



March 2, 2023

Representative Giovanni Capriglione  
EXT E1. 506 Texas House of Representatives  
P.O. Box 2910  
Austin, TX 78768

Representative Oscar Longoria  
Chair of the Texas House Committee on Business & Industry  
CAP 4N.4 Texas House of Representatives  
P.O. Box 2910  
Austin, TX 78768

Representative Cody Vasut  
Vice Chair of the Texas House Committee on Business & Industry  
EXT E2.712 Texas House of Representatives  
P.O. Box 2910  
Austin, TX 78768

**RE: Texas HB 4 – Oppose**

Dear Representative Capriglione, Representative Longoria, and Representative Vasut:

On behalf of the advertising industry, we provide suggested changes to Texas HB 4.<sup>1</sup> We and the companies we represent, many of whom do substantial business in Texas, strongly believe consumers deserve meaningful privacy protections supported by reasonable government policies. However, we are concerned that state efforts to pass privacy laws will only add to the increasingly complex privacy landscape for both consumers and businesses throughout the country. We and our members therefore support a national standard for data privacy at the federal level. As presently drafted, HB 4 contains provisions that are out-of-step with privacy laws in other states. We therefore

---

<sup>1</sup> Texas HB 4, 88th Legis. Reg. Sess. (2023), located [here](#) (hereinafter, “HB 4”).

encourage Texas legislature to update the bill so it more closely aligns with recently enacted legislation in the majority of other states, such as the Virginia Consumer Data Protection Act (“VCDPA”).<sup>2</sup>

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.<sup>3</sup> By one estimate, over half a million jobs in Texas are related to the ad-subsidized Internet.<sup>4</sup> 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 you further on our suggested amendments to the bill outlined here.

## **I. Texas Should Take Steps to Harmonize its Approach to Privacy with Other State Laws**

Rather than adopt HB 4 as is, we encourage the legislature to consider a framework for data privacy that better aligns with recently enacted privacy legislation in other states, such as the VCDPA. In the current absence of a national standard for data privacy at the federal level, it is critical for legislators to seriously consider the costs to both consumers and businesses that will accrue from a patchwork of differing privacy standards across the states. Harmonization with existing privacy laws is critical to minimizing costs of compliance and fostering similar consumer privacy rights for consumers, particularly in a state like Texas that has one of the largest economies in U.S. states and in the world.<sup>5</sup>

One way that HB 4 presently diverges from existing state privacy laws is its definitions of key terms—“sale of personal data” and “personal data.” Currently, the bill defines “sale of personal data” to include “*the sharing, disclosing, or transferring of personal data for monetary or other valuable consideration.*”<sup>6</sup> Including the language “the sharing, disclosing, or transferring” and “or other valuable consideration” increases compliance burdens for businesses by introducing unnecessary ambiguity to what constitutes a sale and diverges from existing “sale” definitions, like in the VCDPA. Meanwhile, this additional language fails to provide a commensurate benefit or protection to consumers. The bill should harmonize its definition with that of the VCDPA and define sale to mean “the exchange of personal data for monetary consideration.”

Similarly, the bill diverges in other key terms by explicitly including pseudonymous data and sensitive data in the definition of “personal data.” This approach would create confusion. Including pseudonymous and sensitive data in the definition of personal data fails to heighten protections for

---

<sup>2</sup> See, e.g., Virginia Consumer Data Protection Act, Va. Code Ann. §§ 59.1-575 et. seq.

<sup>3</sup> John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 134-35 (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](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”).

<sup>4</sup> *Id.* at 132.

<sup>5</sup> See State of Texas Governor’s Office, *Texas Economic Development – Texas Economic Snapshot*, located [here](#) (stating that “Texas is ranked as the ninth-largest economy among nations of the world, larger than Canada, Korea, Russia and Australia.”).

