June 14, 2024

Office of Governor Dan McKee
82 Smith Street
Providence, RI 02903

RE: VETO REQUEST – HB 7787

Dear Governor McKee:

On behalf of the advertising industry, we respectfully ask that you **VETO** HB 7787, Sub. A (hereinafter, "HB 7787").[1] We offer this letter to express our non-exhaustive list of concerns about this legislation. HB 7787 was held for further study on March 28, 2024, then reconsidered June 6, 2024 in the House, and passed both chambers within a week without providing sufficient time needed for interested stakeholders to engage to address concerns with the legislation. More time is sorely needed for a fulsome discussion and review of the bill's terms. Hastily enacting broadly construed privacy legislation that diverges sharply from every other state privacy law will significantly and detrimentally impact Rhode Island consumers and businesses alike.

We and the companies we represent, many of whom do substantial business in Rhode Island, strongly believe consumers deserve meaningful privacy protections supported by reasonable government policies. However, HB 7787 contains unclear and confusing provisions and requirements that are significantly out-of-step with other state privacy laws that have been enacted to date. HB 7787 would consequently create significant impediments to doing business in the Rhode Island without providing meaningful privacy protections or benefits to Rhode Island consumers. We provide the comments below to illustrate how HB 7787's divergent terms will, if enacted, hinder consumers' access to Internet-based resources in Rhode Island and impede business operations in the state.

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies across the country, including Rhode Island. 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.[2] Our group has more than a decade's worth of hands-on experience it can bring to bear on matters related to consumer privacy and controls. We would welcome the opportunity to engage with the Senate further on the points we discuss in this letter.

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[1] Rhode Island HB 7787, Sub. A (Gen. Sess. 2024), located here (hereinafter, "HB 7787").
[2] John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 15 (Oct. 18, 2021), located at https://www.iab.com/wp-content/uploads/2021/10/IAB_Economic_Impact_of_the_Market-Making_Internet_Study_2021-10.pdf (hereinafter, "Deighton & Kornfeld 2021").

I. HB 7787 Would Create Confusion Regarding the Type of Data That Is Subject to Regulation and the Kinds of Rights That Are Granted to Consumers

As drafted, HB 7787 would create requirements for controllers that process "personal data" and meet certain revenue or data processing thresholds.[3] The bill would also place certain requirements on controllers that process "personally identifiable information."[4] However, the bill would provide no definition for the term "personally identifiable information" or provide any clarity regarding how it differs from "personal data." The bill thus does not make clear what kind of data would be subject to regulation under its provisions.

In addition, the bill would create explicit rights for consumers to opt out of the processing of personal data for targeted advertising, the sale of personal data, and profiling, in addition to other rights.[5] The bill does not appear to create an independent right to opt out of personal data *collection*, but it mentions this supposed "right" several times throughout its text.[6] A right to opt out of data collection would starkly diverge from every other state that has passed privacy legislation to date. No other state privacy law provides for this right, as such a right would severely diminish the ability of Rhode Island consumers to access products, services, information, and resources that would otherwise be at their fingertips. Including a right to opt out of data collection in Rhode Island's privacy bill would virtually ensure that Rhode Island consumers have vastly different opportunities and experiences with the Internet than their counterparts in neighboring states such as Connecticut and Massachusetts.

HB 7787 should be amended to align with other state privacy laws by removing all references to personally identifiable information and references to a right to opt out of data collection. Efforts to harmonize state 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. A patchwork of differing privacy standards across the states creates significant costs for businesses and consumers alike. 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.[7] 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 ongoing annual compliance costs of $4.6 billion to $12.7 billion for the state.[8] Other studies confirm the staggering costs associated with varying state privacy standards. One report

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[3] *See, e.g.,* HB 7787, § 6-48.1-5(a).
[4] *See, e.g., id.* at § 6-48.1-3(a).
[5] *Id*. at § 6-48.1-5(e)(4).
[6] *See, e.g., id.* at §§ 6-48.1-5(c), 6-48.1-7(v).
[7] *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 at https://dof.ca.gov/wp-content/uploads/sites/352/Forecasting/Economics/Documents/CCPA_Regulations-SRIA-DOF.pdf.
[8] *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 at https://floridataxwatch.org/DesktopModules/EasyDNNNews/DocumentDownload.ashx?portalid=210&moduleid=34407&articleid=19090&documentid=986.

