



April 9, 2025

Sen. Prozanski, Chair
Senate Committee on Judiciary
900 Court St. NE
Salem, OR 97301

Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee,

Thank you for the opportunity to submit testimony concerning SB 1121 and the -1 amendment. Oregon Public Broadcasting (OPB) strongly supports this proposal as a necessary response to serious challenges raised by the 2023 Oregon Consumer Privacy Act (OCPA) specific to non-profit media entities, challenges that still present extreme and possibly unworkable burdens despite zealous compliance efforts since the enactment of the OCPA. **For this reason, OPB respectfully urges you to support SB 1121 with the -1 amendment.**

The OCPA has always presented unique challenges for non-profit media due to the nature of our organizations and the specialized business services niche on which we rely. These challenges were not well examined or understood by OCPA drafters, as neither large Oregon non-profits nor public media were represented on the drafting task force. Yet the decision not to exempt non-profits left organizations like ours subject to general compliance requirements with no guarantees that they would be workable.

Since 2023, OPB has worked doggedly and in good faith to meet OCPA requirements, diverting significant resources away from our primary mission. Out of pocket costs will run well into hundreds of thousands of dollars, all diverted donor funds. Dozens of staff have had significant time diverted as we engage in system-wide analyses and overhauls, projects that remain ongoing. The burden of even understanding the law has fallen on us, with little competent external guidance available. This law was simply not written to be workable for organizations like ours – every week we discover new hurdles and difficulties, with no ‘other side’ in sight.

In 2023, OCPA proponents hoped that business services sectors would adjust, but those hopes have not materialized, leaving OPB on the hook. Public media services and supports have not adjusted well to the new requirements. To serve the public, we partner with a small set of vendors competent to work with organizations like us. Many are located out of state. In some cases, OPB is their single client in Oregon, making OCPA compliance a huge hurdle. In several cases, critical vendors are simply refusing to work with us, with no ready alternatives.

In order to address the unresolved issues faced by public media in complying with the new data privacy regime under the OCPA, we believe that a targeted exemption is the best route forward. Our good faith efforts to comply have shown that it’s time to make this call. To that end, we respectfully request that you approve the -1 amendment and support this bill.



OPB Request for Public Media Exemption to the OCPA

The OCPA passed in 2023 with the laudable goal of protecting consumer data privacy from commercial exploitation. Unlike most other states that enacted similar legislation, the OCPA drafters decided not to exempt non-profit organizations from coverage. This means that larger Oregon non-profits such as OPB must meet significant new requirements, which also apply to partners and vendors who have access to our data.

This bill was simply not written with non-profit media in mind, and compliance has raised a host of challenges. While First Amendment issues and reporter protections were addressed by amendment, the integrated nature of public media's operations means that we have been extensively impacted and face serious challenges implementing the OCPA.

OPB serves Oregon with broad community engagement, working with communities across the state on many diverse platforms. To do this work, public media non-profits have broad-based, community-supported models that make OCPA compliance particularly difficult. OPB is fortunate to have support from around 150,000 member households located in every county of Oregon and beyond; member support represents the bulk of the revenue supporting our work.

OPB and our colleagues in public media are also unique in that our work in community engagement and member outreach are often deeply integrated with our news and story development in ways that are impossible to separate for purposes of privacy compliance.

With unprecedented threats to federal funding looming, OPB believes that narrow relief for public media organizations (all of which are non-profit) is justified and necessary.

Public media has a unique role, and faces unique challenges

Public, non-profit media like OPB provide an important public service centered around community engagement. We bring not just news but broad arts and culture programming and events to communities across Oregon. We directly connect with audiences and frequently partner with groups and organizations to fulfill our mission across many platforms, from live events to traditional radio and television to a rapidly changing digital environment. To ensure these programs meet our audience needs, we request and share information about audience members, community groups or other constituencies in various ways and for diverse practical, logistical and communication purposes. In our work with communities and non-profit media and arts partners, membership and supporter development are often deeply integrated with our news and arts content development in ways that are impossible to separate for purposes of privacy compliance.

We believe that all public media work is non-commercial and public service-focused work, but the way that data privacy laws focused on for-profit data brokers are written makes it extraordinarily difficult to make clean delineations for what is covered or not for an



organization like OPB. For-profit media don't have the same issues, as their newsrooms and revenue divisions are clearly separated and segregable. These challenges also may not arise for other non-profits with less broad community engagement and more narrow missions.

The uniqueness of the non-profit, public media niche means we rely on highly specialized business services providers that may not be willing or able to adapt to new Oregon-specific regulations, a very real challenge we are currently facing in implementing our OCPA compliance. One facet of the need for specialized vendors is the unique, specific regulatory requirements that already apply to us (via the IRS, FCC, and other state and federal regulators), regulations which already require information safety.

The OCPA adds heavy burdens for public media at an already challenging time

Non-profit, public media face a rapidly changing digital media and fundraising environment where many news organizations are struggling to survive. Many news organizations have folded or reduced service in recent years, unable to adapt. Meeting these challenges requires significant creativity, nimbleness and adaptability both for us and our vendors and partners.

