



March 1, 2022

Chair Janice D. Schakowsky
2125 Rayburn House Office Building
Washington, DC 20515

Ranking Member Gus M. Bilirakis
2322 Rayburn House Office Building
Washington, D.C. 20515

Re: Hearing on “Holding Big Tech Accountable: Legislation to Protect Online Users”

Dear Chair Schakowsky, Ranking Member Bilirakis, and Members of the Subcommittee:

I write this letter to provide the Interactive Advertising Bureau’s (“IAB”) views on the important topics you are examining today. Founded in 1996 and headquartered in New York City, the IAB (www.iab.com) represents over 700 leading media companies, brand marketers, agencies, and technology companies that are responsible for selling, delivering, and optimizing digital advertising and marketing campaigns. Together, our members account for 86 percent of online advertising expenditures in the United States. Working with our member companies, the IAB develops both technical standards and best practices. In addition, IAB fields critical consumer and market research on interactive advertising, while also educating brands, agencies, and the wider business community on the importance of digital marketing. The organization is committed to professional development and elevating the knowledge, skills, expertise, and diversity of the workforce across the digital advertising and marketing industry. Through the work of our public policy office in Washington, D.C., the IAB advocates for our members and promotes the value of the interactive advertising industry to legislators and policymakers.

IAB supports the thriving, competitive, and multifaceted ad-supported open Internet. The Internet is built on the continuous exchanges of data between devices and servers; without these data exchanges, the Internet and its social, cultural, economic, and personal benefits would not exist. The reasonable use of data provides tremendous benefits to consumers, the economy, and society as whole, and helps assure our nation’s current competitive position globally. Reasonable uses of data should not be demonized, and certainly should not be banned, based on the unsupported assumptions about advertising practices that, if banned or unreasonably curtailed, would result in the elimination of the commercial Internet.

In fact, empirical evidence shows that data-driven advertising has helped to create thousands of new small, medium, and self-employed businesses across multiple sectors of the economy; maintains tens of millions of jobs across the nation in every congressional district, and delivers trillions of dollars in consumer value. The democratizing of advertising and consumer connectivity has been a boon to the rapid emergence of self-employed, small, and mid-sized entities across the economy. While some digital businesses have large user bases due to their valuable and useful products and services, and account for large amounts of the revenue and jobs created by the digital economy, it is clear that data-driven advertising technology has in fact increased the amount of competition those large companies face. Year after year, new media



sources, products, and services come online and find the audience and consumers they seek to serve through data-driven advertising. Consumers previously had access to only a handful of television and radio stations, one or two newspapers, and the stores within their community. Today, consumers have access to countless options for where to place their attention and where to obtain the products and services they desire. Data-driven advertising makes this vibrant and competitive ecosystem possible.

When Congress considers legislation, it should do so carefully and with full consideration of the impact such changes to the law will have for consumers, businesses, and the broader United States economy. The Banning Surveillance Advertising Act of 2022 (H.R. 6416) would disrupt and upend the economic engine supporting the vibrant and open Internet by imposing draconian prohibitions that would eliminate an efficient, reasonable, and long-used form of communication between consumers and businesses.

The information that follows is backed by rigorous academic research and real-world studies of how data-driven advertising, and the various markets and consumer benefits it enables, increases competition in the United States and supports millions of companies across the country. Included among these companies are both thousands of providers of consumer goods and services, as well as tens of thousands of digital publishers that rely on data-driven advertising to deliver the content and services that consumers rely on to be better informed, entertained, and to connect with one another.

Section I below provides three compounding arguments and examples of the vibrant marketplace, consumer benefits, societal goods, and positive economic impacts that data-driven advertising has brought to the United States. Section II discusses the potential constitutional issues regarding the proposed banning of data-driven advertising practices. Finally, Section III discusses how to reasonably address the types of practices at the heart of some of legislative proposals that are gaining a hearing today.