<sup>6</sup> HB 4 at Sec. 541.002(28) (emphasis added).

consumers, because existing laws like the VCDPA already treat these forms of data as personal data. By departing from established standards in other state laws that do not expressly include these terms in their “personal data” definitions, HB 4 would generate more confusion among consumers, businesses, and regulators in an already crowded field of definitions of “personal data.” Instead, we recommend that you amend HB 4 to remove the express inclusion of pseudonymous and sensitive data from the definition of personal data.

Absent amendments to HB 4 to unify its approach with existing state privacy laws, the costs to facilitate compliance with divergent state privacy requirements would be significant. To make the point: a regulatory impact assessment of the California Consumer Privacy Act of 2018 (“CCPA”) concluded that the initial compliance costs to California firms for the CCPA *alone* would be \$55 billion.<sup>7</sup> Additionally, a recent study on a proposed privacy bill in a different state found that the proposal would have generated a direct initial compliance cost of between \$6.2 billion to \$21 billion, and an ongoing annual compliance cost of between \$4.6 billion to \$12.7 billion for companies.<sup>8</sup> Other studies confirm the staggering costs associated with different 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 small businesses shouldering a significant portion of the compliance cost burden.<sup>9</sup> Texas should not add to this compliance burden for businesses and should instead opt for an approach to data privacy that is in harmony with already existing state privacy laws.

## **II. The Data-Driven and Ad-Supported Online Ecosystem Benefits Texas 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> More Internet jobs, 38 percent, were created by small firms and self-employed individuals than by the largest Internet companies, which generated

---

<sup>7</sup> See State of California Department of Justice Office of the Attorney General, *Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations* at 11 (Aug. 2019), located at <https://www.oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-isor-appendices.pdf>.

<sup>8</sup> See Florida Tax Watch, *Who Knows What? An Independent Analysis of the Potential Effects of Consumer Data Privacy Legislation in Florida* at 2 (Oct. 2021), located at <https://floridataxwatch.org/DesktopModules/EasyDNNNews/DocumentDownload.ashx?portalid=210&moduleid=34407&articleid=19090&documentid=986>.

<sup>9</sup> 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).

<sup>10</sup> Deighton & Kornfeld 2021 at 5.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

34 percent.<sup>13</sup> The same study found that the ad-supported Internet supported 566,061 full-time jobs across Texas, more than double the number of Internet-driven jobs from 2016.<sup>14</sup>

### **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.<sup>15</sup> 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.”<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.”<sup>19</sup> Absent cost-effective avenues for these smaller advertisers to reach the public, businesses focused on digital or online-only strategies would suffer immensely in a world where digital advertising is unnecessarily encumbered by overly-broad regulations.<sup>20</sup> 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 Texas 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,<sup>21</sup> and decreased advertising spends directly translate into lost profits for those outlets. Revenues from online advertising based on the responsible use of data

---

<sup>13</sup> *Id.* at 6.

<sup>14</sup> Compare *id.* at 134-35 (Oct. 18, 2021), located [here](#) 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 253,097 full-time jobs to the Texas workforce in 2016 and 566,061 jobs in 2020).

<sup>15</sup> See John Deighton, *The Socioeconomic Impact of Internet Tracking* 4 (Feb. 2020), located at <https://www.iab.com/wp-content/uploads/2020/02/The-Socio-Economic-Impact-of-Internet-Tracking.pdf>.

<sup>16</sup> *Id.* at 34.

<sup>17</sup> *Id.* at 15-16.

<sup>18</sup> *Id.* at 28.

<sup>19</sup> J. Howard Beales & Andrew Stivers, *An Information Economy Without Data*, 9 (2022), located [here](#).

<sup>20</sup> See *id.* at 8.

