

**IAPP CCPA
Comprehensive
2019**

ADTECH

IAPP CCPA COMPREHENSIVE 2019

#CCPAcomp

CCPA: Applicability to Adtech - “businesses”

- A “Business” that meets the \$25 mm or 50,000 records threshold, or that derives 50 percent or more of its annual revenues from selling consumers’ personal information.
 - “Business” means a for-profit entity “that *collects consumers’ personal information, or on the behalf of which* such information is collected and that *alone, or jointly with others, determines the purposes and means of the processing of consumers’ personal information*, that does business in the State of California, and that satisfies one or more of the” thresholds above. ([1798.140\(c\)](#))
- APPLICATION TO ADTECH - Are companies in the adtech ecosystem “businesses” under the CCPA?
 - Publishers: Yes, if collect personal information, as defined.
 - Advertisers: Probably. (“on the behalf of . . .”)
 - Adtech companies such as SSPs, DSPs, DMPs, exchanges, ad servers: Yes.

CCpA: APPLICABILITY TO ADTECH - “personal information”

- **“Personal information”** means information that *identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.* ([1798.140\(o\)\(1\)](#))
- **Includes, but not limited to, the following if they meet the test above:**
 - (A) Identifiers such as a real name, alias, postal address, *unique personal identifier, online identifier, Internet Protocol address, email address*, account name, social security number, driver’s license number, passport number, or other similar identifiers.
 - (D) Commercial information, including records of personal property, *products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.*
 - (F) *Internet or other electronic network activity information*, including, but not limited to, *browsing history, search history, and information regarding a consumer’s interaction with an Internet Web site, application, or advertisement.*
 - (G) *Geolocation data.*
 - (K) *Inferences drawn from any of the information identified in this subdivision to create a profile about a consumer reflecting the consumer’s preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.*
- **APPLICATION TO ADTECH - Is data collected through adtech “personal information?”**
 - Yes, each italicized data element is used in the adtech ecosystem.

CCpA: APPLICABILITY TO ADTECH - identifiers

- In case there was any doubt . . .
 - “Unique identifier” or “Unique personal identifier” means a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or family, over time and across different services, including, but not limited to, *a device identifier; an Internet Protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology*; customer number, unique pseudonym, or user alias; telephone numbers, or *other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer or device . . .*” ([1798.140\(x\)](#))
 - “Probabilistic identifier” means the *identification of a consumer or a device to a degree of certainty of more probable than not* based on any categories of personal information included in, or similar to, the categories enumerated in the definition of personal information. ([1798.140\(p\)](#))
- APPLICATION TO ADTECH - What about identifiers that are not “deterministic?”
 - Difficult to argue that identifiers (even if probabilistic or at a household level) are not “personal information” under the CCPA if used for online tracking.

CCPA: APPLICABILITY TO ADTECH - Deidentified and aggregated data

- “Deidentified” and “Aggregate consumer information” are not expressly excluded from the definition of “personal information” (potentially due to drafting errors)
 - However, the CCPA’s obligations “*shall not restrict a business’s ability to . . . collect, use, retain, sell, or disclose consumer information that is deidentified or in the aggregate consumer information.*” ([1798.145\(a\)\(5\)](#))
- APPLICATION TO ADTECH - Can companies generally rely on the exemption for deidentified or aggregated data?
 - No, deidentified and aggregated consumer information are narrowly defined and different from personal information that has been “pseudonymized,” which is defined separately. (see [1798.140\(r\)](#))

CCPA: APPLICABILITY TO ADTECH - Deidentified and aggregated data

- **“Deidentified”** means information that *cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer*, provided that a business that uses deidentified information:
 - (1) Has implemented technical safeguards that prohibit reidentification of the consumer to whom the information may pertain.
 - (2) Has implemented business processes that specifically prohibit reidentification of the information.
 - (3) Has implemented business processes to prevent inadvertent release of deidentified information.
 - (4) Makes no attempt to reidentify the information. ([1798.140\(a\)](#))
- **“Aggregate consumer information”** means information that relates to a group or category of consumers, from which individual consumer identities have been removed, *that is not linked or reasonably linkable to any consumer or household, including via a device*. ([1798.140\(h\)](#))