Instead of quashing a legitimate form of speech, Congress should enact a preemptive, comprehensive national privacy law that provides real consumer protections by banning unreasonable practices that create real, substantial, and concrete harms, while encouraging data to continue to be used in a reasonable manner to further fuel the innovative and expanding United States economy. Such a comprehensive approach should be coupled with an increase in resources and enforcement authority for the Federal Trade Commission (“FTC” or “Commission”) that is tied to specific prohibitions and criteria that place companies on notice regarding unreasonable practices. That new FTC enforcement authority should foster competition, improve consumer benefits, and continue to grow the United States’ economy.

I. Advertising, especially data-driven advertising, provides immense value to society and the economy by opening new markets to small, mid-size, and large businesses alike by enabling them to connect with consumers and compete with each other.

For decades data-driven advertising has facilitated innovation and significant growth in the economy. This growth is fueled not only by the largest firms, but also by the explosion of small



and mid-sized companies, including sole proprietors, that use data and the Internet to compete nationwide with market incumbents and newcomers of all sizes.

Digital advertising, and the Internet economy it supports and drives, contributed \$2.45 trillion to the United States' gross domestic product ("GDP") in 2020, accounting for 12 percent of GDP.¹ That is a growth rate of 22 percent between 2016 and 2020, in a total economy that grew only 2-3 percent per year during that same period.² Further, the data-driven, digital-advertising-supported marketplace accounted for jobs for more than 17 million American jobs in 2020. Most of those jobs were created not by the largest Internet platforms, but instead by small firms and self-employed individuals in all 50 states.³ In fact, self-employed individuals and people working in small teams of five or fewer people made up 19% of the Internet job total.⁴

This digital advertising ecosystem is broad and deep. It encompasses retailers, e-commerce stores, publishers, content developers, service providers, manufacturers, software developers, systems vendors, market research firms, CRM providers, security systems providers, advertising and marketing agencies, games companies, streaming video and audio services, and individual self-employed creators. For instance, there are 200,000 full-time equivalent jobs in the online creator economy.⁵ This number is close to the combined memberships of the following craft and labor unions: SAG-AFTRA (160,000), the American Federation of Musicians (80,000), the Writer's Guild (24,000), and the Authors Guild (9,000).⁶ There are at least 5.5 million full-time and part-time jobs which otherwise would not have existed that have been generated by smaller Internet platforms such as AirBnB, Lyft, EBay, Instacart, and Etsy.⁷ The data-driven advertising ecosystem has generated untold levels of access to new market entrants and created the vibrant Internet economy that has placed the United States at the head of the global marketplace.

In addition, data-driven advertising has been the basis of a hundred-plus years of economic development and growth. For instance, advertising based on data and consumer interests helped create classic American advertising brands as well as the expanding direct-to-consumer market. Over time, the ability of companies and consumers to engage with data-driven advertising has evolved, but the basic principle of delivering the right message to the right consumers at the right time in the right place is now the backbone of the American business-to-consumer economy, so much so that relevant advertising, tailored to the interests of individuals, is now the expectation among consumers. Congress should not take sweeping actions, such as banning most if not all digital advertising, particularly where the record does not support such a drastic measure, and

¹ John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 5, (Oct. 18, 2021), https://www.iab.com/wp-content/uploads/2021/10/IAB_Economic_Impact_of_the_Market-Making_Internet_Study_2021-10.pdf [hereinafter *Market-Making*].

² *Id.*

³ *Id.* at 5-6.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 7.

⁷ *Id.* at 8.



disrupt trillions of dollars in economic activity and such a large and vibrant part of the economy, as would occur with the passage of H.R. 6416.

