

Check My Ads Institute Written Testimony to the Vermont Senate Committee on Institutions in support of the Vermont Data Privacy and Online Surveillance Act

March 14, 2025

Chair Wendy Harrison
Vermont Senate Committee on Institutions
115 State Street
Montpelier, VT 05633

Dear Chair Harrison and Members of the Committee:

We write in support of S.71, the Vermont Data Privacy and Online Surveillance Act.¹ Check My Ads Institute, is a 501(c)(3) nonprofit independent digital advertising watchdog advocating for a transparent and fair digital advertising market for advertisers and the public.²

My name is Arielle Garcia, and I am Chief Operating Officer of Check My Ads Institute. Prior to joining Check My Ads in 2024, I spent ten years in digital advertising, serving most recently as Chief Privacy Officer at UM Worldwide, a major global advertising agency that manages advertising campaigns on behalf of advertisers. For years, I helped advertisers navigate the evolving regulatory environment, as they looked to strike the balance between privacy and targeted advertising. Indeed, I resigned³ from my role due to my realization that the only winners in the current state of the digital advertising industry are big technology (“big tech”) companies like Google, and the data brokers and advertising technology (“adtech”) middlemen that dwell in their shadows.

¹ Vermont Data Privacy and Online Surveillance Act, Sec. 1, ch. 61A, as introduced on February 12, 2025 (Bill S.71).

² CHECKMYADS.ORG, <https://checkmyads.org/> (last visited Mar 12, 2025).

³ Arielle Garcia, *An Industry In Conflict: It's Time For Tough Questions And Hard Decisions*, ADEXCHANGER, Sep. 2023, <https://www.adexchanger.com/marketers/an-industry-in-conflict-its-time-for-tough-questions-and-hard-decisions/> (last visited Mar 12, 2025).

The \$700 billion digital advertising industry is the primary business model of the internet. As it stands today, that business model is broken.

Big tech companies, like Google and Meta have built empires on a foundation of unbridled extraction. Not only have they amassed massive troves of data, but they have cemented themselves across all corners of industry and society, unilaterally establishing norms that benefit their own business to the detriment of their users, advertisers, and publishers alike. Yet, while these companies are household names, there are hundreds of other companies in the advertising technology (“adtech”) sector that have followed in their footsteps.

Before the advent of modern digital advertising, advertisers would typically work with an ad agency to identify which publications their target audiences are likely to consume. Today, most advertising online is transacted through automated, real-time auction. This is known as programmatic advertising.⁴ Over the past two decades, the central promise of programmatic was that it would help advertisers of all sizes more efficiently and effectively reach their audiences, and help publishers monetize - or sell - more of their ad space. The following is a simplified explanation of how a real-time programmatic ad auction works:

1. A user visits a website, triggering a bid request from the website to the Supply Side Platform (“SSP”) that publishers use to sell their ad space. That bid request includes data about the user, such as demographic information, browsing history, location, and the page being loaded.
2. The SSP then sends it over to the Demand Side Platform (“DSP”) that automatically submit bids on behalf of advertisers for the users that match the advertiser’s criteria.
3. The highest bid will win, and the ad will be shown to the user.

This real-time bidding occurs automatically and near-instantaneously.

As such, advertisers today are typically reliant on a supply chain comprised of various intermediaries, including these adtech companies, the ad agencies that plan

⁴ See Mike Sweeney, *What Is Programmatic Advertising? Everything You Need to Know in 2023*, CLEARCODE (Apr. 21, 2020), <https://clearcode.cc/blog/programmatic-advertising/> (last visited Mar 12, 2025).

and execute campaigns on their behalf, and data brokers. For every dollar a business spends on digital ads, each of these intermediaries gets a percentage revenue share, with most paid based on volume. This creates dysfunctional incentives, as every company in the middle stands to gain by having more money pass through their pipes. In addition, in each transaction, these middlemen get access to personal data. This is how programmatic advertising has resulted in constant tracking and widespread sale and leakage of consumer personal data.

