April 29, 2020

Assembly Member Ed Chau

Chair of the Assembly Privacy and Consumer Protection Committee

California State Capitol, Room 5016

Sacramento, CA 94249-0049

**RE: Letter in Opposition to AB 2414**

Dear Chair Chau:

As the nation’s leading advertising and marketing trade associations, we collectively represent thousands of companies across the country, from small businesses to household brands, advertising agencies, and technology providers, including a significant number of California businesses. Our combined membership includes more than 2,500 companies, is responsible for more than 85 percent of U.S. advertising spend, and drives more than 80 percent of our nation’s digital advertising spend. We and the companies we represent strongly believe consumers deserve meaningful privacy protections supported by reasonable government policies.

We write to express our concerns with AB 2414.[[1]](#footnote-2) The bill would impose disclosure requirements on mobile application operators that are duplicative of obligations provided elsewhere in California law. The bill also adopts an approach that is inconsistent with the California Consumer Privacy Act (“CCPA”). Californians already have specific rights with respect to the information covered by this bill, and imposing redundant and potentially conflicting obligations will undermine consumer privacy and the effectiveness of the CCPA. Finally, the bill would cause consumers to be inundated with an overwhelming number of “pop-up” notices, thereby causing notice fatigue and reducing consumer protection rather than advancing it. We therefore respectfully oppose AB 2414 in its current form.

1. **AB 2414’s Disclosure Requirements are Duplicative of Requirements in the CCPA and Are Therefore Unnecessary.**

AB 2414 would require operators of mobile applications to provide “clear and conspicuous notice that fully informs a consumer when, how, and why the consumer’s audiovisual data or geolocation information will be collected, used, and shared….”[[2]](#footnote-3) This requirement is duplicative of requirements enshrined in the CCPA and is therefore unnecessary. The CCPA requires a business to disclose the categories of personal information to be collected and the purposes for which such information will be used at or before the point of personal information collection.[[3]](#footnote-4) Moreover, the CCPA specifically enumerates as categories of personal information audio, visual, and geolocation information.[[4]](#footnote-5) In addition, a business must provide an updated notice to consumers if the business decides to use the collected information for any other purpose.[[5]](#footnote-6) Operators of mobile applications that are businesses under CCPA are therefore already required to comply with specific notice requirements with respect to audio, visual, and geolocation information. As a result, AB 2414’s notice requirements overlap with existing California law and would not provide consumers with any more useful information than is already required by the CCPA.

1. **AB 2414’s Affirmative Express Consent Requirements Conflict With the CCPA.**

The bill would require operators of mobile applications to “obtain a user’s affirmative express consent before collecting or using the user’s audiovisual data or geolocation information.”[[6]](#footnote-7) Operators must also obtain *separate* affirmative express consent from users prior to disclosing audiovisual data or geolocation information.[[7]](#footnote-8) The bill’s opt-in consent provisions differ markedly from the approach taken by the CCPA. The CCPA gives consumers the right to opt out of personal information sales.[[8]](#footnote-9) However, AB 2414 would require opt-in consent for the collection, use, and disclosure of certain types of personal information—“audiovisual data” and “geolocation information.” It is unclear how a business should understand a consumer’s consent to disclosures of audiovisual data and geolocation information under AB 2414 if the business also receives a consumer’s request to opt out of sales of such personal information under the CCPA. AB 2414 therefore contradicts the CCPA, and the ultimate effect of the ambiguous legal regime could detrimentally impact consumers’ privacy rights.

The regulations implementing the CCPA are not yet final. Given the law’s impending enforcement date of July 1, 2020, businesses have been forced to attempt to comply with an incomplete regulatory structure under CCPA. AB 2414’s clear discrepancies with the CCPA’s opt-out approach would inject even more confusion into an already unclear state of affairs. As such, we ask the California legislature to decline to impose inconsistent or conflicting legal rules, such as those set forth by AB 2414, at this time.

1. **AB 2414’s Consent Requirements Would Flood Consumers With Prompts That Would Cause Notice Fatigue and Reduce Consumer Protection.**

The affirmative express consent provisions set forth in AB 2414 would inundate consumers with multiple requests for consent to the collection, use, and disclosure of audiovisual data and geolocation information. The requirement that consent for collection and use must be *separate* from consent for disclosures would significantly increase the amount of consent requests consumers would receive. Requiring multiple prompts to be sent to consumers by bifurcating consent paths would bombard consumers with notices and choices. It could also desensitize consumers to the disclosures and could cause them to avoid or ignore the notices altogether. This outcome would have the unintended result of reducing consumer protection rather than advancing it, as consumers would be less inclined to read and understand the consent prompts before agreeing to them or declining them.

\* \* \*

While we and our members support California’s intent to provide consumers privacy protections, AB 2414’s requirements are duplicative of existing California law, and its consent requirements contradict the approach adopted by the CCPA. These issues coupled with the evolving nature of the CCPA’s implementing regulations indicate that AB 2414 should not proceed as currently drafted. We therefore respectfully oppose AB 2414.

Thank you in advance for your consideration of this letter.

Sincerely,

Dan Jaffe Alison Pepper
Group EVP, Government Relations Senior Vice President, Government Relations

Association of National Advertisers American Association of Advertising Agencies, 4A’s

202-269-2359 202-355-4564

Christopher Oswald David Grimaldi
SVP, Government Relations Executive Vice President, Public Policy

Association of National Advertisers Interactive Advertising Bureau

202-269-2359 202-800-0771

David LeDuc Clark Rector
Vice President, Public Policy Executive VP-Government Affairs

Network Advertising Initiative American Advertising Federation

703-220-5943 202-898-0089

1. AB 2414, (Cal. 2020). [↑](#footnote-ref-2)
2. *Id*. at § 1. [↑](#footnote-ref-3)
3. Cal. Civ. Code § 1798.100(b). [↑](#footnote-ref-4)
4. *Id*. at §§ 1798.140(o)(1)(G), (H). [↑](#footnote-ref-5)
5. *Id*. [↑](#footnote-ref-6)
6. AB 2414, § 1. [↑](#footnote-ref-7)
7. *Id*. [↑](#footnote-ref-8)
8. Cal. Civ. Code § 1798.120. [↑](#footnote-ref-9)