STATE PRIVACY AND SECURITY COALITION

April 21, 2017

Representative Kelly Cassidy
Illinois General Assembly
265-S Stratton Building
Building
Springfield, IL 62706

Chairman André Thapedi
Judicial Civil Committee
250-W Stratton Office

Springfield, IL 62706

Re: ***Illinois HB 2459, the Location-based Video Game Protection Act***

Dear Representative Cassidy and Chairman Thapedi:

The undersigned associations represent hundreds of the country's leading technology companies in high-tech manufacturing, computer networking, and information technology, clean energy, life sciences, Internet media, ecommerce, education, and sharing economy sectors. Our member companies are committed to advancing public policies and private sector initiatives that make the U.S. the most innovative country in the world. We oppose Illinois HB 2459, which would impose unnecessary, impracticable, and constitutionally suspect obligations on application developers offering services in Illinois.

Our coalition applauds the intent of this legislation to protect ecology and endangered species in Illinois. However, the provisions in HB 2459 would create serious risk for deploying valuable services and features that consumers expect and harm Illinois businesses, especially small businesses.

The bill would restrict valuable services and features.

Due to the overbroad definition of "Location-based video game," this bill would limit valuable education, tourism, navigation, urban planning, healthcare, and telework applications – any of which could include "game"-like features or incentives to take certain actions – before they are even deployed in Illinois, denying their benefits to Illinois consumers and businesses.

The bill is impracticable.

This bill requires burdens that are incompatible with the nature of online applications and cannot realistically be implemented by app developers. For example, the requirement that app developers alter content within 4 days may often not be technically feasible, not only in order to respond to the specific request but also to troubleshoot the newly-altered app to ensure that it remains safe and secure. Furthermore, in many cases, an app developer (oftentimes an individual person) publishes an app but does not continue to update and support the app on a prospective basis. This bill would essentially outlaw this practice and prohibit app developers from innovating and creating new software without being bound to that software indefinitely.

The content removal provisions of this bill are also unworkable. App developers located around the globe, small and large, simply do not have the ability to verify that a location happens to be "an area designated by federal, State, or unit of local government" as historically or ecologically sensitive. Similarly, these developers do not have the means to verify who a "real property owner, manager, or custodian" happens to be, or to adjudicate disputes. Furthermore, submitting removal requests through the procedure established by this bill would be burdensome and frustrating, because companies would likely demand verified and authenticated documents (such as Illinois photo identification, proof of employment, and valid deed) establishing the identity of the requesting party and the relationship to the property in question.

The difficulty of verifying the validity of requests will make this bill a tool for abuse (for example, by business competitors seeking to remove each other from an app), forcing businesses to devote additional resources to compliance.

The bill is unnecessary.

Location-based games integrate learning, exploration and physical activity in very beneficial ways. It is also important to note that game developers already have easily-accessible removal systems in place. For example, please note Niantic (the developer of Pokémon Go)'s removal process at https://support.pokemongo.nianticlabs.com/hc/en-us/requests/new?ticket_form_id=341148. Finally, trespassing on private or governmentally restricted lands is already unlawful.

There is not a need for additional regulation, especially for restrictions so broad that they could apply to thousands of business models that are very different from Pokémon Go. The restrictions presented in the bill would include local search, maps and navigation, or ridesharing apps, which use location to offer essential services to consumers throughout the state. Companies that are innovating in this area are taking strong precautions to make sure they are building responsible technologies. When problems arise, they are quickly identified and addressed. The issue that appears to have motivated this legislation, for example, was addressed by Pokémon Go within weeks of its identification.

The bill is constitutionally suspect.

The First Amendment restricts the state's ability to regulate artistic expression and truthful speech – both elements of any "Location-based video game." Illinois residents and

visitors have a First Amendment right to obtain truthful information and entertainment relating to public places including "historically significant sites," as well as any other information in the public interest. Should this bill become law, a lawsuit will likely be filed to enjoin its enforcement, and when it is struck down as unconstitutional the state will be required to remit substantial attorney's fees.

In conclusion, we agree that ecology and endangered species in Illinois should be protected. However, HB 2459 is the wrong approach and would be harmful for Illinois businesses and consumers alike.

Thank you for your consideration of our concerns. We would be happy to discuss the bill further, at your convenience.

Respectfully,

State Privacy & Security Coalition
Association of National Advertisers (ANA)
Entertainment Software Association (ESA)
Internet Coalition
NetChoice
TechNet