



November 1, 2023

Representative Calvin T. Callahan
Chair of the Wisconsin Assembly Committee
on Consumer Protection
Room 15 West
State Capitol
PO Box 8952
Madison, WI 53708

Representative Scott L. Johnson
Vice Chair of the Wisconsin Assembly Committee
on Consumer Protection
Room 109 West
State Capitol
PO Box 8952
Madison, WI 53708

Representative Shannon Zimmerman
Room 324 East
State Capitol
PO Box 8953
Madison, WI 53708

Representative Nate L. Gustafson
Room 420 North
State Capitol
PO Box 8952
Madison, WI 53708

RE: Oppose Assembly Amendment 1 to AB 466

Dear Chair Callahan, Vice Chair Johnson, Rep. Zimmerman, and Rep. Gustafson:

On behalf of the advertising industry, we write to oppose Assembly Amendment 1 to AB 466, and we write to provide input on some of our concerns with the amendment.¹ As described in more detail below, the amendment contains several provisions that are out-of-step with existing privacy laws in ways that would create disharmony across state requirements, complicate compliance efforts for businesses, and confuse and frustrate consumers by hindering their access to free and low-cost products and services online. We ask you to decline to adopt Amendment 1 to the AB 466 and to instead look to harmonize the bill's approach to privacy with other state privacy laws.

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies across the country. These companies range from small businesses to household brands, long-standing and emerging publishers, advertising agencies, and technology providers. Our combined membership includes more than 2,500 companies that power the commercial Internet, which accounted for 12 percent of total U.S. gross domestic product ("GDP") in 2020.² By one estimate, over 115,000 jobs in Wisconsin are related to the ad-subsidized Internet.³ We would welcome the opportunity to engage with you further on the non-exhaustive list of issues with Amendment 1 to the bill that we outline here.

¹ Amendment 1 to Wisconsin AB 466 (Reg. Sess., 2023), located [here](#).

² John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 15 (Oct. 18, 2021), located [here](#) (hereinafter, "Deighton & Kornfeld 2021").

³ *Id.* at 136.

I. Wisconsin Should Take Steps to Harmonize its Approach to Privacy with Other State Laws

A patchwork of differing privacy standards across the states creates significant costs for businesses and consumers alike. Efforts to harmonize draft privacy legislation with existing privacy laws are critical to minimizing costs of compliance and fostering similar privacy rights for consumers no matter where they live. One way that Amendment 1 to AB 466 would diverge from the majority of existing state privacy laws is by permitting the Wisconsin Attorney General (“Department”) to issue regulations to implement the bill’s provisions.⁴ Permitting a state agency to issue regulations to further expound on the requirements in the bill will lead to more divergence in Wisconsin’s privacy standards rather than unifying standards across the nation. The bill should be updated to remove the Department’s regulatory authority to further the goal of maintaining consistency across state privacy requirements.

Compliance costs associated with divergent privacy laws are significant. To make the point: a regulatory impact assessment of the California Consumer Privacy Act of 2018 concluded that the initial compliance costs to California firms would be \$55 billion.⁵ Another recent study found that a consumer data privacy proposal in a different state considering privacy legislation would have generated a direct initial compliance cost of \$6.2 billion to \$21 billion and an ongoing annual compliance costs of \$4.6 billion to \$12.7 billion for the state.⁶ Other studies confirm the staggering costs associated with varying state privacy standards. One report found that state privacy laws could impose out-of-state costs of between \$98 billion and \$112 billion annually, with costs exceeding \$1 trillion dollars over a 10-year period, and with small businesses shouldering a significant portion of the compliance cost burden.⁷ Wisconsin should not add to this compliance bill for businesses and should instead opt for an approach to data privacy that is in harmony with already existing state privacy laws.

II. Safeguards for Opt-Out Preference Signals Should Explicitly Prohibit Default Settings

Amendment 1 to AB 466 would add a requirement for controllers to honor requests to opt out of processing of personal data for purposes of targeted advertising or sales through an opt-out preference signal.⁸ According to the amendment, on or before July 1, 2026, such opt-out preference signals must require the consumer to make an affirmative and unambiguous choice to opt out of any processing of the consumer’s personal data; be easy to use by the average consumer; enable the controller to accurately determine whether the consumer is a Wisconsin resident and whether the consumer made a legitimate opt-out request; and not unfairly advantage one controller over another. However, these requirements do not explicitly state that an opt-out preference signal cannot be set as a default mechanism.⁹ This protection against default opt-out preference signal settings is a safeguard present in the majority of other state privacy laws that permit opt-out requests through such mechanisms.¹⁰

⁴ Amendment 1 to AB 466 at Item 25.

