

Legal Memo: The California Consumer Privacy Act and Connected Television
Center for Digital Democracy
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I. The CCPA and Advertising

In 2018, California became the first state to enact a comprehensive privacy law, the California Consumer Privacy Act (CCPA)¹ that applied to personal information broadly, including personal information collected from streaming services and devices. The CCPA was amended in 2020 by ballot initiative.² The CCPA defines personal information as “information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.”³ It requires that companies give notice of their information practices through specified privacy policies and in response to consumer requests.⁴ It also requires that companies enable individuals to “opt out” of the sale of their information or the sharing of such information for the purposes of cross-contextual behavioral advertising.⁵

A stated goal of the CCPA was to give consumers control over their data and the ability to easily stop cross-contextual behavioral advertising and information sharing for such advertising.⁶ Cross-contextual behavioral advertising is defined under the law as “the targeting of advertising to a consumer based on the consumer’s personal information obtained from the consumer’s activity across businesses, distinctly-branded websites,

¹ Ca. Civ. Code (CCPA) § 1798.100 et seq.

² California Prop. 24 (2020), <https://vig.cdn.sos.ca.gov/2020/general/pdf/topl-prop24.pdf>.

³ CCPA § 1798.140(v). This explicitly includes “Identifiers such as a real name, alias, postal address, unique personal identifier, online identifier, Internet Protocol address, email address, account name, social security number, driver’s license number, passport number, or other similar identifiers.”, “Internet or other electronic network activity information” and inferences drawn from such identifiers. § 1798.140(v)(1) A, F, K.

⁴ CCPA §§ 1798.100, 1798.110.

⁵ CCPA § 1798.120. “Sharing” is defined as “Share,” “shared,” or “sharing” means sharing, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer’s personal information by the business to a third party for cross-context behavioral advertising, whether or not for monetary or other valuable consideration, including transactions between a business and a third party for cross-context behavioral advertising for the benefit of a business in which no money is exchanged. CCPA §1798.140(ah)(1).

⁶ See “Testimony of Alastair Mactaggart,” U.S. Senate Committee on the Judiciary, (Mar. 12, 2019,) <https://www.judiciary.senate.gov/imo/media/doc/Mactaggart%20Testimony1.pdf> (accessed Sep. 17, 2024).

applications, or services, other than the business, distinctly-branded website, application, or service with which the consumer intentionally interacts.”⁷ At the same time, the law permits companies to use and share information for certain “business purposes” related to advertising, including counting ad impressions for unique visitors, verifying the positioning and quality of ad impressions, and auditing. In addition, non-personalized advertising based on a current interaction is permitted.⁸

The California Privacy Protection Agency has promulgated rules regarding opt-outs of sale and cross-contextual sharing, including specifying that at least one method of opt-out be in the manner the business primarily interacts with consumers,⁹ and that opt-outs should be “easy for consumers to execute [and] shall require minimal steps.”¹⁰ The California Attorney General, which enforces the opt-out provisions along with the Agency, has indicated that easy, minimal-step opt-outs on streaming services means that:

“[C]onsumers that are using a SmartTV should be able to navigate to the settings menu in a streaming service’s mobile app and enable the service’s “Do Not Sell My Personal Information” setting.

Consumers should also be able to have this choice honored across different devices if they are logged into their account when they send their opt-out request....

[C]onsumers should be able to easily encounter a streaming service’s privacy policy that discusses their CCPA rights.¹¹”

II. Streaming Devices and Services and California Privacy Law

The streaming services detailed here all generally purport to comply with the CCPA. Most provide California-specific privacy statements or sections.¹² These detail information collection practices. They also disclose that, as defined by CCPA, the companies sell personal information and/or share it for the purposes of cross-contextual

⁷ CCPA § 1798.140(k).

⁸ CCPA § 1798.140(e).

⁹ Ca. Consumer Act Privacy Regulations (CCPA Regs.) § 7026(a).

¹⁰ CCPA Regs § 7026(b).

