

Response to Texas Survey / Request for Information

This initial comment is provided by the American Association of Advertising Agencies (4A's), the American Advertising Federation (AAF), the Association of National Advertisers (ANA), the Interactive Advertising Bureau (IAB), the Network Advertising Initiative (NAI), and the Digital Advertising Alliance (DAA). As the council further considers its approach to data privacy, the trades look forward to providing detailed comments.

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies, including a significant number of Texas businesses. Nearly every advertisement you see in print, online, or on TV is connected in some way to our members' activities. While we and our members agree that privacy is an exceedingly important value that should be protected in the marketplace, we urge the council to be mindful of unintended side effects from any legislative approach in Texas, such as placing unreasonable restrictions on digital advertising. Such an outcome would detrimentally impact both consumers who demand ad-supported digital content, and businesses who provide these products and services.

Data provides tremendous and undeniable benefits to consumers, businesses, and the economy-at-large. Every day, consumers' lives are enriched by data-driven resources and advertising, including an unprecedented array of high-quality information, entertainment, and life-enhancing services. Advertising has helped power the growth of the economy and the Internet by delivering innovative tools and services for consumers and businesses to use to connect and communicate. In particular, the content and services consumers rely on and enjoy, including news, video, music, and more, are made possible in no small part due to data-driven digital advertising. The data-driven advertising model allows consumers to access these resources at little or no cost to them, and it has created an environment where small publishers and start-up companies can enter the marketplace to compete against the Internet's largest players. The industry has also employed millions of individuals, serving as a job catalyst for every state in the United States. Legislation hindering the availability of data, exchanges of data, or data-driven advertising would adversely impact individuals and the business community alike.

The private sector's use of data for commercial purposes is already subject to several federal laws that provide data privacy and protection safeguards. For example, the Children's Online Privacy Protection Act, the Health Insurance Portability and Accountability Act, the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act, the Video Privacy Protection Act and various other statutes impose strict rules on company practices with respect to the use and disclosure of information collected about individuals. Inherent to this sectoral approach is ensuring reasonable practices are permitted while helping prevent unreasonable practices to protect consumers from concrete harms. Any laws enacted to supplement these federal sectoral regimes, either in Texas, other states or at the federal level, should clearly define and prohibit practices that put consumers at actual and concrete risks, while preserving the benefits to individuals and our economy that result from the responsible use of data.

As the Texas legislature considers privacy bills in upcoming legislative sessions, we encourage authors and sponsors to carefully consider the impacts proposed legislation would have on consumers, the business community, and the economy. In particular, proposals that rely

too heavily on opt-in consent for data collection unfairly shift the privacy burden to consumers themselves, who should not be tasked with deciphering data-sharing arrangements prior to reading digital content or downloading an app. Rather, consumers should be able to rely on strong data privacy protections, based on a clear set of prohibited practices. It is imperative to draw an effective distinction between what constitutes sensitive personal data, from the vast majority of data that drives digital advertising and poses less privacy risks. To date, no other state in our country has enacted a comprehensive data privacy law that requires consumers to opt in to business processing or uses of *all* personal information. We encourage Texas to reject calls for it to be the first state to adopt this overly restrictive approach to data privacy. This will ensure that the benefits data provides to Texans, businesses, and the economy can persevere through the trying times that presently face our nation and the world.

For questions concerning this comment, please contact Mike Signorelli, Venable LLP at masignorelli@venable.com.

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