CCpA: Key Definitions - “Sell”

- “Sell” - It’s Not Your Mother’s Definition
- “Sell,” “selling,” “sale,” or “sold,” means selling, renting, releasing, *disclosing, disseminating, making available, transferring, or otherwise communicating* orally, in writing, or *by electronic or other means, a consumer’s personal information* by the business *to another business or a third party for monetary or other valuable consideration.* ([1798.140\(t\)\(1\)](#))
- APPLICATION TO ADTECH - Does the definition of “sell” generally apply to data shared throughout the adtech ecosystem?
 - Yes, the italicized language applies to adtech because this information is transmitted through all of the players in the very complex ad ecosystem (agencies, DSPs, SSPs, DMPs, networks publishers, exchanges, and other ad buying platforms), in exchange for what is likely “valuable consideration.”

CCPA: Key Definitions - “Sell” - Exemptions

- **The CCPA contains various exemptions to the definition of “sell,” including:**
 - **Sharing based on consumer consent:** A consumer uses or directs the business to intentionally disclose personal information or uses the business to intentionally interact with a third party, *provided the third party does not also sell the personal information, unless that disclosure would be consistent with the provisions of this title.* ([1798.140\(t\)\(2\)\(A\)](#))
 - **Sharing for opt-outs** ([1798.140\(t\)\(2\)\(B\)](#))
 - **Sharing with service providers:** The business uses or shares with a service provider personal information of a consumer that is necessary to perform a business purpose if (i) the business has provided notice that information being used or shared in its terms and conditions; and (ii) the *service provider does not further collect, sell, or use the personal information of the consumer except as necessary to perform the business purpose.* ([1798.140\(t\)\(2\)\(C\)](#))
- **APPLICATION TO ADTECH - Is it possible to rely on exemptions to the definition of “sell?”**
 - Unclear how sharing based on consent would work; possible to leverage the IAB’s transparency and consent framework under the GDPR?
 - Opt-out sharing clearly allowed.
 - Service provider exemption does not cover sharing with other “businesses”

CCPA: Key Definitions - “Service provider”

- **“Service provider” is defined as:** A for-profit entity that “*processes information on behalf of a business* and to which the business discloses a consumer’s personal information *for a business purpose* pursuant to a written contract, *provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services* specified in the contract for the business, or as otherwise permitted by this title, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract with the business.” ([1798.140\(v\)](#))
- **APPLICATION TO ADTECH - Are companies in the adtech ecosystem “service providers” under the CCPA?**
 - Publishers: No.
 - Advertisers: No.
 - Adtech companies: Only in limited contexts; *but see* definition of “business purpose.”

Definition of “Business Purpose”

- (d) “Business purpose” means the use of personal information for the business’s or a service provider’s operational purposes, or other notified purposes, **provided that the use of personal information shall be reasonably necessary and proportionate to achieve the operational purpose for which the personal information was collected or processed or for another operational purpose that is compatible with the context in which the personal information was collected.** [1798.1490\(d\)](#)

Definition of “Business Purpose” (Continued)

- **Business purposes are:**
- (1) **Auditing** related to a current interaction with the consumer and concurrent transactions, including, but not limited to, **counting ad impressions to unique visitors, verifying positioning and quality of ad impressions, and auditing compliance with this specification and other standards.**
- (2) Detecting **security** incidents, protecting against malicious, deceptive, fraudulent, or illegal activity, and prosecuting those responsible for that activity.
- (3) **Debugging** to identify and repair errors that impair existing intended functionality.
- (4) **Short-term, transient use**, provided the personal information that is not disclosed to another third party and is **not used to build a profile about a consumer** or otherwise alter an individual consumer’s experience outside the current interaction, **including**, but not limited to, the **contextual customization of ads** shown as part of the same interaction.
- (5) **Performing services on behalf of the business or service provider**, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, **providing advertising or marketing services**, **providing analytic services**, or providing similar services on behalf of the business or service provider.
- (6) Undertaking **internal research for technological development and demonstration.**
- (7) Undertaking activities to **verify or maintain the quality or safety of a service** or device that is owned, manufactured, manufactured for, or controlled by the business, and to improve, upgrade, or enhance the service or device that is owned, manufactured, manufactured for, or controlled by the business.