¹¹ State of California Department of Justice, Office of the California Attorney General, “Attorney General Bonta Announces Investigative Sweep, Focuses on Streaming Services’ Compliance with the California Consumer Privacy Act,” (Jan. 26, 2024), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-investigative-sweep-focuses-streaming-services%E2%80%99> (accessed Sep. 17, 2024).

¹² See, e.g., The Walt Disney Company, “Your US State Privacy Rights,” <https://privacy.thewaltdisneycompany.com/en/current-privacy-policy/your-california-privacy-rights/> (updated June 28, 2024), and Roku, “Roku Privacy Policy,” https://docs.roku.com/published/userprivacypolicy/en/us#userprivacypolicyen_us-userprivacypolicyen_us-CCPA (updated July 1, 2024). Amazon has an “Additional State-Specific Privacy Disclosures” page that addresses California: “Security and Privacy: Additional State-Specific Privacy Disclosures,” <https://www.amazon.com/gp/help/customer/display.html?nodeId=GC5HB5DVMU5Y8CJ2> (updated June 28, 2024).

behavioral ads. They also purport to offer opt-outs,¹³ including via settings menus on devices.¹⁴

Even based purely on their representations, however, it is not clear whether these services are actually in substantive compliance with California law, including specifically the requirements that opt-outs be easy to effectuate and involve minimal steps, or that logged-in consumers be able to have choices honored across different devices. It is also unclear if third parties are appropriately honoring rights, or if companies are communicating opt-out rights with those they are required to – this is especially concerning given the rise of cross-device tracking for ad-measurement purposes and creation of profiles across industry segments. Privacy policies are confusing and at times contradictory in their categorization of information. And even in instances where there may be technical compliance, it is unclear that consumers’ preferences and wishes are in fact being respected.

A. Multiple Steps Appear to be Required to Opt Out & Choices May Not Be Honored Across Devices

For example, LG details what appear to be multiple steps in order to opt out of cross-contextual behavioral ads.¹⁵ While LG explains it offers choices in the SmartTV Settings

¹³ See, e.g., Amazon Opt-out: “Your Ads Privacy Choices,” https://www.amazon.com/privacyprefs?ref_=footer_iba (accessed Sep. 3, 2024); Roku Opt-out: “Your Privacy Choices,” <https://privacy.roku.com/info/ccpa> (accessed Sep. 3, 2024).

¹⁴ From Amazon: “Privacy Settings FAQs for Fire TV streaming media players, Fire TV Edition devices, Fire tablets and Kindle e-readers,” detailing that consumers can opt out of device-level data collection and interest-based ads. For example, “Interest-based Ads: The advertising ID is a resettable identifier we make available to apps on certain Amazon devices for advertising and analytics purposes. You can instruct apps that use your device’s advertising ID not to use that ID to build profiles for advertising purposes or target you with interest-based ads on the device via **Settings > Preferences > Privacy Settings > Interest-based Ads**.” <https://www.amazon.com/gp/help/customer/display.html?nodeId=GQFYXZH2B2H629WN> (accessed Sep. 3, 2024, emphasis in the original).

¹⁵ LG’s policy states: “Right to Opt Out of Targeted Advertising. You may be entitled to opt out of targeted advertising. (Under California law, this is referred to as “sharing” of personal information for cross-context behavioral advertising.) To opt out of targeted advertising (and “sharing”), you should revoke your consent to the Interest-Based and Cross-Device Advertisements agreement as described below. You may also prevent the use of information collected from your Smart Media Product for advertising by selecting the “Limit Ad Tracking” option as described below. ...

As described above in this section, you may have the right to opt out of “sales” of personal information to third parties. The “Do Not Sell My Personal Information” toggle (“Do Not Sell” toggle) located in the Settings menu helps you do this. When you manually activate the Do Not Sell toggle, LGE will cease “sales” of your personal information to third parties.

