



February 25, 2022

The Honorable Senator Michael Flood
District #19, State Capitol
1445 K. St., Room 1206
Lincoln, NE 68509

The Honorable Senator Matt Williams
Chairperson of the Nebraska Banking, Commerce and Insurance Committee
District #36, State Capitol
1445 K. St., Room 1401
Lincoln, NE 68509

RE: Letter in Opposition to LB 1188, the Uniform Personal Data Protection Act

Dear Senator Flood and Senator Williams:

On behalf of the advertising industry, we oppose LB 1188, the Uniform Personal Data Protection Act (“UPDPA”).¹ We offer the following comments summarizing our primary list of concerns with the legislation as currently drafted, and we provide suggested amendments to the bill.

On behalf of the nation’s leading advertising and marketing trade associations, we support your interest in protecting the privacy of Nebraska residents, as we and our members strongly believe consumers deserve meaningful privacy protections supported by reasonable government and responsible industry policies. However, state efforts to pass privacy laws only add to the increasingly complex privacy landscape for both consumers and businesses throughout the country. We and our members therefore support a national standard for data privacy set at the federal level. If the Nebraska legislature nonetheless decides to continue its effort to pass a privacy law applying to the state, we encourage it to consider adopting an approach to privacy that aligns with recently enacted legislation in other states, such as the Virginia Consumer Data Protection Act (“VCDPA”).² Despite its best intentions, as presently drafted, the UPDPA is out of step with existing state laws, and its unclear terms could hinder Nebraskans’ access to valuable ad-supported online resources, impede their ability to exercise choice in the marketplace, and harm businesses of all sizes that support the economy. We ask the legislature to decline to move forward with this legislation, or, at the very least, align its privacy approach with the VCDPA.

¹ LB 1188 (Neb. 2022), located [here](#).

² See Virginia Consumer Data Protection Act, §§ Va. Code Ann. 59.1-571 et seq., located [here](#).

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, is responsible for more than 85 percent of the U.S. advertising spend and drives more than 80 percent of our nation’s digital advertising expenditures. 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 our concerns with the UPDPA with an aim toward better aligning the wants of consumers with the needs of the Internet economy.

I. Nebraska Should Take Steps to Harmonize Its Approach to Privacy With Other State Laws

Harmonization in state privacy law standards is in the interests of consumers and businesses alike, including those of Nebraska residents, because it helps ensure consumers are subject to the same privacy protections no matter where they live, and it enables businesses to take a more holistic approach to privacy law compliance. We understand that Nebraska is considering advancing the UPDPA, as drafted by the Uniform Law Commission (“ULC”). We caution the legislature from adopting this approach. Despite the ULC’s mission to “promote uniformity in the law among the several States on subjects” where “uniformity is desirable and practical,”³ the **UPDPA resembles no other state privacy law that has been enacted to date**. In fact, the UPDPA sets forth an entirely new privacy framework that would not only add to the growing list of varying legislative approaches to privacy across the several states. UPDPA further compounds the compliance challenges for businesses because it is also inconsistent with state and international statutes that many businesses are required to comply with.

Instead of adopting the UDPDA, we encourage the legislature to consider a framework for data privacy that better aligns with recently enacted privacy legislation in other states, such as the VCDPA. Uniformity across state privacy laws is essential for minimizing costs of compliance for businesses and for fostering similar consumer privacy rights for consumers. 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 initial compliance costs to California firms would be \$55 billion.⁴ Additionally, a recent study on a proposed privacy bill in a different state found that the proposal have generated a direct initial compliance cost of \$6.2 billion to \$21 billion and an ongoing annual compliance costs of \$4.6 billion to \$12.7 billion for the state.⁵ 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

³ Uniform Law Commission, *Constitution, Bylaws, and Rules of Procedure*, § 1.2, located [here](#).

⁴ 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.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/CCPA_Regulations-SRIA-DOF.pdf.

⁵ 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://floridatxwatch.org/DesktopModules/EasyDNNNews/DocumentDownload.ashx?portalid=210&moduleid=34407&articleid=19090&documentid=986>.

small businesses shouldering a significant portion of the compliance cost burden.⁶ Nebraska should not add to this compliance burden to businesses, and should instead opt for an approach to data privacy that is in harmony with already existing state privacy laws.

II. Broad Regulatory Authority Increases the Possibility for Divergent State Privacy Standards

As currently written, the UPDPA would provide the Nebraska Attorney General with broad regulatory authority to “adopt rules... to implement the Uniform Personal Data Protection Act.”⁷ Providing a broad regulatory directive in this fashion would not support the development of a uniform approach to data privacy, but rather runs contrary to that goal. Under the current draft of the bill, Nebraska’s privacy law would have the potential to diverge even more dramatically from privacy laws in other states, as the Nebraska Attorney General would have the ability promulgate regulations and interpret the bill in ways that differ from privacy standards in other states. This would deprive consumers the consistency sought by ULC in drafting a “uniform model” privacy bill, and it would deny companies the regulatory consistency to enable effective compliance across the country. We therefore encourage the legislature to not include broad regulatory authority in any privacy legislation it considers to better ensure consistency among state standards for data privacy.

