Proposed Amendment to CCPA Could Provide Reprieve for AdTech Industry

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On Tuesday, the California Senate Judiciary Committee will hold a hearing to discuss SB-753, which, if adopted, would carve out from the California Consumer Privacy Act (CCPA)'s definition of "sale" certain data sharing for purposes of delivering advertising. As we've previously noted, the CCPA is intended to afford consumers the right to know when a company is selling their "personal information" by imposing certain disclosure and opt-out requirements on companies that engage in the sale of such information.

The "sale" definition in the CCPA, as it stands today, is broadly worded and includes essentially any distribution of data in return for value. As a result, there has been legitimate concern in the online advertising space—which involves data sharing among multiple parties—that the sharing of personal information for purposes of delivering targeted advertising would be viewed as a "sale" under the statute and trigger the CCPA's compliance requirements.

SB-753, if adopted, would respond to these concerns by adding a new exemption to the CCPA's definition of a sale. Specifically, a business would not be deemed to have sold personal information if:

Pursuant to a written contract, the business shares, discloses, or otherwise communicates to another business or third party an online identifier, an Internet Protocol address, a cookie identifier, a device identifier, or any unique identifier only to the extent necessary to deliver, show, measure, or otherwise serve or audit a specific advertisement to the consumer.
SB-753 would also require the written contract to "prohibit the other business or third party from sharing, selling, or otherwise communicating the information except as necessary to deliver, show, measure, or otherwise serve or audit an advertisement from the business."

Overall, the proposed amendment would have potentially positive implications for the AdTech industry by allowing businesses to share information to the extent necessary to show specific advertisements to the consumer. That said, the full parameters of the exemption remain unclear, including what exactly qualifies as "necessary," and how the contract obligations might apply across the highly-distributed AdTech ecosystem. We anticipate these questions and others like it to be discussed at the upcoming hearing.

We will continue to closely track SB-753 and provide updates as they come.