September 17, 2019

The Honorable Gavin Newsom
Governor, State of California
State Capitol
Sacramento, CA 95814

SUBJECT: **AB 874 (IRWIN) CALIFORNIA CONSUMER PRIVACY ACT OF 2018**
REQUEST FOR SIGNATURE

Dear Governor Newsom:

The California Chamber of Commerce and the listed coalition of organizations respectfully **REQUEST** your **SIGNATURE on AB 874 (Irwin),** because it makes two important fixes to the California Consumer Privacy Act (CCPA)'s definition of personal information. Without these amendments, this definition is unworkable for businesses, as a practical matter, and a court would likely find part of the definition to be unconstitutional.

1) **New Amendments Add a Noncontroversial "Reasonableness" Standard to "Capable of Being Associated with" in the Definition of "Personal Information"**

When most people think of personal information, they think of data that could identify someone, like birthdates or social security numbers. The CCPA defines "personal information" far more broadly, as "information that . . .identifies, relates to, describes, is capable of being associated with, or could **reasonably** be linked to . . . a particular consumer or household."

Oddly, this definition creates a reasonableness standard for data that can be linked to a person or household – but it does not make the same allowance of reasonableness for data that is "capable of being associated with" them, which is far more broad. There is no good rationale for this distinction.

This drafting oddity means that "personal information" under the CCPA is any information that COULD IN THEORY BE associated with a "consumer" or household. Without a reasonableness standard, this definition will produce extreme results.

For example, if a customer made purchases at a brick and mortar store, upon a CCPA request, that store would likely be required to search security camera footage from the dates of those purchases to find where the customer appears on it – and provide that footage back to the customer or delete it – even if the store never linked that security camera footage back to anyone. A store might be *capable of associating* this data with a customer – and, therefore, arguably must do so under the law.

As drafted, the CCPA requires businesses to locate all non-identified, consumer data even if those data are not stored together with identified data, nor stored in any structured format – as long as such data is capable of being associated with a person. This is not just an unreasonable burden on business, it will undermine existing privacy-protective practices. The only way for businesses to ensure their compliance with access, portability, and deletion requests would be to proactively identify all people interacting with their business and to store their information together in one place (making it more vulnerable to hackers). This would be hugely wasteful and harmful to consumer privacy.

This amendment merely seeks to include the word "reasonably" before "capable of being associated with," which will at least alleviate the most extreme concerns with this language.

Notably, this clarification, originally introduced in AB 873 (Irwin), was included the Senate Judiciary Committee's proposed amendments to AB 873. As part of AB 873, this amendment passed the Assembly with 73 votes in support (and not a single "no" vote) and recently passed the Senate unanimously as part of AB 874. Further, there is no Opposition on file.

2) **Amendment to Remove Unworkable and Unconstitutional Language from the CCPA**

The CCPA's very broad definition of "personal information" excludes information "that is lawfully made available from federal, state, or local government records..." 1798.140 (o)(2). That exemption does not apply, however, "if that data is used for a purpose that is not compatible with the purpose for which the data is maintained and made available in the government records or for which it is publicly maintained." *Id.* With this limiting language, the CCPA creates both practical and constitutional problems for businesses engaged in constitutionally protected activity.

As a practical matter, this limitation on government records is confusing and unworkable. It is unlikely that a business will be able to determine all the purposes for which a government entity made information available to the public. Even assuming a business could ascertain this rationale, it is unlikely there would be any instances where a business would be deemed to use such information for the same purpose that the government made it public.

Although we are supportive of the strides made by the CCPA in giving consumers more control over their data – privacy must be balanced against other important societal values – like the free flow of public domain information. Real estate financing, local and national journalism, credit reporting, background checks, and even political campaigns all rely on access to state public records. For example, records of home sales are often made public, and that information is used for many purposes. If a California resident objected under the CCPA to a particular use of that information – such as its publication on a popular real estate website – it is anyone's guess whether that use would be deemed "not compatible" with the purpose for which the information was made publicly available by the government.

Moreover, public entities, including housing authorities, federal health and human services, law enforcement, and intelligence agencies also rely on the free flow of public record information to perform their government duties.

The value of the commercial products that enable these activities depends on their thoroughness and accuracy. As currently written, the CCPA's treatment of public records casts a pall of uncertainty over these and other important endeavors by permitting individuals to halt the distribution of information about matters of public record.

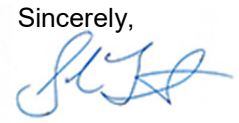
As a result, information routinely disclosed pursuant to California's public records laws and those of the fifty states becomes subject to the CCPA's ban on "selling" upon a qualifying consumer request. **AB 874** ameliorates this acute policy concern by removing the CCPA's limitations on the distribution of "information lawfully made available from federal, state or local government records."

Further, as drafted, the restrictions the CCPA places on the sale of publicly available government records could violate the First Amendment. By removing information that is obviously in the public domain from the CCPA's scope, **AB 874** will help to insulate the CCPA from constitutional attack in two significant ways. First, by excluding lawfully acquired public records from the CCPA's scope, AB 874 eliminates a heavy burden on protected speech. Second, the bill deletes the "compatible use" language, which creates an unjustified and impermissibly vague standard for determining when a business may disseminate information from public government records.

Finally, prior to the author's amendment on the Senate Floor adding the "reasonably capable" fix discussed above, **AB 874** only addressed this fix to the unconstitutional limitation on the definition of personal information. This fix was approved on Consent in the Assembly and in the Senate Judiciary Committee. And, again, after the addition of the above-described amendment, **AB 874** passed the Senate unanimously.

For these reasons, we respectfully **REQUEST** your **SIGNATURE** on **SUPPORT AB 874 (Irwin)**.

Sincerely,



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Policy Advocate
California Chamber of Commerce

Advanced Medical Technology Association
Alliance of Automobile Manufacturers
Association of National Advertisers
Azusa Chamber of Commerce
Brawley Chamber of Commerce
California Association of Realtors
California Attractions and Parks Association
California Bankers Association
California Cable and Telecommunications Association
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California Land Title Association
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California Retailers Association
Camarillo Chamber of Commerce
Chambers of Commerce Alliance of Ventura and Santa Barbara Counties
Civil Justice Association of California
Coalition for Sensible Public Records Access
CompTIA
Consumer Data Industry Association
Consumer Technology Association
CTIA
Email Sender & Provider Coalition
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Insights Association
Interactive Advertising Bureau
Internet Association
Investment Company Institute
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National Federation of Independent Business
North Orange County Chamber
Oxnard Chamber of Commerce
Pleasanton Chamber of Commerce
Rancho Cordova Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Securities Industry and Financial Markets Association
Simi Valley Chamber of Commerce
Software and Information Industry Association
Southwest California Legislative Council
TechNet
The Silicon Valley Organization
Tulare Chamber of Commerce

cc: Office of Legislative Affairs, Office of the Governor
Brandon Bjerke, Office of Assembly Member Irwin

SB:ldl