- a. **The digital advertising ecosystem fosters a competitive marketplace for advertisers, publishers, and technology companies. Overly broad prohibitions would limit competitive opportunities and lead to more marketplace concentration, not less.**

The current data-driven, ad-supported commercial Internet relies on a mix of different advertising technologies and techniques. Multiple studies by leading economists show that unreasonable regulation of tracking and interest-based advertising (“IBA”)⁸, as would occur with a ban on so-called “surveillance advertising,” would lead to “more concentrated” control of the ad-supported Internet.⁹ The data-driven advertising ecosystem encourages myriad advertisers, manufacturers, service providers, agencies, distributors, retailers, software developers, news reporters, entertainment services, and other content, product, and service creators to enter the Internet ecosystem. Congress should not follow misguided calls to effectively limit competition in the data-driven economy with no countervailing consumer benefits or protections.

Prior to the explosion of content generated by the commercial Internet and enabled by data-driven advertising, consumers had access to a limited set of newspapers, radio stations, television stations, shopping experiences, and other content based on where they happened to live. Now, consumers have access to tens of thousands of content publishers and online services across multiple channels, unlimited by geographic constraints, generating growth in the content economy with corresponding employment opportunities. Thanks to data-driven advertising, the total employment in the online news market has risen threefold since 2008, to 142,000 jobs, 73% more than were employed in 2016.¹⁰ Additionally, 2.1 million e-commerce companies were operating in the United States in 2020, generating \$715 billion in revenue.¹¹ Many of those millions of companies are small businesses and sole-proprietorships that are able to achieve success and grow their customer base thanks to data-driven advertising technologies that lower barriers to entry and broaden geographic reach.¹²

For example, one study found that 67% of surveyed small businesses used data-driven advertising to lower their overall advertising costs, with 75% of those surveyed small businesses reporting that digital ads specifically helped them find new customers.¹³ Sales growth at small

⁸ A term generally defined as the collection and use of data from a computer or device, as well as associated computers and devices, to deliver advertising to those computers and devices based on inferred interests based on the data collected, used, and transferred from those computers and devices. See generally Digital Advertising Alliance, *Self-Regulatory Principles and Guidance* (2018), <https://youradchoices.com/principles>.

⁹ See e.g., John Deighton, *The Socioeconomic Impact of Internet Tracking* 4 (Feb. 2020), <https://www.iab.com/wp-content/uploads/2020/02/The-Socio-Economic-Impact-of-Internet-Tracking.pdf> [hereinafter *Socioeconomic*]; Deloitte Dynamic Markets, *Small Business Through the Rise of the Personalized Economy*, 11 (May 2021); *Market-Making* at 5.

¹⁰ *Market-Making* at 7.

¹¹ *Id.*

¹² See Deloitte Dynamic Markets, *Small Business Through the Rise of the Personalized Economy*, 11 (May 2021).

¹³ *Id.* at 16.



companies using data-driven advertising was 16% greater than at small businesses that did not leverage data-driven marketing during the period of study.¹⁴ Thanks to the tools and technologies made available by the data-driven advertising ecosystem, consumers are able to find these new and innovative businesses. Now, instead of advertising to the neighborhood or town where a business sets up shop, a new company can access a nationwide or global audience to create a diverse consumer base that helps fuel robust growth—and enable even more competition with established entities.¹⁵

Evidence also exists that competitiveness is harmed not by data-driven advertising, but rather by unfair and unreasonable efforts to restrict data-driven advertising. For example, since Apple restricted access to its Identifier for Advertising (“IDFA”), the cost of acquiring new customers for a business has increased tenfold.¹⁶ A nationwide prohibition on data-driven advertising would be incalculably more damaging than the already deleterious, unfair obstructions to trade imposed by the world’s richest technology company. Indeed, a disruption to the open Internet’s independent publishers and other companies that rely on data-driven advertising would cause a loss of between \$32 and \$39 billion in annual revenue by 2025 if data-driven advertising were to be unreasonably limited.¹⁷ One example of how H.R. 6416’s definitions could have the inadvertent result of impacting and unreasonably restricting a broad swath of basic commercial advertising activities, not simply the practices that it attempts to regulate, can be found in how it treats ZIP codes. ZIP codes have been used to target advertising messages for nearly 60 years. The U.S. Postal Service has recommended tying to ZIP code targeting to consumers’ demographic information to “increase the value of mail for senders and receivers by connecting recipients with more precisely targeted mailings and reducing less valuable broad mailings.” Yet under H.R. 6416, a company hired to connect a local car dealership with individuals could be prohibited from “targeting” radio advertisements, through digital radio signals, to particular ZIP codes near the dealership.¹⁸ This is just one example of how the bill’s far-reaching provisions could unintentionally disrupt a vast array of productive and reasonable activities, including legacy activities, and fundamentally change the way consumers access products and services and how businesses of all sizes and types connect with their existing and potential customers.

