



March 2, 2022

The Honorable Senator James Maroney  
Co-Chair of the Connecticut Joint Committee on General Law  
Legislative Office Building, Room 3300  
Hartford, CT 06106-1591

The Honorable Representative Michael D'Agostino  
Co-Chair of the Connecticut Joint Committee on General Law  
Legislative Office Building, Room 3504  
Hartford, CT 06106-1591

**RE: Letter in Opposition to SB 6**

Dear Senator Maroney and Representative D'Agostino,

On behalf of the advertising industry, we oppose SB 6 as currently drafted.<sup>1</sup> Below we offer the following comments summarizing our primary, but non-exhaustive, list of concerns with the legislation as currently drafted, and we provide suggested amendments to the bill.

We and the companies we represent, many of whom do substantial business in Connecticut, strongly believe consumers deserve meaningful privacy protections supported by reasonable government 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 Connecticut legislature nonetheless decides to continue its effort to pass a privacy law in the state, we encourage it to consider an approach to privacy that aligns with recently enacted legislation in other states, such as the Virginia Consumer Data Protection Act ("VCDPA"). As presently drafted, SB 6 contains provisions that could hinder Connecticut residents' access to valuable ad-supported online resources, impede their ability to exercise choice in the marketplace, and harm businesses of all sizes, including tens of thousands of jobs tied to the advertising industry in Connecticut, that support the economy.

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.<sup>2</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 on our suggested amendments to SB 6 with an aim toward better aligning the wants of consumers with the needs of the Internet economy.

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<sup>1</sup> SB 6 (Conn. 2022), located [here](#).

<sup>2</sup> 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](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. Connecticut Should Take Steps to Harmonize Its Approach to Privacy with Other State Laws**

Harmonization in state privacy law standards is in the interests of consumers and businesses alike, including those of Connecticut residents, because it helps to ensure consumers are subject to the same privacy protections no matter where they live, and it enables businesses to take a more holistic approach to privacy law compliance. Connecticut differs starkly from existing privacy laws, which would cause significant confusion for both businesses and consumers. Connecticut should not adopt a law that differs from and competes with existing laws when alternative approaches exist that protect consumers while offering consistency across states. We encourage the legislature to examine already-enacted consumer protection standards that are available for regulating data privacy, particularly the VCDPA, before moving forward with SB 6.

In the absence of a national standard for data privacy at the federal level, it is critical for legislators seriously to 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 minimizing costs of compliance and fostering similar consumer privacy rights. 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 concluded that the initial compliance costs to California firms would be \$55 billion.<sup>3</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 \$6.2 billion to \$21 billion and an ongoing annual compliance costs of \$4.6 billion to \$12.7 billion for the state.<sup>4</sup> 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.<sup>5</sup> Connecticut should not add to this compliance burden to businesses, and should instead opt for an approach to data privacy that is in harmony with already existing state privacy laws.

## **II. Broad Opt-in Consent Requirements Impede Consumers from Receiving Critical, Relevant Information and Messages**

As discussed in more detail in Section V below, the data-driven and ad-supported online ecosystem benefits consumers and fuels economic growth and competition. Companies, nonprofits, and government agencies alike use data to send varying groups of individuals specific, relevant messages. Tailored messaging provides immense public benefit by reaching individual consumers with information that is relevant to them in the right time and place. Legal requirements that limit entities' ability to use demographic data responsibly to reach consumers with important and pertinent

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<sup>3</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.dof.ca.gov/Forecasting/Economics/Major\\_Regulations/Major\\_Regulations\\_Table/documents/CCPA\\_Regulations-SRIA-DOF.pdf](https://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/CCPA_Regulations-SRIA-DOF.pdf).

<sup>4</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>5</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).

messaging, such as those set forth in SB 6’s sensitive data opt in consent requirements,<sup>6</sup> can have unintended consequences and, ultimately, serve as a detriment to consumers’ health and welfare.

Ad-technology systems and processes enable everything from public health messaging to retailer messaging. They allow timely wildfire warnings to reach local communities and facilitate the dissemination of missing children alerts, among myriad other beneficial uses.<sup>7</sup> In accordance with responsible data use, uses of data for tailored advertising should be subject to notice requirements and effective user controls. Legal requirements should focus on prohibiting discriminatory uses of such data and other uses that could endanger the health or welfare of consumers instead of placing blanket opt-in consent requirements on uses of data.

