



**September 12, 2023**

Joint Committee on Revenue  
Attn: Ryan Sterling  
State House  
24 Beacon St.  
Boston, MA 02133

**Re: Bills Pertaining to the Establishment of a Tax on Digital/Online Advertising Services: H. 2787, H. 2821, H. 2828, H. 2966, H. 2930, S.1846 (Oppose).**

Dear Co-Chair Moran, Co-Chair Cusack, and Members of the Joint Committee on Revenue:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose the slate of bills being considered by the Committee that would establish a tax on digital or online advertising services (H. 2787, H. 2821, H. 2828, H. 2966, H. 2930, S.1846).

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms<sup>1</sup>. Proposed taxation on the revenues generated from digital advertising services therefore can have a significant impact on CCIA members. 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 and risk having broad economic impacts, including on small- and medium-sized local businesses.

The advertising industry is a diverse and dynamic space, and consumers today encounter advertisements when they read their local newspaper, tune into their favorite broadcast television or radio program, as well as when they use the internet. In each of these instances, a vendor unites viewers with advertisers seeking an audience by offering compelling content. CCIA cautions against singling out businesses offering digital advertising services, and policymakers should provide a rationale if print or broadcast services employing a similar business model would not also be captured in the proposed tax.

**1. While the bill may appear to target and tax larger businesses, the impacts are likely to impact and harm smaller businesses instead.**

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<sup>1</sup> For 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>.



If a significant tax is levied against businesses who conduct digital advertising services, these costs are likely to be passed on. And when these costs are passed on, they're likely to be on to the entities creating the ads, which translates to the various smaller-sized local businesses who currently reap significant benefits in being able to advertise on such platforms.

When assembling an advertising campaign, businesses are looking for the most effective and efficient options – how to reach and influence their target audience with the least amount of resource commitment. Digital advertising dramatically reduces costs through automation, while also offering more customizable and targeted features<sup>2</sup>. Online advertising is particularly beneficial to local businesses who can then target their advertising to the local markets that they are serving. For these reasons, digital advertising is an increasingly popular option for smaller and local businesses – in fact, one study showed that small businesses saw savings of nearly \$163 billion, annually, by using online advertising<sup>3</sup>. Therefore, by levying fees on digital services hosting such advertisements, this would impede the ability of small and local businesses to effectively and efficiently advertise to targeted consumers.

## **2. Taxing digital advertisements raises serious concerns regarding administrative feasibility.**

Determining which digital advertisements are subject to the proposed tax may be difficult. This is compounded by the fact that digital ads that reach state residents are hosted on digital platforms that transcend state borders. In particular, digital advertisements served in a mobile context, especially in a state with a large degree of movement across adjacent state borders, such as Massachusetts, pose several barriers to determining which ads have been served to state residents.

Being able to accurately confirm whether a digital ad has been served to a state resident would require additional data collection, which has data privacy implications, and may conflict with data minimization principles. Many businesses will not know where users reside even if they may know a user's general location at a given time. Unlike specific applications, browsers, where these digital ads are often served, don't generally require location tracking for functionality and regular use.

## **3. Similar proposals to tax digital advertising in other states have raised serious constitutional questions.**

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<sup>2</sup> Kay Jebelli. *Evolution of Ad Spend and the Dynamics of Digital*. Disruptive Competition Project, (Dec. 4, 2020), <https://www.project-disco.org/competition/050420-evolution-of-ad-spend-and-the-dynamics-of-digital/#.Y3es53bMI2U>.

<sup>3</sup> *Online Advertising Delivers Big Benefits for Small Businesses*. Small Business & Entrepreneurship Council, (Sept. 10, 2019), <https://sbecouncil.org/2019/09/10/online-advertising-delivers-big-benefits-for-small-businesses/>.



This legislation singles out businesses who provide digital advertising services from their peers in the traditional offline advertising space. This is important as it raises constitutional concerns related to the Internet Tax Freedom Act (ITFA) and the First Amendment.

In 2021, Maryland enacted the “Digital Advertising Gross Revenues Tax”, first-in-the nation legislation to impose a tax on digital advertisements. Since its enactment, the law has been challenged at both the state and federal levels. As such, the state may face a budget shortfall of approximately \$250 million as the law’s constitutionality is considered in the courts<sup>4</sup>. In October 2022, a Maryland state court<sup>5</sup> struck down the law citing several instances in which it is unconstitutional. First, the court ruled that the law violates the ITFA by imposing a discriminatory tax on online advertising services, but not traditional offline advertisements. In addition, the court found that the law violates the First Amendment because it disproportionately impacts free speech by exempting more traditional means of advertising such as broadcast and news media but applies the tax to comparable internet speech. The constitutionality of Maryland’s law is still in limbo as further rulings and procedural clarity is pending in both the state and federal litigation<sup>6</sup>.

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We appreciate the Joint Committee’s consideration of these comments and stand ready to provide additional information as the Legislature considers proposals related to technology policy.

Sincerely,

Alex Spyropoulos  
Regional Policy Manager, Northeast  
Computer & Communications Industry Association

<sup>4</sup> Brian Witte, *Maryland Judge Strikes Down Nation's First Digital Ad Tax*. Associated Press, 17 Oct. 2022, <https://ktla.com/ap-business/ap-maryland-judge-strikes-down-nations-first-digital-ad-tax/>.

<sup>5</sup> Comcast v. Comptroller of Maryland, No. C-02-CV-21-000509 (Md. Cir. Ct. 2022)

<sup>6</sup><https://www.granthornton.com/insights/alerts/tax/2023/salt/k-o/md-decides-state-digital-advertising-services-tax-to-be-in-effect-05-18>