Not only does data-driven advertising increase the competition for consumer-facing digital operations, but it also creates new business-to-business opportunities for providers of data-driven advertising technology and other business operations. The competitive nature of the digital advertising ecosystem is further supported through a review of the data-driven advertising industry’s own self-regulatory choice tool. That tool allows consumers to make choices about data

¹⁴ *Id.*

¹⁵ *Id.* at 23.

¹⁶ “Loose-leaf tea seller Plum Deluxe used to gain a new customer for every \$27 it spent on Facebook and Instagram ads. Then, Apple Inc. introduced a privacy change restricting how users are tracked on mobile devices.” “Now, the company spends as much as \$270 to pick up a new customer. “That’s a huge jump and one that we just can’t absorb.” Patience Haggin & Suzanne Vranica, *WSJ, Apple’s Privacy Change Is Hitting Tech and E-Commerce Companies. Here’s Why.* (Oct. 2021), <https://www.wsj.com/articles/apples-privacy-change-is-hitting-tech-and-e-commerce-companies-11634901357>. See also SBE Counsel, *Online Advertising Delivers BIG Benefits for Small Businesses* (2019), <https://sbecouncil.org/2019/09/10/online-advertising-delivers-big-benefits-for-small-businesses/>.

¹⁷ See *Socioeconomic* at 4.

¹⁸ See Bill at Sec. 4(17)(B)(ii).



collection, use, and transfer for advertising purposes for over 120 different companies.¹⁹ Those competitive companies helped create an advertising market where the actual cost of data-driven digital advertising is much lower than advertising in other media. The average cost-per-thousand impressions (“CPM”) in direct mail in the United States is around \$300; for prime-time television advertising about \$35; for data-driven digital advertising, about \$2.80.²⁰ Quite clearly, were a ban on Internet advertising to come to fruition, the immediate effect would be a 12x to 100x increase in advertising costs, which most companies, in order to survive, would be forced to pass on to consumers in the form of higher prices. One study found that across approximately forty different sectors of the economy, the Internet’s data-driven advertising drove market entry, employment, and revenue growth.²¹ These advertising practices support and encourage an ever more competitive market.

b. Data-driven digital advertising increases revenue for online publishers and makes all kinds of Internet companies sustainable.

Data-driven advertising provided by hundreds of companies to countless websites, mobile apps, and other online consumer-facing properties increases publishers’ revenue. Data-driven advertising is the resource that enables publishers to provide free and low-cost content to consumers, grow their audiences, and generate revenues.

Several studies have challenged the spurious claim that the technology that enables data-driven relevant advertising is unnecessary and that the loss of such technology would increase revenues at online publishers. One study found that publisher ad prices could fall as much as 52% from the loss of targeting.²² While such a price reduction may be viewed as a positive by some, it has a corresponding and significant impact on publisher revenue, which could cause a publisher’s revenue to fall two to three times below what would have been generated through the use of data.²³ Although online publishers of all sizes rely on data-driven advertising, smaller publishers depend on the practice for a significantly greater portion of their advertising revenue.²⁴ Some advocates suggest that such data-driven advertising can be replaced with other advertising practices with no negative impact on publisher revenue or consumer access. The research cited above shows that claim to be false, and Congress should take care to evaluate all the impacts of proposed legislation before taking action.

¹⁹ See Digital Advertising Alliance, *WebChoices* (2021), <https://optout.aboutads.info/>.

