

1 CALIFORNIA PRIVACY PROTECTION AGENCY BOARD

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3 AUDIO TRANSCRIPTION OF RECORDED PUBLIC COMMENT SESSION

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6 TUESDAY, AUGUST 20, 2024

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Appearances: LIZ ALLEN, CPPA Legal Division  
SERENA MARZION, CPPA Moderator  
GARY LEE, CPPA Legal Division  
SAOIRSE, Privacy Rights Fellow,  
Oakland Privacy  
TONY FICARROTTA, General Counsel,  
Network Adverting Initiative  
YADI YOUNSE, Privacy Rights Fellow,  
Oakland Privacy

1 MS. ALLEN: And good afternoon, everybody. Welcome  
2 to the California Privacy Protection Agency public comment  
3 session on the data broker registration regulations pursuant  
4 to SB 362. My name is Liz Allen. I'm an attorney with the  
5 legal division, and here with me today is Gary Lee. He's a  
6 privacy fellow and an attorney also in the legal division,  
7 and Serena Marzion with our public affairs division.

8 A few quick reminders before we start. The  
9 session will run until 5:00 p.m. PST and it is being  
10 recorded. A recording will be posted on our website at  
11 [cpa.ca.gov](http://cpa.ca.gov). A reminder that written and oral public  
12 comments are treated the same by the agency. The agency  
13 will not be responding to public comment during today's  
14 session. But in accordance with the Administrative  
15 Procedures Act, all comments made today and/or submitted in  
16 writing by today will be responded to in agency's final  
17 rulemaking documents.

18 We understand there's a few people interested in  
19 potentially making public comment today. For the time  
20 being, we'll be limiting public comment to three minutes per  
21 person just to make sure we can accommodate everybody in our  
22 time. That said, if we get to the end of public comment and  
23 we still have time left, we'll invite folks to come back and  
24 continue comments if they had more statements to make.

25 For now, we'll maintain the three-minute limit and

1 we'll let you know once everyone with a hand raised has  
2 spoken, and we'll allow folks to come back. I just want to  
3 say in advance, thank you so much for being here today.  
4 We're looking forward to hearing your feedback. So, with no  
5 further ado, I'll turn it over to Serena to moderate our  
6 public comment session.

7 MS. MARZION: Thank you so much, Liz. We are now  
8 open for public comment. To make a public comment at this  
9 time, please raise your hand using the raised hand feature,  
10 or by pressing star nine. If you're joining us by phone,  
11 I'll call your name and unmute you when it's your turn to  
12 speak. You'll have three minutes and I'll give you a  
13 30-second warning. So it looks like we have one person's  
14 hand raised right now. Saoirse, I'm going to unmute you  
15 now, and go ahead and speak when you're ready. I'm not --  
16 I'm not able to unmute right now.

17 MS. ALLEN: I'm also not able to unmute right now.  
18 Serena, we can see your full screen.

19 MS. SAOIRSE: And now? Am I unmuted.

20 MS. ALLEN: Yes, we hear -- we can hear you.

21 MS. SAOIRSE: Okay. Great. Sorry. Thank you.  
22 Thank you. My name is Saoirse, and I'm a privacy fellow  
23 with a group called Oakland Privacy, which is a citizens  
24 coalition that works regionally to defend the right privacy,  
25 enhance public transparency, increase oversight, and we

1 specialize in the use of surveillance techniques and  
2 equipment, but we are obviously broader than that.

3           What I wanted to talk about first is that we think  
4 that the section that requires data brokers to not only  
5 comply with the DROP requests through the CPPAs page, but to  
6 do so every 45 days on an ongoing basis, is an extremely  
7 strong part of this bill. And we think that it's really  
8 important, and we're really excited to see that that was  
9 present.

