



March 27, 2018

Honorable Cynthia Creem, Chair
Special Senate Committee on Net Neutrality and Consumer Protection
24 Beacon St.
Room 312A
Boston, MA 02133

RE: MA S2376, relating to internet service provider privacy and security - OPPOSE

Dear Senator Creem:

The undersigned associations write to respectfully **oppose S2376**. The privacy components of this bill, if passed, create serious unintended consequences and would negatively impact consumers, business and the Internet. It would foster a complicated regulatory structure at the state level for a sector that is best addressed via a national approach. **S2376** would make Massachusetts a far more difficult place to innovate on the Internet, ultimately hurting the information economy that has become an important part of the state's economy.

The undersigned associations oppose this legislation because it would contribute to an unworkable "patchwork" of state privacy laws and risks unnecessary harm to the information economy.

Consumers and Businesses Can Rely on the Federal Approach to Privacy. The repeal of the Federal Communication Commission's ("FCC") Broadband Privacy Rules does not mean that consumers are left unprotected. In fact, the FCC's recent *Restoring Internet Freedom Order*, which will take effect in the coming weeks, reclassifies broadband Internet access services so that they are no longer "common carrier" services and restores the Federal Trade Commission's ("FTC") jurisdiction over ISPs privacy practices.¹

Accordingly, the FTC, which serves as the regulatory leader with respect to safeguarding consumer privacy will once again be the cop on the beat for the full Internet ecosystem, including ISPs. The Ninth Circuit reiterated this position in *Federal Trade Commission v. AT&T Mobility*, reaffirming the FTC's authority over the non-common carrier activities of common carriers.²

¹ Even during the time that the FCC asserted jurisdiction over ISP privacy practices, consumers were protected because of the FCC's statutory authority.

² *Federal Trade Commission v. AT&T Mobility*, 2018 WL 1045406, at *2 (Feb. 26, 2018).

In response to the Ninth Circuit’s decision, Acting FTC Chairman Maureen Ohlhausen issued a statement noting that the ruling is good news for consumers, and stating that it “ensures that the FTC can and will continue to play its vital role in safeguarding consumer interests including privacy protection....”³ FCC Chairman Ajit Pai also indicated that the decision is a “significant win for American consumers” as the ruling reaffirms that the FTC will “once again be able to police Internet service providers....”⁴

With over 40 years serving as the chief federal agency on privacy policy and enforcement, consumers and businesses have come to rely on the FTC as the authority on consumer privacy. Despite efforts to pass ISP legislation in almost half of U.S. states in 2017, the futility of those efforts is telling. Consumer privacy is most effectively protected through a national approach.

S2376 Would Disrupt the Internet and Harm Consumers. The privacy provisions in **S2376** would greatly exacerbate the growing “patchwork” of state laws on privacy practices. Unlike in other areas, state laws regulating the privacy practices of ISPs would be very difficult for companies to implement and would affect how consumers experience the Internet. This patchwork would force consumers to face a constant drumbeat of confusing and frustrating requests for consent to use the Internet for routine purposes that would vary depending upon the state where the consumer lives. A state-by-state approach, which will vary as each state debates and passes legislation, will inevitably be worse for consumers and organizations. The Internet cannot function as it has if each state is individually regulating how the Internet operates. Such state-by-state legislation would be incredibly disruptive.

The unprecedented growth and success of the Internet over the past two decades, and the high rate of consumer adoption that goes along with it, demonstrates that consumers are pleased with the Internet that has developed under current law. They are increasingly relying on the free and low-cost access to entertainment, news, and financial services, and other useful content that the Internet offers. By destabilizing the ecosystem, **S2376** threatens the “free Internet” that has become part of the daily lives of millions of American consumers.

Advocates for **S2376** and similar bills in other states have failed to identify a single, concrete harm that would be remedied through it. Instead, **S2376** proponents have offered a speculative “parade of horrors” without justification.

S2376 Would Stifle Economic Growth and Innovation. According to the [Value of Data](#) report commissioned by the DMA in 2015, the Data-Driven Marketing Economy generated \$202 billion in revenue and 966,000 jobs in 2014. Similarly, the Interactive Advertising Bureau (“IAB”) commissioned a [study](#), which revealed that the advertising supported Internet ecosystem generated \$1.121 trillion for the U.S. economy in 2016, accounting for 6% of U.S. GDP, double its contribution in 2012. The IAB study also noted the advertising-supported Internet ecosystem created 10.4 million jobs in the United States, a 104% increase from 2012. The regulatory landscape for the Internet that existed prior to the FCC’s rules helped facilitate these significant economic developments. **S2376** would stifle that growth. A Zogby Analytics poll commissioned by the Digital Advertising Alliance (“DAA”) shows that consumers assign a value of almost \$1,200 a year to ad-supported online content. Ad-supported online content is the backbone upon which the Internet as we know it is built. Altering it or disrupting it would be very harmful to the Internet’s role as an economic engine for the American economy.

³ <https://www.ftc.gov/news-events/press-releases/2018/02/statement-acting-ftc-chairman-ninth-circuit-court-appeals-ruling>

⁴ https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0226/DOC-349444A1.pdf

We have already seen the disruptive effects of restrictive requirements for the Internet in other regions, including Europe. It is no coincidence that the major Internet and technology companies in the world were developed in the United States, under the privacy regime that existed before the FCC's Broadband Privacy Rules were adopted. A state-by-state approach on privacy, such as the one set forth in **S2376**, would put the United States in an inferior competitive position and harm the American economy as a result.

Because it is unnecessary for consumers who already receive significant privacy protections under federal rules, unduly burdens Massachusetts' small and large businesses, and negatively impacts Massachusetts' tech and data-driven economy, the undersigned associations respectfully oppose **S2376**.

Sincerely,

DMA – Data & Marketing Association
4A's – American Association of Advertising Agencies
AAF – American Advertising Federation
ANA – Association of National Advertisers
CompTIA - Computing Technology Industry Association
IAB – Interactive Advertising Bureau
Internet Coalition
NetChoice
TechNet

cc: Special Senate Committee on Net Neutrality and Consumer Protection members