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.[9] Rhode Island 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. HB 7787's Requirement to Disclose Names of Specific Current and Future Third-Party Recipients of Data Would Be Operationally Infeasible, Interfere with Legitimate Business, and Create Competition Concerns

HB 7787 also diverges significantly from all other state privacy laws by requiring controllers to "identify all third parties to whom the controller has sold *or may sell* customers' personally identifiable information."[10] The vast majority of other states that have enacted privacy laws do not include the impractical requirement of disclosing the names of partners or customers in a privacy notice. Instead, most other state privacy laws require companies to disclose the *categories* of third parties to whom they transfer personal data rather than the specific names of such third parties themselves in response to a consumer access request,[11] and no other state in the nation has required controllers to identify the names of third parties to which they *may* sell data in the future.

Requiring documentation or disclosure of the names of entities is extraordinarily burdensome, as controllers change business partners frequently, and companies regularly merge with others and change names. For instance, this requirement would either force a controller to refrain from engaging in commerce with a new business-customer until its consumer disclosures are updated or risk violating the law. This is an unreasonable restraint. In addition, the requirement to identify the names of third parties that controllers *may* sell data to in HB 7787 is impractical and potentially impossible to satisfy, as controllers may have no sense of whom they may seek as a partner in the future. From an operational standpoint, constantly updating a list of all third-party partners a controller works with, or could potentially work with in the future, would take significant resources and time away from efforts to comply with other new privacy directives in HB 7797. Controllers may be forced to jeopardize new business opportunities and relationships just to compile, maintain, update, and distribute these ephemeral lists.

Even international privacy standards like the European Union's General Data Protection Regulation ("GDPR") do not require burdensome disclosures of specific third parties in response to data subject access requests, according to the text of the law. Mandating that companies disclose the names of their third-party partners could obligate companies to abridge confidentiality clauses they maintain in their contracts with partners and expose proprietary business information to their

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[9] Daniel Castro, Luke Dascoli, and Gillian Diebold, *The Looming Cost of a Patchwork of State Privacy Laws* (Jan. 24, 2022), located at https://itif.org/publications/2022/01/24/looming-cost-patchwork-state-privacy-laws (finding that small businesses would bear approximately $20-23 billion of the out-of-state cost burden associated with state privacy law compliance annually).

[10] HB 7787, § 6-48.1-3(a)(2) (emphasis added).

[11] *See, e.g.,* Cal. Civ. Code § 1798.110; Va. Code Ann. § 59.1-578(C); Colo. Rev. Stat. § 6-1-1308(1)(a); Conn. Gen. Stat. § 42-520(c)(5); Utah Rev. Stat § 16-61-302(1)(a).

competitors. Additionally, HB 7787 would include no protections for a controller's trade secrets in the context of this requirement.

Finally, the consumer benefit that would accrue from receipt of a list of third-party partners to whom a controller sells data would be minimal at best. For these reasons, we encourage the Senate to strike the onerous language requiring disclosure of a list of specific third parties, which severely diverges from the approach to disclosures taken in almost all existing state privacy laws. To align HB 7797 with other state privacy laws, the bill should require disclosure of the categories of third parties to which the controller has already sold data rather than the names of such third parties themselves, or the names of third parties who could potentially receive data from the controller in the future.

Bills like HB 7787 that are likely to impact both a large volume of consumers and a great portion of Rhode Island's economy should be carefully calibrated to ensure strong consumer protection while allowing beneficial offerings that depend on data to persist. While we agree that Rhode Island consumers deserve meaningful privacy protections supported by reasonable laws and responsible industry practices, HB 7787 would codify unnecessary and ambiguous restrictions that will hinder Rhode Islanders' ability to access vital services in the marketplace.

We strongly urge you to **VETO HB 7787.**

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Thank you in advance for your consideration of this request.

Sincerely,

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