



February 20, 2024

Representative Zack Stephenson
Chair of the Minnesota House Commerce,
Finance, and Policy Committee
449 State Office Building
St. Paul, MN 55155

Representative Carlie Kotyza-Witthuhn
Vice Chair of the House Commerce,
Finance, and Policy Committee
567 State Office Building
St. Paul, MN 55155

Representative Steve Elkins
517 State Office Building
St. Paul, MN 55155

RE: Minnesota HF 2309 – Oppose

Dear Chair Stephenson, Vice Chair Kotyza-Witthuhn, and Representative Elkins:

On behalf of the advertising industry, we oppose Minnesota HF 2309,¹ and we request the and we request that the Minnesota House Commerce, Finance, and Policy Committee (“Committee”) recommend amendments to align it with the approach taken in the majority of states that have enacted consumer data privacy legislation. Taking a divergent approach would make HF 2309 out of step with privacy laws passed in every other state to date and would have far-reaching, unfavorable consequences for Minnesota businesses and consumers alike. We ask the Committee to recommend the legislature update the bill in ways that harmonize it with the majority of privacy laws that have been enacted in 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, 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.

I. Minnesota should harmonize HF 2309 with the privacy approach taken in other states.

Uniform privacy law standards benefit consumers and businesses by helping to ensure consumers are subject to similar privacy protections no matter where they reside and that businesses may take a more holistic approach to privacy law compliance. HF 2309 would create terms that would contrast significantly with other state privacy laws. Seemingly small changes to the meaning of terms or requirements can have a significant impact on businesses’ compliance responsibilities and consumers’ ability to understand and fully effectuate rights under law.

¹ Minnesota HF 2309 (Gen. Sess. 2024), located [here](#).

² John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 15 (Oct. 18, 2021), located [here](#) (hereinafter, “Deighton and Kornfeld”).

For example, HF 2309 should not be amended to adopt a materially different definition of “specific geolocation data” than every other state that has passed privacy legislation. Tying the definition to the ability to identify a “street address,” as proposed, draws into question whether a covered business would be able to comply in circumstances where a consumer’s location is in areas that do not have street addresses, such as on highways or in airports. Additionally, the bill’s approach to “data privacy and protection assessments” and data governance should not stand in stark contrast to other state privacy laws, which generally harmonize their assessment requirements so an assessment conducted to comply with one state law can also comply with another state’s law. The assessment requirements would mandate that all controllers must increase headcount by designating a Chief Privacy Officer; describe its data inventory practices; maintain a written data retention policy; and maintain a data minimization policy, in addition to other requirements. Each of these specific steps is overly prescriptive and would require the expenditure of significant resources across all sectors of the business. Moreover, adopting these requirements—which are out-of-step with other state privacy laws—could threaten the interoperability of assessments, which allow assessments under one state’s law to meet the requirements of another state’s law if they are substantially similar. Instead of adopting this non-standard approach to assessments, Minnesota should update these terms and others in HF 2309 so they reflect the approaches taken in other states to benefit consumers and businesses.

In the absence of a preemptive federal data privacy law, it is crucial for legislators to seriously consider the heavy costs imposed on both businesses and consumers by a patchwork of state privacy standards. 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 study on proposed privacy bill in another state found that the proposal would have generated a direct initial compliance cost of between \$6.2 billion to \$21 billion, and an ongoing annual compliance cost of between \$4.6 billion to \$12.7 billion for companies.⁴ Minnesota should not add to this compliance bill for businesses and should instead opt for an approach to data privacy that is in harmony with already existing state privacy laws.

II. The data-driven and ad-supported online ecosystem benefits Minnesota residents and fuels economic growth.

Over the past several decades, data-driven advertising has established a platform for innovation and tremendous growth opportunities. One recent study found that the Internet economy’s contribution to the United States’ gross domestic product (“GDP”) grew 22 percent per year since 2016, in a national economy that grows between two to three percent per year.⁵ 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.⁶ Additionally, more than 17 million jobs in the

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.oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-isor-appendices.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 Deighton and Kornfeld at 5.

⁶ *Id.*

U.S. were generated by the commercial Internet in 2020, 7 million more than four years prior.⁷ More Internet jobs, 38 percent, were created by small firms and self-employed individuals than by the largest Internet companies, which generated 34 percent.⁸ The same study found that the ad-supported Internet supported 113,952 full-time jobs across Minnesota in 2020, more than double the number of Internet-driven jobs from 2016.⁹

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—and, importantly, not just in the advertising sector.¹⁰ 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.”¹¹ 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.¹² 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.¹³ According to one study, “[b]y the numbers, small advertisers dominate digital advertising, precisely because online advertising offers the opportunity for low cost outreach to potential customers.”¹⁴ Absent cost-effective avenues for these smaller advertisers to reach the public, businesses focused on digital or online-only strategies would suffer immensely in a world where digital advertising is unnecessarily encumbered by overly-broad regulations.¹⁵ Data-driven advertising has thus helped to stratify economic market power and foster competition, ensuring that smaller online publishers can remain competitive with large global technology companies.

