April 4, 2023

Senate Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RE: SB 262 - "Technology Transparency" (Oppose)

Chair Trumbull and Members of the Committee on Commerce and Tourism:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose SB 262 in advance of the Committee on Commerce and Tourism hearing on April 4, 2023.

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.[1] Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members. Recent sessions have seen an increasing volume of state legislation related to the regulation of what digital services host and how they host it. While recognizing that policymakers are appropriately interested in the digital services that make a growing contribution to the U.S. economy, these bills require study, as they may raise constitutional concerns,[2] conflict with federal law, and risk impeding digital services companies in their efforts to appropriately manage content online and provide consumers with optimized online experiences.

SB 262 includes several provisions focused on advertising practices. Digital advertising allows consumers to benefit from free online goods and services and consumers value this. Certain experiments found that the median consumer in 2017 valued free search engine services at up to $17,000 per year, and valued free email at up to $8,000 per year.[3] Research also shows that targeted advertising reduces search costs and improves match quality between firms and consumers. In effect, this supports increased price competition, and by extension increased consumer surplus associated with more effective means of matching consumers with the products they seek through such advertising.

We appreciate the opportunity to expand on several concerns about the provisions included in SB 262.

1. CCIA recommends revisions to several definitions included in SB 262.

a. Regarding advertising practices

As written, the bill's definition of "sharing" would expand the scope of opt-out to cover advertising practices that solely involve first parties. As such, this would limit a company's ability to personalize

[1] For over 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at https://www.ccianet.org/members.
[2] Eric Goldman, *The Constitutionality of Mandating Editorial Transparency*, 73 Hastings L.J. 1203 (2022), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3985&context=hastings_law_journal.
[3] Erik Brynjolfsson et al., *Using Massive Online Choice Experiments to Measure Changes in Well-Being*, Proceedings of the National Academy of Sciences of the United States of America, Volume 116, no. 15 (2019): 7250-7255, https://www.pnas.org/doi/full/10.1073/pnas.1815663116.

their own sites and applications using first-party data without consent. This would also have adverse privacy outcomes for consumers as this would disincentivize the use of advertising practices that rely on first parties rather than those that require the disclosure and receipt of third-party data. CCIA recommends amending this section to more closely align with existing targeted advertising opt-out requirements.

Similarly, the definition of "targeted advertising" encompasses first-party advertising as well. Under current conditions, publishers are able to protect a user's identity while allowing advertisers to reach their target audiences because publishers are able to share information, generally, that describes the type of audience (i.e., age, gender, other demographic information) without sharing information about a *specific* user. However, as the law is currently written, this type of sharing that helps to protect user privacy would be treated in the same manner as the sharing of more granular information about a specific consumer. This would disincentivize the practice of sharing more general information about target audiences at the expense of sharing more specific information about individual users.

b. Regarding children

As currently written, the bill defines a child as anyone under 18. Due to the nuanced ways in which children under the age of 18 use the internet, it is imperative to appropriately tailor such treatments to respective age groups. For example, if a 16-year-old is conducting research for a school project, it is expected that they would come across, learn from, and discern from a wider array of materials than a 7-year-old on the internet playing video games. We suggest changing the definition of "child" to a user under the age of 13 to align with the federal Children's Online Privacy Protection Act (COPPA) standard. This would also allow for those over 13, who use the internet much differently than their younger peers, to continue to benefit from its resources.

c. Regarding processors

SB 262 defines a "processor" to include a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity. CCIA recommends revising this definition to refer to a natural person.

2. CCIA requests further clarification regarding several provisions.

a. Regarding data collection through voice recognition

CCIA has several concerns regarding SB 262's requirement for a consumer's "authorization" prior to collecting any personal information through the operation of a voice recognition feature. It is not clear what satisfies this authorization requirement. Additional clarity would be helpful for covered entities to successfully achieve compliance.

The bill's provisions also raise several questions with regard to compliance feasibility. By restricting the collection of personal information without authorization, it is hard to understand how to receive authorization from anyone that is not the registered user of the device. It is also unclear how the bill's restrictions would apply to scenarios where voice data collection is not being used to identify a specific person or the collection of a voiceprint. CCIA is concerned that SB 262 is so overly restrictive that they would prevent basic functionality of such devices such as recording a customer's voice when they are placing an order, or recording a customer's voice when they are indicating specific preferences for the connected device.

b. Regarding processors

SB 262 would add a new provision surrounding how to determine whether a person is acting as a controller or processor. The bill specifies that such a relationship is a "fact-based determination that depends upon the context in which personal information is to be processed". It is unclear what this means in the context of the processor relationship and also creates confusion surrounding how this would apply in scenarios where a processor violates the terms of an agreement – as written, the provision may suggest that the processor relationship does not exist. CCIA proposes deleting this section.

Similarly, CCIA recommends striking the provision that imposes liability for processors in violation of the statute as this should be governed as a breach of contract and may unintentionally be applied to entities that are not based in Florida.

c. Regarding controllers

As written, SB 262's definition of controller appears to exempt data brokers from the scope of the bill's provisions. CCIA is concerned that this could put the privacy of Floridians at risk. A company could be selling Floridians data to China and yet exempt from this bill unless they also advertise or operate a voice assistant.

