



February 8, 2023

Representative Michael Marcotte
Chair of the House Committee on Commerce and Economic Development
106 Private Pond Rd.
Newport, VT 05855

Representative Stephanie Jerome
Vice Chair of the House Committee on Commerce and Economic Development
PO Box 65
Brandon, VT 05733

Representative Logan Nicoll
Ranking Member of the House Committee on Commerce and Economic Development
11 Depot St.
Ludlow, VT 05149

RE: Ad Trade Letter in Opposition to Vermont H. 121

Dear Chair Marcotte, Vice Chair Jerome, and Ranking Member Nicoll:

On behalf of the advertising industry, we respectfully oppose Vermont H. 121,¹ and we offer this letter to express our non-exhaustive list of concerns about this legislation. We and the companies we represent, many of whom do substantial business (both for profit and nonprofit) in Vermont, strongly believe consumers deserve meaningful privacy protections supported by reasonable government policies. However, H. 121 would enact a piecemeal approach to privacy instead of emulating existing state privacy standards that are more comprehensive and clearer in scope. As drafted, the bill would impose uneven requirements on different sectors of the digital economy and would create disharmony with current state-level privacy laws. Vermont consumers deserve holistic privacy protections that are reasonably aligned with the privacy rights available to consumers in other states. By the same measure, Vermont businesses deserve assurances that they are not being disadvantaged as compared to enterprises in other states. We acknowledge that this is a complex task, and we encourage you to appropriately weigh these factors in striking a more appropriate balance which benefits consumers and the businesses which support so many Vermont jobs. We therefore encourage the General Assembly to undertake a formal study of existing state approaches to privacy laws before advancing H. 121 in its current state through the legislative process.

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies across the country, including Vermont. 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,

¹ Vermont H. 121 (Gen. Sess. 2023), located [here](#) (hereinafter, "H. 121").

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. We would welcome the opportunity to engage with you on this matter and help bring practical, hard-learned lessons to improve this bill.

As drafted, H. 121 introduces entirely new concepts and undefined terms that are nowhere present in other state privacy laws. For example, the legislation provides consumers with the right to opt out of “tracking” and “predictive analytics” without defining either term, and without any basis for differentiating those opt out rights from “sales” or “targeted advertising.”³ The bill would also create the complicated concept of an “individual” and a “general” opt out for data brokers.⁴ The bill would stand up these novel opt out structures without providing sufficient detail regarding how they will be managed. This will have the very foreseeable consequence of confusing consumers and confounding businesses.

We and our members support a national standard for data privacy at the federal level. In the absence of such a national standard, it is critical for state legislators to seriously consider the costs and confusion 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 creating an environment where consumers in Vermont have a consistent set of expectations and the same rights as individuals in other states, while minimizing compliance costs for businesses operating in Vermont. Compliance costs associated with divergent—and oftentimes conflicting—privacy laws are significant. To make the point: one report found that differing privacy laws could impose 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.⁵ We acknowledge that it is popular to think that these costs will impact only the biggest of companies, but the truth is that these costs (and any reduction in competition) will flow down to local retailers, travel destinations, recipe publishers, farm stands, restaurants, and myriad other small businesses who see digital advertising as the lifeblood of attracting customers.

H. 121’s out-of-step provisions could restrict access to information for Vermont consumers and stifle economic growth for Vermont businesses of all sizes. The ability of consumers to provide, and of 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 individuals’ lives, as the products, services, and content they consume through the Internet are powered by open flows of information that are supported by advertising.

² 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 (hereinafter, “Deighton & Kornfeld 2021”).

³ H. 121 at § 2432(e).

⁴ *Id.* at §§ 2448(a), (b).

⁵ 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).



Overregulating the data economy threatens to negatively impact consumers' ability to access the vital information they access online for free or at a very low cost today.

To help ensure Vermonters can continue to reap the benefits of a robust ad-supported online ecosystem and Vermont businesses can continue to thrive, we recommend that the General Assembly undertake a study of existing approaches to data privacy before moving forward with the incomplete and inconsistent regime in H. 121. As presently written, the bill falls short of creating a regulatory system that will work well for Vermont consumers or businesses.

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We welcome the opportunity to engage with you further about workable privacy standards to help ensure Vermonters maintain their access to and benefits from the information economy.

Thank you in advance for your consideration of this letter.

Sincerely,

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