



Oregon Public Broadcasting
7140 S Macadam Avenue Portland, OR 97219
503.244.9900 opb.org

March 18, 2025

Representative Nathan Sosa, Chair
House Committee on Commerce and Consumer Protection
900 Court St. NE, Hearing Room F
Salem, OR 97301

Chair Sosa and Members of the Committee,

Thank you for the opportunity to submit testimony concerning HB 3899.

Oregon Public Broadcasting offers our perspective as a non-profit organization already subject to OCPA requirements. We hope to ensure that due regard is given to the impacts of this bill on Oregon's non-profit media and arts community, which would be swept into the OCPA's coverage with no warning and inadequate resources to ensure compliance. **We respectfully oppose HB 3899 as currently drafted because of its serious threat to our arts and media colleagues, who are instrumental in sustaining Oregon's news and cultural ecosystem.**

Oregon is already unusual in its decision not to exempt non-profits from the OCPA – most states enacting similar bills have exempted non-profits, and for good reason. The OCPA passed in 2023 with laudable goals of protecting consumer privacy. Legislators who raised concerns about the impact on non-profits were told that they need not worry because most non-profits were not large enough to be covered. Because of this, the impact on those smaller non-profits was not seriously examined. Non-profits were given an extra two years to comply, though only a select group of larger non-profits like OPB were impacted.

OPB has faced serious challenges implementing the OCPA over the last two years, proving that our initial concerns were more than warranted. We now worry that HB 3899 will do serious harm to many non-profit media and cultural organizations on which our communities rely. We ask you to consider alternatives to achieving well-intentioned privacy goals without unintended harm to non-commercial organizations in the media and arts spaces, who are already facing significant financial and operational challenges.

Oregon is unusual in applying its privacy law to non-profits

Data privacy bills have almost always been drafted with commercial entities and commercial business structures in mind. Most states to enact data privacy laws have included at least



partial exemption for non-profit organizations.¹ Some others without exemptions in statute have attempted to address this through regulations. The unique ways in which nonprofit media and arts organizations approach privacy and care for data in our services to communities simply are not accounted for in model data privacy bills.

Because we rely on funding from our communities and philanthropic donors to survive, non-profit media and arts organizations already approach donor data privacy and security with a heightened sense of responsibility. Donor trust and community trust are essential. By law, our resources often must be used for restricted programmatic purposes, which means that any additional compliance efforts necessarily take funding away from our core operations.

Organizations like OPB whose missions are focused on the needs of our communities and who rely on generous community support must necessarily hold individual data to accomplish our tax-exempt purposes. To maximize the impact of our resources, non-profit media and arts organizations often collaborate with each other, sometimes sharing select portions of our donor lists for specific purposes and limited durations to accomplish shared projects and reach the maximum good. Such list sharing arrangements would be considered prohibited “sales” under the current bill. This is one simple example of how these bills were not drafted with our sector in mind.

The OCPA was drafted without non-profit input

One reason why Oregon is an outlier on non-profit coverage is that Oregon non-profits were not invited to participate in the OCPA drafting task force. The decision to apply the OCPA to non-profits was made without engaging the organizations most affected. The DOJ also did not engage its own Charitable Activities division, which would have had expertise and perspective to help identify impacts and ensure workability for non-profits. OPB and others only learned of the OCPA shortly before its first legislative hearing and then we faced an uphill battle getting our voices and perspectives taken seriously or even understood.

Legislators in 2023 relied on the 100,000 cap to ensure most non-profits were not harmed

OPB raised concerns about the OCPA at a 2023 hearing on SB 619 and in later conversations with the DOJ. One of the core assurances that OCPA proponents made in that hearing and subsequent conversations was that **the 100,000 profile cap itself would shield most non-profits.**² In proponents’ view, only a few organizations large enough to handle the burden would be covered. When OPB began to engage with the DOJ, one of their first responses was to ask if we were even covered, with the understanding most non-profits were not. It was clear

