



Oregon Public Broadcasting
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Representative Kropf, Chair
House Committee on Judiciary
900 Court St. NE
Salem, OR 97301

Chair Kropf, Vice-Chairs Chotzen and Wallan, and Members of the Committee,

Thank you for the opportunity to submit testimony concerning SB 1121. Oregon Public Broadcasting (OPB) strongly supports this bill as amended by the Senate Committee on the Judiciary. This bill is a necessary response to serious challenges raised by the 2023 Oregon Consumer Privacy Act (OCPA) specific to non-profit media entities. **For this reason, OPB respectfully urges you to support SB 1121, which includes a very narrow carve-out for certain public media entities to address these significant challenges.**

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. 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 external guidance available. Out of pocket costs will run well into hundreds of thousands of dollars, all diverted donor funds. 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 support this bill.



SB 1121 Reflects Considered Collaboration and Support from Legislators

The current language of SB 1121, including the public media exemption to the OCPA, reflects broad cooperation and strong support for a solution that works for public media. We are very grateful to Sen. Prozanski and his staff for working with OPB to understand our concerns and ultimately facilitating the addition of this exemption to SB 1121 with unanimous committee support. We began working with Sen. Prozanski's office during and after the 2023 legislative session, and our work together over the years has been vital in moving this issue forward.

OPB has also continued to work with DOJ toward assessing the impacts of the OCPA on Oregon public media during and after the 2023 legislative session, and for this bill. DOJ has been focused on providing guidance to non-profits as the delayed implementation deadline looms, and we have had productive conversations about the unique issues faced by OPB and other public media, issues that may not be resolved absent new action and clarity under the law.

This new exemption reflects a careful approach, respectful of overall policy decisions made by OCPA drafters when including non-profits under the ambit of OCPA. Its focus is meant to prevent new loopholes; in fact, OPB is the only organization that is likely to qualify under its terms, and any new organizations that may qualify in the future will be bona fide public media. Experience shows the need for this exemption, and we are grateful for the support in meeting that need.

OPB Believes a Public Media Exemption to the OCPA is the Best Solution

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



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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 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.

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 creativity, nimbleness and adaptability both for us and our vendors and partners. 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



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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 incorporated OCPA compliance guarantees into our vendor agreements, and we have found that assuring 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 sector 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 vendors may never have had to accommodate data privacy laws, either because most state laws have exempted non-profits or because no prior 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.

After two years of assessment and compliance work, now is the time to fix serious problems

The delayed implementation of the OCPA for nonprofits gave us a grace period to assess these new regulations, and we have worked doggedly and invested tremendous resources into compliance. Many unknowns or uncertainties at the time of OCPA passage have come into sharp relief, and the realities on the ground are much clearer. These regulations simply don't work for an organization like OPB. That is why we believe now is the time for a narrow, targeted exemption, one that is carefully written to address the needs of Oregon non-profit media without creating any broad loopholes or undercutting the broader OCPA policy. 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

Rachel Smolkin
CEO, Oregon Public Broadcasting