<sup>21</sup> See Howard Beales, *The Value of Behavioral Targeting* 3 (2010), located at [https://www.researchgate.net/profile/Howard-Beales/publication/265266107\\_The\\_Value\\_of\\_Behavioral\\_Targeting/links/599ecccc6fdcc500355d5af/The-Value-of-Behavioral-Targeting.pdf](https://www.researchgate.net/profile/Howard-Beales/publication/265266107_The_Value_of_Behavioral_Targeting/links/599ecccc6fdcc500355d5af/The-Value-of-Behavioral-Targeting.pdf).

support the cost of content that publishers provide and consumers value and expect.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> Indeed, as the Federal Trade Commission noted in its comments to the National Telecommunications and Information Administration, if a subscription-based model replaced the ad-based model, many consumers likely would not be able to afford access to, or would be reluctant to utilize, all of the information, products, and services they rely on today and that will become available in the future.<sup>27</sup>

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 HB 4’s potential impact on advertising, the

---

<sup>22</sup> See John Deighton & Peter A. Johnson, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the US Economy* (2015), located at <https://www.ipc.be/~media/documents/public/markets/the-value-of-data-consequences-for-insight-innovation-and-efficiency-in-the-us-economy.pdf>.

<sup>23</sup> 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](#).

<sup>24</sup> J. Howard Beales & Andrew Stivers, *An Information Economy Without Data*, 2 (2022), located [here](#).

<sup>25</sup> Mark Sableman, Heather Shoenberger & Esther Thorson, *Consumer Attitudes Toward Relevant Online Behavioral Advertising: Crucial Evidence in the Data Privacy Debates* (2013), located at [https://www.thompsoncoburn.com/docs/default-source/Blog-documents/consumer-attitudes-toward-relevant-online-behavioral-advertising-crucial-evidence-in-the-data-privacy-debates.pdf?sfvrsn=86d44cea\\_0](https://www.thompsoncoburn.com/docs/default-source/Blog-documents/consumer-attitudes-toward-relevant-online-behavioral-advertising-crucial-evidence-in-the-data-privacy-debates.pdf?sfvrsn=86d44cea_0).

<sup>26</sup> Digital Advertising Alliance, *Zogby Analytics Public Opinion Survey on Value of the Ad-Supported Internet Summary Report* (May 2016), located at [https://digitaladvertisingalliance.org/sites/aboutads/files/DAA\\_files/ZogbyAnalyticsConsumerValueStudy2016.pdf](https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/ZogbyAnalyticsConsumerValueStudy2016.pdf).

<sup>27</sup> Federal Trade Commission, *In re Developing the Administration’s Approach to Consumer Privacy*, 15 (Nov. 13, 2018), located at [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-ntia-developing-administrations-approach-consumer-privacy/p195400\\_ftc\\_comment\\_to\\_ntia\\_112018.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-ntia-developing-administrations-approach-consumer-privacy/p195400_ftc_comment_to_ntia_112018.pdf).

consumers who reap the benefits of such advertising, and the overall economy before advancing it through the legislative process.

\* \* \*

We and our members support protecting consumer privacy. We believe, however, that HB 4 would impose requirements that would be misaligned with other state privacy laws. We therefore respectfully ask you to decline to advance the bill in its current form. We are eager and willing to work with you on alternative, comprehensive privacy legislation that balances consumer privacy and choice with preserving the benefits that come from the responsible use of data.

Thank you in advance for your consideration of this letter.

Sincerely,

Christopher Oswald  
EVP for Law, Ethics & Govt. Relations  
Association of National Advertisers  
202-296-1883

Alison Pepper  
Executive Vice President, Government Relations  
American Association of Advertising Agencies, 4A's  
202-355-4564

Lartase Tiffith  
Executive Vice President for Public Policy  
Interactive Advertising Bureau  
212-380-4700

Clark Rector  
Executive VP-Government Affairs  
American Advertising Federation  
202-898-0089

Lou Mastria, CIPP, CISSP  
Executive Director  
Digital Advertising Alliance  
347-770-0322

CC: Mike Signorelli, Venable LLP  
Allie Monticollo, Venable LLP