²⁰ Stephanie Faris, Chron, *What Is a Typical CPM?* (Apr. 15, 2019), <https://smallbusiness.chron.com/typical-cpm-74763.html>.

²¹ See generally, *Market-Making*.

²² Garret Johnson et al., *Consumer Privacy Choice in Online Advertising: Who Opt Out and at What Cost to Industry?* (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3020503.

²³ See *Id.*

²⁴ Digital Advertising Alliance, *Study: Online Ad Value Spikes When Data Is Used to Boost Relevance* (Feb. 10, 2014), <https://digitaladvertisingalliance.org/press-release/study-online-ad-value-spikes-when-data-used-boost-relevance>. See also Digital Advertising Alliance, *New Study Shows Ad Revenue Benefit through Cookies – Reinforcing Previous 2014 DAA Research: We Can Have Both Personalization & Ubiquitous Privacy Protections* (2019), <https://digitaladvertisingalliance.org/blog/new-study-shows-ad-revenue-benefit-through-cookies-%E2%80%93-reinforcing-previous-2014-daa-research-we>.



Far from being the reason online publishers may face revenue challenges, data-driven advertising is the reason that more than half of all advertising spending in the United States has moved to digital media, a change that has buoyed online publishers.²⁵ Should Congress take the extreme measure of banning data-driven advertising, it is likely that between “\$32 billion and \$39 billion of advertising and ecosystem revenue would move away from the open web by 2025.”²⁶ This type of result was observed in a study of the European mobile app marketplace. The European Union has considered a ban on data-driven advertising, and the study found that a ban would threaten “about €6 billion of advertising income for app developers. As a result [of a ban], European consumers would face the prospect of a radically different Internet: more ads that are less relevant, lower quality online content and services, and more paywalls.”²⁷ In fact, implementation of the General Data Protection Regulation (“GDPR”) in Europe has already foreshadowed what is likely to occur in the U.S. should unnecessary and unfair data constraints be implemented: It helps large firms grow their reach and revenues at the expense of smaller firms.²⁸ Indeed, small businesses in Europe have not flourished in the ways their U.S. counterparts have. For the above reasons, a change like the one envisioned by H.R. 6416 would increase market concentration, limit consumer choice, negatively impact the use of the Internet, and remove competition from the Internet.²⁹

c. Consumers value the ad-supported Internet and the relevant advertising it delivers and understand their choices regarding data-driven marketing. Consumers are not harmed by data-driven advertising.

Consumers desire free or low-cost access to the online services that digital advertising provides, prefer that ads they see be more relevant to their interests, and understand the value exchange and controls offered to them regarding data-driven advertising. Research shows that more than half of surveyed consumers desire relevant advertising, and a significant majority desire tailored discounts.³⁰ Additionally, 90 percent of consumers in a different survey stated that free content was important to the overall value of the Internet, and 85 percent stated they prefer the

²⁵ *Market-Making* at 8.

²⁶ *See Socioeconomic* at 4.

²⁷ Center for Data Innovation, *The Value of Personalized Advertising In Europe* (Nov. 22, 2021), <https://www2.datainnovation.org/2021-value-personalized-ads-europe.pdf>.

²⁸ Nick Kostov & Sam Schechner, *Wall. St. Jour.*, *GDPR Has Been a Boon for Google and Facebook* (Jun. 17, 2019), <https://www.wsj.com/articles/gdpr-has-been-a-boon-for-google-and-facebook-11560789219>. Poorly considered legislation, like the California Consumer Privacy Act (“CCPA”), also harm small businesses disproportionately to larger entities due to the high cost of compliance for limited corresponding consumer benefit. *See* Attorney General’s Office California Department of Justice, *Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations* (Aug. 2019) (finding that compliance with the CCPA could cost \$55 billion dollars for companies).

