

The NetChoice Coalition

Promoting Convenience, Choice, and Commerce on The Net

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April 28, 2011

Senator Noreen Evans
California State Senate
Senate Judiciary Committee
State Capitol, Room 2187
Sacramento, CA 95814

RE: **Opposition to SB 761, An Act Relating to Personal Information**

Dear Chairwoman Evans:

NetChoice opposes SB 761, which threatens California's leadership in delivering the free online services enjoyed around the world. SB 761 would turn the online advertising business model on its head, by requiring opt-in for the use of non-personal information that helps to deliver interest-based ads.

SB 761 would require Opt-In consent for interest-based ads.

Online interest-based advertising provides most of the funding that enables websites to create content and develop new services. Interest-based ads rely on collection of non-identifying data about users' web browsing and the sites and subjects they frequent most. Presently, consumers can opt-out of this kind of interest tracking. But SB 761 would mandate that websites obtain express user consent (opt-in) before they collect or use this non-personal data.

An Opt-In mandate would cost California websites over \$4 Billion in 5 years.

California is not the first government to attempt an opt-in regime for non-personal and non-sensitive user data. Parts of the European Union (EU) required Opt-in and saw a significant loss in the effectiveness of online advertising.

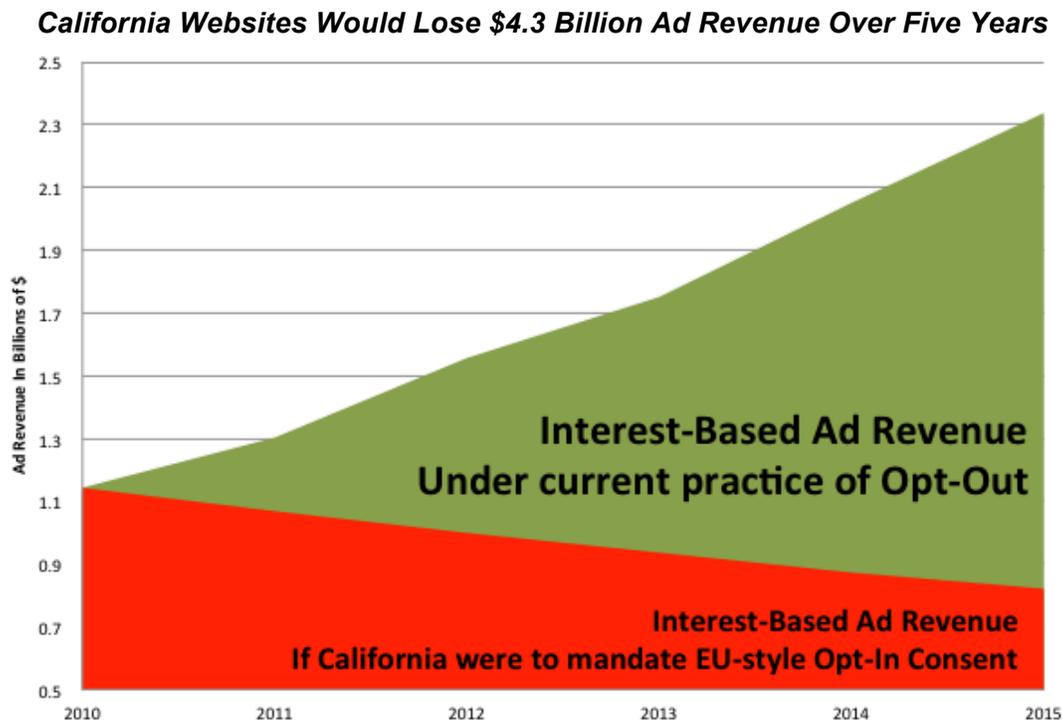
An MIT/University of Toronto Study¹ looked at results when five European governments required opt-in to restrict interest tracking for online advertising. The study compared the purchase intentions of over 3 million individuals across 5 EU and 5 non-EU countries over the 8 years after European nations began implementing opt-in requirements of the EU Privacy Directive.

¹ Goldfarb & Tucker, *Privacy Regulation and Online Advertising*, Univ. Toronto & MIT (Aug-2010).

The MIT-Toronto Study found that after the EU adopted an opt-in model for interest-based advertising, “advertising effectiveness decreased on average by around 65 percent in Europe relative to the rest of the world.”

The study also found that subtle, low-key ads were most hurt by the opt-in approach. So, to make up for the lack of relevance to the user, ads must become more abundant, more aggressive and more intrusive to the user experience.

Building off the MIT-Toronto findings, NetChoice can forecast the effect that EU-style opt-in legislation would have on California websites:



SB 761 forbids sharing of non-personal data – even when the user consents.

SB 761 imposes a complete ban on a website transferring user data for *any* purpose. This total ban cannot be lifted by any safe harbor or exception created by the Attorney General. And websites cannot share even when the user consents to the sharing. This would create an unworkable regime under which sites could no longer share even technical, non-personal data needed to give users a better online experience.

California’s world-leading Internet innovators would be impacted.

California prides itself on its technology and business innovators. However, many of California’s leading online companies would be among those harmed most by SB 761. Companies such as Facebook, Yahoo!, and Google rely heavily on interest-based advertising. But SB 761 and its opt-in mandate would dramatically reduce user participation rates and undermine the economic model for most free content and services.

SB 761 would harm Internet startups and emerging websites even more.

Established Internet leaders may be able to convince many of their users to opt-in for data collection, despite today's inflated rhetoric over privacy concerns. But new, lesser-known companies would find it far more difficult to entice users to opt-in, even just for non-personal data. SB 761 could cause Internet companies to rethink whether California is the best state for online businesses.

SB 761 would harm California consumers, too.

As a result of SB 761, Internet advertising in California could see a \$4 billion decline in ad revenue over the first 5 years, with three predictable results:

1. Californians will see more and larger ads that are less relevant, as websites attempt to make-up lost revenue from the decline in interest-based ads
2. Websites will have less funding to pay for new services and content
3. Some websites will erect "pay walls" that require users to fund content and services that are free today

Please don't allow SB 761 to become law.

Now is not the time for California to emulate mistakes made by the European Union in its experiment with online privacy. Please don't allow SB 761 to deprive California of the benefits of online services that are now the envy of the world.

Thank you for considering our views and please let me know if we can provide further information.

Sincerely,



Steve DelBianco
Executive Director, NetChoice
cc: Members of the Committee

NetChoice is a coalition of trade associations and e-Commerce businesses who share the goal of promoting convenience, choice and commerce on the Net. More information about NetChoice can be found at www.netchoice.org