3. Data access language should be more narrowly tailored.

CCIA recommends more narrowly tailoring SB 262's provisions regarding consumer data access requests. As written, the bill would expand this existing right to (i) the specific pieces of personal information which have been collected about the consumer; (ii) the categories of sources from which the consumer's personal information was collected; and (iii) the specific pieces of personal information about the consumer which were sold or shared. To encourage consistency and harmonization across other U.S. state privacy laws, CCIA recommends the following revision:

CONSUMER RIGHT TO REQUEST COPY OF PERSONAL INFORMATION COLLECTED, SOLD, OR SHARED.
(a) A consumer has the right to request that a controller that collects, sells, or shares personal information about the consumer disclose the following to the consumer:

~~*1. The specific pieces of personal information which have been collected about the consumer.*~~
~~*2*~~*1. The categories of third-party sources from which the consumer's personal information was collected.*
~~*3. The specific pieces of personal information about the consumer which were sold or shared.*~~

4. SB 262's provisions regarding algorithmic prioritization raise several concerns.

SB 262 would require a controller that operates a search engine to provide a user with information on how the controller's search engine algorithm prioritizes or deprioritizes content in its search results. Digital services invest significant resources into developing and carrying out content moderation practices that protect users from harmful or offensive material and need flexibility in order to address new challenges as they emerge. Instead, the proposed requirements in SB 262 would mandate that services disclose sensitive information, including content moderation practices, algorithms, and techniques that could be exploited by bad actors. Florida should not offer a roadmap to criminals and

adversaries on how to defeat the measures the digital services employ to protect consumers from online threats. CCIA also cautions against overly broad transparency requirements regarding how a specific algorithm functions as this raises concerns surrounding the potential divulging of trade secrets. CCIA recommends limiting the applicability of this provision only to algorithms that are intentionally designed to engage in partisanship prioritization[4] and including an exception to protect from the potential exposing of business trade secrets.

Further, the bill does not define "search engine" and as such could encompass any service that provides a search function, an increasingly useful and integrated component on many online websites. CCIA recommends defining "search engine" to avoid confusion and help entities understand whether SB 262's provisions apply to its services.

Finally, "political ideology" is not defined and CCIA requests further clarity. It is important to note that just as these services do not serve all users, they do not publish all content. In addition to prohibiting illegal content as required by relevant state and federal laws, many digital services remove content that is dangerous, though not inherently illegal, and could be considered "political ideology." Thus, while it is not explicitly illegal to engage in cyberbullying, or to evangelize the Chinese Communist Party, many digital services nevertheless act on such content to uphold commitments to their user communities to combat dangerous or abhorrent categories of content or behavior. If social media services are compelled to treat all user-generated material with indifference their platforms could become saturated with inappropriate and potentially dangerous content and conduct.[5] Consumers could be exposed to foreign disinformation, communist propaganda, and anti-American extremism, all of which are not inherently unlawful.

5. SB 262 would impose overly burdensome requirements and penalties on businesses.

CCIA recommends several revisions to provisions of SB 262 that would impose overly restrictive and burdensome requirements on businesses. CCIA's suggested revisions would align the provisions of SB 262 more closely with other state laws. This approach would encourage consistency and harmonization across state lines and would avoid creating statutory divergences that risk creating onerous costs for covered organizations.

SB 262 would require a controller that has received direction from a consumer opting out of the sale or sharing of the consumer's personal information to comply within four calendar days and cease in selling or sharing the consumer's personal information. CCIA recommends aligning the turnaround time for honoring this request with other state laws and allowing 15 business days to comply.

CCIA appreciates that SB 262 would allow for a 45-day cure period. This allows for actors operating in good faith to correct an unknowing or technical violation, reserving formal lawsuits and violation penalties for the bad actors that the bill intends to address. This would also focus the government's

[4] Paul M. Barrett et al., *False Accusation: The Unfounded Claim that Social Media Companies Censor Conservatives.,* NYU Stern Center for Business and Human Rights, (Feb 2021), https://static1.squarespace.com/static/5b6df958f8370af3217d4178/t/60187b5f45762e708708c8e9/1612217185240/NYU+False+Accusation_2.pdf.

[5] Rob Arthur, *We Analyzed More than 1 Million Comments on 4chan. Hate Speech There Has Spiked by 40% since 2015.*, VICE, (July 10, 2019), https://www.vice.com/en/article/d3nbzy/we-analyzed-more-than-1-million-comments-on-4chan-hate-speech-there-has-spiked-by-40-since-2015.

limited resources on enforcing the law's provisions for those that persist in violations despite being made aware of such alleged violations. Such notice allows consumers to receive injunctive relief, but without the time and expense of bringing a formal suit. Businesses would also be better equipped with the time and resources to address potential modifications rather than shifting focus to defending against litigation. However, CCIA recommends that such a provision not be at the discretion of the attorney general's office and be uniformly applied.

SB 262 would also allow for fines that are significantly higher than the current maximum violation fines provided under other U.S. state privacy laws. For example, other state privacy laws include fines for violations up to $7,500 per infringement, whereas SB 262 include maximum fines of up to $50,000 per violation and up to $150,000 where the violation involves a failure to delete or correct, not honoring a sale/sharing opt out, or actual knowledge that a consumer is 18 or younger. CCIA recommends revising such enforcement provisions to more closely align with the frameworks in other states.

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We appreciate your consideration of these comments and stand ready to provide additional information as the legislature considers proposals related to technology policy.

Sincerely,

Khara Boender
State Policy Director
Computer & Communications Industry Association