Even when the Do Not Sell toggle is activated, you may still continue to receive Interest-Based and Cross-Device advertisements from LGE (if you have consented to receive such advertisements), unless you revoke your consent to the Interest-Based and Cross-Device Advertising Agreement. You may opt out of receiving Interest-Based and Cross-Device advertising at any time by navigating to the Interest-Based & Cross-Device Advertising Agreement on the “User Agreements” page of the Settings menu. You may also prevent the use of information collected from your Smart Media Product for advertising by selecting the “Limit Ad Tracking” option on the “Advertisement” page of the Settings menu. To reset your Advertising Identifier (and to prevent advertisements from being targeted based on personal information

menu, it appears that there are multiple toggles a consumer may have to change—a Do Not Sell toggle, a Limit Interest-Based and Cross-Device Ads Toggle, and possibly also a “Limit Ad Tracking” toggle. LG tells consumers that “[e]ven when the Do Not Sell toggle is activated, you may still continue to receive Interest-Based and Cross-Device advertisements from LGE (if you have consented to receive such advertisements), unless you revoke your consent to the Interest-Based and Cross-Device Advertising Agreement.”¹⁶ Under California law, if a consumer specifically tells LG it does not want its information sold, cross-contextual targeted ads should cease and the user’s opt-out should be honored. This is true even if a consumer has previously consented to such advertising – the CCPA Regulations make this explicitly clear.¹⁷ This requirement of multiple steps to opt-out does not appear to comport with the requirement that opting out should be easy and require minimal steps. It also is not clear that LG is offering one way to opt out across all devices.

Amazon also does not appear to offer SmartTV viewers a way to opt-out across devices from their TVs. It tells consumers they can change preferences at the SmartTV device level regarding interest-based advertising and device-level data collection, but that these device-level settings are only “device specific.”¹⁸ This implies that for logged-in consumers on SmartTVs, preferences are not honored across devices.

Disney also may not enable consumers to easily opt out of Disney+ cross-contextual behavioral advertising in one shot if they are logged into their account. Disney specifically tells consumers that opt-out choices are “specific to the digital property and to the device and browser you are using.”¹⁹ Disney does offer a way for consumers to

that was associated with that Advertising Identifier), you can press the “Reset Ad ID” button in the Settings menu.” <https://us.lgappstv.com/main/terms> (updated Feb. 2024).

¹⁶ *Id.*

¹⁷ Businesses are permitted to notify consumers about the conflict, and provide the consumer with the opportunity to consent to the sale or sharing of their personal information, which if the consumer *then* does the business may ignore the opt out signal. Otherwise “the business shall process the opt-out preference signal as a valid request to opt-out of sale/sharing”. CCPA Reg. § 7025(3).

¹⁸ Amazon states: “6. If I set my preferences on one Amazon Device, will the setting be applied to all my devices?”

No, these settings are device-specific. In addition, if you use multiple user profiles on a tablet, you will choose your settings for each profile.” Amazon, *supra*.

¹⁹ Disney explains the limitations of opt-out requests on its “Do Not Sell or Share My Personal Information” and “Targeted Advertising Opt-Out Rights” page, <https://privacy.thewaltdisneycompany.com/en/dnssmpi/> (accessed Sep. 3, 2024). In a previous privacy notice, it formerly raised “technological constraints” as a reason opt-out limitations, stating in its California privacy specific section: “INTEREST BASED ADVERTISING

- Please note, given current technology constraints, to opt out on mobile applications and connected devices (like smart TVs or streaming devices), please select the device setting’s option that allows you to disable ad tracking. To opt out, these devices typically require you to select options like “limit ad tracking” or to disable options such as “interest-based advertising,” “interactive TV,” or “smart interactivity.” These settings vary by device type.”

ostensibly opt-out of device tracking across different properties,²⁰ but it is unclear whether this includes SmartTVs. In addition, Disney, like other streamers, separates out Nielsen research from other available opt-outs.²¹ Many consumers may know Nielsen from measuring how many viewers watch a TV show. But Nielsen also has an advertising arm, which has recently announced increases to its “big data footprint.”²² Whether individuals opting out of sale/sharing need to additionally opt out of Nielsen measurements, which appear to also be used for advertising, is unclear, and if they do it is at odds with the CCPA’s minimal and one-time opt-out requirements.

