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Statement of the American Association of Advertising Agencies (4A's) to the California Attorney General on the California Consumer Privacy Act

February 13, 2019

Good afternoon, and thank you for allowing me to make brief comments on the California Consumer Privacy Act (CCPA) and its impact on the digital advertising industry, specifically the advertising agency community. My name is Alison Pepper, and I am the Senior Vice President of Government Relations at the American Association of Advertising Agencies (4A's).

Founded in 1917, the 4A's is a trade association representing advertising agencies across the country. The 4A's helps empower our members to deliver insightful creativity that drives commerce and influences culture all while moving the industry forward. We are dedicated to, and vested in, our members' success, just as they are dedicated to helping brands create, distribute, and measure effective and insightful advertising and marketing. Today the 4A's serves 700+ member agencies across 1,300 offices, which control more than 85% of total U.S. advertising spend. Currently, the 4A's has 213 member agencies based in California, representing approximately 30% of all 4A's members.

The 4A's supports the goals of the CCPA, and understands the need for providing California consumers with more transparency in an increasingly complex online environment. As a founding supporter of the Digital Advertising Alliance (DAA) back in 2008, an organization dedicated to providing consumers with more transparency about digital advertising, the 4A's has an established track record in working to ensure that consumers have access and choices when it comes to how their information is used online.

While supporting and recognizing the overarching goal of the CCPA, we do have some concerns with the CCPA as passed. The CCPA appears to have some ambiguous language that leaves many agencies unclear as to not only what is required of them, but also presents questions as to the future of loyalty programs and other consumer-centric programs designed and promoted by our members. Collectively, these issues may not only undermine access to popular consumer programs, but more importantly, they could limit the effectiveness of

certain consumer protections. Specifically, some of the concerns raised by the CCPA include the following:

1. **Explicit Notice.** Section 1798.115 (d) prohibits a third party from selling consumer personal information that has been sold to the third party by a business unless the consumer has received explicit notice and is provided an opportunity to opt out from the business selling the data. When a consumer chooses not to exercise this right, it's currently unclear that a third party can rely on a written assurance of CCPA compliance from the transferring party. It would be helpful to have clarity that recognizes that a written assurance of CCPA compliance is sufficient and reasonable.

2. **Publicly Available Data.** Section 1798.140 (o)(2) states that personal information does not include publicly available information. However, this section also states that information is not publicly available if that data is used for a purpose that is not compatible with the purpose for which the data is maintained and made available in the government records for which it is publicly maintained.

   Many California public agencies already have rules and regulations around commercial use of public records. Certain public records can be used for important reasons from fraud prevention to auto vehicle recalls. CCPA appears to introduce new uncertainties into this process by potentially creating a new category of personal information when public records are used by commercial entities outside of the "purpose for which the data is maintained and made available." It's unclear if this new determination of acceptable scope of usage would be determined by the public agency providing the records, the CCPA, or some other entity. We would ask that some guidance be given to companies so that they can obtain a clear understanding as to what constitutes "in-scope" usage before proceeding.

3. **Treating Pseudonymized Data And Personal Information The Same.** Section 1798.140(o)(1)'s definition of "personal information," in combination with Section 1798.140(g)'s definition of "consumer," suggests that the law will treat pseudonymized data in the same manner as data that could directly identify an individual. Pseudonymized data does not include data types that individually identify a person. Pseudonymized data is rendered in such a way that it does not address a specific consumer without additional information. Agencies are

concerned that these definitions would require them to try to associate non-identifiable pseudonymized device data with a specific person seeking to exercise their CCPA rights, thus having the potentially unintended consequence of forcing agencies to take what was previously non-identifiable data and associate it with a specific person. Such a result would undermine consumer privacy and remove privacy protections from consumers.

Thank you for the opportunity to speak today. We appreciate the California Attorney General's office willingness to listen to concerns associated with the CCPA, and the 4A's looks forward to submitting detailed written comments and working with you to develop implementing regulations for this important legislation.