



August 13, 2018

Dear bill authors,

On behalf of 39.5 million Californians, the undersigned state and national organizations strongly urge you to reject recent proposals to weaken the California Consumer Privacy Act (“CCPA”). We appreciate your efforts to pass AB 375 and to use SB 1121 as a vehicle to make technical, clean-up amendments to AB 375, while leaving more substantive proposals for consideration during the next session. Unfortunately, the August 6, 2018 California Chamber of Commerce et al. letter (“Chamber letter”) goes far beyond the stated scope of SB 1121. The majority of the Chamber letter’s proposed changes are substantive in nature and would fundamentally water down the CCPA’s privacy protections. Even when the letter does identify a provision where a technical fix is needed, the proposed solution is often excessive in nature and would run counter to the clear intention of the legislation.

The sky is not falling, as industry suggests. Rather, AB 375 requires only that companies take certain steps to protect consumer privacy. What is allegedly “unworkable” today will be workable once companies comply with the law.

Indeed, many companies in California are already complying with the considerably more expansive Global Data Protection Regulation (GDPR). And laws that are in the public interest may indeed have some “negative consequences” on industry’s bottom line. Some businesses will have to change their practices. Indeed, these practices should have changed long ago, as they helped create a string of breaches and scandals, from big (Equifax) to small (e.g., Target disclosing a teen’s pregnancy to her father). AB 375 is meant to protect consumers’ right to privacy, and it is a necessary step toward further enshrining that right in California and the nation. The law and its particulars do not pose a threat to the California economy, indeed, California has a long tradition of leading the nation on privacy laws as well as having a thriving economy.

The majority of the Chamber’s proposals, as well as the California Bankers Association et al.’s proposals (“Banker letter”) (together “Industry letters”) are substantive requests made in bad faith, which do not clarify language but instead substantially reduce privacy protections for consumers. Numerous other requests seek to co-opt the Attorney General’s expertise in issuing regulatory guidelines. And, even for the minority of cases where industry has identified legitimate technical concerns, the proposed fixes are overbroad and ultimately narrow protections for consumers.

Examples of non-technical proposals made by industry that would dramatically reduce the protections:

- **Removing consumers’ ability to access specific pieces of their personal information.** The right of access was deliberately expanded under the bill from the initiative, and without the ability to obtain one’s *actual* information--consistent with what global companies already offer Europeans, and an important transparency measure of consumers--there would also be no right to data portability. Including this right in AB 375 was perhaps the most critical element in persuading the California Consumer Privacy Act ballot measure sponsors, to withdraw their measure.
- **Removing the requirement that data be provided in a readily useable format.** This too would erode the right to data portability and the ability for consumers to change providers— locking them into services whose practices or prices they may no longer desire.
- **Limiting the definition of personal information.** The CCPA’s protections apply to personal information, defined broadly in accordance with California law, but industry’s proposals would undermine this definition. For example, the industry seeks removal of “probabilistic identifiers,” while every day it uses such information to create dossiers on individuals based on data gathered from mobile devices, PCs, gaming platforms and even digital TV; similarly, industry falsely argues that HIPAA is sufficient to protect health information. In fact, HIPAA only includes certain “covered entities”, it does not, for example, protect consumers who share sensitive information with health websites and apps on smart devices.
- **Weakening privacy protections for minors.** The Chamber’s proposal to limit companies’ obligations with regard to children to situations of “actual knowledge” would substantially remove explicitly chosen protections for the most vulnerable among us, and would lead to

more surveillance on young people and families.

- **Rendering the consumer opt-out process meaningless by making it needlessly complicated.** While the most privacy protective option of requiring consumers to opt-in before their information is sold was not provided to adults in AB 375, the law does attempt to remove friction for adults who choose to exercise their rights and make such actions as easy as possible. Yet industry now seeks to insert new hoops—such as creating an account, or notifying each business unit separately—for consumers to jump through in the hopes they will give up and not exercise their rights.

Instead of making sweeping changes to the CCPA in the final days of session that would rewrite the definition of what information is covered or who a protected consumer is, we believe the legislature’s focus should be on cleaning up inadvertent technical errors. Below, we address examples of the technical fixes that could be addressed in SB 1121, including fixes we would like to see, as well as concerns raised in the Industry letters that we agree could be addressed by a technical fix—albeit not by the language they propose.

- **Sec. 1798.120(d):** The language regarding opt-in for minors reads “between 13 and 16 years of age.” Given the legislature’s stated intention to provide more protections to those *under* 16 years of age, this could read “between 13 and 15 years of age” to clarify that it is inclusive of 13 year olds and 15 year olds, but not 16 year olds.¹
- **Sec. 1798.145(i):** We agree with industry that the law could benefit from a clarification that companies do not have to collect extra data to comply with this law (though we disagree with the proposal to change what constitutes personal information).
- **Sec. 1798.150(a):** We agree that the language reading “nonencrypted and nonredacted” may be an error introduced in haste.
- **Sec. 1798.145(a)(5):** We would not oppose a clarification of the definition of deidentified information. We disagree, however, with any attempts to equate deidentified and aggregate with pseudonymized, which is clearly a less-privacy protective class of information.

Beyond strictly technical cleanup, SB 1121 should focus on ensuring the California Office of the Attorney General has the support and resources it needs to immediately begin preparations to fulfill its role as enforcer of nearly all of the law’s provisions. Our organizations are committed to supporting the Attorney General in any way that we can, and committed to fighting to ensure that this law offers the best possible protections for Californians.

To be sure, AB 375 is not as strong as it could be. For example, the law addresses sale, but not data collection and use (let us not forget that unregulated data use was in part to blame for the democracy-undermining Cambridge Analytica data breach); privacy protective defaults such as opt-in protections for adults; and more meaningful opportunities for consumers to assert their

¹ While as advocates we would prefer to see protections include 16-year-olds, we do not believe that is consistent with the current intent expressed in the law.

rights in court. Furthermore, we do not believe privacy should be a luxury good or that essential services should be only available to those who can afford to pay extra. But there is a time and a place for those arguments, and it is not during the AB 1121 technical fixes process. These should be discussed and debated in the appropriate venues next session.

The Chamber's letter states that "the stakes are too high to delay any further – for consumers, businesses, the Attorney General, and the economy." We agree that the stakes couldn't be higher. Let these substantive issues go through the democratic process in the next session prior to the law's implementation.

Sincerely,

Common Sense Kids Action
American Civil Liberties Union of California
Access Humboldt
Berkeley Media Studies Group
CalPIRG
Campaign for a Commercial-Free Childhood
Center for Digital Democracy
Center for Media Justice
Color of Change
Consumer Action
Consumer Federation of America
Consumer Federation of California
Consumer Watchdog
Consumers Union
Digital Privacy Alliance
Electronic Frontier Foundation
Media Alliance
National Consumer League
Privacy Rights Clearinghouse
Public Knowledge