⁵ See State of California Department of Justice Office of the Attorney General, *Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations*, 11 (Aug. 2019), located [here](#).

⁶ See Florida Tax Watch, *Who Knows What? An Independent Analysis of the Potential Effects of Consumer Data Privacy Legislation in Florida*, 2 (Oct. 2021), located [here](#).

⁷ Daniel Castro, Luke Dascoli, and Gillian Diebold, *The Looming Cost of a Patchwork of State Privacy Laws* (Jan. 24, 2022), located [here](#) (finding that small businesses would bear approximately \$20-23 billion of the out-of-state cost burden associated with state privacy law compliance annually).

⁸ Amendment 1 to AB 466 at Item 13, 16.

⁹ *Id.* at Item 16.

¹⁰ See, e.g., Colorado Privacy Act, Colo. Rev. Stat. § 6-1-1313(2)(c); Conn. Gen. Stat. § 42-520(c)(1)(A)(ii)(II).

It is of critical importance to ensure opt-out preference signals are tamperproof and are accurate representations of consumers' choices. Under the present terms of Amendment 1, which do not include a specific safeguard precluding default settings, there would be no means to validate whether a signal is a true expression of a consumer's preference, whether that signal can be tampered with, or if it may be set by intermediaries by default in a way that that does not align with consumer-enabled preferences. Opt-out preference signals and related tools must be subject to baseline standards to ensure they can effectively protect consumers and accurately signal consumer preferences free from interference. We therefore ask you to add language to the bill to ensure that opt-out preference signals clearly represent the consumer's affirmative, freely given, and unambiguous choice to opt-out, and not set as default on by an intermediary such as a browser.

III. The Data-Driven and Ad-Supported Online Ecosystem Benefits Wisconsin Residents and Fuels Economic Growth

Over the past several decades, data-driven advertising has created a platform for innovation and tremendous growth opportunities. A recent study found that the Internet economy's contribution to the United States' GDP grew 22 percent per year since 2016, in a national economy that grows between two to three percent per year.¹¹ In 2020 alone, it contributed \$2.45 trillion to the U.S.'s \$21.18 trillion GDP, which marks an eightfold growth from the Internet's contribution to GDP in 2008 of \$300 billion.¹² Additionally, more than 17 million jobs in the U.S. were generated by the commercial Internet in 2020, 7 million more than four years prior.¹³ More Internet jobs, 38 percent, were created by small firms and self-employed individuals than by the largest Internet companies, which generated 34 percent.¹⁴ The same study found that the ad-supported Internet supported 117,703 full-time jobs across Wisconsin, more than double the number of Internet-driven jobs from 2016.¹⁵

A. Advertising Fuels Economic Growth

Data-driven advertising supports a competitive online marketplace and contributes to tremendous economic growth. Overly restrictive legislation that significantly hinders certain advertising practices, such as third-party tracking, could yield tens of billions of dollars in losses for the U.S. economy—and, importantly, not just in the advertising sector.¹⁶ One recent study found that “[t]he U.S. open web’s independent publishers and companies reliant on open web tech would lose between \$32 and \$39 billion in annual revenue by 2025” if third-party tracking were to end “without mitigation.”¹⁷ That same study found that the lost revenue would become absorbed by “walled gardens,” or entrenched market players, thereby consolidating power and revenue in a small group of powerful entities.¹⁸ Smaller news and information publishers, multi-genre content publishers, and specialized research and user-generated content would lose more than an estimated \$15.5 billion in revenue.¹⁹ According to one study, “[b]y the numbers, small advertisers dominate digital advertising, precisely because online advertising offers the opportunity for low-cost outreach to potential customers.”²⁰ Absent cost-effective avenues for these smaller advertisers to reach the public,

¹¹ Deighton & Kornfeld 2021 at 5.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 6.

¹⁵ Compare *id.* at 136 (Oct. 18, 2021) with John Deighton, Leora Kornfeld, and Marlon Gerra, *Economic Value of the Advertising-Supported Internet Ecosystem*, INTERACTIVE ADVERTISING BUREAU, 106 (2017), located [here](#) (finding that Internet employment contributed 45,246 full-time jobs to the Wisconsin workforce in 2016 and 117,703 jobs in 2020).

¹⁶ See John Deighton, *The Socioeconomic Impact of Internet Tracking* 4 (Feb. 2020), located [here](#).

¹⁷ *Id.* at 34.

¹⁸ *Id.* at 15-16.

¹⁹ *Id.* at 28.

