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CONSUMER ATTORNEYS OF CALIFORNIA

Seeking Justice for All

December 3, 2018

California State Legislature
State Capitol
Sacramento, CA 95814

To the Honorable Members of the California State Legislature:

Californians and individuals around the country are concerned about the privacy and security of their personal information. Irresponsible data practices lead to a broad range of harms, including discrimination in employment, health care, and advertising, data breaches, and loss of individual control over personal information. Technology practices and resulting concerns can limit adoption and use of new technology such as internet-connected devices, threaten e-commerce, and even decrease democratic engagement and speech. Many individuals do not understand and are worried about how their information is used or shared online.¹ They feel that they have lost control of their data² and they want government to protect them.³

We applaud California lawmakers for taking an important step last year to protect their constituents' privacy and security by enacting the California Consumer Privacy Act (CCPA). It is a good foundation on which to encourage business practices based on respect and responsibility for individuals' personal data, in California and across the United States (since other states look to California as a leader). Unfortunately, instead of recognizing the need to further protect Americans and their data, some in industry seem intent on pushing California backward. They are asking you to take away rights and protections for Californians that are already enshrined in law. And in case that fails, they are imploring Congress to take away not only Californian's rights, but your right as legislators to act in the interests of your constituents.

California can and should continue to lead on consumer protection, as it has for decades, with robust, thoughtful legislation that puts people first. To that end, the legislature's focus this year should be on building upon—and clarifying when needed—CCPA's protections. For example, the legislature should:

¹ Only a third of teenagers and a quarter of parents agree that social networking sites and apps do a good job of explaining what they do with users' data. And 82 percent of parents and 68 percent of teens are at least "moderately" worried that social networking sites use their data to allow advertisers to target them with ads. *See Common Sense and Survey Monkey Poll*, Common Sense (June 11, 2018), <https://www.common sense media.org/about-us/news/press-releases/common-sense-and-surveymonkey-poll-finds-privacy-matters-for-parents>.

² Bree Fowler, *Americans Want More Say in the Privacy of Personal Data*, Consumer Reports (May 18, 2017), <https://www.consumerreports.org/privacy/americans-want-more-say-in-privacy-of-personal-data>.

³ Lee Rainie, *Americans' Complicated Feelings About Social Media in an Era of Privacy Concerns*, Pew Research Ctr. (Mar. 27, 2018), <http://www.pewresearch.org/fact-tank/2018/03/27/americans-complicated-feelings-about-social-media-in-an-era-of-privacy-concerns>.

- Define and rein in data misuse and abuse. The CCPA, as drafted, does not sufficiently define or deter companies' internal misuse of data. For instance, data misuse should include instances where companies themselves use information in ways that are unexpected and unwanted by individuals. Under this definition, a social media company would be barred from using inferences it makes about individuals' emotional states to target them with ads, or a fitness company would be prevented from using information from an activity app to price membership to its health club, clothing line, or food offerings. At the very least, the legislature should address problematic uses of data.
- Ensure appropriate security protections for all personal information. The CCPA at present only requires reasonable security for certain types of data such as financial information and Social Security numbers and does not require that companies have any security provisions for wide swathes of personal information—including, for example, all of the log-in and account information for 30 million people in the September 2018 Facebook data breach, or the names, addresses, dates of birth, occupations, gender, and profile photos of half a million Google+ users exposed before Google shut the service down. The CCPA should require security measures for all personal information covered by the statute, tailored to the nature of that data.
- Provide meaningful redress to individuals and expand the private right of action, as requested by the Attorney General. A law is only as good as its enforcement, and the CCPA places an enormous responsibility on the Office of the Attorney General as its primary enforcer — and even then, companies have the right to “cure” bad behavior to completely evade accountability. As stated by the AG himself in requesting this amendment, providing a consumer enforcement remedy allowing consumers to seek legal remedies for themselves to protect their privacy “would provide a critical adjunct to governmental enforcement.” We urge you to include this important enforcement mechanism/method of redress in 2019.

Furthermore, the legislature must do everything in its power to support the AG's implementation and enforcement of the law. In addition to adding a broadened consumer enforcement remedy, the legislature should ensure that the AG's office has adequate resources and staffing, as well as address other concerns: a burdensome obligation to provide opinions to private businesses at taxpayers' expense and a get out of jail free card (“right to cure”) for companies that could render months of investigation and other efforts meaningless. (Civil Code §1798.155). We echo the AG's calls to remove these provisions from the CCPA.

We urge you to keep the focus on strengthening protections for your constituents, and to reject efforts to diminish Californians' privacy and security protections. You should:

- Oppose proposals to reduce the types of consumers' personal information protected by the CCPA. Even seemingly innocuous information like the items that individuals purchase or their energy use can be used to infer clearly sensitive matters such as pregnancy or job loss. Historically, California has broadly defined protected personal information, and as technological advances make it easier to glean ever more insights

from what might otherwise appear to be trivial data, now is not the time to take away longstanding protections.

- Fight efforts to undermine individuals’ control over their information. Proposals to add new loopholes in the CCPA for the selling of information for advertising purposes, a major concern for individuals, would dramatically reduce the hard-won “Right to Say No” enshrined in the law.
- Reject attempts to limit individuals’ abilities to access and download their information. The ability to download and port your data—a right companies already must offer to Europeans—is essential for meaningful individual control. This provision in the CCPA was extensively negotiated for in the passage of AB 375 and a key factor in proponents of the ballot measure choosing to withdraw it. Furthermore, data portability is essential to ensuring competition since without it consumers will be locked-into one service or platform
- Refuse to eliminate protections for kids and teens. Under the CCPA, companies cannot be willfully blind to young people using their services—rather, they must provide them with additional protections in recognition of their special vulnerability. If the sole standard is “actual knowledge” companies will pretend—as they often do now—that they are not dealing with kids, and skirt requirements to protect them.

Last year, California took a first-of-its-kind step forward to protect its citizens’ privacy with the passage of the CCPA. We strongly support this action and call on legislators to take further steps *now* to promote public trust in technology and its benefits and ensure that companies act fairly and responsibly in their collection and use of individuals’ personal information. We look forward to helping you better protect your constituents and their data.

Access Humboldt
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Cc: Governor Edmund G. Brown