The new privacy compliance requirements also come at a time when threats to public media may require OPB to undertake extraordinary fundraising efforts to ensure we maintain our public service. The OCPA complicates existing fundraising and diverts donor support from our mission.

OPB is already focused on privacy

OPB is deeply invested in protecting member privacy and data security (two distinct issues). We have an active, cross-functional data security team meeting regularly, have extensive information security systems and policies, and require vendors to sign data security agreements. Our fundraising systems, in particular, have been intentionally designed to safeguard donor and member data, restricting access and limiting how and with whom that data is shared. In part this responds to significant regulation already in place for public media organizations—similar to other service sectors that were exempted under OCPA. But we also view this as a core issue of public service and public trust, a key aspect of our mission serving our Oregon community.

OPB faces serious challenges finding compliant vendors and partners in an unprepared market

The effect of this law is that it makes it more difficult to secure the services of capable vendors who work regularly with successful non-profits. We are deeply concerned that this may limit our ability to innovate in new areas of fundraising and constituent engagement, even while we seek to more effectively serve the public in the digital age.

To run our programs successfully, we work with a wide range of vendors. These vendors manage credit card processing, EFT payment processing, phone-based customer support,



address processing, online donor acquisition, direct mail, door-to-door canvassing, and many more processes.

Since the OCPA became law, we've developed a new data privacy addendum that requires vendors to affirm that they are compliant with the OCPA's requirements. We have found that affirming compliance is difficult for many vendors we work with, or would like to work with, limiting our potential business partners.

The small and specialized nature of the public media market compounds these issues. Only a few firms may exist to meet various core needs for this niche industry, so vendors are not readily replaceable. Many of our current and potential vendors are located outside of Oregon. Many of these vendors may never have had to accommodate data privacy laws, either because most existing state laws have exempted non-profits, or because none of their clients were large enough for coverage.

Asking vendors to comply with the OCPA requires them to obtain legal counsel to ensure they are compliant with Oregon law, a relatively small state where they may have no existing business. Smaller vendors may lack the legal resources to review the law and think through every aspect of what compliance requires of them. **OPB has already had several core vendors simply refuse to work with us on compliance, with no ready replacements rising to meet the need.** These challenges present serious challenges for the continued viability of our work.

DOJ hopes for sector adjustment did not materialize, with heavy burdens for non-profit media

During the 2023 legislative session, non-profits like OPB raised these precise concerns about the specialized nature of our sectors, and the inability of vendor and partner infrastructure to adjust to these new demands. At the time, the DOJ largely brushed them aside, expressing a confident hope to legislators and non-profits that the sector would adjust and that competent infrastructure would emerge to meet demand.

Two years later, our predictions proved correct, and the landscape remains as challenging as we feared. There are too few vendors who can meet our needs, too few alternatives, too much uncertainty, and navigating these unclear compliance obligations remains a significant challenge for organizations like OPB.

Oregon non-profits were left out of the OCPA task force process

The issues we face now were an unfortunate but foreseeable result of an overall lack of engagement with Oregon non-profits during the OCPA drafting. **Many states enacting data privacy laws like OCPA have exempted non-profit organizations, due to the unique issues non-profits face in compliance.** Yet the OCPA task force excluded most covered Oregon non-profits from their work, and many Oregon non-profits only became aware of these issues during legislative session, with little time to catch up.



In legislative hearings, OCPA proponents minimized this omission. They represented that few non-profits would be covered and asserted that those big enough to be covered would surely have the resources to take new burdens in stride. In reality, the decision to forego a non-profit exemption was made without due consideration for the actual impacts on Oregon non-profits, and later efforts at compromise met with little success.

Despite welcome legislator concerns, media protection amendments fell short of clarity

When OPB entered the legislative debate around the OCPA, we were very grateful for earnest engagement we received from legislators. We felt as if our issues were taken seriously and that there was real desire to address them. The most immediate issue to grab attention was the unintended impact on journalists: while the DOJ initially indicated to us that the First Amendment would itself serve as a backstop, the bill carried a serious risk of abuse from subjects of journalism using it to invade journalists' files and prevent accurate coverage of individual wrongdoing.

We were grateful for DOJ's willingness to engage with us over the nature of fixes for journalism and non-profits; however, the ultimate language of the OCPA fell short of our needs as a non-profit public media organization. Amendments ultimately incorporated into the bill mirrored protections in other states, but only in part. Language ultimately encoded as ORS 646A.572(2)(s) exempted "noncommercial" media activities. However, the exemption did not define "noncommercial." And without that clarity, OPB found it very difficult to determine which of its activity beyond the most core reporting were actually exempt from application of the law, despite significant investment—an additional administrative and regulatory burden with no clear answers. While we could argue strongly that all charitable activity is noncommercial activity and all activities of OPB in particular are noncommercial activity of a journalism entity, the lack of clarity means we must comply anyway out of caution.

Thank you for your time and attention to these matters, and for your willingness to work with organizations like OPB to craft policy that works for everyone.

Respectfully,

Rachel Smolkin
CEO, Oregon Public Broadcasting