²⁰ J. Howard Beales & Andrew Stivers, *An Information Economy Without Data*, 9 (2022), located [here](#).

businesses focused on digital or online-only strategies would suffer immensely in a world where digital advertising is unnecessarily encumbered by overly-broad regulations.²¹ Data-driven advertising has thus helped to stratify economic market power and foster competition, ensuring that smaller online publishers can remain competitive with large global technology companies.

B. Advertising Supports Wisconsin Residents' Access to Online Services and Content

In addition to providing economic benefits, data-driven advertising subsidizes the vast and varied free and low-cost content publishers offer consumers through the Internet, including public health announcements, news, and cutting-edge information. Advertising revenue is an important source of funds for digital publishers,²² and decreased advertising spends directly translate into lost profits for those outlets. Revenues from online advertising based on the responsible use of data support the cost of content that publishers provide and consumers value and expect.²³ And, consumers tell us that. In fact, consumers valued the benefit they receive from digital advertising-subsidized online content at \$1,404 per year in 2020—a 17% increase from 2016.²⁴ Another study found that the free and low-cost goods and services consumers receive via the ad-supported Internet amount to approximately \$30,000 of value per year, measured in 2017 dollars.²⁵ Legislative frameworks that inhibit or restrict digital advertising can cripple news sites, blogs, online encyclopedias, and other vital information repositories, and these unintended consequences also translate into a new tax on consumers. The effects of such legislative frameworks ultimately harm consumers by reducing the availability of free or low-cost educational content that is available online.

C. Consumers Prefer Personalized Ads & Ad-Supported Digital Content and Media

Consumers, across income levels and geography, embrace the ad-supported Internet and use it to create value in all areas of life. Importantly, research demonstrates that consumers are generally not reluctant to participate online due to data-driven advertising and marketing practices. One study found more than half of consumers (53 percent) desire relevant ads, and a significant majority (86 percent) desire tailored discounts for online products and services.²⁶ Additionally, in a recent Zogby survey conducted by the Digital Advertising Alliance, 90 percent of consumers stated that free content was important to the overall value of the Internet, and 85 percent surveyed stated they prefer the existing ad-supported model, where most content is free, rather than a non-ad supported Internet where consumers must pay for most content.²⁷ Indeed, as the Federal Trade Commission noted in one of its submissions to the National Telecommunications and Information Administration, if a subscription-based model replaces the ad-based model of the Internet, many consumers likely will not be able to afford access to, or will be reluctant to utilize, all of the information, products, and services they rely on today and that will become available in the future.²⁸ A subscription model would diminish the number of channels available to access information, increase costs to consumers, curtail access to a diversity of online voices, and create an overall Internet environment where consumers with means can

²¹ See *id.* at 8.

²² See Howard Beales, *The Value of Behavioral Targeting* 3 (2010), located [here](#).

²³ See John Deighton & Peter A. Johnson, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the US Economy* (2015), located [here](#).

²⁴ Digital Advertising Alliance, *Americans Value Free Ad-Supported Online Services at \$1,400/Year; Annual Value Jumps More Than \$200 Since 2016* (Sept. 28, 2020), located [here](#).

²⁵ J. Howard Beales & Andrew Stivers, *An Information Economy Without Data*, 2 (2022), located [here](#).

²⁶ Mark Sableman, Heather Shoenberger & Esther Thorson, *Consumer Attitudes Toward Relevant Online Behavioral Advertising: Crucial Evidence in the Data Privacy Debates* (2013), located [here](#).

²⁷ Digital Advertising Alliance, *Zogby Analytics Public Opinion Survey on Value of the Ad-Supported Internet Summary Report* (May 2016), located [here](#).

²⁸ Federal Trade Commission, *In re Developing the Administration's Approach to Consumer Privacy*, 15 (Nov. 13, 2018), located [here](#).

afford to access content, while consumers with less expendable income will be forced to go without access to online resources.

Laws that restrict access to information and economic growth can have lasting and damaging effects. The ability of consumers to provide, and companies to responsibly collect and use, consumer data has been an integral part of the dissemination of information and the fabric of our economy for decades. The collection and use of data are vital to our daily lives, as much of the content we consume over the Internet is powered by open flows of information that are supported by advertising. We therefore respectfully ask you to carefully consider Amendment 1 to AB 466's potential impact on advertising, the consumers who reap the benefits of such advertising, and the overall economy before advancing it through the legislative process.

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We and our members support protecting consumer privacy. We believe, however, that Amendment 1 to AB 466 would make Wisconsin a significant outlier in terms of data privacy requirements when compared to other states in the nation. We therefore respectfully ask you to decline to advance Amendment 1 to AB 466 any further in the legislative process. Thank you in advance for your consideration of this letter.

Sincerely,

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CC: Bill Sponsors and Members of the Wisconsin Assembly Committee on Consumer Protection

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