



Governor Gavin Newsom
1303 10th Street, Suite 1173
Sacramento, CA 95814

September 24, 2019

Re: Letter of Opposition to AB 1202

Dear Governor Newsom:

As the nation's leading advertising and marketing trade associations, we have hundreds of members who would be directly impacted by AB 1202, and we write to inform you about the significant unintended and negative consequences of the bill for California consumers and businesses alike. We respectfully ask for you to veto the bill, so the legislature can consider legislation that will achieve its intended result without the grave unintended consequences of AB 1202.

Collectively, the undersigned associations represent industries driven by data and take very seriously the responsibility to protect consumer data and provide transparency around data collection activities. Our members support more than 2 million jobs in California and help generate some \$767.7 billion dollars for the California economy. They engage in responsible data collection and use that benefits consumers and the economy, and believe consumers deserve tough and meaningful privacy protections in the marketplace. Unfortunately, AB 1202 would result in numerous problems for consumers, the California Attorney General ("AG"), and businesses, making California a more difficult place to innovate and regulate, and hurting workers and consumers in nearly all sectors of the state's economy.

As you know, the soon-to-be-effective California Consumer Privacy Act of 2018 ("CCPA") will create significant but still unknown changes to a California economy that relies on data. Given the uncertainty around that impact and the Attorney General's ongoing work on implementation regulations, it is important to ensure that any additional changes to California's information privacy laws are carefully crafted to create an interoperable and understandable framework. To that end, we believe it would be ill-advised to sign a new law directly regulating the information economy until the AG completes the statutorily-mandated rulemaking to clarify the CCPA. Time is needed to assess the impact of this untested new law on consumers, businesses, and the ability of the AG effectively to advise on and enforce the law.

I. The bill's overinclusive definitions may result in registration obligations for almost every company in California, thus failing to provide consumers with useful disclosures.

Because AB 1202 uses the CCPA's overly broad definitions of "sale," "personal information," and "business," the registration requirement could potentially cover every business operating in California, creating a massive, yet useless website of irrelevant information.



While AB 1202 attempts to narrow the scope of the definition of “data broker” to companies that do not have a “direct relationship” with the consumer, this clause, in combination with the definitions of “sale” and “personal information,” fails to exempt businesses conducting routine activities, such as a publisher trying to reach new customers, detect against fraud, or measure their marketing campaigns.

This outcome could result in thousands of businesses, large and small, being forced to register with the AG and pay an annual fee for typical commercial activity that bears no relation to serving as a “data broker” in the commonsense definition of that term. Relying on definitions crafted to address a wholly different consumer privacy regime means that AB 1202 failed to limit its coverage to “data brokers,” resulting in an overly broad and ultimately useless transparency page for consumers.

We urge you to veto the bill and instruct the legislature to try again by crafting a bill that achieves what it sets out to do, rather than overly regulating the entire California economy.

II. The bill would create enormous new responsibilities for the AG at a time when that Office is tasked with voluminous CCPA responsibilities.

As you also know, California’s new data privacy law goes into effect in mere months and will create broad new obligations for the AG. The CCPA directs the AG to provide guidance on implementation of the law, along with rulemaking and enforcement. These duties are resource-intensive and demanding, and they will continue to have an outsized impact on the AG’s enforcement capabilities.

AB 1202 would direct the AG to manage a new registration system, complete with fee collection responsibilities. Such system management would be an onerous undertaking even absent the CCPA-related obligations. AB 1202 is premature in this regard and, at a minimum, should follow an economic impact assessment on the AG’s Office if it was required to build these consumer-facing tools. Therefore, the bill should be vetoed.

III. The bill’s transparency provisions are less informative than the CCPA, undermining the goals of the CCPA.

The bill creates new data broker disclosure obligations, which do not take into account similar provisions in the CCPA. The bill requires data brokers to provide “[t]he name of the data broker and its primary physical, email, and internet website addresses” as well as “[a]ny additional information or explanation the data broker chooses to provide concerning its data collection practices.” Cal. Civ. Code § 1798.99.82(b). The bill also directs the AG to “create a page on its internet website where the information provided by data brokers...shall be accessible to the public.” Cal. Civ. Code § 1798.99.84.



In contrast, the CCPA creates more detailed disclosure requirements for the businesses it covers (including “data brokers”), and as a result, the requirements in AB 1202 are both duplicative and less useful than those disclosures currently mandated under soon-to-be enforced California law. Of note, the CCPA creates privacy policy disclosure requirements about the categories of personal information a business collects and sells to other businesses (Cal. Civ. Code §§ 1798.110(c); .115(b-c)), specific notice obligations and opt-out obligations for third parties to sell personal information collected from a business (Cal. Civ. Code § 1798.115(d)), and opt-out buttons on homepages of covered entities’ Internet websites (Cal. Civ. Code § 1798.135(c)), among other requirements. As a result, consumers will be provided with more detailed information and control under the CCPA than they would receive through AB 1202. Therefore, AB 1202 should be vetoed.

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AB 1202 is unnecessary for consumers who already receive significant protections under federal and state rules, unduly burdensome for California businesses, resource-intensive for the Office of the AG, and negative in its impact on California’s entire tech and data-driven economy. Companies doing business in California need time to learn how to comply with the CCPA. For these reasons, the undersigned associations respectfully request that you veto AB 1202.

Sincerely,

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