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Dear Madam/Sir,

IAB Canada, on behalf of its members, would like to thank you for providing us with the opportunity to respond to your discussion paper "Improving Private Sector Privacy for Ontarians in a Digital Age".

The online advertising industry is more prepared than ever, to help navigate the key topics of conversation that have been tabled within the discussion paper that the government is currently reviewing in order to help Ontario thrive digitally in the coming years. Data and its various uses are the cornerstone of the \$8.7 billion Canadian digital advertising sector that employs more than 40,000 Canadians. Facing the possibility of amended provincial and federal privacy laws, it is imperative that the digital advertising industry is actively involved in practical discussions around potential amendments that can help maintain the balanced approach to privacy and innovation that Canada is historically well known for.

While we agree that gaps do exist within our current structure, we would encourage the province to keep the following three points top of mind before making any significant enhancements to privacy requirements in Ontario:

**1. Avoiding patchwork privacy legislation is best for individuals and business**

IAB Canada and its members encourage Ontario to avoid creating a patchwork of privacy regulation causing barriers for Ontario businesses and creating confusion for individuals. Ontario's privacy framework should be technology neutral, principle-based and align with similar laws of the Federal government and other provinces.

Industry needs a clear and consistent policy landscape to support innovation and competitiveness

for investment. Government-industry engagement will help to develop a privacy framework that does not hinder current and future innovation.

IAB Canada took [part](#) in the Federal government's PIPEDA modernization review. As this is an ongoing process, we feel strongly that Ontario continues to monitor these developments to ensure there is ongoing alignment. Alignment supports integrated industries that operate locally, nationally and internationally. **We recommend that provincial reform should wait until after federal reform in order to ensure a cohesive approach to privacy.**

## **2. Any provincial legislation should focus on addressing gaps in federal privacy protections**

Ontario's proposed privacy law should not overlap with PIPEDA, which currently applies to most Ontario businesses, but instead should focus on enhancing privacy protections for Ontarians where the sector or subject matter is not covered by PIPEDA.

Introducing a duplicate legal privacy regime will only put unnecessary strain on businesses and not-for-profit organizations. It would also significantly hinder organizations' ability to be innovative in an agile manner in a highly competitive data-driven marketplace. Duplicitous regimes might also contribute to existing confusion amongst Ontarians as it pertains to their individual privacy rights.

## **3. Legislation should be flexible and adaptable to avoid burdening SMEs**

Any new provincial law should be flexible and adaptable to a variety of business structures and markets. This is particularly important for Small and Medium Enterprises (SME) as they can easily be unfairly burdened by unduly onerous and cost prohibitive compliance expectations. Any new privacy law should include a purpose clause enshrining that the law be interpreted in a proportionate and reasonable manner based on the circumstances. This will ensure that we do not stifle innovation with regulation.

As representatives of the Canadian digital advertising industry, we hope that our feedback and participation will be useful. We look forward to participating in further productive discussions as we collectively work toward modernizing our digital capabilities to bring Ontario and Canada, to the forefront of global digital innovation and economic growth while simultaneously protecting the rights and privacy of our citizens.

### **About IAB Canada:**

Established in 1997, IAB Canada is a not-for-profit association exclusively dedicated to the development and promotion of the rapidly growing digital marketing and advertising sector in

Canada.

IAB Canada represents over 250 of Canada's most well-known and respected stakeholders in the digital advertising and marketing sector, including advertisers, advertising agencies, media companies, digital media publishers and platforms, social media platforms, adtech providers and platforms, data companies, mobile and video game marketers and developers, measurement companies, service providers, educational institutions, and government associations operating within the space. Our members include numerous small and medium sized enterprises.

Companies in the digital advertising and marketing sector offer a wide range of highly innovative products and services, including valuable service offerings to individual Canadians. This sector is intensely competitive, and the long-term success of our members is fundamentally predicated on their ability to continually design, develop, offer and improve valuable digital products and services.

Our members include numerous small and medium sized enterprises and represent over 80% of the estimated \$8.8 billion industry in Canada. IAB Canada has a long history of creating programs that are designed to promote the responsible growth of the online advertising industry in Canada. Notably, IAB Canada was the founding member of the self- regulatory Ad Choices Program developed to enable industry compliance within the PIPEDA framework.

