March 7, 2023

Senate Committee on Judiciary
Attn: Lisa Rybloom, Mike Reiley
900 Court St. NE
Salem Oregon 97301

Re: Oregon SB 619 – Relating to protections for the personal data of consumers (Oppose)

Dear Chair Prozanski and Members of the Senate Committee on Judiciary:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully provide input on and express several concerns about the current provisions including in SB 619.

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For over 50 years, CCIA has promoted open markets, open systems, and open networks. The Association supports the enactment of comprehensive federal privacy legislation in order to promote a trustworthy information ecosystem characterized by clear and consistent consumer privacy rights and responsibilities for organizations that collect data. A uniform federal approach to the protection of consumer privacy is necessary to ensure that businesses have regulatory certainty in meeting their compliance obligations and that consumers are able to understand and exercise their rights.

We appreciate, however, that in the absence of federal privacy protections, state lawmakers have a continued interest in enacting local legislation to guide businesses and protect consumers. Thus, should the Oregon State Legislature in conjunction with the Oregon Attorney General Office's Consumer Data Privacy Task Force proceed in advancing SB 619, CCIA would like to highlight several areas for consideration in order to support meaningful privacy protections that avoid avoid unnecessary interference with the ability of businesses to meet their compliance obligations and the opportunity for consumers to benefit from the innovation that supports this modern economy.

1. Privacy rules should promote interoperability and state-to-state consistency to provide clear regulatory certainty across jurisdictions nationwide.

For example, any forthcoming regulations should be reasonably aligned with the existing duties, definitions, and rights of comparable state privacy laws. If inconsistent with already existing privacy regimes, such legislation would prompt significant statutory interpretation and compliance difficulties for businesses participating in the online marketplace. And given the significant costs of developing data privacy systems, minor statutory divergences between frameworks for key definitions or compliance obligations can create enormous burdens for covered organizations. While SB 619 shares

many similarities with existing state privacy laws such as in Virginia, Connecticut, and Colorado, CCIA would like to take this opportunity to highlight several areas of divergence.

2. Several definitions could be further revised to support consistency and harmonization with other state privacy laws and provide clarity for covered entities to achieve compliance.

CCIA recommends several definitions in order to support business compliance efforts while simultaneously promoting strong consumer data protections. These include definitions for i) "targeted advertising", ii) "biometric data" and iii) "legal and similarly significant effects".

While the definition of "targeted advertising" mirrors language in the Virginia, Connecticut, and Colorado laws, it could be further revised for clarity and to more closely align with such existing state laws. CCIA recommends clarifying that the bill provides for a limited opt-out of targeted advertising based on third-party data. This is a proven and workable approach that would allow businesses to continue delivering valuable and accessible experiences while providing consumers with control over how their data is used.

Similarly, while SB 619's draft language helpfully clarifies that "biometric data" does not include photographs, audio or video recording, CCIA recommends that the definition be further narrowed to clarify that the bill covers biological characteristics "that are used to identify a specific individual". Such a clarification would assist in reducing uncertainty for businesses and consumers alike regarding the scope of the bill's protections and promote consistency with other state laws.

SB 619 would allow a consumer to opt-out of a controller processing a consumer's personal data for targeted advertising, sale of personal data, or profiling to support decisions that produce "legal or similarly significant effects". Although this language points to an important limiting principle that supports the beneficial uses of automated systems while protecting consumers' data, the bill does not currently define this term. CCIA recommends including a definition that mirrors the definition adopted in Virginia, Connecticut, and Colorado.

3. CCIA recommends striking the "constructive knowledge" standard in favor of "actual knowledge" as this distinction removes ambiguity.

SB 619 would require a controller to process data for users under 13 years of age in accordance with measures specified by the federal Children's Online Privacy Protection Act of 1998 (COPPA), if the controller knows or constructively knows they are a child. Moreover, opt-in consent would also be required for the processing of personal data for the purposes of targeted advertising or to sell a consumer's personal data if the controller has "actual or constructive knowledge" that the consumer

is between 13-15 years old. The "constructive knowledge" language should be removed from both provisions in favor of an "actual knowledge" standard, consistent with the standard under COPPA.

4. CCIA recommends additional revisions regarding request rights to align with existing state laws and provide additional clarity.

As written, SB 619 allows for a controller to charge a consumer for a second or subsequent request to cover the administrative costs of complying with such additional requests. However, the bill does not include an express authorization for a controller to charge or decline to respond to requests that are "manifestly unfounded, excessive, repetitive, or technically infeasible" in nature, like other state laws, such as Virginia and Connecticut. CCIA recommends revising Section 3 to ensure such request rights are not abused and do not harm the processing of good faith consumer requests.

Similarly, to further align with the Virginia and Connecticut laws, CCIA recommends clarifying that Section 2 should not be construed to adversely affect any individual's rights or freedoms, such as the privacy and data protection of others. The addition of such a provision recognizes that companies may face instances in which consumers exercising rights under the Act may implicate the rights of another, and would clarify that businesses may consider such third person's rights in responding to a request.

5. The bill's enforcement provisions risk creating inflated liability with no associated meaningful improvement to consumer data protections.

The bill's private right of action would create unwarranted, inflated liability for thousands of online enterprises. As such, CCIA recommends removing the private right of action in its entirety. By creating a new private right of action, this legislation would open the doors of Oregon's courthouses to speculative claims from plaintiffs. As speculative lawsuits prove extremely costly and time-intensive to litigants and the judiciary, it is foreseeable that these costs would be passed on not only to taxpayers but also to online services and local brick-and-mortar businesses in the state that use these services to advertise online. These costly proceedings would disproportionately impact smaller businesses and startups across Oregon. CCIA recommends striking this provision in its entirety.

Further, under Section 9, the bill includes a provision that would allow courts to find actions by both the controller and its directors, members, officers, employees, or agents in violation of the Act and impose separate civil penalties on each. This provision would needlessly subject employees to direct civil penalty liability in a significant departure from existing norms.

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We appreciate your consideration of these comments and stand ready to provide additional information as the legislature considers proposals related to technology policy.

Sincerely,

Khara Boender
State Policy Director
Computer & Communications Industry Association