10           Where consumer's privacy is concerned, the  
11 relationship between someone's personal data and a broker's  
12 pecuniary interest in monetizing those data is often deeply  
13 skewed in favor of brokers, and this requirement returns  
14 some of the balance to shift back toward individuals and  
15 away from corporations. The next part was that in the  
16 introductory text, the Delete Act is this phrase, "The bill  
17 would prohibit an administrative action pursuant to these  
18 provisions from being commenced more than five years after  
19 the date on which a violation occurred."

20           But given that this is directly related to the  
21 effectiveness of the DROP portal, I think it's important to  
22 consider how the timeline is measured. The CPPA ought to  
23 consider changing this from the date the violation occurred  
24 to the date consumers and affected parties were  
25 presumptively notified. To start the clock on the date of a

1 violation, even if that clock runs for five years, focuses  
2 the attention on the actions of the corporations, whereas  
3 the rest of the bills focus the rest of the implementation  
4 of the DROP portal, and much of the focus of the CPPA itself  
5 is on protecting consumers from harm.

6 And that perspective shift, I think, is not  
7 insignificant. It mirrors a recent shift more broadly in  
8 the American social concept of privacy and personal identity  
9 away from an industry specific approach, which is largely  
10 dictated by the needs and desires of the commercial voices  
11 in those industries towards something more closely  
12 resembling a European model, which places the attention on  
13 and centers decision making around the locus of harm to the  
14 consumer.

15 Following that important shift in perspective, the  
16 CPPA should consider altering the timeline from five years  
17 after the violation occurred to five years after consumers  
18 were presumptively notified of that violation. A smaller  
19 note to -- and this isn't -- you know, a smaller note is  
20 that there's no direct link to the definition of the term  
21 dark patterns, which would -- which would implicate how --  
22 or which is referred to in how brokers use and respond to  
23 both these requests and also how consumers might be affected  
24 by data brokers.

25 MS. MARZION: Twenty seconds.

1 MS. SAOIRSE: Okay. The very last thing that I  
2 want to add is that a month ago during the previous public  
3 comment period, a woman asked an important question, what is  
4 the actual harm to consumers from companies who erroneously  
5 remove someone's information from their databases? Brokers  
6 will try to paint the risk of removing someone's data  
7 without properly verifying their identity as profound, but  
8 it is not. The stakes are very low for consumers and they  
9 are also very low for data brokers.

10 MS. MARZION: Thank you very much.

11 MS. SAOIRSE: Thank you.

12 MS. MARZION: All right. Tony, go ahead and unmute  
13 you when you're ready to talk. Sorry, I'm unable to unmute.  
14 Can somebody else try, please?

15 MR. FICARROTTA: Are you able to hear me.

16 MS. MARZION: Yes, go ahead, Tony. Thank you.

17 MR. FICARROTTA: Thank you. And good afternoon.  
18 My name's Tony Ficarrotta. I am general counsel for the  
19 Network Advertising Initiative, the NAI. And on behalf of  
20 the NAI, thank you for the opportunity to provide comments  
21 on this rulemaking initiative. In its initial statement of  
22 reasons for this rulemaking, the agency set out an objective  
23 of ensuring that data brokers provide accurate and adequate  
24 information to support the Delete Act's goals of consumer  
25 protection through transparency and informed decision making

1 when exercising CCPA privacy rights.

2 The NAI would like to highlight two opportunities  
3 for changes that would promote that goal. The first relates  
4 to the definition of covered reproductive healthcare data,  
5 and the second relates to the requirement for a business to  
6 indicate whether it collects consumer's reproductive  
7 healthcare data and/or their precise geolocation when  
8 registering as a data broker. To put our recommendations in  
9 context, we first note that the agency's practice has been  
10 to include, on California's data broker registry page, a  
11 business's indication as to whether it collects consumer's  
12 reproductive healthcare data or precise geolocation data.

13 And that enables the public to view data brokers  
14 according to whether they collect those types of data. And  
15 this may help consumers prioritize which businesses on the  
16 registry to learn more about and to exercise their CCPA --  
17 their CCPA rights with. And so with that in mind, the first  
18 change the NAI recommends to the text of the proposed rules  
19 is to specify in the definition of reproductive healthcare  
20 data that it is sensitive personal information under the  
21 CCPA, which the definition currently proposed by the agency  
22 does not do.