B. Numerous and Unclear Third-Party Information Sharing

Most of the streaming companies also tell consumers that numerous third parties collect personal information from them as well, and that consumers should investigate those privacy policies. It is unclear whether companies can disclaim responsibility for all the third-party information collection they facilitate – and if such abdication of responsibility is permitted, lawmakers may wish to consider better consumer protections. Roku’s policy, for example, explicitly disclaims liability for apps – which is how many watch TV on Roku devices.²³ Thus, when a consumer opts out of cross-context behavioral ads on their SmartTV, it is unclear – and even unlikely – that all apps on the device respect that choice, even pre-populated apps. This makes limiting tracking on a device very difficult for a consumer and may defy consumer expectations (device-level settings on a SmartTV do not actually apply to the whole device). Further, it may not comply with regulatory obligations for businesses to pass along Do Not Sell requests if they have disclosed data.²⁴

<https://privacy.thewaltdisneycompany.com/en/current-privacy-policy/your-california-privacy-rights/> (for version updated June 30, 2023).

²⁰ Disney/OneTrust Privacy Portal, <https://privacyportal-de.onetrust.com/webform/64f077b5-2f93-429f-a005-c0206ec0738e/de88148a-87d6-4426-95b1-ed444dd53281> (accessed Sep. 3, 2024).

²¹ One of many “controls and choices” listed in Disney’s privacy policy is “Choosing to limit participation in [Nielsen digital measurement research](#) (for non-Panelists),” The Walt Disney Company, “Privacy Policy,” <https://privacy.thewaltdisneycompany.com/en/current-privacy-policy/> (updated Dec. 12, 2023).

²² Nielsen, “Nielsen and LG Ad Solutions Strike Deal to Create Largest ACR Data Footprint for TV Measurement in the US,” (Oct. 19, 2023), <https://www.nielsen.com/news-center/2023/nielsen-and-lg-ad-solutions-strike-deal-to-create-largest-acr-data-footprint/>.

²³ Roku states: “Using our products and services, you can access channels provided by other companies (“**Third-Party Channels**”), including hybrid broadcast broadband (“**hbbtv**”) channels that may be available in your region. When you install, access or stream one of these channels, you are also interacting with that channel directly, and the channel provider and its analytics and advertising partners may collect information from your Roku Device, including your device identifier and how you use their services. In addition, Roku’s Channels may also be available on platforms operated by other companies, including smart TVs, set top boxes, streaming devices, gaming devices, mobile devices or other internet connected devices. This Privacy Policy does not cover the actions and privacy practices of these channel providers, platform operators or their partners. For more information about how these companies use your data, please see their privacy policies.” Roku, “Privacy Policy,” <https://docs.roku.com/published/userprivacypolicy/en/us> (updated July 1, 2024).

²⁴ CCPA Regs. § 7026(f). “A business shall comply with a request to opt-out of sale/sharing by:… (2) Notifying all third parties to whom the business has sold or shared the consumer’s personal information, after the consumer submits the request to opt-out of sale/sharing and before the business complies with that request, that the consumer has made a request to opt-out of sale/sharing and directing them to

Third-party data brokers that the streaming companies share information with also offer their own complicated opt outs that may not be in compliance with legal requirements. LiveRamp, which partners with Disney, among others, requires multiple clicks and then the filling out of a form in order to opt-out of sale or sharing of personal information. This does not seem consistent with CCPA's requirements.

C. Confusing Language in Privacy Statements

The streaming companies' reliance on sharing and selling personal information for advertising purposes, as detailed in lengthy privacy statements, and in voluminous documentation to marketers, combined with confusing language in privacy statements and a lack of clarity regarding what is "personal information," puts consumers at risk. It is not clear that companies are complying with technical transparency requirements or the spirit of the CCPA.

