

**Statement of the Association of National Advertisers
(ANA) to the California Privacy Protection Agency on
Regulations Implementing the California Privacy
Rights Act of 2020**

May 6, 2022

Good morning and thank you for the opportunity to speak on the California Privacy Rights Act of 2020's approach to sensitive personal information as well as offer input on key topics for the California Privacy Protection Agency to consider as it drafts CPRA implementing regulations. My name is Chris Oswald, and I am the Executive Vice President of Government Relations at the Association of National Advertisers -- the "ANA."

The ANA serves the marketing needs of 20,000 brands with a membership consisting of U.S. and international companies, including hundreds of California-based businesses that are client-side marketers, nonprofits, fundraisers, and marketing solutions providers (data science and technology companies, ad agencies, publishers, media companies, suppliers, and vendors). The ANA leads the advertising industry by serving, educating, and advocating for more than 50,000 industry members that collectively invest more than \$400 billion in marketing and advertising annually.

I. The ANA and its members strongly agree that protecting consumer privacy is of paramount importance. Our members have worked diligently to align their compliance programs with the requirements of the CCPA and its implementing regulations. At the same time, they are navigating a complex patchwork of state laws emerging across the nation. The costs borne on companies and ultimately consumers continue to rise. One study found that state privacy law requirements could impose between 98 billion and 112 billion dollars of costs annually. According to the study, over a 10-year period, these costs would exceed 1 trillion dollars. The study also found that small businesses would bear an extraordinary portion of this burden—an amount approximately equal to 20 to 23 billion dollars. In the face of these astronomical costs, we urge the CPPA to work to align its regulations with other state requirements to reduce the economic burdens of the CPRA while maintaining robust privacy protections for California consumers. We are eagerly awaiting the California Privacy Protection Agency’s draft regulations on the various topics the Agency is instructed to address through its rulemaking process.

II. The ANA and its members support responsible data practices that benefit consumers. As the CPPA drafts implementing regulations pertaining to sensitive personal information, we ask you to keep in mind that

ordinary demographic data deemed to be “sensitive personal information” under the CPRA’s definition is frequently used in non-sensitive, non-discriminatory ways that provide important benefits to consumers. For example, the CPRA says that data that “reveals” a consumer’s ethnic origin or religious beliefs is sensitive personal information. Religious organizations often seek donations from those who express interest in causes related to a particular religious affiliation. Here, the organization’s intent is clear: to find people belonging to or sympathetic to a particular religious belief or denomination in order to effectively communicate with them for the betterment of the group. Similarly, organizations of all sizes are increasingly using demographic data to inform their diversity and inclusion and multi-cultural marketing efforts as they seek to serve the many different cultural groups in our country. Additionally, various entities, including U.S. federal agencies, have used demographic data to target information about COVID-19 vaccines to particular constituencies. These are just a few reasons why the opt-out approach inherent in the CPRA’s right to limit the use and disclosure of sensitive personal information is the appropriate approach for uses of such data. This structure will enable advertisers and others to reach desired audiences with relevant goods, services, and offers, such as magazines, personal care products, food products,

critical public health messaging, and numerous other important communications. All of this can be achieved while still providing strong protections for consumers.

III. The CCPA should work to harmonize its regulations with other state laws. During the rulemaking process, we encourage the Agency to carefully consider how the California Consumer Privacy Act impacted business operations. The standard regulatory impact assessment for the CCPA found that the estimated total cost of *initial* compliance with the CCPA would be 55 billion dollars. This number only reflects an estimate of initial efforts to come into compliance with the law. It does not even contemplate ongoing costs to continue to comply with ever-changing legal requirements.

Additionally, the SRIA found that companies with fewer than 20 employees would incur an average initial cost of 50 thousand dollars, companies with between 20 to 100 employees would incur an average initial cost of 100 thousand dollars, and companies with between 100 to 500 employees will incur an average initial cost of 450 thousand dollars. The assessment also noted that approximately 99% of California businesses have fewer than 500 employees, meaning that the vast majority of California businesses would be significantly impacted by the CCPA regulations. My own experience as a trade

association representative has shown me that small and mid-size businesses are disproportionately impacted by overly broad and complex privacy regulations. Their larger business counterparts, by contrast, have more resources to absorb the significant costs associated with compliance. As a result, burdensome privacy CPRA regulations could have a substantially negative impact on the ability of small, mid-size, and start-up businesses to survive and flourish in California.

Other studies have confirmed the staggering costs to the business community that were represented in the CCPA SRIA. For example, in response to one survey of businesses, two-thirds of respondents indicated it takes them two or more weeks of time and resources to respond to a single consumer rights request. Because companies' responses are often processed manually, the study found that the average cost of each request is roughly \$1,520 U.S. dollars. Research also shows that most organizations must involve anywhere from 26 to 50 employees in processing a single consumer rights request, and on average, a privacy employee spends about 2 to 4 months (or 60 to 130 hours) in a year working on compliance with consumer rights requests. At this rate, it is easy to see that as the number of consumer requests add up, so does the cost of compliance. And, with ever-changing laws and regulations, such as the changes we will witness

from the impending CPRA regulations, companies are constantly forced to re-assess their processes and compliance plans to adjust to substantively changing obligations.

While the impact of burdensome privacy regulations to California-based firms alone is substantial, it is important to also highlight that state privacy laws like the CPRA impose significant compliance costs on out-of-state firms as well. One study has estimated that the CPRA will cost 78 billion dollars annually, with California's economy shouldering 46 billion of that cost and the rest of the U.S. economy bearing the other 32 billion. The same study forecasted that California small businesses will bear 9 billion dollars of in-state costs, while out-of-state small businesses would face 6 billion dollars of costs. The CPRA's costs are consequently projected to extend well beyond California state lines, and the CPPA should take this overall market impact into account as it drafts CPRA implementing regulations.

It is ANA's hope that the CPPA will strive to strike an appropriate balance between protecting consumer privacy and allowing businesses to continue to innovate, subsidize the economy, and facilitate consumers' access to a wealth of information online. The Agency should avoid rules that would significantly reduce the use and value of consumer data. Overly broad regulations would

significantly hinder business operations, kill small and start-up businesses, and deprive consumers of benefits and advantages they currently receive through access to an open and largely free Internet ecosystem. Consumers will also certainly feel the effects of the CPRA regulations, which will raise the cost of doing business in California.

We encourage the Agency to consider how its regulations will impact businesses, and in turn, consumers' ability to access products, services, and information they depend on for free or at a very low cost. We will be submitting detailed written comments in response to the Agency's draft regulations implementing the CPRA, which will set forth more information about these and a number of other important concerns. We look forward to working with you as the regulations to implement the CPRA are finalized.

Thank you for the opportunity to speak to you today.