



LEADERSHIP AND
MARKETING EXCELLENCE

September 24, 2018

The Honorable John Thune
U.S. Senate Committee on Commerce,
Science, and Transportation
512 Dirksen Senate Building
Washington DC, 20510

The Honorable Bill Nelson
Ranking Member, Senate Committee on
Commerce, Science & Transportation
716 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Thune and Ranking Member Nelson:

The Association of National Advertisers (“ANA”)¹ commends you for convening the upcoming hearing entitled, “Examining Safeguards for Consumer Data Privacy,” and for the Committee on Commerce, Science, and Transportation’s (“Commerce Committee” or “Committee”) continued work on the important issue of data privacy.

The Commerce Committee has been a leader on data privacy issues since the advent of the modern Internet and we urge the Committee to maintain its careful and thoughtful approach to data policy issues. Dialogue with all stakeholders in the digital economy will be essential to the Committee’s ongoing oversight efforts to ensure consumers continue to benefit from an open, competitive, and innovative digital marketplace. To that end, as you consider data privacy issues, it is central to consider the myriad benefits of data and advertising, which fuel economic growth, foster a wide array of affordable media choices that educates the public, and drive innovation and consumer value.

In today’s digital economy, data and advertising have become essential in the provision of innovative products and services to consumers, and information about such products and services.² Data improves advertising, which in turn creates for consumers a vibrant ad-supported

¹ The ANA makes a difference for individuals, brands, and the industry by driving growth, advancing the interests of marketers and promoting and protecting the well-being of the marketing community. Founded in 1910, the ANA provides leadership that advances marketing excellence and shapes the future of the industry. The ANA’s membership includes nearly 2,000 companies with 25,000 brands that engage almost 150,000 industry professionals and collectively spend or support more than \$400 billion in marketing and advertising annually. The membership is comprised of more than 1,100 client-side marketers and more than 800 marketing service provider members, which include leading marketing data science and technology suppliers, ad agencies, law firms, consultants, and vendors. Further enriching the ecosystem is the work of the nonprofit ANA Educational Foundation, which has the mission of enhancing the understanding of advertising and marketing within the academic and marketing communities.

² In a recent Zogby survey, 90% of consumers stated that free content was important to the overall value of the Internet and 85% surveyed stated they prefer the existing ad-supported model, where most content is free, rather than a non-ad supported Internet where consumers must pay for most content. Zogby Analytics, *Public Opinion Survey on Value of the Ad-Supported Internet* (May 2016). The Zogby survey also found that consumers value the ad-supported content and services at almost \$1,200 a year. Digital Advertising Alliance, *Zogby Poll: Americans Say*

ecosystem delivering essential products, services, and media content. Data also is vitally important to U.S. economic competitiveness. Ideas developed in the United States by statisticians and econometricians, running on U.S.-designed hardware, and coded in algorithms developed and tested in the research offices of U.S. firms, are used to generate significant revenues throughout the world. A study led by Prof. John Deighton at the Harvard Business School reported that the ad-supported Internet ecosystem generated \$1.121 trillion for the U.S. economy and was responsible for 10.4 million jobs in the U.S. in 2016.³

Increasingly, however, the digital economy faces ill-conceived requirements regulating the collection and use of data, including some adopted at the state and international levels, such as the hastily enacted California Consumer Privacy Act (“CCPA”) and the European Union’s General Data Protection Regulation (“GDPR”).⁴ These rules limit legitimate and consumer-valued uses of data, overburden consumers with notices, allow for broad access to consumer data without thoughtful safeguards to protect against fraud and criminal behavior, and negatively impact the efficiency and effectiveness of the digital economy. Stakeholders across the spectrum are raising alarms with respect to the defective provisions of the CCPA.⁵ In particular, the CCPA’s statutory damages and private right of action related to data breaches have the potential to bankrupt a broad range of companies even if the data released causes no consumer harm. Similar problems have emerged with GDPR, which imposes literally hundreds of rules on the collection and use of data. We have already seen a number of companies pull their products and services out of Europe due to the significant resources required to comply with the GDPR’s prescriptive and voluminous rules.⁶

The first results of the CCPA and GDPR experiments are in, and the evidence is showing that these laws are harmful to consumers and businesses, and will have a chilling effect on innovation. The rules also are overlapping and inconsistent, which is creating a balkanized patchwork of regulations that consumers will not understand, that impose significant costs on businesses, and that serve as a major barrier to entry. As such, to fully understand the CCPA’s and GDPR’s negative effects on consumers and competition, and to inform its continued oversight efforts, we recommend that the Committee instruct the Department of Commerce and the Federal Trade Commission to carry out a detailed review of the impacts of GDPR and CCPA. Such a review will be crucial in evaluating the various approaches to privacy and data

Free, Ad-Supported Online Services Worth \$1,200/Year; 85% Prefer Ad-Supported Internet to Paid, PR Newswire (May 11, 2016).

³ John Deighton, Leora Kornfeld, Marlon Gerra, *Economic Value of the Advertising-Supported Internet Ecosystem*, IAB (2017).

⁴ Cal. Civ. Code § 1798.100 (effective Jan. 1, 2020); Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

⁵ Dan Jaffe, *Fixing the California Privacy Law Will Require a Serious, Long Term Effort*, ANA (Sept. 4, 2018); Sarah Boot, *No Time to Waste on Fixing Consumer Privacy Law*, CalChamber (Aug. 20, 2018).

⁶ Hannah Kuchler, *US small businesses drop EU customers over new data rule*, Financial Times (May 24, 2018).

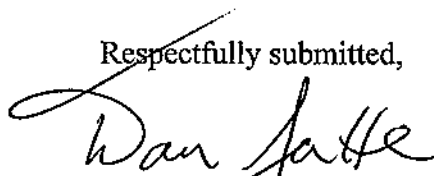
security that have already been imposed and are presently being proposed across the country. The review also will help inform policy decisions on a new federal privacy framework that neither jeopardizes the United States' competitive advantage in technology and innovation nor strips consumers of the benefit and enjoyment of a data-driven Internet ecosystem.

To help ensure that consumers continue to enjoy the online content, products, and services they value and expect, the data that underpins advertising and marketing must continue to be available. The Congress can and should act to prevent and preempt unacceptable outcomes for U.S. consumers and the economy while at the same time considering a new privacy paradigm that includes strong consumer privacy protections and that maintains the United States' leadership in the digital economy.

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The ANA appreciates the opportunity to comment on this hearing and we ask that this letter be placed in the hearing record. Please contact Dan Jaffe, Group Executive Vice President, at djaffe@ana.net or (202) 296-2359 with any questions. We look forward to working with the Committee on these important matters.

Respectfully submitted,



Dan Jaffe
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Association of National Advertisers