²⁹ *Id.*

³⁰ Mark Sableman, Heather Shoenberger & Esther Thorson, *Consumer Attitudes Toward Relevant Online Behavioral Advertising: Crucial Evidence in the Data Privacy Debates* (2013), 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.



existing ad-supported model, where most content is free, rather than a non-ad supported Internet where consumers must pay for most content.³¹

Moreover, consumer surveys show that the use of data for advertising is the least important issue to consumers when they consider digital privacy protections, and that consumers want any privacy regulation to protect the ad-supported Internet they enjoy today.³² Additionally, surveyed consumers placed a value on the ad-supported digital services they use for free at more than \$1,400 in 2020, an increase of more than \$200 from 2016.³³ Another economic analysis published by the Massachusetts Institute of Technology found that consumers place a value of tens of thousands of dollars per year on the free, ad-supported digital services they receive, including search engines, email, maps, video, e-commerce, social media, messaging, and music³⁴—a consumer surplus totaling trillions of dollars that would be wiped away if data-driven advertising was banned.

An example of the explosive growth in consumer surplus provided by data-driven advertising online is in the digital entertainment sector – a sector that was in its infancy fourteen years ago. Today, podcasts, gaming, streaming video and music, and the rest of the digital entertainment sector generate \$40 billion of revenue from Internet-related activity, and this sector doubled in employment in the last four years to approximately 34,000 people.³⁵ Data-driven advertising helped create this entirely new sector of the economy, offering consumers new entertainment and information channels, as well as access to myriad new and diverse voices that previously had been invisible or inaccessible to them. Without the support of data-driven advertising, consumers would not be able to derive the very valuable benefits provided by these companies. The Federal Trade Commission itself acknowledged in previous comments to Congress that, if a subscription-based model replaced the ad-supported model for the Internet, consumers would likely not be able to afford access to, or would be reluctant to utilize, all of the information, products, and services they do today.³⁶

Consumers understand the choices they have regarding data-driven advertising, and few of them choose to opt out of the practice. Consumers have various opportunities to opt out of data-driven advertising. For instance, in California, Virginia, and Colorado, laws will soon come into

³¹ Digital Advertising Alliance, *Americans Value Free Ad-Supported Online Services at \$1,400/Year; Annual Value Jumps More Than \$200 Since 2016* (Sept. 28, 2020), <https://digitaladvertisingalliance.org/press-release/americans-value-free-ad-supported-online-services-1400year-annual-value-jumps-more-200>.

³² Digital Advertising Alliance, *U.S. Consumer Attitudes on Privacy Legislation* (2018), https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/Nov2018-privacy-legislation-consumer-survey.pdf.

³³ Digital Advertising Alliance, *Americans Value Free Ad-Supported Online Services at \$1,400/Year; Annual Value Jumps More Than \$200 Since 2016* (Sept. 28, 2020), <https://digitaladvertisingalliance.org/press-release/americans-value-free-ad-supported-online-services-1400year-annual-value-jumps-more-200>.

³⁴ Erik Brynjolfsson *et al.*, Proceedings of the National Academy of Sciences, *Using massive online choice experiments to measure changes in well-being* (Apr. 9, 2019), <https://www.pnas.org/content/116/15/7250>.

³⁵ *Market-Making* at 8.

³⁶ Federal Trade Commission, *In re Developing the Administration's Approach to Consumer Privacy*, 15 (Nov. 13, 2018), 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.



effect that allow state residents to opt out of interest-based advertising.³⁷ In addition, self-regulatory frameworks, such as the Digital Advertising Alliance Self-Regulatory Principles (“DAA Principles”), allow all consumers, regardless of their state of residency, to opt out of interest-based advertising and have been recognized by the FTC as providing important consumer protections.³⁸ Consumers recognize the DAA AdChoices Icon and understand that it provides easy access to data controls.³⁹ Even though consumers are offered various ways to opt out of data-driven advertising, studies show that few actually exercise that choice, underscoring the value they receive from relevant advertising targeted to their interests and needs.⁴⁰

Congress should not ignore consumers’ stated and revealed preferences for free, online products and services supported by more relevant advertising enabled through the responsible use of data. Congress should not give undue credence to claims regarding consumer preferences and harm with regard to advertising when it is clear claims of consumer harm are misleading and based solely on conjecture and personal distaste for advertising by select interest groups. For these and the other reasons discussed throughout this letter, Congress should not pass H.R. 6416.