Yet, while this process sounds efficient and powerful in theory, the reality is much different. Out of every dollar spent on programmatic advertising, only 36 cents makes it to the publisher.⁵ 29 cents of the ad dollar goes to adtech intermediaries, and 35 cents is wasted on fraud, invalid (e.g. bot) traffic, low-quality made-for-advertising (“MFA”) websites.⁶ The average programmatic ad campaign serves on 44,000 websites.⁷ All the while, even the biggest advertisers, with the most leverage, have limited ability to confirm where exactly their ads appeared.⁸

These figures, produced by leading advertiser trade association, the Association of National Advertisers (“ANA”), represent a *conservative* estimate. It does not, for example, account for ad agency fees. It does not include the money wasted on ineffective ad verification tools that advertisers use in an attempt to make sure their ads go where they want them to go, and are seen by real people.⁹ Nor does it include wasted spending on advertising that, while not technically meeting industry definitions of ad fraud, does not adhere to the criteria outlined by advertisers. Thus,

⁵ Association of National Advertisers, ANA Programmatic Media Supply Chain Transparency Study: Complete Report, <https://www.ana.net/miccontent/show/id/rr-2023-12-ana-programmatic-media-supply-chain-transparency-study> (last visited Mar 7, 2025).

⁶ *Id.*

⁷ *Id.*

⁸ See, e.g. Kendra Barnett, *Buyers Blame Adtech Opacity for Funding Child Abuse Online*, (Feb. 7, 2025), <https://www.adweek.com/media/ad-buyers-blast-google-amazon-and-others-after-ads-appear-on-site-hosting-child-abuse-content/> (last visited Mar 12, 2025).

⁹ See, e.g. Seb Joseph, *Ad Verification Is under Fire: Ad Execs Are Questioning Its Role as Protector*, DIGIDAY (2024), <https://digiday.com/marketing/ad-verification-is-under-fire-ad-execs-are-questioning-its-role-as-protector/> (last visited Mar 12, 2025); Marty Swant, *Amazon, Google and Verification Vendors among Ad Tech Cohort under Fire from U.S. Senators over Child Safety Shortcomings*, DIGIDAY (2025), <https://digiday.com/media-buying/amazon-google-and-verification-vendors-among-ad-tech-cohort-under-fire-from-u-s-senators-over-child-safety-shortcomings/> (last visited Mar 12, 2025).

while research suggests that ad fraud accounts for a whopping \$84 billion¹⁰ in global spend – placing it second only to the drug trade as a source of revenue for organized crime – that is just the tip of the iceberg as it comes to advertiser waste.¹¹

Bad incentives hurt small businesses.

For small businesses, this is not only detrimental to their growth, but at times, to their survival. Recently, Check My Ads Institute launched an advertising campaign with the intention of emanating the experience of an average small business user. We set up a Google Ads account, as millions of other small businesses do.¹² We were nudged into Google’s AI-driven, opaque product, Performance Max, which is notorious for restricting advertiser transparency and control, and has a history of placing ads on potentially illegal content, while ignoring advertiser targeting criteria.¹³

Unsurprisingly, our ads were served exclusively¹⁴ on AI-generated spam websites and other low-quality websites more likely to attract bot clicks than real humans.¹⁵ Our ads appeared on YouTube videos in other languages, when we

¹⁰ QUANTIFYING THE COST OF AD FRAUD: 2023-2028, (2023), <https://fraudblocker.com/ad-fraud-data-facts> (last visited Mar 5, 2025).

¹¹ Press Release, *Sens. Warner & Schumer Call on FTC to Protect Consumers from Digital Ad Fraud* (July 11, 2016), <https://www.warner.senate.gov/public/index.cfm/2016/7/sens-warner-schumer-call-on-ftc-to-protect-consumers-from-digital-ad-fraud/>; Press Release, Sen. Mark R. Warner, *Warner Calls on FTC and Google to Address the Prevalence of Digital Ad Fraud* (Oct. 25, 2018), <https://www.warner.senate.gov/public/index.cfm/2018/10/warner-calls-on-ftc-and-google-to-address-the-prevalence-of-digital-ad-fraud/>; WFA issues first advice for combatting ad fraud - World Federation of Advertisers, <https://wfanet.org/knowledge/item/2016/06/06/WFA-issues-first-advice-for-combatting-ad-fraud/> (last visited Mar 12, 2025).