¹ For a full comparison, see Foley & Lardner LLP, Foley Viewpoints: U.S. State Comprehensive Consumer Data Privacy Law Comparison, Dec. 1, 2024, available at <https://www.foley.com/insights/publications/2024/12/us-state-consumer-data-privacy-laws/>

² See Hearing before the Senate Committee on Judiciary, Hearing Room D, Mar. 7, 2023, 1 pm. The main DOJ presentation by Kimberly McCullough did not address non-profit compliance concerns. Proponent coalition member Pam Dixon for the World Privacy Forum spoke to the effect on non-profits, directly citing the coverage limits as reason why the bill was workable for most smaller non-profits.



the decision to include non-profits in the law relied upon the assumption that most organizations – from arts non-profits, to local historical societies, to community education projects – would be shielded by the 100,000 profile limit.

HB 3899 directly threatens this core assurance, pulling the rug on the assertion that the OCPA would only apply to non-profits that could afford to comply. The OCPA as drafted was simply never intended or designed to apply to small non-profits in the media and arts communities.

This bill will harm Oregon non-profit media and arts organizations

OPB is particularly mindful of this bill's potential impact on smaller media and arts organizations in the state, many of whom are our active partners in ensuring statewide coverage of important governmental and cultural issues. We already face a rapidly changing digital media and fundraising environment where many traditional news organizations are struggling to survive. Many news organizations have folded or reduced service in recent years, unable to adapt. Continued funding for journalism of all types is uncertain, and multiple media entities have come under investigation in response to their coverage. Meeting these challenges requires significant creativity, nimbleness and adaptability, and the resources to see these challenges through. The last thing a small newspaper or noncommercial community service group needs is new, unworkable regulatory burdens.

Non-profit arts and media organizations are not prepared for the demands of new regulation

In 2023, proponents of the OCPA expressed faith that the industry would adjust, predicting that new infrastructure would emerge to meet new demands. After two years working diligently on OCPA compliance, OPB has found that hopes for a smooth transition were unfounded. The guidance and infrastructure simply are not available to support organizations like ours, raising extraordinary burdens and uncertainty. Because this process has been a challenge for us, we are extremely concerned about what it will mean for so many smaller organizations who struggle to meet payroll while providing essential news and cultural programming to their communities.

Non-profits like OPB operate in specialized niches for business and fundraising services. In a small market like Oregon, this often means partnering with vendors out of state who serve exclusively non-profits, but who have not had to comply with laws like the OCPA because they work with small entities or serve states that exclude non-profits from coverage. The OCPA has made it more difficult to secure the services of capable vendors who work regularly with public media. Only a small number of vendors may be available for our specialized work, with little recourse if they refuse to invest in compliance with Oregon law. The OCPA requires us to add technology services and to revise the services we already have. All of this costs money. With a lack of administrative guidance from the state, the time, energy and expense of navigating compliance has fallen on our organization, diverting significant staff time and increasing legal and consulting fees. The overall cost of compliance for our organization is certain to run well



Oregon Public Broadcasting
7140 S Macadam Avenue Portland, OR 97219
503.244.9900 opb.org

into six figures – all diverted donor and grant money – with no clear end in sight to the major lift.

Facing this reality for OPB, we are extremely concerned at the prospect of similar burdens falling on our smaller public media peers or serving as a barrier to entry for new public media platforms. We are also concerned for our frequent partners in the arts and culture spaces.

To be clear, OPB agrees with and believes in the overall aims of the OCPA, and we take no position on the precise location data issues that are addressed in HB 3899. We believe that there are ways forward that fulfill the OCPA mission without undue, unintended harm to Oregon's non-profit media and cultural organizations.

One alternative course would be to exempt non-profits from this new scope of coverage, and instead task the DOJ's Charitable Activities Division with engaging in a robust review of non-profit data privacy issues. This is an opportunity to truly evaluate what these kinds of laws mean for Oregon's non-profits in practice. The issue is not all-or-nothing, but more work is needed here before Oregon can truly determine whether its current approach is justified.

Respectfully,

Rachel Smolkin
Rachel Smolkin
CEO, Oregon Public Broadcasting