23 But by making this explicit, the agency can ensure  
24 that when a consumer makes a request to limit the use of  
25 their sensitive personal information to a business that



1 collects reproductive healthcare data, reproductive  
2 healthcare data is sure to be covered by their request to  
3 limit. This change would also provide certainty to  
4 businesses seeking to comply with the Delete Act, and honor  
5 consumer request to limit. Aligned with the agency's goals  
6 for this rulemaking, this change would promote informed  
7 decision making by consumers when exercising their CCPA  
8 rights.

9 The second change we recommend is to clarify that  
10 businesses registering as data brokers should indicate that  
11 they collect reproductive healthcare data or precise  
12 geolocation data only if they use those types of data for  
13 commercial purposes, and need not do so if they only process  
14 the data to delete, de-identify, aggregate, or render that  
15 data nonsensitive. Making this change would help consumers  
16 understand which businesses on the registry commercialize  
17 those types of data, and avoid confusing them with  
18 businesses that may collect, but then immediately delete  
19 them.

20 This too would promote informed decision making by  
21 consumers when exercising their CCPA rights. It would also  
22 create a powerful incentive for businesses on the registry  
23 to minimize sensitive data that they don't use. The agency  
24 would not be alone in making this type of allowance. Is  
25 there a strong precedent for doing so both in

1 self-regulatory standards set by the NAI, as well as recent  
2 enforcement actions by the FTC in the location data space?  
3 Again, thank you for the opportunity to comment on this  
4 rulemaking. Our recommendations are set out in greater  
5 detail in our written comments to the agency. Thank you.

6 MS. MARZION: Thank you. Okay. If you would like  
7 to make a public comment at this time, you can do so by  
8 raising your hand using your raised hand feature or by  
9 pressing star nine if you're joining us by phone. I'll call  
10 your name and unmute you when it's your turn to speak. All  
11 right. We have Yadi. Go ahead and speak. You have three  
12 minutes.

13 MS. YOUNSE: Hi, there. I'm Yadi with Oakland  
14 Privacy. My colleague, Saoirse, made the comments that we  
15 had formally from our organization, but I wanted to take a  
16 opportunity to quickly address the comments made by the  
17 previous speaker from industry regarding reproductive data  
18 and the collection of geolocation. And I just want to  
19 remind the agency and others that, yes, there -- that is an  
20 interesting point about making the distinction of whether  
21 that information is used for commercial purposes. However,  
22 in addition, this data is also shared with law enforcement.

23 And given the recent Dobbs decision, and that we  
24 are finding that law enforcement is more and more going to  
25 tech companies and obtaining information, the ability for

1 them to still be able to access very, very sensitive  
2 information like this is very troubling. And so I would  
3 just like for the agency to keep in mind that it's not just  
4 about making a distinction of what information the company  
5 itself is using for its purposes and also for commercial  
6 purposes, but also its ability to share -- collect and share  
7 that data with law enforcement that is not covered by this.  
8 So I would just hope that this is something that's taken  
9 into consideration and giving the strongest protections to  
10 consumers and being able to control that data. Thank you so  
11 much.

12 MS. MARZION: Thank you for your comment. Okay.  
13 If you've already made a comment, you're welcome to raise  
14 your hand again and you can speak since we don't have any  
15 other comments at this time. You'll have three minutes.  
16 So, again, use your hand using your raised hand feature, or  
17 if you're joining us by phone, you can star nine and we will  
18 call on you. Thank you. Okay.

