



Computer & Communications
Industry Association
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February 7, 2022

Chairman Thomas
Senate Committee on Consumer Protection
New York State Senate
172 State St.
Albany, NY 12210

Re: CCIA Comments in Opposition to S 6701

Dear Chairman Thomas and Members of the Senate Consumer Protection Committee:

On behalf of the Computer & Communications Industry Association (CCIA),¹ I write to reiterate the Association's opposition to S 6701, the "New York Privacy Act." CCIA previously expressed concerns regarding the bill during the 2021 legislative session,² and given it has not been sufficiently amended, we remain in opposition.

CCIA supports the enactment of comprehensive federal privacy legislation to promote a trustworthy information ecosystem characterized by clear and consistent consumer privacy rights and responsibilities for organizations that collect and process data. A uniform federal approach to the protection of consumer privacy throughout the economy is necessary to ensure that businesses (especially SMEs) have regulatory certainty in meeting their compliance obligations and that consumers are able to understand and exercise their rights.

As the Committee proceeds in considering the establishment of a new statewide consumer privacy framework, CCIA encourages attention to the following principles in order to support meaningful privacy protections that avoid unnecessary interference with the ability of both consumers and businesses to benefit from data-enabled products, services, and innovation that support the modern economy.

1. Vest enforcement authority with the Attorney General

A new privacy framework would be best enforced by the New York State Office of the Attorney General. The inclusion of a private right of action would lead to the proliferation of class action lawsuits seeking lucrative settlements for alleged bare-procedural violations, primarily benefiting plaintiffs' attorneys with little connection to the remedy of any genuine consumer injury. The limited enforcement effectiveness of crafting broad private

¹ CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For fifty 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. For more, visit www.ccianet.org.

² Computer & Communications Industry Association, CCIA Comments on S6701 Concerning Consumer Data Privacy. (May 25, 2021).

rights of action in the commercial privacy context are apparent in the history of both state and federal privacy statutes.³ CCIA further recommends the inclusion of an opportunity-to-cure provision so that organizations acting in good faith are encouraged to rapidly resolve any concerns. This has been a successful enforcement model in other jurisdictions and the California Attorney General recently highlighted its use of notices to cure as an effective tool to support widespread business compliance with new privacy rules.⁴

2. Promote interoperability with best practices

Existing privacy laws typically recognize a core set of rights and protections including individual control, transparency of processing activities, and limitations on third-party disclosures that are reflected in S 6701. However, given the significant costs of developing privacy management systems, minor statutory divergences between frameworks for definitions or the scope of compliance obligations can create significant burdens for covered organizations.⁵ CCIA encourages an amendment to S 6701 to ensure that it is reasonably aligned with existing duties, definitions, and rights in state law so as to avoid unnecessary costs to New York businesses. As currently written, many of the bill's definitions for key concepts, such as "personal information" and "sale" are inconsistent with existing privacy regimes and would likely result in significant interpretation and compliance challenges, even for businesses that comply with other state privacy laws.

3. Employ risk-based privacy protections

Privacy protections should be directed toward managing data collection and processing practices that pose a risk of harm to consumers or are unexpected in the context of a service. Consent mechanisms can be a powerful tool for promoting transparency and consumer control; however, it is important to recognize that the provision of many services, both online and offline, requires the collection and processing of certain user information. Requiring specific user-consent for any data collection or processing would be inconsistent with consumer expectations, add unnecessary friction resulting in the degradation of user experiences, and likely overwhelm consumers, resulting in "consent fatigue" that diminishes the impact of the most important user controls.⁶ As

³ See, U.S. Chamber Institute for Legal Reform, "Ill-suited: Private Rights of Action and Privacy Claims" (July, 2019), https://instituteforlegalreform.com/wp-content/uploads/2020/10/III-Suited_-_Private_Rights_of_Action_and_Privacy_Claims_Report.pdf.

⁴ Xavier Becerra, "Attorney General Becerra Announces Approval of Additional Regulations That Empower Data Privacy Under the California Consumer Privacy Act" (March 15, 2021), <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-approval-additional-regulations-empower-data>.

⁵ A study commissioned by the California Attorney General estimated that in-state companies faced \$55 billion in initial compliance costs for meeting new privacy requirements, with small businesses facing disproportionately higher shares of costs. Berkeley Economic Advising and Research, LLC, "Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations," at 11 (August, 2019), https://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/CCPA_Regulations-SRIA-DOF.pdf.

⁶ See Article 29 Data Protection Working Party, WP 259, *Guidelines on Consent Under Regulation 2016/679*, 17 (Apr. 10, 2018), ("In the digital context, many services need personal data to function, hence, data subjects receive multiple consent requests that need answers through clicks and swipes every day. This may result in a certain degree of click fatigue: when encountered too many times, the actual warning effect of consent mechanisms is diminishing."), https://ec.europa.eu/newsroom/article29/itemdetail.cfm?item_id=623051.

drafted, S 6701's expansive prior consent requirements would far exceed any existing US state law and uniquely burden New York businesses without an obvious benefit for consumers' privacy interests.

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Thank you for your attention to the important subject of advancing consumer privacy protections and your consideration of these comments. CCIA stands ready to provide additional information and perspectives as the Committee considers consumer privacy issues.

Sincerely,

Alyssa Doom
State Policy Director
Computer & Communications Industry Association

