



February 28, 2022



The Honorable Brad Wilson
Utah House of Representatives
350 North State, Suite 350
Salt Lake City, Utah 84114

Re: CCIA Comments on SB 227

Dear Speaker Wilson and Members of the Utah House of Representatives:

On behalf of the Computer & Communications Industry Association (CCIA),¹ I write to provide feedback on SB 227.

CCIA is a nonprofit, non-partisan trade association representing a broad cross-section of communications and technology firms. CCIA supports the enactment of comprehensive privacy legislation to promote a trustworthy information ecosystem characterized by clear and consistent consumer rights and responsibilities for organizations that collect and process data. To guide lawmakers seeking to adopt such legislation, CCIA drafted a set of principles to promote fair and accountable data practices.² Below I have outlined key features of these best practices that are reflected in SB 227.

1. Establish clear rights for consumers over their personal information.

To promote trust and participation in the digital economy, it is important for consumers to feel confident they have control over their personal data. SB 227 protects consumers' fundamental rights over personal information, including the rights to access, correct, delete, and transfer personal data. The bill also empowers consumers with a choice over how their information is used by creating the right to opt out of the collection and sale of personal data.

2. Promote interoperability with best practices to mitigate unnecessary compliance burdens.

In meeting compliance requirements under a new privacy regime, businesses inevitably face logistical and financial challenges. Given the substantial costs associated with developing privacy management systems, even minor statutory divergences between frameworks for definitions or the scope of compliance obligations can create

¹ 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 information, visit www.cianet.org.

² Computer & Communications Industry Association, Considerations for State Consumer Privacy Legislation: Principles to Promote Fair and Accountable Data Practices (January, 2022), <https://www.cianet.org/wp-content/uploads/2022/02/CCIA-State-Privacy-Principles.pdf>

significant burdens for covered organizations.³ SB 227 avoids creating extra hurdles and additional costs for businesses operating within the state by reasonably aligning duties, definitions, and rights with existing state consumer data privacy regimes in both Colorado and Virginia.

3. Include role-based distinctions for “controllers” and “processors” to ensure clarity in their respective obligations to protect consumers’ data.

In the digital economy, the primary parties handling consumer data are “controllers,” which typically have a first-party relationship with consumers’ data, and “processors,” which process data on behalf of controllers. Controllers are better situated to receive and implement consumers’ instructions for handling their data, while processors perform contractual duties at the instruction of controllers. Because they have different duties in the handling of personal information, legislation should clearly distinguish between these two sets of actors.⁴ SB 227 appropriately clarifies the obligations of both parties in a manner that enables ready compliance with new responsibilities and eliminates gaps in the protection of consumer data.

4. Ensure practicable compliance to provide covered entities with predictability in meeting new obligations.

SB 227 gives businesses predictability in meeting compliance obligations in two key ways. First, its January 1, 2024, effective date provides a sufficient on-ramp for compliance. Recently enacted privacy laws in Colorado and Virginia contain similar implementation periods, providing covered entities with ample time to comply with new obligations. Further, the bill avoids broad rulemaking provisions which, as we have witnessed in California, would add additional layers of complexity for businesses and make compliance a moving target.⁵ The predictability that SB 227 affords will be particularly important for the state’s small- and medium-sized businesses seeking to meet compliance obligations with fewer resources.

5. Vest enforcement authority with the Attorney General and provide businesses with an opportunity to make corrections.

CCIA supports exclusive enforcement of the Attorney General’s Office with regards to consumer privacy legislation. State attorneys general have a history of enforcing privacy legislation, and therefore possess subject matter expertise needed to identify and remedy instances of noncompliance.⁶ CCIA also supports SB 227’s inclusion of an opportunity-to-cure provision, which allows organizations acting in good faith to quickly remedy instances of noncompliance without overly burdening regulator resources. This has been a successful enforcement model in

³ 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.

⁴ The Software alliance, The Difference Between Controllers and Processors and Why It Matters for Federal Data Privacy Legislation. (March 3, 2020), <https://www.bsa.org/policy-filings/the-global-standard-distinguishing-between-controllers-and-processors-in-privacy-legislation>.

⁵ Duane Pozza, Kathleen Scott. *California Set to Begin Potentially Far-Reaching Rulemaking on Privacy*. Wiley Rein LLP (October 26, 2021), <https://www.jdsupra.com/legalnews/california-set-to-begin-potentially-far-4890759/>

⁶ 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.

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.⁷

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We appreciate Members' attention to these comments and stand ready to provide additional information as the House considers SB 227.

Sincerely,

Alyssa Doom
State Policy Director
Computer & Communications Industry Association

⁷ 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>.