



May 24, 2022

The Honorable Representative Robert Mercuri
162B East Wing
P.O. Box 202028
Harrisburg, PA 17120-6443

The Honorable Representative Jim Marshall
Chair of the Pennsylvania House of Representatives Consumer Affairs Committee
105 Ryan Office Building
P.O. Box 202014
Harrisburg, PA 17120-2014

RE: Letter in Opposition to HB 2202

Dear Representative Mercuri and Representative Marshall,

On behalf of the advertising industry, we oppose HB 2202 as currently drafted, because the bill is out of step with other existing state privacy laws.¹ We and the companies we represent, many of whom do substantial business in Pennsylvania, strongly believe consumers deserve meaningful privacy protections supported by reasonable laws and responsible industry policies. However, state efforts to pass privacy laws 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. If the Pennsylvania General Assembly nonetheless decides to continue its effort to enact a privacy law, we encourage you to consider an approach to privacy that aligns with recently enacted legislation in the majority of other states.

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 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 on our suggested amendments to HB 2202.

¹ HB 2202 (Pa. 2022), located [here](#).

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. Pennsylvania Should Take Steps to Harmonize Its Approach to Privacy with Other State Laws

In the 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 essential for creating an environment where consumers in Pennsylvania and other states have a consistent set of expectations, while minimizing compliance costs for businesses. 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 (“CCPA”) concluded that the initial compliance costs to California firms for the CCPA alone would be \$55 billion.³ 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 \$6.2 billion to \$21 billion, and an ongoing annual compliance cost of \$4.6 billion to \$12.7 billion for the state.⁴ 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 small businesses shouldering a significant portion of the compliance cost burden.⁵ Pennsylvania 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. HB 2202 Is Out of Step With Existing Privacy Laws Because It Fails to Address the Concept of Pseudonymous Data

One way HB 2202 diverges from existing state privacy laws is that it fails to address the concept of pseudonymous data. The vast majority of state privacy laws recognize the privacy benefits of “pseudonymous data,” which is typically defined to include personal data that cannot be attributed to a specific natural person without the use of additional information. These other laws exempt this data from consumer rights to access, delete, correct, and port personal data, provided that this data is kept separately from information necessary to identify a consumer and is subject to effective technical and organizational controls to prevent the controller from accessing such information. Without an explicit exemption for pseudonymous data from consumer rights, controllers could be forced to reidentify data or to maintain it in identifiable form in order to ensure they can, for example, return such information to a consumer in response to an access request. Requiring companies to link pseudonymous data with identifiable information is less privacy protective for consumers than permitting and encouraging companies to keep such data sets separate. The Pennsylvania General Assembly should amend HB 2202 harmonize it with other privacy laws to exempt pseudonymous data from consumer rights of access, correction, deletion, and portability.

³ 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.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/CCPA_Regulations-SRIA-DOF.pdf.

⁴ 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>.

⁵ 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).

III. The Data-Driven and Ad-Supported Online Ecosystem Benefits Pennsylvania 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.⁶ 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.⁷ 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.⁸ More Internet jobs, 38 percent, were created by small firms and self-employed individuals than by the largest Internet companies, which generated 34 percent.⁹ The same study found that the ad-supported Internet supported 245,929 full-time jobs across Pennsylvania, more than double the number of Internet-driven jobs from 2016.¹⁰

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.¹¹ 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.”¹² 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.¹³ 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.¹⁴ Data-driven advertising has thus helped to stratify economic market power, ensuring that smaller online publishers can remain competitive with large global technology companies.

B. Advertising Supports Pennsylvania 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,¹⁵ and decreased advertising spends directly translate into lost profits for those outlets. Since the coronavirus pandemic began, 62 percent of advertising sellers have

⁶ Deighton & Kornfeld 2021 at 5.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 6.

¹⁰ *Compare id.* at 132 - 33 (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 109,382 full-time jobs to the Pennsylvania workforce in 2016 and 245,929 jobs in 2020).

¹¹ 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>.

¹² *Id.* at 34.

¹³ *Id.* at 15-16.

¹⁴ *Id.* at 28.

¹⁵ See Howard Beales, *The Value of Behavioral Targeting* 3 (2010), located at https://www.networkadvertising.org/pdfs/Beales_NAI_Study.pdf.

seen advertising rates decline.¹⁶ Publishers have been impacted 14 percent more by such reductions than others in the industry.¹⁷ Revenues from online advertising based on the responsible use of data support the cost of content that publishers provide and consumers value and expect.¹⁸ Legislative models that inhibit or restrict digital advertising can cripple news sites, blogs, online encyclopedias, and other vital information repositories. The effects of such legislative models 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.¹⁹ 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.²⁰ Indeed, as the Federal Trade Commission noted in its recent 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.²¹

During challenging societal and economic times such as those we are currently experiencing, 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 any future legislation'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.

* * *

¹⁶ IAB, *Covid's Impact on Ad Pricing* (May 28, 2020), located at https://www.iab.com/wp-content/uploads/2020/05/IAB_Sell-Side_Ad_Revenue_2_CPMs_5.28.2020.pdf

¹⁷ *Id.*

¹⁸ 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>.

¹⁹ 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.

²⁰ 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.

²¹ 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.

We and our members support protecting consumer privacy. We believe HB 2202 would impose particularly onerous requirements on entities doing business in the state and would unnecessarily impede Pennsylvania residents from receiving helpful services and accessing useful information online. We therefore respectfully ask you to reconsider the bill and to amend the legislation.

Thank you in advance for consideration of this letter.

Sincerely,

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