IAB Canada is the only organization fully dedicated to the responsible growth of digital/interactive advertising in Canada by delivering:

- Globally accepted digital ad standards;
- Advocacy for the Canadian digital advertising industry to the Canadian government;
- Trained human capital, through globally standardized courses, certification and custom workshops;
- Original Canadian digital marketing research; and,
- Information to the industry and enhanced communication between members.

In IAB Canada's response we would like to submit comments addressing six of the topics detailed as key areas in the "Improving Private Sector Privacy for Ontarians in a Digital Age" discussion paper:

1. Increased Consent and Clear Transparency
2. Data Portability & Right to Be Forgotten
3. Oversight, Enforcement, and Fines
4. Deidentified Personal Information, Data Derived from Personal Information
5. Application to Non-commercial Organizations
6. Enabling Data-sharing for Innovation, while Protecting Privacy

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## **Topic 1: Increased Consent and Clear Transparency**

IAB Canada supports the belief that Ontarians must be better equipped to make informed choices about their service providers and to exercise greater control over the collection, use and disclosure of their personal information.

IAB Canada also agrees with the notion of providing increased transparency and enhanced controls to citizens. Particularly in the online advertising sector, we recognize that transparency is the cornerstone of building trust and, that it is in the best interest of both business and consumers that privacy policies and the information about the use of personal data (what is being collected, how it is collected and with which third parties it will be shared) is easily accessible and communicated in clear and plain language.

IAB Canada also believes that the “meaning” behind meaningful consent is losing value. We are concerned around the overuse of express (opt-in) consent mechanisms in the digital media landscape and believe that the sheer volume of consent touchpoints is diminishing the “meaning” of consent and contributing to consent fatigue and would therefore recommend against the province moving forward with any sort of opt-in regime. Therefore, as a priority, we support the idea of developing a framework or flexible criteria supporting transparency and consent that is truly useful to individuals with requirements that are proportionate and sensitive to the context and the individual business.

We believe that it is imperative that the requirement for consent be better focused on the things that matter most and that the province should consider special situations where expressed consent (or opt-in) could be required. Similar to the special purposes laid out in other regimes, private sector privacy legislation could consider alternatives to consent as a basis for the collection, use and disclosure of personal information such as in the GDPR.

In Canada and other parts of the world, IAB is on-the-ground solving for privacy requirements that work in the existing infrastructure, while already developing proposals for the future state of the industry, which puts us in an ideal position to help the government meet their objectives. An example of this is the significant amount of work done by IAB globally, to create a standardized taxonomy around data purposes that has now been implemented by the vast majority of the ad tech industry. This work was critical towards providing a realistic means to develop enhanced consent management platforms that would allow consumers to opt-out of advertising in an informed and transparent manner.

We have seen first-hand that citizens respond well to control mechanisms and we have learned a

great deal about the importance of user interfaces in the context of driving meaningful interaction and consent. It is therefore recommended that amendments instead look towards facilitating the implementation of effective technical frameworks versus prescriptive consent requirements.

IAB Tech Lab's technical solution – the Transparency Consent Framework (TCF) for example, was implemented widely in Europe as the best-in-class solution to address the GDPR. Working with DPAs across multiple countries, while simultaneously representing numerous stakeholders in the digital space, almost 100 percent compliance has been attained. The TCF has also been adapted to aid in compliance within the CCPA framework. The TCF framework has provided citizens with significantly enhanced transparency and control allowing improved navigation of their privacy options while helping the advertising industry stay in compliance with complex privacy legislation. Currently in Canada we are in the developmental stages of bringing the TCF Canada to life which will aid in compliance with all Canadian privacy legislation including federal, provincial, public and private sector. This is a scalable technical framework that can be modified as new amendments are set.

In addition to the TCF, in 2019, IAB Tech Lab launched DataLabel.org, a global framework for businesses to appropriately disclose their data source information. IAB Canada believes that this framework provides a tremendous first step towards citizen-facing transparency and that businesses in Ontario should be encouraged to participate in this global initiative. Programs like DataLabel.org lay a solid foundation for future downstream efforts to provide citizens with accurate facts around data being used by brands and the online advertising platforms. IAB Canada is working hard to promote the benefits of these programs to our members and will continue to do so in the hopes of increased engagement.