The Trade Desk, which does not even appear to have registered as a data broker in the state of California,²⁵ but which seems very much to function as one including in partnering with streaming companies like Roku, does not have a very transparent or consistent privacy statement. Near the top of its statement, it refers to certain information it collects for ads as "pseudonymous" – such as IP addresses and unique identifiers that most laws define as personal information. Then later, after much scrolling to a California privacy section, such information is defined differently as personal information.²⁶

Amazon, which consistently maintains it does not "sell" information, nonetheless discloses that it provides a variety of personal information for the purposes of cross-contextual advertising. Sometimes it defines this information as personal information – such as in its state-specific notices – and at other times it uses confusing language and seeks to describe advertising IDs, device identifiers, and other unique identifiers as information that does not "directly identify" a user.²⁷ These differing representations are not fully transparent with users, and seem to contradict the spirit and possibly the letter of the CCPA.

comply with the consumer's request and forward the request to any other person to whom the third party has made the personal information available during that time period."

²⁵ California law requires that data brokers register, among other requirements. A data broker is "business that knowingly collects and sells to third parties the personal information of a consumer with whom the business does not have a direct relationship." Ca. Civ. Code § 1798.99.80. See 2024 and 2023 Data Broker Registrants: California Privacy Protection Agency, "Information for Data Brokers," https://coppa.ca.gov/data_brokers/ (last accessed Sep. 3, 2024).

²⁶ Amazon, "Amazon.com Privacy Notice," <https://www.thetradedesk.com/us/privacy?preFilter=inventory> (updated Apr. 12, 2024).

²⁷ Amazon "Use of Third-Party Advertising Services," https://www.amazon.com/gp/help/customer/display.html?nodeId=468496&ref_=footer_privacy (updated Mar. 31, 2024).

D. Broad Information Sharing and Profiling for Related Advertising Purposes May Limit Effectiveness of Opt-Outs, Especially with Clean-Room Technology

There is also a massive ecosystem of information sharing that appears to skirt the edges of privacy law – information sharing for ad attribution or related “business purposes” and ostensibly pseudonymous or deidentified information sharing in clean rooms, as well as increasing profiling at the individual and household level. While this may not be an obvious violation of the CCPA, it does appear to undermine the law’s effectiveness at giving consumers control, especially over the sale and sharing of their information for cross-contextual behavioral advertisements.

Roku, which purports to enable logged-in customers to opt out of cross-contextual behavioral advertising on all devices, or on each device in a privacy settings menu,²⁸ nonetheless considers a lot of information transfer to be outside the scope of sale or sharing. Analytics information seems to be out of scope, even though much analytics information can be used to further consumer profiles and targeted advertising. In addition, the wide variety of information used for ad-attribution reporting involves demographic and other information, including at the household level (which is personal information under California law).²⁹

Further, with a move to clean-room technology to cross-target ads across services and properties, it is even less clear that consumers’ wishes to opt out of tracking and sharing of their information for targeting purposes are being honored. Businesses assert such technology complies with CCPA, even if there is an opt out, because ostensibly only deidentified (or pseudonymized) personal information is shared. Yet the whole purpose of clean-room technology is to enable third-party advertisers to target advertising to individuals and individual devices more effectively. As Roku explains, “[p]ublishers can now use Roku platform signals to enable advertisers to target audiences and measure

²⁸ Roku, “Your Privacy Choices,” <https://privacy.roku.com/info/ccpa> (accessed Sep. 3, 2024).

²⁹ Roku’s privacy policy states: “We work with advertising measurement providers and their service providers to help us and our advertisers understand information about the content and ads viewed, and the effectiveness of ad campaigns, including the audience that saw their ads and how they responded. These measurement providers collect or receive information about your viewing of or interaction with content and ads, including ads that you view within Roku’s Channels and Third-Party Channels, as well as the content and ads that you view through your Roku TV model’s antenna and connected devices (if Roku’s Smart TV experience is enabled), and ads you view on other websites, mobile apps, and connected devices (including Smart TVs) to which Roku provides advertising services. We may also disclose your demographics data and audience segments (e.g., sports fans, sitcom enthusiasts, cord cutters, etc.) with advertising measurement providers and their service providers.

