



February 5, 2024

Senator William M. Strauss
24 Beacon St.
Room 134
Boston, MA 02133

Representative Tackey Chan
24 Beacon St.
Room 42
Boston, MA 02133

Senator John. J. Cronin
24 Beacon St.
Room 218
Boston, MA 02133

Representative Mary S. Keefe
24 Beacon St.
Room 466
Boston, MA 02133

Senator Susan L. Moran
24 Beacon St.
Room 312-D
Boston, MA 02133

RE: Massachusetts H. 395 – Oppose

Dear Sen. Strauss, Chair Cronin, Chair Chan, Vice Chair Moran, and Vice Chair Keefe:

On behalf of the advertising industry, we write to oppose H. 395, the “Online Advertising Act” (“OAA”).¹ Below we provide our non-exhaustive list of concerns with this legislation. The OAA would address consumer privacy in a piecemeal fashion by regulating just one type of entity in the marketplace—“third party advertising networks,” as defined. Massachusetts should instead work to advance legislation that reflects the approach taken by the majority of states that have passed privacy laws to provide more holistic privacy protections for Massachusetts residents and more even compliance responsibilities for entities doing business in the state. We ask the Joint Committee on Consumer Protection and Professional Licensure (“Committee”) to decline to advance the OAA any further in the legislative process and to instead look to harmonize its approach to privacy with other state privacy laws.

As drafted, the OAA would place new notice, choice, and other requirements on “third party advertising networks.”² Every other state that has passed omnibus privacy legislation to date has applied its requirements to “businesses” or “controllers,” defined broadly to encompass many types of entities that collect and transfer consumer data. Advancing the OAA would add a new and unprecedented law to the patchwork of privacy standards across the states, which would create significant costs for businesses and consumers alike. Efforts to harmonize state privacy legislation with existing privacy laws are critical to minimizing costs of compliance and fostering similar privacy rights for consumers no matter where they live.

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

¹ Massachusetts H. 395 (193rd Gen. Court, 2024), located [here](#) (hereinafter, “OAA”).

² OAA defines “third party advertising network” as “mean any company, individual or other group that is collecting personally or non-personally identifiable information for the purposes of third party ad delivery and reporting.” *Id.* at Sec. 2(G).

initial compliance costs to California firms would be \$55 billion.³ Another recent study found that a consumer data privacy proposal in a different state considering privacy legislation would have generated a direct initial compliance cost of \$6.2 billion to \$21 billion and ongoing annual compliance costs of \$4.6 billion to \$12.7 billion for the state.⁴ 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 with small businesses shouldering a significant portion of the compliance cost burden.⁵ Massachusetts 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.

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 2020.⁶ By one estimate, over 200,000 jobs in Massachusetts are related to the ad-subsidized Internet.⁷ We would welcome the opportunity to engage with the Committee further on the issues with the OAA that we outline above.

* * *

³ See State of California Department of Justice Office of the Attorney General, *Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations*, 11 (Aug. 2019), located at https://dof.ca.gov/wp-content/uploads/sites/352/Forecasting/Economics/Documents/CCPA_Regulations-SRIA-DOF.pdf.

⁴ See Florida Tax Watch, *Who Knows What? An Independent Analysis of the Potential Effects of Consumer Data Privacy Legislation in Florida*, 2 (Oct. 2021), located at <https://floridataxwatch.org/DesktopModules/EasyDNNNews/DocumentDownload.ashx?portalid=210&moduleid=34407&articleid=19090&documentid=986>.

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).

⁶ 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").

⁷ *Id.* at 127-28.

We and our members support protecting consumer privacy. We believe, however, that the OAA would provide piecemeal protections for Massachusetts consumers and would make the state an outlier in terms of data privacy requirements when compared to other states in the nation. We therefore respectfully ask the Committee to decline to advance the OAA any further in the legislative process. Thank you in advance for your consideration of this letter.

Sincerely,

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CC: Members of the Joint Committee on Consumer Protection and Professional Licensure

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