

On behalf of the ANA, the 4A's, the AAF, the IAB, and the NAI, thank you for the opportunity to provide comments on SB 5062 ("WPA"). In addition to this testimony, we have provided more detailed comments to you via email. We look forward to working with the Committee.

### **I. Enforcement**

The WPA places sole enforcement authority within the purview of the state Attorney General. We strongly agree with this approach, as it would lead to strong outcomes for consumers and avoid unreasonable threats to businesses seeking to comply. Private right of action provisions are completely divorced from any connection to actual consumer harm and provide consumers little by way of protection from detrimental data practices. Therefore, adding a private right of action to the WPA would create a complex and flawed compliance system, likely flooding the courts with frivolous lawsuits driven by opportunistic trial lawyers searching for technical violations, rather than focusing on actual consumer harm or providing tangible privacy benefits for consumers. The bill should maintain enforcement authority exclusively vested in the state Attorney General.

### **II. Browser Controls**

The WPA asks state agencies to monitor the development of universal privacy controls and requires those agencies to research such controls, deliver a report on their findings, and issue recommendations on the controls to the Governor and legislature. We strongly advise against including a mandate for controllers to honor controls set through or by intermediaries because a single broadcast opt out does not benefit consumers or business. Consumers themselves should be empowered to exercise choices over personal data, and they should be able to make individualized decisions regarding which controllers they wish to exercise those choices.

### **III. Sale Definition**

The WPA would provide Washingtonians with a right to opt out of the processing of personal data concerning such a consumer for purposes of targeted advertising; sales of personal data; and profiling. However, the bill does not clarify how the definitions of "targeted advertising" and "sale" work together. While the definition of "targeted advertising" correctly excludes essential ad operations that are imperative for the Internet to work, such as ad delivery, reporting, and ad fraud prevention, the definition of "sale" does not similarly exclude these essential ad operations from its scope. We ask you to update the WPA's definition of "sale" to clarify that it does not cover essential ad operations. Our suggested redlines to the "sale" definition are set forth the detailed letter we provided to you via email.

### **IV. Ad-Supported Content and Loyalty Programs**

The WPA prohibits a controller from "discriminating" against a consumer by denying goods or services to a consumer, charging different prices or rates for goods or services, or providing a different level of quality of goods and services to a consumer. This provision could eliminate publishers' ability to offer consumers the choice between ad-supported content or paying a fee for the same content. To help ensure that Washingtonians can continue to receive the benefits of ad-supported content, and the benefits of loyalty and discount programs, we ask the legislature to remove the last sentence in Section 107(7) of the WPA.

**V. Data Protection Assessments (“DPAs”)**

We oppose the requirement to provide DPAs to the Attorney General upon request because it would not enhance consumer protection. It would result in controllers “sanitizing” their DPAs upon creating them to mitigate against unreasonable scrutiny on businesses’ reasonable privacy governance decisions.

**VI. Deletion Right**

The WPA gives a consumer the right to delete personal data “concerning the consumer.” This formulation of the right is overly broad and is not aligned with other laws that provide similar rights in other states. Permitting a consumer to delete any personal data “concerning” them could extend beyond information that is solely associated with the one consumer making the deletion request, thereby impacting the rights of others. We ask the legislature to recast the right to delete in the WPA as a consumer’s right to delete personal data about them that the controller has collected “from” them.

**VII. Appeals**

The WPA enables consumers to appeal a controller’s refusal to act on a request to exercise the rights in the WPA. The bill also requires controllers to facilitate the submission of appeal records to the Attorney General. These requirements would force controllers to justify lawful decisions, create unpredictability in businesses’ execution of consumer rights requests, and obligate controllers to dedicate significant resources to responding to appeals without providing greater privacy protections to consumers. We ask you to remove the required appeal process in the WPA to foster greater certainty in businesses’ fulfillment of consumer rights requests and to reduce the associated excessive costs.