



May 8, 2020

Rep. Paula Davis
Chair of the Louisiana House of Representatives Committee on Commerce
7902 Wrenwood Blvd.
Suite D
Baton Rouge, LA 70809

RE: Letter in Opposition to HB 654

Dear Chair Davis:

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies across the country, from small businesses to household brands, advertising agencies, and technology providers, including a significant number of Louisiana businesses. Our combined membership includes more than 2,500 companies, is responsible for more than 85 percent of U.S. advertising spend, and drives more than 80 percent of our nation's digital advertising spend. We and the companies we represent strongly believe consumers deserve meaningful privacy protections supported by reasonable government policies.

While we fully support the legislature's intent to provide Louisianans with strong privacy protections, we respectfully oppose HB 654 in its current form.¹ The bill would place unreasonable and unclear restrictions on the use of information for marketing and advertising absent a resident's consent. Additionally, the bill confers on consumers a right to opt out of sales of covered information. This provision could significantly limit the availability of information in the marketplace, thereby harming the economy and robbing consumers of the benefits of the free flow of data. We therefore urge the House Committee on Commerce ("Committee") to decline to advance HB 654 further through the legislative process at this time.

I. The Data-Driven and Ad-Supported Online Ecosystem Benefits Consumers and Fuels Economic Growth

Today, the U.S. economy is increasingly fueled by the free flow of data. One driving force in this ecosystem is data-driven advertising. Advertising has helped power the growth of the Internet for decades by delivering innovative tools and services for consumers and businesses to connect and communicate. Data-driven advertising supports and subsidizes the content and services consumers expect and rely on, including video, news, music, and more. Data-driven advertising allows consumers to access these resources at little or no cost to them, and it has created an environment where small publishers and start-up companies can enter the marketplace to compete against the Internet's largest players.

As a result of this advertising-based model, U.S. businesses of all sizes have been able to grow online and deliver widespread consumer and economic benefits. According to a March 2017 study entitled *Economic Value of the Advertising-Supported Internet Ecosystem*, which was conducted for the IAB by Harvard Business School Professor John Deighton, in 2016 the U.S. ad-supported Internet created 10.4 million jobs.² Calculating against those figures, the interactive marketing industry contributed

¹ HB 654, (La. 2020), located at <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1163989>.

² John Deighton, *Economic Value of the Advertising-Supported Internet Ecosystem* (2017), located at

\$1.121 trillion to the U.S. economy in 2016, doubling the 2012 figure and accounting for 6% of U.S. gross domestic product.³ The same study found that in 2016, the ad-supported Internet contributed \$10 billion to Louisiana's annual GDP and supported 29,828 full-time jobs across the state.⁴

Consumers, across income levels and geography, embrace the ad-supported Internet and use it to create value in all areas of life, whether through e-commerce, education, free access to valuable content, or the ability to create their own platforms to reach millions of other Internet users. Consumers are increasingly aware that the data collected about their interactions on the web, in mobile applications, and in-store are used to create an enhanced and tailored experience. Importantly, research demonstrates that consumers are generally not reluctant to participate online due to data-driven advertising and marketing practices. 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.⁵ It is in this spirit—preserving the ad supported digital and offline media marketplace while helping to design appropriate privacy safeguards—that we provide these comments.

II. The Bill's Consent Requirements Are Unclear and Overly Burdensome for Consumers and Businesses

The bill would restrict the use of “any public record that includes the personally identifiable information of a resident... to market or solicit the sale of products or services to the resident without his consent.”⁶ Additionally, the bill would impose a flat prohibition on marketing and solicitations “unless the person has affirmatively consented by electronic or paper notification to share the personally identifiable information with a third party before the personally identifiable information is used for these purposes.”⁷ These provisions are unclear, contradict consumer expectations, and would burden businesses and consumers with an overwhelming number of marketing consent requests.

The restriction on the use of public records for marketing absent consumer consent contrasts with Louisiana's broad and open approach to public information.⁸ Public record data enables *all* market players, regardless of size, to successfully engage in commerce. Restricting entities' ability to freely and responsibly use public record information would disadvantage all businesses in Louisiana, but particularly small business and new market entrants. The proposed restriction on commerce would favor entrenched, large business incumbents who are more readily able to access private and paid-for sources of information. Start-ups and new market entrants rely on access to marketing lists drawn from public record data. Their lack of access to data in the marketplace would hinder their ability to establish and grow their businesses. In addition, the bill's requirement that a person must affirmatively consent to sharing personally identifiable information with a third party before such information may be used for marketing or soliciting is unclear. This term appears to operate under the inaccurate assumption that information will always be shared with third parties in order for marketing to occur. The bill also does not define which entities constitute “third parties,” thereby adding further ambiguity to the provision.

<https://www.iab.com/wp-content/uploads/2017/03/Economic-Value-Study-2017-FINAL2.pdf>.

³ *Id.*

⁴ *Id.*

⁵ 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.

⁶ HB 654, § 1.

⁷ *Id.*

⁸ *See* La. Stat. Ann. §§ 44.1 *et seq.*

The affirmative express consent provisions set forth in the bill would be extremely burdensome for both businesses and consumers. The bill would effectively require consumer consent for any kind of marketing or solicitation for sales of products or services. As a result, consumers would be inundated with multiple requests for consent to the use of personally identifiable information for marketing. The requirement could desensitize consumers to consent requests and could have the unintended result of reducing consumer protection rather than advancing it, as consumers would be less inclined to read and understand the consent prompts before agreeing to them or declining them.

III. The Bill’s Provisions on Personal Information Sales Could Reduce Louisianans’ Access to Diverse Content, Products, and Services Online

The bill states that a “consumer may, at any time, submit a verified request... to an operator directing the operator not to make any sale of any covered information the operator has collected or will collect about the consumer.”⁹ “Sale” is defined as “the exchange of covered information for monetary consideration by the operator to a person for the person to license or sell the covered information to additional persons.”¹⁰ Particularly when combined with the bill’s broad definition of “Personal Information,” this provision could unnecessarily limit information from the digital marketplace that is critical for data-driven advertising and, this would negatively impact the overall economy as well as Louisiana residents.

Data-driven marketing and advertising has provided untold economic and societal benefits by subsidizing the vast and varied free and low-cost digital content consumers enjoy online. As highlighted above, consumers have continually demonstrated a preference for ad-supported digital media. Requests from Louisiana residents directing operators to discontinue any sales of covered information could hinder this necessary exchange of data, and the resulting costs would likely be passed along to consumers in the form of charges for access to information, articles, news, and other online content. Restrictions on data transfers, such as the right to direct operators to stop sales in HB 654, could impede Louisianans’ access to online products and services that they enjoy and expect. We therefore ask the Committee to carefully weigh the benefits and costs of this right for Louisiana residents and reconsider including the right in the bill.

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⁹ HB 654, § 2.

¹⁰ *Id.*

While we and our members support Louisiana's intent to provide consumers with privacy protections, the marketing consent requirement and sale opt out right in HB 654 are problematic and burdensome for both Louisiana residents and businesses. We therefore respectfully oppose HB 654, and we ask the Committee to decline to advance the bill at this time.

Thank you in advance for your consideration of this letter.

Sincerely,

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