



State Privacy and Security Coalition, Inc.



March 26, 2013

The Honorable Bonnie Lowenthal
California State Assembly
State Capitol, Room 3152
Sacramento, CA 94814

**SUBJECT: AB 1291 (Lowenthal) CUSTOMER’S PERSONAL INFORMATION DISCLOSURE
OPPOSED**

Dear Assemblymember Lowenthal:

We write to urge that you not move forward with **AB 1291**. While we understand that the bill is sponsored by several consumer organizations, it is unworkable, rests on mistaken assumptions about how the Internet works, and would impose costly and unrealistic mandates on California’s technology sector with minimal benefit to state residents.

AB 1291 is over-broad. It would expand the definition of “personal information” under California’s Shine the Light Law to cover not only any information that identifies “or references” an individual, but also any information that identifies or “is able to be uniquely associated with a particular device”. It would

specifically reach IP addresses and device identifiers, as well as information that could be associated with that information.

Although the bill says that it applies to “customers”, in fact AB 1291 would apply to any California resident who “with or without an exchange of consideration” provides any of a wide sweeping range of non-personally identifying information to a business. This means the bill would reach every website or other service to which a state resident connects to with a device, whether for business purposes or as a consumer.

It would require any business that runs a computer server and receives this information to do three expensive and unworkable things without any ability to defray the costs of this mandate.

First, businesses would need to provide “to the ‘customer’ free of charge, access to, or copies of”, all of the amorphous range of information about the “customer” stored by the business. The information would need to be provided in a personalized or standardized format. This mandate is unworkable for the following reason. Businesses would not be able to authenticate customers on the basis of an IP address or device identifier because both numbers relate to a router or a device, not an individual.

Second, businesses would have to provide the name and address of each entity to whom the information is disclosed – even if they have no idea of the name or address. It is important to recognize that servers on the Internet will sometimes automatically forward along the IP address or device identifier number of a “host” that connects to the server in the course of forwarding a request or communication from the “host” along to its destination. Recall that no payment need occur. A California user would simply need to send a communication through the Internet to impose this obligation on every business whose server handles the communication.

Third, the bill would go even farther, requiring notice “prior to or immediately after the disclosure” regardless of whether the “customer” had requested the disclosure. Californians would be deluged with disclosures each time an IP address, device identifier, or other information on the bill’s very long list of personal information was disclosed automatically or through a conscious decision by the business.

Furthermore, this bill would reopen the door to unfair competition lawsuits. Proposition 64 was supported by the business community and passed by the voters with overwhelming support in order to help protect California’s businesses from shakedown lawsuits brought under the unfair competition law. AB 1291 would undermine such limitations. It not only imposes unworkably broad new regulations, it would then allow a lawsuit for any technical violation. This is a recipe for abusive and costly lawsuits that may benefit the trial bar, but harm businesses operating in California.

For all these reasons, we urge you to abandon plans to move forward with **AB 1291**.

Sincerely,

California Chamber of Commerce
American International Group
Association of California Life and Health Insurance Companies
California Bankers Association
California Cable and Telecommunications Association
California Manufacturers and Technology Association
California Retailers Association
Direct Marketing Association
Internet Alliance
NetChoice
Personal Insurance Federation of California
State Privacy and Security Coalition, Inc.
TechAmerica
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cc: District Office Assemblymember Lowenthal