III. Data-Driven Advertising Provides Significant Benefits to Nebraska Residents, to the Economy, and to All Consumers

Over the past twenty years, data-driven advertising has created a platform for innovation and tremendous growth opportunities. A new 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.⁸ 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.⁹ Additionally, more than 17 million jobs in the U.S. were generated by the commercial Internet in 2020, 7 million more than four years prior.¹⁰ More Internet jobs, 38 percent, were created by small firms and self-employed individuals than by the largest Internet companies, which generated 34 percent.¹¹ The same study found that the ad-supported Internet supported 36,246 full-time jobs across Nebraska in 2020, approximately double the number of Internet-driven jobs from 2016.¹²

⁶ 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).

⁷ UPDPA, Sec. 16(b).

⁸ See John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 5 (Oct. 18, 2021), located https://www.iab.com/wp-content/uploads/2021/10/IAB_Economic_Impact_of_the_Market-Making_Internet_Study_2021-10.pdf.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 6.

¹² Compare *id.* at 129 (Oct. 18, 2021), located [here](#) 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 18,310 full-time jobs to the Nebraska workforce in 2016 and 36,246 jobs in 2020).

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.¹³ 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.”¹⁴ 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.¹⁵ 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.¹⁶ Data-driven advertising has thus helped to stratify economic market power, ensuring that smaller online publishers can remain competitive with large global technology companies.

B. Advertising Supports Nebraskans’ Access to 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 about COVID-19. Advertising revenue is an important source of funds for digital publishers,¹⁷ and decreased advertising spends directly translate into lost profits for those outlets. Since the coronavirus pandemic began, 62 percent of advertising sellers have seen advertising rates decline.¹⁸ Publishers have been impacted 14 percent more by such reductions than others in the industry.¹⁹ Revenues from online advertising based on the responsible use of data support the cost of content that publishers provide and consumers value and expect.²⁰ Legislative models that inhibit or restrict digital advertising can cripple news sites, blogs, online encyclopedias, and other vital information repositories, thereby compounding the detrimental impacts to the economy presented by COVID-19. The effects of such legislative models ultimately harm consumers by reducing the availability of free or low-cost educational content that is available online.

¹³ See John Deighton, *The Socioeconomic Impact of Internet Tracking* 4 (Feb. 2020), located at <https://www.iab.com/wp-content/uploads/2020/02/The-Socio-Economic-Impact-of-Internet-Tracking.pdf>.

¹⁴ *Id.* at 34.

¹⁵ *Id.* at 15-16.

¹⁶ *Id.* at 28.

¹⁷ See Howard Beales, *The Value of Behavioral Targeting* 3 (2010), located at https://www.networkadvertising.org/pdfs/Beales_NAI_Study.pdf.

¹⁸ IAB, *Covid’s Impact on Ad Pricing* (May 28, 2020), located at https://www.iab.com/wp-content/uploads/2020/05/IAB_Sell-Side_Ad_Revenue_2_CPMs_5.28.2020.pdf

¹⁹ *Id.*

²⁰ See John Deighton & Peter A. Johnson, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the US Economy* (2015), located at <https://www.ipc.be/~media/documents/public/markets/the-value-of-data-consequences-for-insight-innovation-and-efficiency-in-the-us-economy.pdf>.

C. Consumers Prefer Personalized Ads & 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.²¹ 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.²² Indeed, as the Federal Trade Commission noted in its recent comments to the National Telecommunications and Information Administration, if a subscription-based model replaced the ad-based model, many consumers likely would not be able to afford access to, or would be reluctant to utilize, all of the information, products, and services they rely on today and that will become available in the future.²³

During challenging societal and economic times such as those we are currently experiencing, 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 therefore respectfully ask you to carefully consider any future legislation'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.

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²¹ Mark Sableman, Heather Shoenberger & Esther Thorson, *Consumer Attitudes Toward Relevant Online Behavioral Advertising: Crucial Evidence in the Data Privacy Debates* (2013), located at https://www.thompsoncoburn.com/docs/default-source/Blog-documents/consumer-attitudes-toward-relevant-online-behavioral-advertising-crucial-evidence-in-the-data-privacy-debates.pdf?sfvrsn=86d44cea_0.

²² Digital Advertising Alliance, *Zogby Analytics Public Opinion Survey on Value of the Ad-Supported Internet Summary Report* (May 2016), located at https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/ZogbyAnalyticsConsumerValueStudy2016.pdf.

²³ Federal Trade Commission, *In re Developing the Administration's Approach to Consumer Privacy*, 15 (Nov. 13, 2018), located at https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-ntia-developing-administrations-approach-consumer-privacy/p195400_ftc_comment_to_ntia_112018.pdf.

Thank you for your consideration of these primary but non-exhaustive comments. We look forward to continuing to work with the legislature on how to best proceed.

Sincerely,

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