19 MR. FICARROTTA: I just --

20 MS. MARZION: -- Tony, go ahead. You have three  
21 minutes to make your comment.

22 MR. FICARROTTA: Thank you again. And I listened  
23 with interest to Oakland Privacy's point about law  
24 enforcement uses. I think what you'll see if you -- when  
25 you read our written comments and some of the intent behind

1 them, we're focused on businesses that are -- that are  
2 registered, that limit their processing of data that would  
3 otherwise be considered reproductive healthcare data or  
4 precise geolocation data in order to minimize it. So  
5 different methods for minimizing it. Could be deleting it,  
6 could be aggregating it, could be de-identifying it, or  
7 could be rendering it nonsensitive.

8 And in each of those cases, our point of view is  
9 that it would no longer have direct commercial uses in the  
10 form of precise location or reproductive healthcare data,  
11 and probably would not have any use to law enforcement if  
12 it's properly rendered nonsensitive or deleted or  
13 de-identified either. So I think it's an -- it's an  
14 interesting consideration and would be happy to have, you  
15 know, some constructive dialogue on how to make sure that  
16 that would be accomplished by any allowance for the  
17 reporting requirement. Thank you.

18 MS. MARZION: Thank you for your comment.

19 MS. SAOIRSE: Yeah.

20 MS. MARZION: Saoirse, go ahead. You have three  
21 minutes to make your comment.

22 MS. SAOIRSE: Great. Thank you. So, yeah, it's  
23 pronounced Saoirse, but what I wanted to -- what I wanted to  
24 talk about is -- sorry, I'm also from Oakland Privacy, and  
25 my colleague, Yadi, just spoke. I wanted to talk about a

1 different part of the bill, which is the part that reads, "A  
2 data broker that fails to register as required by the  
3 section is liable for administrative fines and costs in an  
4 administrative action brought by the CPPA as follows, an  
5 amount equal to the fees that were due during the period it  
6 failed to register," which, you know, at the very high end  
7 of that would be \$67,400, including like the fee and the  
8 \$200 a day thing.

9           And I wanted to -- I wanted to ask how the -- I  
10 wanted to ask the CPPA to consider how that might -- how  
11 that might be approached and what the deterrent factors  
12 might be for a smaller -- for a smaller data broker company  
13 versus a larger company like LexisNexis or Experian who  
14 might -- or for whom that might just be a drop in the -- a  
15 drop in the bucket. And to consider what other enforcement  
16 mechanisms, for example, a sliding scale versus a daily fee  
17 or a daily penalty kind of thing, might have more of an  
18 intended effect of preventing companies from circumventing  
19 this -- from circumventing this requirement. And that's all  
20 that I have to say. Thank you very much.

21           MS. MARZION: Thank you for your comment. Okay.  
22 So just a reminder, we're here until 5:00 today taking  
23 public comments. So if you'd like to do that at this time,  
24 please raise your hand using the raised hand feature, or by  
25 pressing star nine if you're joining us by phone. I'll call

1 your name and unmute you when it's your turn to speak.  
2 You'll have three minutes. Okay. We're taking public  
3 comments at this time, so please raise your hand using the  
4 raised hand feature or by pressing star nine if you're  
5 joining us by phone. I will call your name and unmute you  
6 when it's your turn to speak and you'll have three minutes.

7 MR. LEE: Thank you so much everyone for joining  
8 us. I'm letting y'all know we have about eight minutes  
9 left in this public comment session. We will remain open  
10 for comment until 5:00 p.m. Pacific Time, and I wanted to  
11 encourage people to share the comments in the next eight  
12 minutes if you have anything else you'd like to share.

13 All right. Thank you everyone who's continued to  
14 stay on with us until 5:00 p.m. We really appreciate you  
15 joining today's session, and we appreciate everybody who  
16 took the opportunity to provide comment. For more  
17 information and updates, please continue monitoring our  
18 regulations email, our board meetings, and regulations  
19 website at [cppa.ca.gov/regulations](http://cppa.ca.gov/regulations).

20 This session has been recorded and the transcript  
21 will be available on our meetings website,  
22 [cppa.ca.gov/meetings](http://cppa.ca.gov/meetings). We're at 5:00 now, so we will be  
23 closing the session now. Thank you again to everybody who  
24 attended and participated.

25 (End of recording)