14-0006

January 16, 2014

VIA MESSENGER

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *The Online Privacy Act*

Dear Ms. Johansson:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary of the chief purpose and points of the initiative measure entitled the "The Online Privacy Act." The text of the measure, a check for $200.00, and the certifications required by Elections Code sections 9001 and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

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Harry A. Berezin
Remcho, Johansen & Purcell, LLP
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Sincerely,

Jamie Court

Enclosures

The Online Privacy Act

SECTION. 1. Findings and Purpose.

The California Constitution declares that among our inalienable rights is the right to privacy.

Californians should have a right to keep their personal information private. Online companies should be prevented from tracking personal information and web activity without our knowledge and permission.

"Do Not Track Online" signals should be respected.

Children should not have their personal information collected and sold. Schools should be banned from sharing and selling children's personal information.

Therefore, it is the intent of the people of California in enacting this measure to ensure Californians' privacy online by: 1) requiring that online companies respect Californians' right to privacy and honor "Do Not Track" signals sent by any means; and, by 2) protecting personal information gathered about children through online services at educational and public institutions from sale, sharing, and tracking for any reason other than educational purposes.

SECTION 2. Chapter 22.2 (commencing with Section 22585) is added to Division 8 of the Business and Professions Code to read:

CHAPTER 22.2. PROTECTION OF PERSONAL INFORMATION.

22585. (a) An operator of a third-party online service that receives a Do Not Track Signal associated with a particular consumer shall not track that consumer's personal information, except as necessary to prevent fraud or to comply with a proper request by a law enforcement agency.

(b) A first-party online service shall not require a consumer to consent to tracking as a condition of accessing the content or services of the first-party online service. A first-party online service that receives a Do Not Track Signal from a consumer shall not sell, share, or otherwise transfer the personal information of the consumer to any other entity, including but not limited to a third-party online service.

(c) Any person who provides a cloud computing service to a public institution operating within the state shall use any personal information collected only for the purpose of providing the service to the public institution, and shall not use such personal information for any other purpose, including but not limited to commercial purposes that benefit the cloud computing service provider, such as selling, sharing, or otherwise transferring such personal information.

(d) For purposes of this Section, the following definitions apply:

(1) "Cloud computing service" means any service that connects computers using a real-time communications service such as the Internet.

(2) "Consumer" means a California resident who accesses online services.

(3) "Do Not Track Signal" means a signal by a consumer, utilizing any technology or means of communication, to an online service that it may not track his or her personal information.

(4) (A) "First-party online service" means, with respect to a particular network interaction by a particular consumer, an online service with which a consumer is intentionally interacting, including any service that is commonly owned and controlled by, and shares common branding with, the online service with which the consumer is intentionally interacting.

(B) A contractor hired by a first-party online service to provide services to the first-party online service shall be considered a first-party online service for purposes of this chapter with respect to the contractor's use of information on behalf of the first-party online service, provided that the contractor:

(i) acts only as an information processor on behalf of the first-party online service;

(ii) ensures that the information can only be accessed and used as directed by the first-party online service;

(iii) has no independent right to, and does not, collect, retain, store, share, sell, or use the information except as necessary to ensure the integrity, security, and proper operation of the service being provided; and

(iv) has a contract in place that includes the requirements of this subparagraph (B).

(5) "Intentionally interacting" means the act of intentionally conducting one or more network interactions with an online service by a consumer. It does not include unintentional interactions, such as hovering over, muting, pausing, or closing any content.

(6) "Online service" means any service provided over the Internet that collects the personal information of consumers including, but not limited to, a website, online application, or mobile application.

(7) "Operator" means a sole-proprietorship, partnership, limited-liability company, corporation, or other legal entity that is organized or operated either as a non-profit organization or for the profit or financial benefit of its shareholders or other owners.

(8) "Personal information" means, with respect to a consumer, any of the following that is transmitted online:

(A) The online activity of the consumer, including, but not limited to, Internet websites and content from Internet websites accessed, the date and hour of online access, the computer and geolocation from which online information was accessed, and the means by which online information was accessed, such as, but not limited to, a device, browser, or application.

(B) Any unique or substantially unique identifier that can lead to the real-time identification of a single user or device, such as a customer number or Internet Protocol address.

(C) Information including, but not limited to, a name, a postal address or other location, an email address or other username, a telephone or fax number, a government-issued identification number, such as a tax identification number, a passport number, or a driver's license number, an account number, credit card or debit card number, or any required security code, access code, or password that is necessary to permit access to a consumer's financial account.

(D) Any other information that could be used to identify, or is associated with, a particular consumer, including but not limited to biometric information.

(9) "Public institution" means a public or private educational institution or any governmental entity, including any executive, legislative, and judicial body or agency at the local, municipal, city, county, or state level.

(10) "Third-party online service" means, with respect to a particular network interaction by a particular consumer, an online service that is not a first-party online service.

(11) "Track" means to collect, retain, store, share, sell, or use a consumer's personal information over time and across a third-party online service or services.

(e) It is the intent of the people that this Act addresses a matter of statewide concern. This section supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the collection and retention of personal information by online services.

22585.1. (a) For purposes of Business and Professions Code section 17204, a consumer whose personal information has been tracked in violation of this chapter shall be deemed to have suffered an injury in fact and need not suffer a loss of money or property as a result of a violation of this chapter in order to bring an action for a violation of this chapter.

(b) Any operator of an online service that violates any provision of this chapter shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction, or by a consumer who has suffered an injury in fact, as described in subsection (a) of this section. Such penalty shall be awarded to the jurisdiction on whose behalf the action was brought, or in the case of an action brought by a consumer, to the State.

(c) Notwithstanding Business and Professions Code section 17200 et seq., any operator of an online service that violates any provision of this chapter shall be required to disgorge all consideration received in connection with the violation in a civil action brought by a consumer or consumers who have suffered an injury in fact, as described in subsection (a) of this section.

(d) In addition to the remedies provided in this section and any other remedy provided by law, any individual who suffers an injury in fact, as described in subsection (a), shall recover statutory damages in the amount of one thousand dollars ($1,000) or actual damages, whichever is greater, for each violation from the operator responsible for the violation or violations, except that in the case of a knowing and willful violation by an operator, an individual shall recover statutory damages of not less than one thousand dollars ($1,000) and not more than ten thousand dollars ($10,000), or actual damages, whichever is greater, for each violation from the operator responsible for the violation or violations.

SECTION 3. Construction and Amendment.

This Act shall be liberally construed to promote its underlying purposes, and shall not be amended, directly or indirectly, by the Legislature except to further the Act's purposes by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electorate.

SECTION 4. Severability.

If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions which can be given effect without the invalid or unconstitutional provision or application shall not be affected, and shall remain in full force and effect.

SECTION 5. Proponent Standing.

(a) The people of the State of California declare that the proponents of this Act have a direct and personal stake in defending this Act and grant formal authority to the proponents to defend this Act in any legal proceeding, either by intervening in such legal proceeding, or by defending the Act on behalf of the people and the State in the event that the State declines to defend the Act or declines to appeal an adverse ruling or judgment against the Act.

(b) In the event that the proponents are defending this Act in a legal proceeding because the State has declined to defend it or to appeal an adverse ruling or judgment against it, the proponents shall:

(1) act as agents of the people and the State;

(2) be subject to all ethical, legal, and fiduciary duties applicable to such parties in such legal proceeding; and

(3) take and be subject to the Oath of Office prescribed by Article XX, section 3 of the California Constitution for the limited purpose of acting on behalf of the people and the State in such legal proceeding.