Also, as evidenced through our work in developing and helping to launch the AdChoices program, IAB Canada has been working with our members to encourage greater transparency and consumer controls. We believe that this inherently improves customer relationships while helping businesses responsibly leverage consumer data to deliver value. As founding members of the program, IAB Canada continues to encourage the modernization of the AdChoices tool to reflect the changing technical realities of online advertising.

IAB Canada is the critical stakeholder, representing the entire digital advertising industry in Canada. With every new regulatory change, the complex ecosystem that exist within the online advertising industry requires careful technical consideration in order to implement effective mechanisms with the desired policy outcomes. The entire infrastructure of the digital advertising landscape will be inevitably impacted any new legislative requirements and that is why we remain open to engagement with government in its work to modernize privacy legislation. IAB Canada, and our members, want to help in the quest to provide solutions that are technically sound for both citizens and the business community.

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## **Topic 2: Data Portability & Right to Be Forgotten**

As referenced in the discussion paper, other privacy regimes such as the GDPR take a rights-based approach to privacy protection. Two digital rights that the province is proposing, and are not currently available to Ontarians, relate to “data portability” and the “right to be forgotten”.

Data portability allows individuals to obtain their personal information and to transfer it between organizations if they wish. At IAB Canada, we understand that portability and data mobility are very important components of increasing Ontarians’ individual control and consumer choice. However, it is imperative to remember that although data mobility provides certain advantages, it comes with inherent risks to consumer protection, privacy, confidentiality, cybersecurity, innovation and competition. IAB Canada, and our members, believe that when considering data portability, one needs to examine the process through the lens of both the individual and the business.

As we expressed in our response on PIPEDA reform, we recommend a system that supports the principle of increased individual control over data with some limitations, but that makes full portability conditional on there being adequate frameworks/infrastructure in place to protect economic growth. When approaching portability, government should work to achieve the following:

- manage expectations of both individuals and businesses;
- recognize the need for businesses to invest in this area while avoiding unnecessary and excessive business costs;
- provide clear, simple and easily implemented obligations;
- limit uncertainty for all parties;
- allow for phased-in approach as infrastructure and frameworks are developed; and,
- allow for the continuation of innovation as other needed frameworks and infrastructures are rolled out.

Should a new portability requirement be introduced, IAB Canada believes it should be targeted and deliberate to meet stated objectives, needs and expectations. In the case of the GDPR, European markets have struggled with the technical realities around the legislation’s sweeping data portability right that simply requires organizations to provide data in a “structured, commonly used and machine- readable format” and transmit it directly from one controller to another “where technically feasible”. Any equivalent amendment in provincial legislation should provide far greater clarity on implementation.

Third-party organizations should not be empowered to exercise the portability right on behalf of an individual and therefore, we believe that initially, any data portability right should be limited in scope. To mitigate the risk of fraud and identity theft, the right should apply only between the individual and the organization. Any transfer of personal information between organizations must be made at the request of an individual.

Also, the data covered by the right to portability should be limited to the personal information the individual has provided to the organization and certain data (e.g. transactions) created through interaction with products and services. The right should not apply to other forms of data that may be proprietary, are not related to personal information or not easily portable from one

system to another, for example:

- derived data, insights, observed data
- de-identified data (not PI and no obligation to re-identify)
- any other data not conducive to portability such as call notes or complaints

In addition, we believe that there must be reasonable verification of the individual making the request. Also, to be realistic and feasible in practice, the portability obligation would have to be limited to information under the organization's control and there would need to be a clear definition of a standardized digital format.

In response to the notion of providing citizens with a "right to be forgotten", IAB Canada and its members strongly feel that this should be discussed and undertaken by the federal government under PIPEDA reform as it impacts all Canadian citizens. This would also serve to avoid undue confusion, expense and an inconsistent approach to privacy.

From a business perspective a federal approach is more attainable and less cost prohibitive to manage. There are also certain industries where the long-term impact of data deletion is detrimental to business and this should be carefully contemplated prior to putting this into effect. The "right to be forgotten" should only be considered in certain cases and not across all business models.

Overall, we encourage the province to undertake an approach that is reflective of our own unique environment all while learning from the challenges that other jurisdictions, such as the EU, have faced in implementing a portability requirement. Importantly, as mentioned throughout this response, it will be critical for Ontario to monitor the PIPEDA modernization review to ensure there is ongoing alignment to support integrated industries and businesses of all sizes.