II. The proposals to ban or unreasonably constrain data-driven advertising violate First Amendment protections for commercial and individual speech.

The banning of data-driven advertising would likely be a violation of the First Amendment. Commercial speech by a business is constitutionally protected speech.⁴¹ For a regulation to restrict commercial speech and be within constitutional bounds it must: (1) assert a substantial state interest in restricting the speech; (2) directly advance that substantial interest; and (3) be no more extensive than necessary to serve that interest.⁴² The sweeping ban of a century’s worth of established marketing practice contemplated by H.R. 6416 would not directly advance any substantial government interest, and would be more extensive than necessary if such an interest existed. Moreover, categorically banning an entire segment of advertising would specifically and

³⁷ California Privacy Rights Act of 2020, Cal. Civ. Code § 1798.120; Virginia Consumer Data Protection Act, Va. Code Ann. § 59.1-573(A)(5); Colorado Privacy Act, Colo. Rev. Stat. § 6-1-1306(1)(a). Notably, none of these states attempted to ban the practice, or even require consumers opt-in to receiving data-driven advertising.

³⁸ Digital Advertising Alliance, *Self-Regulatory Principles for Online Behavioral Advertising* (Jul. 2009), https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/seven-principles-07-01-09.pdf; FTC, *Cross-Device Tracking, An FTC Staff Report*, 11 (Jan. 2017), https://www.ftc.gov/system/files/documents/reports/cross-device-tracking-federal-trade-commission-staff-report-january-2017/ftc_cross-device_tracking_report_1-23-17.pdf (“FTC staff commends these self-regulatory efforts to improve transparency and choice in the cross device tracking space...DAA [has] taken steps to keep up with evolving technologies and provide important guidance to their members and the public. [Its] work has improved the level of consumer protection in the marketplace.”).

³⁹ Digital Advertising Alliance, *New DAA-Commissioned Survey Shows ‘AdChoices’ Icon Recognition Has Grown to 82 Percent in 2021* (Jun. 3, 2021), <https://digitaladvertisingalliance.org/blog/new-daa-commissioned-survey-shows-%E2%80%98adchoices%E2%80%99-icon-recognition-has-grown-82-percent-2021>.

⁴⁰ Garret Johnson *et al.*, *Consumer Privacy Choice in Online Advertising: Who Opt Out and at What Cost to Industry?* (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3020503 (finding that 0.23% of consumers choose to opt-out of IBA).

⁴¹ See *Individual Reference Services Group, Inc. v. Fed. Trade. Comm’n.*, 145 F. Supp. 2d 6, 41 (D.D.C. 2001); *Boetler v. Advance Magazine Publishers Inc.*, 210 F. Supp. 3d 579, 597 (S.D.N.Y. 2016); *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011).

⁴² *Individual Reference Services Group, Inc. v. Fed. Trade Comm’n.*, 145 F. Supp. 2d 6, 41 (D.D.C. 2001).



adversely affect digital publishers that rely on such advertising to support their production and distribution of news, entertainment, opinion journalism, advocacy, community organizing, and other activities that are fully protected by the First Amendment and centuries of jurisprudence. Congress should not step into such a fraught and fruitless endeavor at the behest of those advocating to ban these practices.⁴³

III. Congress should not take piecemeal approaches to consumer privacy in the digital age that do not fully address potential consumer harms, and serve only as a burden on businesses acting in good faith through rising costs of compliance.