Measurement providers use your information to create statistics about what content and ads are being watched – for example, to help them and their clients understand the audience viewing the content or ads, and to measure the effectiveness of the ads.

Roku, through its advertising services, provides measurement and analytics solutions to other companies. In providing these services, we analyze and reorganize ad campaign data from these companies and provide analytics reports to help them better understand the audience that viewed the company’s ads and whether those viewers belong to the same household.” Roku, “Privacy Policy,” <https://docs.roku.com/published/userprivacypolicy/en/us> (updated July 1, 2024).

campaign performance without relying on cookies. Additionally, FreeWheel and Roku will rely on data clean room technology to enable the activation of additional data sets providing better measurement and monetization to publishers and agencies.”³⁰ If an individual opt outs under CCPA, but their (ostensibly no longer personal) information is nonetheless shared in a clean room, the result of which they are profiled and targeted for ads, their wishes do not appear to have been respected. The individuals’ desire to not have their information shared for advertising purposes feels moot, as the end result is the same.

In addition, streaming companies’ marketing materials show an ever-increasing focus on profiling, including using AI or automated decision-making technologies. This is a privacy concern as well, and the California Privacy Protection Agency has offered some draft/for-discussion proposals regarding the use of automated decision making for profiling.³¹ Businesses would need to conduct risk assessments when they use automated decision making for profiling for the purposes of behavioral advertising. They would also have to present pre-use notices to consumers prominently and conspicuously, and may need to provide opt-out rights as well.³² While these are not current legal requirements, they highlight a gap in current privacy protections and – if adopted into regulations – will require changing business practices.

E. Currently, Privacy Preferences and Choices May Not Be Effectively Honored

The data ecosystem is extremely complex in the smart TV space. Third-party sharing, and the development of individual and household profiling, appear to be increasingly the norm, among streaming companies, data brokers, and other entities (e.g., grocery stores), that from a consumers’ perspective are totally unrelated.³³ Streaming companies inform individuals that information is shared with their consent, or that they may opt-out of information sharing they do not like. However, while consumers typically “consent” in the same moment that they sign up for a service (requiring no additional effort), opting out is not easy – per companies’ own policies and directions, it may require multiple opt-outs on a smart TV to opt out of the device and the apps’ collection, not to mention separately opting out of physical data brokers who buy and sell offline

³⁰ Roku Advertising, “Now Available to FreeWheel Customers: Roku’s Leading Ad Tech,” (Jul. 12, 2023), <https://advertising.roku.com/learn/resources/now-available-to-freewheel-customers-rokus-leading-ad-tech>.

³¹ Under some draft proposed regulations, “Profiling” means any form of automated processing of personal information to evaluate certain personal aspects relating to a natural person and in particular to analyze or predict aspects concerning that natural person’s intelligence, ability, aptitude, performance at work, economic situation; health, including mental health; personal preferences, interests, reliability, predispositions, behavior, location, or movements.” California Privacy Protection Agency, “Draft Risk Assessment and Automated Decisionmaking Technology Regulations,” (Mar. 2024) https://coppa.ca.gov/meetings/materials/20240308_item4_draft_risk.pdf.

³² *Id.*, § 7200, 7220, 7221.

³³ Alyssa Boyle, “Netflix Announces New Ad Measurement Options Ahead Of The Upfronts,” AdExchanger (Apr. 19, 2024) <https://www.adexchanger.com/tv/netflix-announces-new-ad-measurement-options-ahead-of-the-upfronts/>.

information that may be combined. Opting out may not even be effective, if companies interpret certain collection mechanisms or data points not to be “personal information” (even though the law is fairly clear that if information can be used to reasonably identify an individual, it is “personal”), if companies fail to share opt-outs with partners, or if companies create in-house profiles that are still used to targeted individuals.

