

May 6, 2026

House Committee on Commerce and Economic Development
Rep. Michael Marcotte, Chair and Rep. Edye Graning, Vice Chair

Re: Testimony in Partial Support of Vermont S.71 – An act relating to consumer data privacy and online surveillance

Dear Chair Marcotte, Vice Chair Graning and esteemed committee members,

I'm grateful to have an opportunity to share ISL's thoughts on S.71, particularly from a lens of protecting the privacy and online surveillance of children. I'm Lisa LeVasseur, founder and research director of Internet Safety Labs, a non-profit, non-partisan, independent digital product safety testing organization. Note that in previous testimony for H.650, I provided empirical data on privacy risks commonly found in apps used by children which is context for some of the observations included here, where I'll focus on what's good and what isn't ideal in the S.71.

What's Good for Children

1. The fact that the bill clearly identifies and protects minors under the age of 18 (instead of the typical age of 13) means more youngsters are covered. (Sections 2415e(a)(2)(C) and 2415e(a)(7))
2. The fact that the bill clearly identifies data collected from "a consumer who a controller knew or should have known is a minor" to be automatically classified as sensitive data and therefore excluded from being allowed to be shared in first-party or targeted advertising is good. (Section 2415a(53)(I))
3. The definition of sensitive data is good, covering categories of data that aren't always addressed, and includes transgender or non-binary (Section 2415a(53)(C)). It's not perfect though (see below).
4. The limitation of collection and processing of personal data to what is reasonably necessary and proportionate to provide the expected service. (Section 2415e, DUTIES OF CONTROLLERS, (a)(1)) is good and aligns with ISL's Safe Software Principle # 4, Data Collection Minimization¹.
5. The limitation of collection of sensitive data unless it's strictly necessary for a service is good (Section 2415e(a)(4)).

¹ <https://internetsafetylabs.org/resources/specifications/principles-of-safe-software/>

6. Section 2415f PROCESSORS' DUTIES: CONTRACTS BETWEEN CONTROLLERS AND PROCESSORS is a welcome addition. As a long-time software product manager, it's very good to see concrete requirements for software supply chain contracts regarding the handling of data. These are necessary artifacts for enforcement.

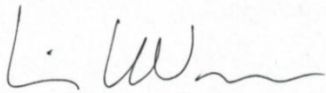
What Could Be Better

- 1) The definition of "contextual advertising" in this bill (Section 2415a(12)) is problematic on several fronts:
 - a) It doesn't align with the commonly accepted definition of contextual advertising in COPPA.
 - b) The inclusion of coarse location and language are essentially targeted advertising, especially as written with "consumer's immediate presence" and "consumer's language preferences". Even though these are device and browser-based attributes, it's correct to understand them as being synonymous with user/consumer information. Furthermore, ISL believes it's highly likely that contextual ads as defined, in practice will include the sharing of unique persistent identifiers and therefore will be functionally equivalent to targeted advertising, especially with no actual oversight or review of the actual software behavior.
- 2) While the definition of sensitive data covers some new ground, it follows in the footsteps of other bills that fail to protect against gender-based algorithmic bias by allowing covered services to collect gender information when it's patently unnecessary. ISL sees this all the time in apps that ask for gender or title information (Mr./Mrs./Ms. e.g.). Very few services need gender information to perform the expected service.
- 3) While we understand that, since the adoption of California's CPRA, requiring the consumer to opt out of risky data selling and sharing is the accepted norm, ISL continues to flag this behavior as unfairly putting the onus on users to take extra action to protect themselves from knowingly unsafe digital product behavior (i.e. risky personal information sharing). (Section 2415d(a)(6))
- 4) While we are not legal experts, the bill would be more beneficial to consumers if it had a private right of action, allowing injured consumers to take direct action. Given how unsupervised and ungoverned digital products are in practice, we wish that there was a more egalitarian, yet cost-effective and practical justice system that allowed consumers to take direct action when harmed by unsafe digital products behaving as designed.
- 5) Data Protection Assessments (Section 2415g): ISL questions the efficacy of manufacturers "grading their own homework" in terms of performing product assessments. We raise the concern that any law relating to digital product safety (including privacy laws), must be drafted with an eye towards practical monitoring and

enforcement of the mandated digital product behaviors, including independent auditing and assessment of digital product safety risks.

- 6) ISL questions the reliability of data deidentification as a guarantee against the sharing of personal information (in particular as an exemption to “Personal data”, Section 2415a(41)(B)).
- 7) Finally, ISL is unclear on the benefit of distinguishing between first party advertising and targeted advertising, as both are targeted advertising. Just because the first party is responsible for the targeting data doesn’t mean that it isn’t passing that personal data along to the advertising real-time bid stream. Moreover, large digital product manufacturers nearly always obtain supplementary customer data from third party sources to enrich their customer data profiles. ISL wonders how manufacturers are keeping the data sources clear and separate; it will be very difficult to monitor and confirm so-called first party ads. As a final note, we have seen “first party ad” mean advertisements for the publisher/first party’s products, not just ads “on the first party’s own website, application, or its other online content”.

Sincerely,
Lisa LeVasseur



Executive Director & Research Director
Internet Safety Labs