Two other bills that the Committee seeks to discuss today also cause us concern: H.R. 6580, The Algorithmic Accountability Act of 2022, and H.R. 6796, the Digital Services Oversight and Safety Act of 2022. Both bills seek to bring “accountability” to certain data practices, but instead would implement new compliance requirements on businesses that do not serve to increase consumer protection or prevent concrete consumer harms. Instead of taking unnecessary and wasteful steps to increase the cost of doing business, Congress should focus on comprehensive approaches to consumer privacy that would increase consumer protection and foster increased innovation in the provision of such protections.

H.R. 6580 would require certain entities to engage in impact assessments regarding certain uses of algorithms in their product and service offerings. While impact assessments may be useful parts of a comprehensive privacy program, a standalone requirement for just one part of a company’s data activity does not achieve those same results. Instead, the bill would require companies to perform assessments based on FTC regulations, provide versions of those assessments to the FTC, and have summaries of them placed in a public database. Beyond the potential exposure of vital trade secrets and proprietary business information that the disclosure of impact assessments may create, it is unclear what if any consumer benefits will flow from these requirements. Instead of imposing new compliance costs on companies, Congress could take other measures to encourage, but not mandate, a specific form of transparency. Additionally, if Congress wishes to require companies to engage in impact assessments, those assessments should be part of comprehensive privacy legislation.

H.R. 6796 would create a new bureau at the FTC and authorize myriad new regulations and rulemaking procedures. The new authority granted to FTC, like that in H.R. 6580, would place new, burdensome, requirements on companies without any countervailing consumer protections or benefits. We support a strengthened FTC that can enforce a comprehensive, preemptive, privacy law. However, those new resources, staff, and powers must be combined with clear criteria for rules and enforcement that place companies on notice about what activity is prohibited and what is allowed. H.R. 6796 appears to create a set of recordkeeping requirements and databases through which a privileged set of government-authorized academics and researchers would be allowed to access for their own purposes. Congress should instead empower the FTC through a comprehensive, preemptive, privacy law that would provide all Americans with consistent privacy

⁴³ See also Daphne Keller, Stanford Law School Center for Internet and Society, *Six Constitutional Hurdles For Platform Speech Regulation* (Jan. 22, 2021), <http://cyberlaw.stanford.edu/blog/2021/01/six-constitutional-hurdles-platform-speech-regulation>.



protections, foster competition on a strong baseline of privacy, and place the FTC in a position to police bad actors in the marketplace.

IV. A national privacy standard rooted in a principles-based approach can address actual consumer harms while allowing for innovation to continue and consumers to still access the services and products they desire.

We recommend that Congress look to Privacy for America’s Framework to guide its development and enactment of comprehensive and preemptive federal consumer data privacy and security legislation.⁴⁴ Taking such an approach to protecting consumer privacy, instead of creating a ban on a reasonable use of data, would provide concrete benefits to consumers and still allow for innovation and preserve the vibrant economy data-driven advertising supports.

The Privacy for America Framework would designate certain uses of personal information to be reasonable and others to be *per se* unreasonable and thus prohibited.⁴⁵ For other uses of personal information, the Framework would empower the FTC to step in and issue regulations as needed to define the contours of permissible and impermissible activities based on specific criteria.⁴⁶ This approach would substantially enhance the FTC’s regulatory and enforcement authority with more resources without disrupting reasonable uses of data. Instead of a blanket ban on valuable data practices, the Framework address actual harmful practices with appropriate controls to deliver real results to consumers. This is a model that Congress can look to in its work to create a true national privacy standard, backed by a strengthened FTC and state attorneys general, instead of piecemeal attempts to address perceived harms that are not based in reality.

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Thank you again for the opportunity to write to you today, and we look forward to working with Congress and the Subcommittee on these and other important topics.

Sincerely,

Lartease M. Tiffith, Esq.
Executive Vice President for Public Policy
Interactive Advertising Bureau

⁴⁴ See <https://www.privacyforamerica.com/overview/principles-for-privacy-legislation/>. The Framework is also attached to this letter.

⁴⁵ Framework at Part 1, Sec. 1(Y); Sec. 3: Sec 6(G)(c).

⁴⁶ Framework at Part 2, Sec. 2.