

**STATEMENT OF JIM HALPERT
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**SENATE STANDING COMMITTEE ON
CONSUMER PROTECTION AND INTERNET & TECHNOLOGY**

**ON
PROTECTING CONSUMER DATA AND PRIVACY ON ONLINE PLATFORMS**

November 22, 2019

1. Introduction

Mr. Chairmen, thank you very much for the opportunity to testify today.

My name is Jim Halpert. I am a native New Yorker and co-chair the Global Privacy and Cybersecurity practices at the DLA Piper law firm, where I am helping dozens of clients to come into compliance with the CCPA and Nevada “do not sell” law.

I am testifying on behalf of the State Privacy and Security Coalition, a group of 29 major companies across many sectors that advocates for state privacy and security laws that protect consumers, are clear and consistent with one another, and can be efficiently implemented by regulated entities.

I and the companies that are part of the Coalition I represent believe that a uniform federal privacy regime is far and away the best way to ensure that consumers, regardless of the state in which they live, will receive the same rights that New Yorkers receive under the bills you are considering. Nevertheless, we understand that privacy legislation is very important to you and to the residents of New York.

We respectfully request that if states regulate before a federal law passes, that they:

- a. “color within the lines of California” but in a clearer way to avoid confusion
- b. be much clearer than California about what info and activities are regulated
- c. reject private class action enforcement for all obligations in the law because they are so intensely operational that almost inevitably business will make innocent, inadvertent mistakes
- d. avoid duplicative regulation of federal regulated sectors, including well-established regulation under HIPAA, the Gramm-Leach Bliley Act and other federal privacy laws
- e. adopt an approach that protects consumers, can be implemented efficiently, and scales for smaller organizations.

2. Issues with the CCPA As a State Model

The CCPA is very well-intentioned and contains several really good ideas, but its actual text is not a good model for other states. Although its core rights (except for data breach class actions) are good ones, the law is needlessly confusing. It is extremely difficult even for most lawyers, much less consumers, to understand. The CCPA also applies too broadly to data and activities that do not raise material privacy concerns. This creates huge, unnecessary compliance costs, as well as unintended consequences.

There are some important likely unintended consequences: One is incentivizing businesses to make retrievable (and therefore usable) vast amounts of data that the business does not use, so as to be able to respond to rights requests. Another is causing smaller companies in the Internet advertising market to fail because Do Not Sell requests under the CCPA prohibit disclosures of data to third party advertising companies. A third is giving fraudsters and hackers rights to opt out of fraud and detection and authentication services.

The CCPA was drafted behind closed doors in 3 weeks, was passed without amendments and contained about 50 drafting errors as passed in 2018. Because it was passed so hastily, the CCPA is a moving target: CCPA requirements have already changed 3 times and an Initiative will drive further changes in 2022, with further rulemakings so more changes after that! It is important to avoid the drawn out process and confusion of the CCPA by taking time to make sure that any law is clear and practical to comply with.

It is also important to understand that compliance with the CCPA and laws like it are huge undertakings for most businesses. In fact, a report commissioned by the California Attorney General's Office found that the CCPA would impose about \$55 billion in compliance costs. This does not include costs retrofitting CCPA compliance programs for new requirements in regulations to be finalized in June of 2020 or further requirements in the CCPA Initiative on the California ballot in November of 2020.

3. Omnibus Privacy Activity in other states

It is important to note that no state has copied the CCPA language since it was enacted last year. Only Nevada passed a broad privacy law, and it applies only the Do Not Sell right in the CCPA to information collected online and with much more focused, clearer definitions.

4. Conclusion

Our Coalition and its members are happy to work with your committees on a different approach that meets the above criteria.

Respectfully submitted,

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