



March 18, 2024

Senator Anne Carney
Senate Chair of the Joint Standing Committee
on Judiciary
21 Angell Point Road
Cape Elizabeth, ME 04107

Representative Matt Moonen
House Chair of the Joint Standing Committee
on Judiciary
53 Thomas St., #3
Portland, ME 04102

Senator Lisa Keim
1505 Main Street
Dixfield, ME 04224

Representative Margaret O'Neil
21 Sheila Circle
Saco, ME 04072

RE: Feedback on Updated Maine Privacy Proposals

Dear Chair Carney, Chair Moonen, Senator Keim, and Representative O'Neil:

On behalf of the advertising industry, we write to provide additional feedback on privacy proposals that will be discussed in upcoming meetings of the Joint Standing Committee on Judiciary ("Committee"). We and the companies we represent strongly believe consumers deserve meaningful privacy protections supported by reasonable laws and responsible industry policies, and as a result, we support a national, preemptive standard for data privacy. In the absence of such a preemptive federal law, it is critical that states work to harmonize privacy standards to provide consistent protections for consumers and minimize unnecessary compliance costs. We recognize efforts the Committee has made to align its privacy proposals with other state privacy laws. We continue to believe that harmonization across state privacy standards is critical for providing consumers with understandable privacy rights and for minimizing compliance costs for businesses of all sizes. We will provide additional feedback on specific provisions of Maine's privacy proposals as they progress. In the meantime, we offer the following non-exhaustive list of comments to help guide the Committee's discussion and further honing of the draft legislation:

- **Definitions should align with existing state privacy laws.** Definitions in Maine's privacy proposals—particularly for terms such as "personal data," "sensitive data," "publicly available information," and "targeted advertising"—should not unnecessarily deviate from the definitions of those terms in existing state privacy laws. The Committee should take steps to harmonize Maine's privacy definitions with other laws.
- **Businesses should not be required to name individual data partners in notices and consent requests.** Maine should not require businesses to disclose the names of third-party partners in consumer disclosures or consent requests. Such a requirement would impose an unreasonable restraint on commerce by requiring businesses to maintain and constantly update ephemeral lists of entities. Such a requirement could also pose competition concerns and force businesses to violate confidentiality clauses they maintain in contracts with partners. Requiring businesses to disclose

names of third parties would not provide consumers with meaningful protections, but rather would only lengthen the notices they must read and cause notice fatigue.

- **Required links should be interoperable with other state privacy requirements.** Maine should not require specific text for links for consumers to exercise privacy rights. Prescriptive mandates for particular phrasing or text for links businesses must use to provide consumers with the right to opt out run the risk of conflicting with other state laws that maintain different text requirements for such links. Instead of requiring specific text, a privacy law should require businesses to offer an opt out mechanism and should provide flexibility for the ways in which businesses can present the mechanism to consumers.
- **Maine should not impose overly restrictive requirements on advertising to U-18s.** As Maine considers privacy legislation, we encourage the Committee to acknowledge the different ways minors of certain age ranges interact with and derive benefit from the Internet. We encourage the Committee not to adopt a one-size-fits-all approach that treats a 7-year-old the same as a 17-year-old. Targeted advertising to older minors, for example, helps them access information and resources that can be foundational to their maturation, development, and education. Limiting or prohibiting targeted advertising to minors would inhibit Maine's teenagers from accessing information about universities, trade programs, military recruitment, job opportunities, cars, apartments, and other resources for their future. It would also restrict them from being active participants in the digital economy, which could have a significant and negative impact on Maine businesses. The Committee should align its approach to personal data associated with minors with the approaches taken in 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, 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 2020.¹ By one estimate, over 20,000 jobs in Maine are related to the ad-subsidized Internet.² We would welcome the opportunity to meet with the Committee to further discuss the points we address in this letter.

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¹ John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 15 (Oct. 18, 2021), located [here](#).

² *Id.* at 127.

With more than a decade's worth of hands-on experience related to consumer privacy and controls, we would welcome the opportunity to engage further and work with you to hone a workable privacy framework that benefits Maine businesses and consumers alike. Thank you for your consideration of this request.

Sincerely,

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