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### **Topic 3: Enforcement**

In general, IAB Canada and its members would like to engage in a collaborative effort with the province to ensure that if enforcement is to become a part of the legislation, it is meaningful and fair. We applaud the suggestion of working with industry in a model that allows the regulator to play an active part in endorsing and enabling innovative and well-balanced solutions to encourage compliance. Initiatives such as developing innovative strategies around education, research, guidance, and advisory services as well as regulatory sandboxes are all welcomed

suggestions.

Also, having the province play more of an advisory role would certainly be welcomed by well-meaning organizations in the online advertising industry. Those seeking non-binding, advance opinions and guidance in order to assist in their innovation and development efforts would be provided greater certainty and predictability, without fear of being the subject of investigation or undue enforcement.

We also strongly support the notion of not taking a “one size fits all” approach. The potential limitations on SMEs in Ontario should be carefully considered. Should a regime of administrative monetary penalties be introduced, serious consideration must also be given to the quantum of fines. There is a real risk of stifling innovation as organizations will be hesitant to innovate for fear that they could unintentionally contravene provincial privacy legislation. IAB Canada cautions against GDPR-like penalties of 4% of global revenues that have created significant deterrent to data driven innovation in the EU. We believe there should be a more proportionate and thoughtful approach in Ontario.

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#### **Topic 4: Application to Non-commercial Organizations**

Ontario’s proposed privacy law should not compete with PIPEDA, which currently applies to most Ontario businesses. Legislation could focus on enhancing privacy protections for Ontarians which are not - and will not - be covered by the upcoming changes to PIPEDA. For more clarification, an Ontario privacy law would help fill some of the gaps that will continue to exist within the federal law, including coverage of employee personal data privacy and application to not-for-profits, charities, professional associations, trade unions and political parties. For this reason, we suggest that the province wait until PIPEDA reform is complete before putting forth any new provincial legislation.

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#### **Topics 5 & 6: De-Identified Personal Information, Data Derived from Personal Information and Enabling Data-sharing for Innovation, while Protecting Privacy**

Digital innovation is a fundamental driver of digital transformation, leading to radical changes in the way individuals interact, create, produce and consume content. Digital innovation not only gives rise to new and novel products and services, but it also creates opportunities for new business models and markets, and it can drive efficiencies in the public sector and beyond. Over the past decade, Canada has taken a global leadership position in delivering first-class technology to the advertising industry.

The online advertising industry has a long history of creating both open and closed marketplaces. Historically, these marketplaces have not shared cross-entity data and have been limited to offering advertisers with a trusted selection of publishers and platforms with whom to trade. Data trust agreements could allow competitive coalitions to emerge in the local digital media landscape. Trusts would also allow publishers to deliver greater scale of content while significantly streamlining the consent management process for citizens.

IAB Canada is supportive of the concept of de-identified data trusts. This idea requires a thorough analysis and careful thought, and we encourage Ontario to work with stakeholders to develop a legislative framework for innovative data use that leverages existing best-in-class data privacy frameworks. Globally, IAB Canada is working on solutions that incorporate data trusts in the context of developing addressable audiences for advertising. We have made significant progress in probing privacy by design models. It remains imperative that government works closely with Industry to gain valuable insights on the progress being made. The online advertising industry provides an exceptional use case for anonymized data that respects citizens' privacy while protecting commercial interest. This learning could be leveraged across sectors and jurisdictions.

As stated in our response to PIPEDA reform, IAB Canada and its members would welcome the use of protected data trusts as a means of achieving competitive advantage. Consideration may be given to incentives like cross-entity certification processes, standardized technical solutions and flexible approaches such as streamlined reporting and other important factors that are top of mind for risk adverse advertisers.

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## **Summary**

On behalf of IAB Canada and all of its members, we thank you for the opportunity to submit our responses to the important questions being asked by the Government of Ontario. While we understand your desire for enhanced provincial privacy laws, we strongly encourage you to pause until federal reform takes place. Once an enhanced PIPEDA comes into play, the province can then work to address any specific gaps that exist to specifically protect and safeguard Ontario citizens. It is our sincere hope that we will be invited by the province to engage in a truly collaborative approach to privacy through ongoing discussions with our sector and very much look forward to this.

If you have any questions or require any further information, please do not hesitate to reach out.

Sincerely,

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