CCPA: Substantive Provisions - Disclosure of personal information collected

- **“Businesses” that sell personal information or that disclose it for a business purpose, must, in response to a verified request from a consumer, disclose:**
 - Categories of personal information that the business collected about the consumer;
 - Categories of personal information that the business sold about the consumer and the categories of third parties to whom the personal information was sold, *by category or categories of personal information for each third party to whom the personal information was sold*; or if the business has not sold consumers’ personal information, it shall disclose that fact; and
 - Categories of personal information that the business disclosed about the consumer for a business purpose; or if the business has not disclosed the consumers’ personal information for a business purpose, it shall disclose that fact.
([1798.115](#), [1798.130\(a\)\(4\)](#), [\(a\)\(5\)\(C\)](#))
- **APPLICATION TO ADTECH - Required to disclose “sale” of personal information?**
 - Publishers: Likely do not “sell” personal information when displaying ads, but perhaps they do when “personal information” is collected on their websites or apps by an adtech vendor.
 - Advertisers: Just buy an audience; they don’t “sell” “personal information.”
 - Adtech companies: Likely *do* “sell” personal information, as defined, as data is passed through the daisy chain of the adtech ecosystem for what is likely to be considered “valuable consideration.”

CCPA: Substantive Provisions - Deletion of personal information

- “Businesses” must, in response to a verifiable consumer request, delete personal information of the requester and make sure service providers do as well, with certain exceptions. ([1798.105\(a\),\(c\)-\(d\)](#))
 - The California AG must adopt regulations to clarify what is a “verifiable consumer request”
 - The CCPA states it “*shall not be construed to require a business to reidentify or otherwise link information that is not maintained in a manner that would be considered personal information.*” ([1798.145\(i\)](#)) (But see extremely broad definition of personal information)
- APPLICATION TO ADTECH - Required to delete data upon request?:
 - Publishers: Yes, if they qualify as a “business”; must pass deletion request to downstream “service providers.”
 - Advertisers: Probably not, except for first-party data they hold about consumers.
 - Adtech companies: Yes. But must they delete ALL data relating to an individual? Also very difficult to ensure “service providers” do this in complex ad ecosystem.

CCPA: Substantive Provisions - Opt-out for sales of personal information

- “Businesses” may not sell personal information without giving notice and a chance for affected consumers to opt out.
 - “Businesses” must place a *link on their website homepage titled “Do Not Sell My Personal Information”* that redirects to a webpage that enables a consumer to opt-out of the sale of the consumer’s personal information.
 - The business cannot require consumers to create an account in order to opt-out of the sale of their personal information.
([1798.120](#), [1798.115\(d\)](#), [1798.135](#))
- APPLICATION TO ADTECH - Required to provide an opt-out?:
 - Publishers: Yes, if they qualify as a “business?” Can they link to the DAA and NAI opt-out pages?
 - Advertisers: Probably not.
 - Adtech companies: Yes. But how will consumers know to go there? Will this tie in to the DAA Framework?

CCPA: Substantive Provisions - Enhanced disclosures of privacy rights and practices

- “Businesses” must disclose in their online privacy policy or California-specific description of consumer privacy rights consumers’ rights under the CCPA and the methods for exercising those rights, as well as the categories of personal information the business collects, sells, or discloses for business purposes. ([1798.130\(a\)\(5\)](#))
 - The notices must be updated annually.
- APPLICATION TO ADTECH - Do companies need to ensure that their privacy policies comply with the CCPA?
 - Publishers: Yes, if they qualify as a “business.”
 - Advertisers: Probably not in capacity as advertisers.
 - Adtech companies: Yes. How will this be fleshed out in the AG’s regs?

Contact



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