this

⁵ *Id.* at § 7063(a)(2).

⁶ Cal. Civ. Code § 1798.140(h).

⁷ Daniel's Law created a new right for "covered persons"—law enforcement officers, judges, and other state officials, as well as their immediate family members in the same home—to request that any person or business stop disclosing the covered person's home address and unpublished home telephone number to others. The law also permits "authorized persons" to make requests on covered persons' behalf. New Jersey Daniel's Law, *located* [here](#).

protected class, however. The lack of verification provisions in the law offers no avenue for companies to check if a person submitting a request is a “covered person” or an “authorized person” under the law. Companies also have no way to discern whether authorized agents who submit requests on behalf of purported covered persons are truly authorized to submit such requests. Without a reliable means to verify requests, it becomes impossible to ensure that consumers are fully aware of the authority they grant to third party agents under the law. These third parties may subsequently obscure consent provisions within the terms and conditions of other services they offer. In addition, nefarious parties can submit false requests impersonating covered persons, and companies will have no way to discern that the request is fraudulent.

In sum, the CPPA should issue regulations describing how it will validate authorized agent requests through the DROP. The CPPA should require agents to submit signed proof of their authority and require consumers to directly confirm with the CPPA that they provided requisite authority to an agent. The CPPA should prohibit agents from self-certifying such authority and require agents to obtain informed consent from consumers to submit requests through the DROP on their behalf. By including these measures in the draft rules, the CPPA can enhance consumer protection and help ensure authorized agents are acting in the interests of the consumers they represent.

II. The CCPA should issue regulations to establish safeguards for requests submitted through authorized agents.

In addition to setting forth an explicit process to verify authorized agents’ authority to submit requests on behalf of consumers, the CPPA should issue regulations to create other consumer safeguards for authorized agent requests. Specifically, and as discussed in more detail below, the CPPA should issue regulations to (a) minimize the possibility of anti-competitive results from authorized agent requests; (b) ensure agents are held to the same standards that data brokers and the CPPA are held to when they describe available rights to individuals; and (c) prohibit authorized agents from making secondary uses of data they receive from consumers or charging consumers to submit requests to exercise rights that would otherwise be available to them for free.

a. The CPPA should issue regulations to deter anti-competitive gamesmanship through authorized agent requests.

Under the California Delete Act, the DROP presents an opportunity for competitive interference. Some entities may exploit the DROP for their competitive advantage. We encourage the CPPA to draft rules that reduce the risk of misuse of the DROP.

The draft rules should authorize a company to act as an authorized agent *only* if it uses personal information *solely* to fulfill consumer rights requests, perform verification functions, or engage in fraud prevention. This limitation on authorized agents is set forth in the CCPA regulations and should be carried through to apply to authorized agents under the California Delete

Act.⁸ Moreover, this approach aligns with past Federal Trade Commission (“FTC”) statements addressing the potential for abuse of agent-made requests in the context of the “do-not-call” registry and explaining the FTC’s decision to decline to allow for requests made through such “third-party registrations.”⁹ In an effort to prevent “third-party abuse” of the system, the FTC coupled verification measures with a complete ban on allowing private companies or other third parties to register consumers with the national registry.¹⁰ The same policy principles that guided the FTC’s limits on third-party registrations should guide the CPPA in promulgating rules to deter anti-competitive conduct in the context of authorized agent requests through the DROP.

b. The CPPA should issue regulations that require agents to adhere to the same standards as data brokers and the CPPA when presenting choices to consumers.

Agents should be required to adhere to the same standards that businesses, data brokers, and the CPPA must observe when presenting choices and privacy rights to consumers.¹¹ The CPPA should issue regulations that obligate agents to offer the same choices that consumers would encounter if they accessed the DROP directly and explain the impacts and scope of privacy choices to consumers.

For example, the California Delete Act requires the deletion mechanism to “allow[] a consumer to selectively exclude specific data brokers from a [deletion mechanism] request.”¹² Authorized agents should similarly be required to present the same options to consumers. Agents should not be permitted, for instance, to provide consumers with only one option to delete data from *all* registered data brokers. The CPPA must present and allow for Californians to toggle through and select or de-select specific data brokers from the list of registered data brokers that will receive a deletion request. Agents should provide consumers with equivalent options when choosing data brokers for submitting deletion requests. Since the CPPA itself must offer consumers the ability to exercise granular choices, agents must be required to do the same to effectuate the letter of the law.