B. Advertising supports Minnesotans’ access to diverse 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,¹⁶ and decreased advertising spends directly translate into lost profits for those outlets. Revenues from online advertising based on the responsible use of data support the cost of content that publishers provide and consumers value and expect.¹⁷ And, consumers

⁷ *Id.*

⁸ *Id.* at 6.

⁹ Compare *id.* at 128 (Oct. 18, 2021) 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 54,519 full-time jobs to the Minnesota workforce in 2016 and 113,952 jobs in 2020).

¹⁰ See John Deighton, *The Socioeconomic Impact of Internet Tracking*, 4 (Feb. 2020), located [here](#).

¹¹ *Id.* at 34.

¹² *Id.* at 15-16.

¹³ *Id.* at 28.

¹⁴ J. Howard Beales & Andrew Stivers, *An Information Economy Without Data*, 9 (2022), located [here](#).

¹⁵ See *id.* at 8.

¹⁶ See Howard Beales, *The Value of Behavioral Targeting*, 3 (2010), located [here](#).

¹⁷ See John Deighton & Peter A. Johnson, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the US Economy* (2015), located [here](#).

tell us that. In fact, consumers valued the benefit they receive from digital advertising-subsidized online content at \$1,404 per year in 2020—a 17% increase from 2016.¹⁸ Another study found that the free and low-cost goods and services consumers receive via the ad-supported Internet amount to approximately \$30,000 of value per year, measured in 2017 dollars.¹⁹ Legislative frameworks that inhibit or restrict digital advertising can cripple news sites, blogs, online encyclopedias, and other vital information repositories, and these unintended consequences also translate into a new tax on consumers. The effects of such legislative frameworks ultimately harm consumers by reducing the availability of free or low-cost educational content that is available online.

C. Consumers prefer personalized ads and 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.²⁰ 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.²¹ Indeed, as the Federal Trade Commission noted in one of its submissions to the National Telecommunications and Information Administration, if a subscription-based model replaces the ad-based model of the Internet, many consumers likely will not be able to afford access to, or will be reluctant to utilize, all of the information, products, and services they rely on today and that will become available in the future.²² A subscription model will diminish the number of channels available to access information, increase costs to consumers, curtail access to a diversity of online voices, and create an overall Internet environment where consumers with means can afford to access content, while consumers with less expendable income will be forced to go without access to online resources.

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 ask you to carefully consider HF 2309'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.

¹⁸ Digital Advertising Alliance, *Americans Value Free Ad-Supported Online Services at \$1,400/Year; Annual Value Jumps More Than \$200 Since 2016* (Sept. 28, 2020), located [here](#).

¹⁹ J. Howard Beales & Andrew Stivers, *An Information Economy Without Data*, 2 (2022), located [here](#).

²⁰ Mark Sableman, Heather Shoenberger & Esther Thorson, *Consumer Attitudes Toward Relevant Online Behavioral Advertising: Crucial Evidence in the Data Privacy Debates* (2013), located [here](#).

²¹ Digital Advertising Alliance, *Zogby Analytics Public Opinion Survey on Value of the Ad-Supported Internet Summary Report* (May 2016), located [here](#).

²² Federal Trade Commission, *In re Developing the Administration's Approach to Consumer Privacy*, 15 (Nov. 13, 2018), located [here](#).

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We and our members strongly believe consumers deserve meaningful privacy protections supported by reasonable and responsible industry policies. However, we believe HF 2309's out-of-step provisions will unnecessarily impede Minnesotans' ability to access helpful services and information online. We therefore respectfully ask you to recommend that HF 2309 be harmonized with the approach taken in the majority of states that have enacted consumer data privacy legislation. HF 2309 should not diverge from this approach.

Thank you for your consideration of this request.

Sincerely,

Christopher Oswald
EVP for Law, Ethics & Govt. Relations
Association of National Advertisers
202-296-1883

Alison Pepper
EVP, Government Relations & Sustainability
American Association of Advertising Agencies, 4A's
202-355-4564

Lartase Tiffith
Executive Vice President, Public Policy
Interactive Advertising Bureau
212-380-4700

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

Lou Mastria, CIPP, CISSP
Executive Director
Digital Advertising Alliance
347-770-0322

CC: Members of the Minnesota House Commerce, Finance, and Policy Committee

Mike Signorelli, Venable LLP
Allie Monticollo, Venable LLP