



April 2, 2019

The Honorable Zack Hudgins
Chair, House Innovation, Technology
& Economic Development Committee
260A John L. O'Brien Building
PO Box 40600
Olympia WA 98504-0600

Dear Chairman Hudgins:

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies, from small businesses, to household brands, across every segment of the advertising industry, including a significant number of Washington businesses. Our members engage in responsible data collection and use that benefits consumers and the economy, and we believe privacy deserves effective meaningful protection in the marketplace.

We strongly support the objectives of the Washington Privacy Act ("WPA") and its House Innovation, Technology & Economic Development Committee companion measure ("ITED v.5"), but we have certain concerns around the likely negative impact on Washington consumers and businesses from certain provisions in the bill. We are also concerned that differing privacy laws from state to state will create a fragmented Internet environment for consumers. As such, we support a strong national standard to protect consumer privacy. A patchwork of legislation throughout the United States will create consumer confusion and present significant challenges for businesses trying to comply with these laws. We seek to harmonize privacy protections across the marketplace to help ensure predictable results for consumers and businesses.

In these comments we provide you with information about the importance of a data-driven and ad-support online ecosystem for consumers and the economy. While we have several concerns with the proposed legislation, in this letter we highlight particular issues with the House Committee bill: the bill creates a broad private right of action and lacks an opportunity for entities covered by the bill to cure an alleged violation. A private right of action would lead to countless frivolous lawsuits imposing serious economic burdens and create confusion with regard to how to comply with the law. An opportunity to cure incentivizes businesses to comply with the law quickly and effectively and can help consumers and the businesses alike avoid costly litigation. Accordingly, we urge you to consider changes to the bill that ultimately would better protect Washingtonians' privacy.



I. The Data-Driven and Ad-Supported Online Ecosystem Benefits Consumers and Fuels Economic Growth

The free flow and responsible use of data fuels the economic engine of the Internet, creating untold consumer benefit.¹ For decades, online data-driven advertising has powered the growth of the Internet by funding innovative tools and services for consumers and businesses to connect and communicate. Data-driven advertising, largely carried out using pseudonymized data, supports and subsidizes the content and services consumers expect and rely on, including video, news, music, and more, at little or no cost to the consumer. Companies also collect data for numerous operational purposes including ad delivery and reporting, fraud prevention, network enhancement, and customization. These uses are necessary for a seamless cross-channel, cross-device consumer experience and a functioning digital economy.

II. A Private Right of Action Would Allow for Frivolous Lawsuits and Create Confusion

The House Committee bill, ITED v.5, provides that a violation of the bill constitutes an unfair or deceptive act pursuant to the state's consumer protection act, chapter 19.86 RCW.² Because the state's consumer protection act includes a private right of action, violations of this bill in any way, actual or perceived, could be subject to a lawsuit. We strongly oppose this provision.

A private right of action would undoubtedly lead to countless frivolous lawsuits. Businesses would be forced to defend themselves at great expense, even in circumstances in which a suit was completely unjustified. Moreover, various courts could interpret provisions of the law differently, creating confusion and significant challenges to compliance. Adding to the confusion, courts could interpret provisions in the law differently than the Attorney General or the office of privacy and data protection created by the law. Businesses need to be able to rely on a single arbiter who can provide clear guidance on compliance. The creation of varied and conflicting precedents would not best serve consumers' privacy interests.

III. Without a Cure Opportunity, Businesses Will be Less Incentivized to Fix Violations

The House Committee bill does not provide a period of time for covered entities to cure alleged violations of the Act. A cure period would give entities covered by the bill the opportunity to take remedial action to address their privacy practices if they are not in line with what the bill prescribes. A cure period also would be an incentive for companies to protect

¹ As a result of the advertising-based model that serves as the economic engine of the Internet, the Internet economy in the United States has rapidly. According to a recent study conducted for the Interactive Advertising Bureau (IAB) by Harvard Business School Professor John Deighton, the U.S. ad-supported Internet created 10.4 million jobs in 2016 and the industry contributed \$1.121 trillion to the U.S. economy that year, doubling its contribution over just four years and accounting for 6 percent of U.S. gross domestic product. John Deighton, *Economic Value of the Advertising-Supported Internet Ecosystem* (2017) <https://www.iab.com/wp-content/uploads/2017/03/Economic-Value-Study-2017-FINAL2.pdf>.

² ITED v. 5 at § 14, "Enforcement".



consumers' privacy in the manner intended by the bill. As noted above, our members strongly support and take numerous measures to protect consumer privacy beyond their legal obligations. We cannot support legislation that could lead to "gotcha" lawsuits with no opportunity to correct perceived or actual violations of the law.

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While our members strongly support the WPA's intent to provide consumers enhanced privacy protections, we are concerned that without clarification and adjustments the bill could result in reduced privacy for consumers, rather than an expansion of it, as the bill intends. We stand ready to work with you to find solutions to these and other issues as this bill is considered by the Washington Legislature.

Sincerely,

Dan Jaffe
Group EVP, Government Relations
Association of National Advertisers
202-296-2359

Christopher Oswald
SVP, Government Relations
Association of National Advertisers
202-296-2359

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

David Grimaldi
Executive Vice President, Public Policy
Interactive Advertising Bureau
202-800-0771

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

David LeDuc
Vice President, Public Policy
Network Advertising Initiative
703-220-5943