



April 27, 2017

Chair Ann Cummings
Senate Committee on Finance
Vermont General Assembly
115 State Street
Montpelier, VT 05633-5301

[Sent Electronically for Distribution]

RE: **H. 347** relating to protecting the privacy and security of internet users – **OPPOSE**

Dear Chair Cummings:

The undersigned associations write to respectfully **oppose H. 347**. This bill, if passed, creates 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. H. 347 would make Vermont 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 recent repeal of the Federal Communication Commission's ("FCC") Broadband Privacy Rules does not mean that consumers will be left unprotected. In fact, Internet Service Providers ("ISPs") have been and will continue to be substantially regulated at the federal level. Prior to the FCC's decision to adopt the Broadband Privacy Rules, it issued a wide-ranging enforcement advisory opinion, making it clear that the Communications Act (Section 222) applies to ISPs. This guidance continues to apply today. The recent action by Congress and the President does not change or alter the obligations of ISPs under Section 222, or the FCC's ability to enforce noncompliance. Nor does the recent repeal of the Broadband Privacy Rules create new rights or powers for ISPs because the rules never went into effect. As such, consumers continue to be protected under existing FCC authority.

Following the decision to repeal the FCC's Broadband Privacy Rules, FCC Chairman Ajit Pai announced that the FCC would be working with the Federal Trade Commission ("FTC") to restore the

FTC’s authority over ISP privacy practices.¹ Chairman Pai reiterated that the FTC is and has been the regulatory leader with respect to privacy, and that we need to “end the uncertainty and confusion that was created in 2015 when the FCC intruded in this space.”² As indicated by Chairman Pai, consumers need greater certainty and clarity with respect to privacy regulation, and this certainty and clarity will be achieved at the federal level. Greater certainty and clarity will not be achieved through states entering into a regulatory space that has been historically addressed through a national approach.

H. 347 Would Disrupt the Internet and Harm Consumers. H. 347 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, H. 347 threatens the “free Internet” that has become part of the daily lives of millions of American consumers.

Advocates for H. 347 and similar bills in other states have failed to identify a single, concrete harm that would be remedied through it. Instead, H. 347 proponents have offered a speculative “parade of horrors” without justification or evidence.

H. 347 Has Not Undergone Adequate Review or Analysis. H. 347 is attempting to regulate in a complicated, highly technical area despite the fact that it has not received sufficient analysis. Prior to enacting the Broadband Privacy Rules, the FCC underwent an extensive rulemaking process, receiving comments from organizations, building a record, and contemplating stakeholder concerns. After a year of regulatory consideration, the FCC released the final Broadband Privacy Rules. H. 347, however, is merely a reaction to the decision to repeal the FCC’s Broadband Privacy Rules, and is not the product of a deliberative, thoughtful legislative process.

H. 347 was hastily drafted, was not properly vetted, and, as a result, is poorly constructed. H. 347 has been introduced at the end of Vermont’s legislative session, forcing members to move forward without fully understanding the impact of the legislation, and without giving members adequate time to address issues with the language in the legislation.

H. 347 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 FEDERAL COMM’N COMM’N, Statement of Chairman Pai on President Signing Cong. Resolution of Disapproval (April 3, 2017), available at <https://www.fcc.gov/document/statement-chmn-pai-president-signing-cong-res-disapproval>.

² *Id.*

\$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. H. 347 would stifle that growth. A recent 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.

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 H. 347, would put the United States in an inferior competitive position and harm the American economy as a result.

Because it is unnecessary for consumers as they already receive significant protections under federal rules, unduly burdens Vermont's businesses (both small and large), and negatively impacts Vermont's tech and data-driven economy, the undersigned associations respectfully oppose H. 347.

Sincerely,

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

cc: Honorable Members of the Senate Committee on Finance