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## HUGE ISSUE ON THE NOVEMBER 2020 BALLOT — NO, NOT THAT ONE. CCPA 2.0!

by Gary A. Kibel

There's an election this November, and there will be a huge issue on the ballot. The battle lines are drawn and both sides are determined to convince voters to support their position. Don't believe the fake news — the outcome could have a very significant impact. No, it's not Trump vs. Biden, but California and privacy.

With the industry still trying to operationalize requirements under the California Consumer Privacy Act (CCPA), California voters will decide this November on whether to approve or reject the California Privacy Rights Act (CPRA), AKA CCPA 2.0. Don't expect to see television commercials or have your Facebook news feed clogged with advocacy ads. But make no mistake, the debate is fierce and the stakes are high.

The CCPA was born out of an aborted ballot initiative in 2018. Back then, the sponsors of the ballot initiative agreed to pull back and not submit the signatures required to put the matter to the public, and instead negotiated with the California legislature on what would eventually become the CCPA.

This time there will be no such negotiations. The CPRA sponsors submitted over 900,000 signatures, far in excess of the 623,212 needed to get the CPRA onto the November ballot. Therefore, on Nov. 3, Californians will give the CPRA a thumbs up or thumbs down.

The CPRA amends the CCPA in many ways. Among the more significant changes for the ad tech industry are:

- >> A new definition of "cross-context behavioral advertising" addressing retargeting
- >> A new term of "sharing" data, which includes cross-context behavioral advertising
- >> An obligation for opt-out links to say "Do Not Sell or Share My Info"
- >> New obligations for data minimization and data retention and
- >> The establishment of a new enforcement agency — the "California Privacy Protection Agency"

The ballot initiative (formally known as Proposition 24) has been published by the State of California with statements both pro and con.

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Pro: “In 2018, the Legislature enacted the California Consumer Privacy Act. But since then, industry has repeatedly tried to weaken and limit enforcement of this law.”

Con: “The real winners with Proposition 24 are the biggest social media platforms, giant tech companies and credit reporting corporations.”

The response to the CPRA has not always been as expected. The typically privacy-focused Electronic Frontier Foundation said “Prop 24 does not do enough to advance the data privacy of California consumers. It is a mixed bag of partial steps backwards and forwards.”

That said, polls indicate that the CPRA has a very good chance of being approved. Therefore, the ad tech industry may need to get its arms around yet another new set of compliance obligations.

I’m Gary Kibel, and I approve this message.

Follow Gary Kibel ([@GaryKibel](#)), Davis & Gilbert LLP ([@dglaw](#)) and AdExchanger ([@adexchanger](#)) on Twitter.

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