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March 27, 2020

Via Electronic Submission: privacyregulations@doj.ca.gov

California Department of Justice
Office of the Attorney General
ATTN: Privacy Regulations Coordinator
300 South Spring Street, First Floor
Los Angeles, CA 90013

Re: Comments on Second Set of Modifications to Proposed Regulations Under the CCPA

Dear Attorney General Becerra:

The Toy Association, Inc. (TTA), on behalf of its members is pleased to respond to the Attorney General's request for input from stakeholders on the Second Set of Modifications to the Proposed Regulations (Proposed Regulations) implementing the California Consumer Privacy Act (CCPA) (Cal. Civ. Code §§ 1798.100–1798.199) noticed on March 11, 2020. As we indicated in our earlier two sets of comments, incorporated by reference herein, TTA represents more than 1,100 businesses – toy manufacturers, importers and retailers, as well as toy inventors, designers and testing labs – all involved in bringing safe, fun and educational toys and games for children to market. The U.S. toy industry contributes an annual positive economic impact of \$109.2 billion to the U.S. economy. TTA and its members work with government officials, consumer groups, and industry leaders on ongoing programs to ensure safe play, both online and offline.

TTA greatly appreciated the changes the Attorney General (AG) made in the first set of modifications to the Proposed Regulations, which addressed several of the concerns TTA expressed in its first set of comments. However, TTA is disappointed that the AG chose not to adopt the simple and straightforward changes recommended by TTA in its February 25, 2020 comments. These changes would have gone a long way to addressing the conflicts between the CCPA and the Children's Online Privacy Protection Act (COPPA), as well as some specific operational problems in implementing the CCPA. As TTA noted previously, COPPA preempts inconsistent state laws. Provisions of the CCPA and any final implementing regulations that are inconsistent with COPPA will not be enforceable, so the failure to make the recommended changes is puzzling. Equally importantly, however, the changes we recommend have demonstrably been effective in the children's privacy arena, allowing businesses to operate while protecting children's privacy. The existence of conflicting requirements creates regulatory uncertainty and complicates the efforts of companies to come into compliance with the CCPA and implementing regulations.

TTA reiterates the need for the following changes to address the conflicts and inconsistencies between COPPA and the CCPA and its implementing regulations, as well as to reduce unnecessary burdens on businesses and consumers:

- Explicitly limit requests to access or delete personal information of a child under the age of 13 to an individual who is reasonably determined to be the parent or guardian rather than any “authorized agent.” The change in the Proposed Regulations, replacing “whether” with “that” in § 999.330(c) is helpful, but lacks the clarity that an affirmative statement limiting such requests to parents and guardians, as TTA recommends, would have.
- Amend § 999.314, allowing service providers to use or disclose personal information for certain reasons to exempt the *full* range of activities constituting “support for internal operations” recognized by the Federal Trade Commission (FTC) for both service providers and businesses. Companies have relied on the FTC’s “support for international operations” provision to conduct business-critical activities in a privacy-safe way when handling the sensitive personal information of children. There is no evidence that these activities have resulted in any privacy harm to children. Because the FTC’s approach protects the privacy of children, there is no reason that they should not equally apply to handling the personal information of teens and adults.
- Amend § 999.330(a)(2) to explicitly permit the use of new methods for verifying parental consent that may be recognized by the FTC or by authorized COPPA safe harbor organizations under the process outlined in the COPPA Rule at 16 C.F.R. § 312.5(b)(3).
- To lessen the burden on parents making requests to access or delete household information which includes information of children under the age of 13, amend § 999.322 to clarify that a single request from a verified parent or guardian is sufficient to verify and act on requests covering every child under 13 in the household.

Conclusion

TTA applauds the AG’s willingness to continue its review and reconsideration of the Proposed Regulations, and to give affected stakeholders the opportunity to comment on these important proposed regulations. TTA appreciates the AG’s previous changes addressing many of its comments, and also welcomes the AG’s deletion of the requirements for a “Do Not Sell” button in the Proposed Regulations.

As a signatory to March 17, 2020 letter from 66 trade associations, companies, and organizations requesting temporary forbearance from CCPA enforcement in light of the coronavirus pandemic, TTA stresses the urgent need for both clarity in the regulations, consistency with preemptive laws like COPPA, and adequate time for businesses to plan to implement new regulatory requirements. It is more critical than ever to meet these goals to avoid unnecessary burdens on businesses and their employees during these difficult and uncertain times. For example, for some companies to ensure that they have fulfilled their obligation under the regulations to provide all data collected or to ensure fulfillment of a data deletion request within the timeframes mandated, it may be necessary for those companies to have employees

onsite at their places of work or to require that employees engage in non-essential travel and other actions that may not be consistent with social distancing norms and obligations. Avoiding unnecessary risks to employees tasked with responding to these requests - not just in California, but across the country – and assuring that those businesses meet local and state mandates to protect workers and the public by sheltering at home are also compelling reasons to delay enforcement.

With that in mind, we also urge the AG to work with the California legislature to delay application of CCPA obligations as to handling of employee data for at least one year. It is hard to see how there will be adequate time to update regulations to address employee data with adequate time for the business community to review and comment on them, and for businesses to consider operational impacts of those changes, implement and test compliance measures, and still meet a January 1, 2021 timeframe.

The toy industry remains steadfast in its support for strong national consumer privacy and data security frameworks. We hope this submittal will assist the AG as it finalizes the regulations under the CCPA. Please contact Ed Desmond at edesmond@toyassociation.org or Jennifer Gibbons at jgibbons@toyassociation.org if you would like additional information on our industry's perspective.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Pasierb". The signature is stylized and cursive.

Steve Pasierb
President & CEO

cc: Sheila A. Millar, Of Counsel