¹² See, *Plaintiff’s Trial Exhibit 1231*, United States v. Google LLC, No. 1:23-cv-00108 (E.D. Va.), <https://www.justice.gov/atr/media/1369916/dl>.

¹³ See, e.g., Kali Hays, *Google Served Ads on Sanctioned Websites, Adalytics Report Says*, BUS. INSIDER (Apr. 6, 2022), <https://www.businessinsider.com/google-served-ads-sanctioned-websites-adalytics-report-russia-2022-4>; *Google adverts appear on sanctioned sites, according to report*, FINANCIAL TIMES (Nov. 28, 2023), <https://www.ft.com/content/45101fb1-83d3-4b28-87ac-de562be9fb31>; Claire Atkin & Nandini Jammi, *Google Search Ads Lack Transparency*, CHECK MY ADS (Dec. 14, 2023), <https://checkmyads.org/google-search-ads-no-transparency/>.

¹⁴ Google’s Performance Max (“PMax”) product places ads across both Google’s own properties (e.g. YouTube, Search), as well as across third party websites and apps – known as Google’s “network.” This comment refers specifically to network ad placements.

¹⁵ The details of the Check My Ads Institute advertising campaign placements can be accessed here: https://www.dropbox.com/scl/fi/b82iwmsktszeflkoyxb7/PMAX_Placements_Backup.pptx?rlkey=aszmumgmatlpwvc7ai5h8v4ak&dl=0/

explicitly chose to target English language content. Indeed, with some of our ads landing on kids' videos, we have no idea *who* Google's algorithm targeted.¹⁶ Due to the opacity of the product, a small business cannot determine which websites or YouTube channels increased sales or which audiences drove revenue.¹⁷ While Google gets more money and more data, small businesses are merely the unwitting conduit.

The same phenomenon occurs outside of Google's products. The consumer data peddled by data brokers for ad targeting, while being invasively collected, is also astoundingly ineffective for marketing.¹⁸ Research has shown that leading ad data brokers were only right about people's gender 42% of the time – worse than guessing at random. This is what advertisers are paying for.¹⁹

¹⁶ This is not the first instance where Google has appeared to serve adult-targeted ads to children. Natasha Singer, *YouTube and Google Are Accused of Violating Children's Privacy*, N.Y. TIMES (Aug. 17, 2023), <https://www.nytimes.com/2023/08/17/technology/youtube-google-children-privacy.html>; Press Release, Sen. Edward J. Markey, *Senators Markey, Blackburn Demand FTC Investigate YouTube, Google for Suspected Violations of Children's Privacy* (Aug. 17, 2023), <https://www.markey.senate.gov/news/press-releases/senators-markey-blackburn-demand-ftc-investigate-youtube-google-for-suspected-violations-of-childrens-privacy/>.

¹⁷ See, e.g., *Sweetgreen Admedia: Google Search Advertising*, ADWEEK (Apr. 15, 2024), <https://www.adweek.com/media/sweetgreen-admedia-google-search-advertising/> (“... buyers have complained that Performance Max is a black box. Specifically, advertisers say there’s no sufficient controls on where ads go or reporting data on where ads actually ended up”); *Are YouTube Ads COPPA Compliant?*, ADALYTICS, <https://adalytics.io/blog/are-youtube-ads-coppa-compliant> (“...advertisers report they cannot audit this issue because Pmax does not provide them with granular placement reports.”); Department of Justice, *Proposed Remedies for Search Trial: Access to Data Reports*, <https://storage.courtlistener.com/recap/gov.uscourts.dcd.223205/gov.uscourts.dcd.223205.1062.1.1.pdf> (last visited Jan. 16, 2024) (“Google must not limit the ability of advertisers to export in real time...data or information relating to their entire portfolio of ads or advertising campaigns bid on, placed through, or purchased through Google, including data relating to placement or performance (i.e., conversion data).”); Lara O'Reilly, *IPG Mediabrands 'Privacy Alert' Says Clients Should 'Consider' a Pause on Google Ads Product*, BUS. INSIDER (Aug. 17, 2023), <https://www.businessinsider.com/ipg-mediabrands-privacy-alert-pause-google-performance-max-ads-2023-8/>.