III. Regulators and Lawmakers Can Help Enforce and Strengthen Privacy Protections

The privacy practices of streaming companies leave much to be desired. The California Attorney General’s attention to these companies, announced in January 2024, is sorely needed – especially to address practices regarding opt-outs, their ease, universality, and applicability to multiple parties and devices. Attention should also be paid to companies’ privacy statements and the clarity and consistency within them. Further, California lawmakers should consider tightening exceptions and sharing for related advertising practices, especially with the rise of clean-room technology and other mechanisms seemingly designed in large part to avoid current regulations. And they should consider what regulations will protect consumers from behavioral ad profiling using AI.

CCPA and Children

For children under 16, the CCPA requires that businesses get opt-in consent before selling personal information or sharing it for cross-contextual behavioral advertisements. There is supposed to be “affirmative authorization” before such data use and sharing occurs. If a business has actual knowledge, including willful disregard, that a consumer is under 16, it is a violation to sell or share their personal information without their consent if they are 13-15, or their parent’s consent if they are under 13.³⁴

It is unclear how companies are protecting kids on their streaming services, especially if those kids are not logged into a child-specific account. This is true even of brands that otherwise purport to comply with COPPA. Disney, for example, notes its compliance under a COPPA safe harbor program, but indicates this may be limited to “Child Directed Websites and Mobile Apps” and therefore may not include the Disney+ streaming service.³⁵ Disney says they protect children on child-specific accounts, and explain that some of their properties are “primarily targeted to children.” But Disney distinguishes between its sites and applications that are “primarily targeted at children, and others that are intended for users of all ages and their families.”³⁶ It is not clear that Disney protects children watching content “for users of all ages” on Disney+. But children do watch family content – and watch it on family profiles, and watch it without

³⁴ CCPA § 1798.120(c).

³⁵ The Walt Disney Company, “Children’s Privacy Policy,” <https://privacy.thewaltdisneycompany.com/en/for-parents/childrens-online-privacy-policy/> (updated Mar. 11, 2022).

³⁶ *Id.*

their families present. Disney’s marketing materials evidence a large amount of research into the streaming habits of families, and they demonstrate that the company knows that many children watch when their parents are not present. One recent company report notes that less than half of families all watch together; and that 41 percent of families “stream solo.”³⁷

Also confusing is Disney’s data-broker partner practices. LiveRamp, which partners with Disney, discloses voluminous selling and sharing of personal information. While it claims it does not “knowingly collect, sell, or share the personal information of consumers under 16 years of age,” it does purport to offer opt-out rights to parents and guardians. Presumably, this is why the default is that one has to opt-out vs opt-in (as required for viewers under 16). But the amount of information required for a parent to make an opt-out request is at odds with CCPA requirements, to say the least – requiring an “upload [of] a document proving your custodial guardianship of your child if you are the Parent/Legal Guardian.”³⁸

Children, including those up to age 16, are supposed to be protected as a default under CCPA. Especially given marketing materials highlighting household profiles and the understanding of youth viewers, it is not clear that children are receiving these protections, except in narrowly cabined circumstances. Especially in the context of advertising and profiling, it is not obvious how streaming services purport to get consent. Further, if consent is bundled into a sign-up to or a set-up of a service – and likely involves consent to the sharing of information with all manner of third parties – it is not obvious how informed or true such consent is. And, just as it is difficult for adults to opt out, it seems equally difficult for children to achieve that same status.

³⁷ Karlene Lukovitz, “Disney IDs (And Promotes) Family Streaming Audience Segments,” Media Daily News (Dec. 20, 2023), <https://www.mediapost.com/publications/article/392064/disney-ids-and-promotes-family-streaming-audienc.htm> .

³⁸ LiveRamp, “California Privacy Notice,” <https://liveramp.com/privacy/california-privacy-notice/> (updated Aug. 26, 2024); LiveRamp, “Your Privacy Choices,” <https://liveramp.com/privacy/my-privacy-choices/> (accessed Sep. 3, 2024); LiveRamp/TrustArc Parent/Legal Guardian Portal,” <https://submit-irm.trustarc.com/services/validation/24390193-fcd2-4df3-a75e-194e09417946> (accessed Sep. 3, 2024).