In addition, the CPPA’s draft rules should mandate that authorized agents must provide clear and neutral explanations of the deletion mechanism to consumers. Like the prohibition against businesses’ use of dark patterns to entice or dissuade consumers from making certain choices under the CCPA,¹³ authorized agents should similarly be required to refrain from using sensational language or coercive tactics to encourage consumers to use the deletion mechanism. Agents should be required to accurately explain the scope and impact of privacy choices to consumers. The draft rules should safeguard against agents using manipulative language that distorts or exaggerates the consequences of utilizing or foregoing use of the DROP.

⁸ See Cal. Code Regs. tit. 11, § 7063(d).

⁹ See Federal Trade Commission, *Final Amended Rule: Telemarketing Sales Rule*, 68 Fed. Reg. 4580, 4639 (Jan. 29, 2003).

¹⁰ See Federal Trade Commission, *Q&A: The National Do Not Call Registry*, located [here](#).

¹¹ See Cal. Code Regs. tit. 11, § 7010.

¹² Cal. Civ. Code § 1798.99.86(a)(3).

¹³ See *id.* at § 1798.185(20)(C)(iii). See also Cal. Code Regs. tit. 11, § 7004(b).

c. The CCPA should issue regulations that prohibit agents from making secondary uses of data they receive from consumers or charging consumers.

The draft rules should explicitly prohibit authorized agents from making secondary uses of the data they receive from consumers through their role as an authorized agent or charging consumers for using or submitting requests to the DROP, ensuring that consumers are not misled into paying for a service they could otherwise perform independently at no cost. Agents should be required to use information they receive from consumers in the context of DROP requests solely to facilitate requests through the DROP. In addition, under the California Delete Act, the CCPA may not charge consumers for making deletion requests through the DROP.¹⁴ Similarly, authorized agents should not be permitted to profit from consumers by submitting requests on their behalf.

III. The CCPA should issue regulations allowing data brokers to independently verify consumer deletion requests made via the DROP and permitting data brokers to obtain information necessary to effectuate opt-out requests.

The CCPA should draft rules that permit data brokers to independently verify consumer requests to ensure consumers are the individuals seeking to exercise rights under the law. The draft rules must allow data brokers to verify that they are executing deletion requests related to the personal data of the individuals making the requests to avoid “adversely affect[ing] the rights and freedoms of other natural persons.”¹⁵

Specifically, according to the CCPA, “[t]he rights afforded to consumers and the obligations imposed on the business in this title shall not adversely affect the rights and freedoms of other natural persons. A verifiable consumer request... to delete a consumer’s personal information pursuant to Section 1798.105... shall not extend to personal information about the consumer that belongs to, or the business maintains on behalf of, another natural person.”¹⁶ The Final Statement of Reasons (“FSOR”) discussing the original CCPA regulations expressly acknowledged issues associated with effectuating consumer rights on personal information associated with the wrong consumer in the context of households.¹⁷ The FSOR noted that the California Attorney General added certain requirements to address issues with household requests implicating privacy concerns of household members who may not want personal information deleted in response to a household request to delete.¹⁸ Amendments to the CCPA via the California Privacy Rights Act of 2020 addressed the concern associated with effectuating consumer rights in ways that would impact the rights and freedoms of others in the context of households by squarely stating that requests to delete do not apply to household data.¹⁹ In some cases, additional measures may be necessary to verify a request received via the DROP to help ensure a request is applied to the personal information

¹⁴ See Cal. Civ. Code § 1798.99.86(b)(5).

¹⁵ *Id.* at § 1798.145(k).

¹⁶ *Id.*

¹⁷ See Final Statement of Reasons for Proposed Adoption of CCPA Regulations at 44 (Jun. 1, 2020), located [here](#).

¹⁸ *Id.* at 44-45.

¹⁹ Cal. Civ. Code. 1798.145(p).

associated with the correct person to avoid adversely affecting the rights and freedoms of other natural persons.

Moreover, different data brokers operate by processing different types of personal information. For example, while one data broker may handle personally identifiable information, such as names and addresses, another might exclusively process pseudonymous identifiers not directly tied to consumer identities. Considering the diverse landscape of data brokers and what they collect, a verification process that allows data brokers to independently verify consumer requests against the personal information they actually maintain would help ensure accurate action is taken in response to a consumer's request while safeguarding the rights and freedoms of all parties involved.