¹⁸ Jack Neff, *Disturbing Findings from a Personal Data Journey* / *Ad Age*, <https://adage.com/article/data-driven-marketing/disturbing-findings-personal-data-journey/2577746/> (last visited Mar 12, 2025); Nico Neumann, Catherine E. Tucker & Timothy Whitfield, *How Effective Is Third-Party Consumer Profiling and Audience Delivery?: Evidence from Field Studies*, (2019), <https://papers.ssrn.com/abstract=3203131/> (last visited Mar 12, 2025); ‘Marketers are buying this’: Pitfalls and ‘lies’ to avoid on junk user data, clean room matching, MMM, incrementality tests and B2B tech – Melbourne Business School Associate Professor Nico Neumann | Mi3, <http://www.mi-3.com.au/04-02-2025/marketers-are-buying-pitfalls-and-lies-avoid-junk-user-data-clean-room-matching-mmm/> (last visited Mar 8, 2025).

¹⁹ Neumann, Tucker, and Whitfield, *supra* note 18.

My own personal desktop research echoed these findings.²⁰ One ad platform held over 500 audience segments to which I belonged, which it received from seven different data brokers. To their credit, supplying this much information is very uncommon in the absence of universal legal requirements. Yet, these audiences were highly inaccurate, often contradictory, and sometimes sensitive. According to this data, I'm both high income and below the poverty level. I'm listed as both a middle-aged suburban homeowner without kids, as well as a mother of two. I am neither. I am, according to my profile: a defense contractor, I work in food service, agriculture, and I both love and hate my job. I was identified as likely suffering from heart disease, speaking Spanish, and celebrating Ramadan. None of these things are true. While the industry has finally started to acknowledge²¹ these data quality realities out loud, this insight is far less accessible to small businesses.

The harms of online surveillance outweigh alleged benefits.

Nevertheless, right or wrong, this data can be used – within and beyond advertising – in ways that cause real harm. The Chief Privacy Officer of Acxiom - one of the world's largest data brokers - has admitted that their consumer data used by advertisers around the world is comprised of little more than “informed guesses.”²² He said he “hopes” that if they guess wrong, it doesn't have any negative

²⁰ The details from Arielle Garcia's access request, as excerpted from presentation at Programmatic/IO 2024: https://www.dropbox.com/scl/fi/fd2fgu0xtm4jlrxbefkn2/Programmatic-IO_ArielleGarcia_2024_Excerpts.pptx?rlkey=uznf6cmmgblab2wce27vg3hc2&dl=0/ (Additional detail can be provided upon request).

²¹ \$700bn delusion: Does using data to target specific audiences make advertising more effective? Latest studies suggest not | Mi3, <http://www.mi-3.com.au/26-06-2024/data-delusion-does-using-data-target-specific-audiences-advertising-actually-make/> (last visited Mar 12, 2025); Jack Neff, *supra* note 18; Neumann, Tucker, and Whitfield, *supra* note 18; Suzanne Smalley, “Junk Inferences” by Data Brokers Are a Problem for Consumers and the Industry *Itself*, <https://therecord.media/junk-inferences-data-brokers/> (last visited Mar 8, 2025); ‘Marketers are buying this’, *supra* note 18.