One-size-fits-all opt-in requirements for data uses run the risk of regulating out of existence beneficial uses of information that help consumers, businesses, and non-profits by making messaging and information more relevant to individuals. Opt-in consent requirements also tend to work to the advantage of large, entrenched market players at the expense of smaller businesses and start-up companies. To ensure uses of demographic data to benefit Connecticut residents can persist, and to help maintain a competitive business marketplace, we encourage the Joint Committee on General Law (“Committee”) to remove the broad opt in consent requirement for “sensitive data” processing. We suggest that the Committee replace it with a requirement for opt in consent *only when* such data will be used in furtherance of “decisions that produce legal or similarly significant effects concerning a consumer,” a term that is already defined and included in SB 6.<sup>8</sup> Such an approach would not only help to maintain competitive balance, but also reduce the risk of notice fatigue which some other laws have created as an unintended consequence.<sup>9</sup>

### **III. SB 6’s Proposed Global Signal Provisions For Authorized Agents Lack Reasonable Safeguards to Protect Consumer Choice**

SB 6 would require controllers to permit consumers to opt in or opt out of the processing of personal data for purposes of targeted advertising or sales through a “signal sent with the consumer’s consent by a platform, technology, or mechanism... indicating the consumer’s intent to opt-in or opt-out, as applicable...”<sup>10</sup> The provisions surrounding such required signals include safeguards to ensure that (1) certain businesses and models are not placed at an unfair disadvantage due to the implementation of such signals, (2) a preference indicated by a signal is a true expression of a consumer’s choice, and (3) a setting may not be turned on by default without an affirmative, freely given, and unambiguous choice by the consumer.<sup>11</sup> SB 6 also permits consumers to use global signals or controls to designate authorized agents to express opt out preferences on their behalf, but the described above safeguards are not carried through to the bill’s authorized agent provisions.<sup>12</sup> We therefore urge the Committee to amend the proposed global signal terms related to authorized agents in Section 5 of the bill to include such protections.

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<sup>6</sup> SB 6 at Section 6(4).

<sup>7</sup> See Digital Advertising Alliance, *Summit Snapshot: Data 4 Good – The Ad Council, Federation for Internet Alerts Deploy Data for Vital Public Safety Initiatives* (Sept. 1, 2021), located at <https://digitaladvertisingalliance.org/blog/summit-snapshot-data-4-good-%E2%80%93-ad-council-federation-internet-alerts-deploy-data-vital-public>.

<sup>8</sup> See SB 6 at Section 1(12).

<sup>9</sup> Kate Fazzini, *Europe’s sweeping privacy rule was supposed to change the internet, but so far it’s mostly created frustration for users, companies, and regulators*, CNBC (May 5, 2019), located at <https://www.cnbc.com/2019/05/04/gdpr-has-frustrated-users-and-regulators.html>.

<sup>10</sup> *Id.* at Section 6(e)(1)(B).

<sup>11</sup> *Id.* at Section 6(e)(1)(B)(i) – (vi).

<sup>12</sup> *Id.* at Section 5.

Choice settings must be designed and implemented in a manner that ensures a preference expressed through the setting is enabled by a consumer, and does not unfairly disadvantage or advantage one business or model over another. Otherwise, these settings run the risk of intermediary interference, as the companies and agents that stand between businesses and consumers can set such controls by default without requiring an affirmative consumer action to initiate the control. Including such safeguards in SB 6’s authorized agent provisions would help avoid the unintended consequence of creating a new class of gatekeepers, which would undercut competition in the market. Unconfigurable, global opt out setting mechanisms have already been introduced in the market, making decisions for consumers by default without requiring them to affirmatively turn on the mechanisms.<sup>13</sup> These tools are not user-enabled, as they do not provide any assurance that consumers themselves are the ones making privacy choices.

Consumers should be assured the ability to take an action to enable global signals, or to enable an authorized agent to make choices on their behalf. To achieve this, global settings should be subject to specific parameters that ensure the integrity of consumer choice. We therefore urge the Committee to include safeguards for global controls in the bill’s Section 5 authorized agent provisions. Including such safeguards, which are in other state privacy laws such as the California Privacy Rights Act of 2020 and the Colorado Privacy Act,<sup>14</sup> would close a gap in SB 6 by ensuring clear consumer protections for situations where consumers designate authorized agents to submit requests on their behalf.