In addition, under the California Delete Act, if a data broker denies a consumer's deletion request on the ground that it is unverifiable, the data broker must process it as a request to opt out of the sale or sharing of the consumer's personal information under the CCPA.²⁰ Even though consumer opt out requests need not be verified pursuant to California law, data brokers must still have the means to locate a consumer within their systems in order to facilitate the alternative opt-out right. The CPPA's regulation should take this reality into account. Some measure of personal information will need to be collected and accurately matched to personal information in a data broker's systems to effectuate opt-out rights. The CPPA should permit data brokers to receive such information in the context of the DROP so they can locate the right consumer in their systems to process an opt-out request.

IV. The CPPA should issue regulations to clearly explain the scope of the deletion mechanism to consumers.

Under the California Delete Act, data and entities subject to certain federal laws are exempt from the scope of the accessible deletion mechanism.²¹ In addition, the statute includes other relevant exceptions for requests submitted through the DROP, such as exceptions relating to maintaining data for security and integrity purposes.²² The CPPA should ensure that it makes these exemptions clear to consumers on the main webpage that houses the DROP. Consumers should be aware of the scope of their requests and should be appropriately informed of relevant protections under law. For example, anti-fraud products and services play a crucial role in protecting consumers and ensuring their safety from fraudulent activities and scammers. Companies rely on the use of data to verify the identities of customers and keep them safe from fraud. Consumers should be assured that deletion requests made through the DROP will not eliminate the data necessary for them to receive the benefits of these anti-fraud and identity theft services, as such an outcome would not only be detrimental to consumer safety but also contradict consumers' expectations and desires for robust security measures.

²⁰ See *id.* at § 1798.99.86(c)(1)(B).

²¹ *Id.* at § 1798.99.80(c).

²² *Id.* at §§ 1798.99.86(c)(1)(B), (D); (c)(2).

V. The CPPA should ensure its regulations strictly adhere to the statutory definition of a “data broker” under California’s data broker registry law.

The CPPA has publicized draft regulations indicating that it is contemplating changes to the legally defined term “data broker” under California law.²³ The CPPA should ensure its draft rules align with the definition of “data broker” under California’s data broker registration law to ensure consistency in implementation and enforcement.²⁴ Any changes to the definition may not broaden or materially alter the definition established by the legislature via statute.

The California Delete Act defines a data broker as “a business that knowingly collects and sells to third parties the personal information of a consumer with whom the business does not have a direct relationship.”²⁵ The CPPA is considering defining “direct relationship” to mean a consumer’s intentional interaction with a business “for the purpose of obtaining information about, accessing, purchasing, using, or requesting the business’s products or services within the preceding three years.”²⁶ In addition, according to the proposal, “a consumer does not have a ‘direct relationship’ with a business if the purpose of their engagement is to exercise any right described under [the CCPA], or for the business to verify the consumer’s identity. *A business is still a data broker if it has a direct relationship with a consumer but also sells personal information about the consumer that the business did not collect directly from the consumer.*”²⁷

This definition does not align with the original intent of the data broker registration law.²⁸ In the preamble of the data broker registration bill, the California legislature found that “there are important differences between data brokers and businesses with whom consumers have a direct relationship. Consumers who have a direct relationship with businesses... may have some level of knowledge about and control over the collection of data by those businesses, including: the choice to use the business’ products or services, the ability to review and consider data collection policies, the ability to opt out of certain data collection practices, the ability to identify and contact customer representatives, and the knowledge necessary to complain to law enforcement.”²⁹ As proposed, the definition of “direct relationship” would mean the term “data broker” would likely cover every business in California, as “sale” is defined extremely broadly in the CCPA and virtually every business collects personal information from third-party sources other than the consumer themselves. We urge the CPPA to draft rules that do not incorporate this proposed definition of “direct relationship,” which goes beyond the scope and intent of the law.

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²³ See CPPA Board Meeting, Agenda Item 4: Data Broker Registration Draft Text (May 10, 2024), available [here](#).

²⁴ See Cal. Civ. Code § 1798.99.80(c).

²⁵ *Id.*

²⁶ See CPPA Board Meeting, Agenda Item 4: Data Broker Registration Draft Text (May 10, 2024), available [here](#).

²⁷ *Id.* (emphasis added).

²⁸ See California AB 1202 (Reg. Sess. 2019), Sec. 1(g), located [here](#).

²⁹ *Id.*



Thank you in advance for your consideration of these preliminary comments.

Sincerely,

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