²² Suzanne Smalley, *supra* note 21.

consequences for denial of benefits or credit.²³ But, credit reference agencies have purchased and used Acxiom's data to determine credit worthiness.²⁴

Another data broker, named Epsilon, now also owned by an ad giant, has sold data to perpetrators of elder fraud.²⁵ Its parent company, Publicis, recently announced its acquisition of another data broker which it claims will give it deep insight into 91% of the world population.²⁶ It's a scary thought, given that this is less than two years after the same company's Health unit entered a \$350M settlement for its role in the Opioid crisis.²⁷ As Attorney General Clark may recall, among the allegations, Publicis Health was accused of using doctor-patient recording data to glean insights on how to more effectively push opioids on pain sufferers in "higher and higher doses."²⁸ Meanwhile, its data broker unit, as recently as 2021, continued to sell data pertaining to pain sufferers, and may still do so to this day.

Without privacy laws, like S. 71, that codify transparency and choice, include principles of data minimization, and restrict use of sensitive data, these data-enabled harms will continue unchecked. All of this so that data brokers and adtech companies can sell data that has less than a 50% chance of being accurate to unsuspecting small business advertisers? This is the alleged pinnacle of "efficiency" that props up the

²³ *Id.*

²⁴ Data trading between credit agency and address trader illegal, <https://noyb.eu/en/data-trading-between-credit-agency-and-address-trader-illegal/> (last visited Mar 8, 2025).

²⁵ Office of Public Affairs | Marketing Company Agrees to Pay \$150 Million for Facilitating Elder Fraud Schemes | United States Department of Justice, (2021), <https://www.justice.gov/archives/opa/pr/marketing-company-agrees-pay-150-million-facilitating-elder-fraud-schemes/> (last visited Mar 8, 2025).

²⁶ CoreAI - YouTube, <https://www.youtube.com/watch?v=YCsE0VBH3vI/> (last visited Mar 12, 2025); Rebecca Stewart, *Inside Publicis Groupe's Surprise Acquisition of ID Business Lotame*, (Mar. 6, 2025), <https://www.adweek.com/agencies/inside-publicis-groupe-surprise-acquisition-of-id-business-lotame/> (last visited Mar 12, 2025).

²⁷ Attorney General Clark Announces Vermont Will Receive \$1 Million in Settlement with Marketing Firm Publicis Over Role in Opioid Epidemic | Office of the Vermont Attorney General, <https://ago.vermont.gov/blog/2024/02/01/attorney-general-clark-announces-vermont-will-receive-1-million-settlement-marketing-firm-publicis/> (last visited Mar 12, 2025).

²⁸ *Commonwealth v. Publicis Health, LLC*, No. 21-1055, at 27 (Mass. Super. Ct. Sept. 27, 2021) (complaint)("[A]fter analyzing recordings of conversations between doctors and patients, Verilogue told Purdue...Purdue could use direct 'patient education' efforts too, Publicis said, to get patients comfortable with taking OxyContin, including in higher and higher doses."); Arielle Garcia, *What Do We Say To Emily? The Human Cost Of Advertising Data Abuse*, ADEXCHANGER (2024), <https://www.adexchanger.com/data-driven-thinking/what-do-we-say-to-emily-the-human-cost-of-advertising-data-abuse/> (last visited Mar 12, 2025).

industry's complete disregard for consumer privacy and the data-enabled harms that result from ubiquitous tracking.

S. 71 would help make advertising *more* effective, not less.

This bill that would protect the privacy of Vermont residents is not at odds with relevant, effective advertising. Nor would this bill end all targeted advertising.

What it would do is reduce the supply of low-quality data at the core of the broken adtech market. It would allow for brands, publishers and other companies with legitimate customer relationships, built on a fair value exchange, to realize the value of those assets. Ultimately, it would create the conditions for more relevant advertising that benefits Vermont's businesses, while restricting the harmful practices that undermine the safety, liberty, and security of its citizens.

Thank you for the opportunity to testify in support of this important bill and contribute to the record. We are happy to answer any further questions, and to remain a resource for the Vermont Legislature.

Sincerely,



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