REPORT

CCPA: What It Is & How to Prepare
Our Commitment to Data Privacy

On January 1, 2020 the California Consumer Privacy Act (CCPA) will become effective. It is set to be the most comprehensive privacy law to date in the US and aims to give Californians more control over their personal information.

There are many provisions of CCPA that are ambiguous and leave room for interpretation. With that in mind we will continue to engage with all our clients and partners to discuss the best approach to compliance.

As a global company with headquarters in Europe, Criteo has adopted the GDPR as its worldwide standard for all its services and has implemented processes to handle user rights and adopted best-practice data protection principles that go well beyond what is required by the CCPA. We were also an early adopter of industry best practices such as the AdChoices program and the IAB Transparency and Consent Framework.

With this strong commitment to data privacy, we are fully engaged with our clients and partners to help them navigate through their CCPA compliance journey through proactive communications and best-practice compliance tips.
What is the CCPA?
While designed to protect the personal information of Californians, the CCPA may have a country-wide impact as companies are likely to adopt it as a national standard of privacy compliance.

The CCPA adopts a very broad definition of personal information and introduces transparency requirements. It offers new protections to consumers in California, including:

- The right to know
- The right to delete
- The right to opt out of “sales” of their data
The Right to Know

The CCPA introduces the right of access/portability. It allows a specific user to gain access to the “specific pieces of personal information the business has collected about that user”.

Should a client receive such a request from a user with respect to data collected by Criteo, then they will be able to advise them to check Criteo’s Privacy Policy which contains full details on how the user can obtain this information and submit a request directly to Criteo.

Upon receipt of a request from a data subject, Criteo asks for user identification and then provides an Excel spreadsheet containing all personal information related to that user.

Criteo would not send this information directly to the client acting on the user or consumers behalf.

The Right to Delete

The CCPA introduces a right to request that a business delete any or all personal information about the consumer which the business has collected from the consumer.

As with the right to know procedure, should a client receive such a request from a user with respect to data collected by Criteo, then our clients will be able to advise the requestor to check Criteo’s Privacy Policy where they will be able to submit the request directly to us.

Some clients may feel that they should pass on deletion requests they receive to Criteo, however this is not the case as Criteo does not act as a Service Provider.

The Right to Opt-Out

Users have the right to be able to instruct a company not to ‘sell’ their personal information to third parties.

If our clients and partners will be considered as ‘selling’ data to Criteo, they will have to provide users with a way to exercise their right to opt-out.

The draft AG regulations are also requiring that our clients and partners notify all third parties to whom personal information has been ‘sold’ within the last 90 days prior to the user requesting to opt out.

In order to make this process as simple as possible for users, industry trade associations such as the DAA and the IAB are currently working on standards to stipulate how the opt-out and its notification to third parties should be handled.
How is Personal Information defined under CCPA?

CCPA explicitly covers data such as “online identifiers”, “IP addresses”, “browsing history”, “information regarding a consumer’s interaction with a website, application, or advertisement” and “geolocation data” if it can be reasonably linked, directly or indirectly, with a particular consumer or household.

Criteo does not collect any data, such as first and last name or postal address or even email address in plain text, that would allow us to identify a person. However, our technology is able to single out a particular device or browser.

As such, we expect that most data collected by Criteo, which is already considered Personal Data under the GDPR, will be considered Personal Information under the CCPA.
Who should be preparing for CCPA?

The territorial and material scopes of the CCPA are complex so you should seek legal advice.

Criteo’s advertisers and retailers shipping to California, as well as publishers who operate websites and apps of interest for Californians may fall within the definition of “businesses” under the CCPA, if any of the following are true:

1. > $25M annual gross revenue
2. > 50,000 unique visitors from California
3. > 50% of annual revenue derived from displaying ads through Criteo to users from California

The CCPA will also apply, at least to some extent, to affiliates of companies that fall themselves within the above definition.

What is Criteo’s status under the CCPA?

Because Criteo “determines the purposes and means of the processing of consumers’ personal information” but it is not the entity which the users intend to interact primarily with, we expect Criteo will be considered both a ‘business’ and a ‘third party’.

At the core of Criteo technologies are its AI-driven algorithms and its Shopper Graph, which both rely on a ‘network effect’ to bring shared value to its customers and partners. This is why Criteo does not expect to act as a Service Provider as it would limit its ability to operate such technologies.
Transparency Requirements

The CCPA adds transparency requirements for Criteo and for Criteo clients and publisher partners while setting out the following obligations (these are the main obligations, but we do not undertake to provide our clients and partners with an exhaustive compliance checklist):

**On their website’s footer**
(via settings and download page for apps)
- A ‘Do Not Sell My Personal Information’ link to the Opt-out page
- A link to the ‘Notice at collection’
- A link to the full Privacy Policy

**Notice at collection**
- The categories of personal information shared with Criteo for the purpose of displaying targeted ads
- A ‘Do Not Sell My Personal Information’ link to the Opt-out page
- A link to the full Privacy Policy
- If online transactions are passed on to Criteo, a notice will also need to be provided at the point of collection

**Privacy Policy**
- The fact that personal information is shared with Criteo, an advertising network, for the purpose of displaying targeted ads
- The categories of personal information shared with Criteo
- A description of user rights
- A link to the Opt-out page

**Opt-out page**
- The first-party opt-out notice and choice mechanism: you can use a CMP or a TMS to prevent Criteo’s tags from collecting data following an opt-out
- The DAA cross-industry opt-out standard notice and choice mechanism
- A link to the full Privacy Policy
Disclosures

Subject to further data categories being introduced by the Attorney General, these are the categories of data our advertisers and publishers will need to disclose:

Advertisers & Retailers
- Identifiers (e.g. cookie IDs, Mobile Advertising IDs, IP addresses, user agents, hashed email addresses)
- Internet or other electronic network activity information:
  - Browsing history (e.g. URL of the websites browsed, name of the apps opened)
  - Interactions with a website or mobile application (e.g. ads viewed, clicked)
- Commercial information, including records of products or services purchased, obtained, or considered (e.g. products seen, put in basket, purchased)

Publishers
- Identifiers (e.g. cookie IDs, Mobile Advertising IDs, IP addresses, user agents, hashed email addresses)
- Internet or other electronic network activity information:
  - Browsing history (e.g. URL of the websites browsed, name of the apps opened)
  - Interactions with a website or mobile application (e.g. ads viewed, clicked)

Does working with Criteo imply the ‘sale’ of data?

The definition of a ‘sale’ goes further than a simple exchange of money. It includes “making available (...) personal information for monetary or other valuable consideration”.

Because Criteo’s tags collect personal information for the benefit of its clients, they may fall within the above definition.

The California AG has published draft regulations on October 11, 2019, as mandated by the CCPA. But these regulations have unfortunately not broached this pivotal question and there is still considerable uncertainty around whether ‘sales’ can occur even when data is exchanged purely as an accessory to a broader transaction.
What should advertisers and publishers do next?

1. Determine to what extent the CCPA will apply to them and seek legal advice if required

2. Be ready to update their privacy disclosures and implement choice mechanisms

For more information, contact your Criteo Account Strategist today

Disclaimer:
This summarizes the main requirements related to the CCPA, without going into full details. We should advise our clients and publisher partners to consult with their internal or external legal counsel to ensure the compliance of their practices.