#### **IV. The Opportunity to Cure Violations of SB 6 Should Be Permanent to Incentivize Controllers to Quickly Bring Practices In Line With Legal Requirements**

SB 6 sets forth a 60-day cure period for Connecticut Attorney General enforcement actions.<sup>15</sup> However, as presently drafted, the bill’s 60-day opportunity for controllers to cure alleged violations would expire on December 31, 2024.<sup>16</sup> We encourage the Committee to remove the sunset date for the Connecticut Attorney General enforcement cure period. Cure periods allow businesses to remediate alleged privacy violations quickly and efficiently without having to go through the expense of complicated litigation. Encouraging controllers to swiftly correct alleged violations of law benefits consumers, as incentivizing companies to update their practices promptly to provide enhanced privacy protections serves consumers better than allowing alleged violations to persist while a given dispute proceeds through the courts. Cure periods are also particularly important for small and start-up companies. Smaller controllers may not have the resources or funding to sustain ongoing legal costs to defend or settle complicated privacy claims. Without a cure period, small controllers will have less of an ability to avoid expensive lawsuits by quickly bringing themselves into compliance with legal requirements. As a result, we urge the Committee to remove the end date for the bill’s cure period.

#### **V. The Data-Driven and Ad-Supported Online Ecosystem Benefits Connecticut Residents and Fuels Economic Growth**

Over the past several decades, data-driven advertising has created a platform for innovation and tremendous growth opportunities. A new study found that the Internet economy’s contribution to the

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<sup>13</sup> See Brave, *Global Privacy Control, a new Privacy Standard Proposal, now Available in Brave’s Desktop and Android Testing Versions*, located [here](#) (“Importantly, Brave does not require users to change anything to start using the GPC to assert your privacy rights. For versions of Brave that have GPC implemented, the feature is on by default and unconfigurable.”)

<sup>14</sup> California Privacy Rights Act of 2022, Cal. Civ. Code § 1798.185(a)(19)(A); Colorado Privacy Act, Colo. Rev. Stat § 6-1-1313(2).

<sup>15</sup> SB 6 at Section 11(b).

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

United States' GDP grew 22 percent per year since 2016, in a national economy that grows between two to three percent per year.<sup>17</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>18</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 ago.<sup>19</sup> More Internet jobs, 38 percent, were created by small firms and self-employed individuals than by the largest internet companies, which generated 34 percent.<sup>20</sup> The same study found that the ad-supported Internet supported 79,714 full-time jobs across Connecticut, more than double number of Internet-driven jobs from 2016.<sup>21</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.<sup>22</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>23</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>24</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>25</sup> 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 Connecticut 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 about COVID-19. Advertising revenue is an important source of funds for digital publishers,<sup>26</sup> and decreased advertising spends directly translate into lost profits for those outlets. Since the coronavirus pandemic began, 62 percent of advertising sellers have seen advertising rates decline.<sup>27</sup> Publishers have been impacted 14 percent more by such reductions than others in the industry.<sup>28</sup> Revenues from online advertising based on the

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<sup>17</sup> Deighton & Kornfeld 2021 at 5.

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

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 6.

<sup>21</sup> *Compare id.* at 123-24 (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 35,814 full-time jobs to the Connecticut workforce in 2016 and 79,714 jobs in 2020).

<sup>22</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>23</sup> *Id.* at 34.

<sup>24</sup> *Id.* at 15-16.

<sup>25</sup> *Id.* at 28.

<sup>26</sup> See Howard Beales, *The Value of Behavioral Targeting 3* (2010), located at [https://www.networkadvertising.org/pdfs/Beales\\_NAI\\_Study.pdf](https://www.networkadvertising.org/pdfs/Beales_NAI_Study.pdf).

<sup>27</sup> 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](https://www.iab.com/wp-content/uploads/2020/05/IAB_Sell-Side_Ad_Revenue_2_CPMs_5.28.2020.pdf)

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

responsible use of data support the cost of content that publishers provide and consumers value and expect.<sup>29</sup> Legislative models that inhibit or restrict digital advertising can cripple news sites, blogs, online encyclopedias, and other vital information repositories, thereby compounding the detrimental impacts to the economy presented by COVID-19. 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.<sup>30</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>31</sup> 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.<sup>32</sup>

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.

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<sup>29</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>30</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>31</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>32</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).

We and our members support protecting consumer privacy. We believe SB 6 would impose particularly onerous requirements on entities doing business in the state and would unnecessarily impede Connecticut 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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