Microsoft

October 23, 2020

Mr. Harvey Perlman
Chair, ULC Collection and Use of Personally Identifiable Data Committee
Nebraska College of Law
McCollum Hall (LAW) 263
Lincoln, NE 68583-0902
Via Email: hperlman1@unl.edu

RE: The Uniform Law Commission's Collection and Use of Personally Identifiable Data Act

Dear Mr. Perlman:

On behalf of Microsoft, I am writing to express concerns with the October discussion draft released by the Collection and Use of Personally Identifiable Data Committee. As we have indicated previously, we support the Committee's efforts to develop model comprehensive privacy legislation. The United States has long needed a comprehensive privacy law. We have been calling for federal privacy legislation since 2005, and we have supported efforts to pass privacy legislation in states across the country. For those reasons, we have been hopeful that the Committee's work could help advance legislative efforts across the country.

However, the October draft contains several serious flaws that would make it a poor model for state legislation. First, the bill has been made far too narrow to provide meaningful protection for consumers. Specifically, we have concerns with the following:

- The definition of "personal data" is much too narrow. It would cover only data associated with direct identifiers, and not the broader category of data that is "identifiable." That makes it far narrower than the range of data covered by most modern comprehensive privacy laws, including the EU's General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA). And it means that it would fail to cover modern data sets that have real privacy impacts, such as data associated with cookie identifiers or IP addresses.
- The definitions of "pseudonymized data," "deidentified data," and "publicly available data" are too broad. When combined with the narrow definition of "personal data," they mean that the bill fails to cover vast categories of modern data sets with serious privacy impacts.

Second, the amendments made to the definition of "data controller," which now applies only to a person that "initially collects personal data," and to the provisions relating to "data processor[s]," which no longer require processors to process personal data solely pursuant to instructions in a binding contract with a data controller, are also problematic. They fail to align with existing privacy laws, including the CCPA, the GDPR, and many other global privacy laws. Moreover, these changes,

particularly when combined with the amendments made to the definitions of "personal data," "pseudonymized data," etc., would render the bill inapplicable to data brokers and online advertising platforms, two types of entities that pose significant impacts to individuals' privacy.

Ultimately, we believe that the result of these two changes would be a bill where consumers are, in our view, no longer sufficiently able to exercise control over their personal data. Consumers' data could be shared broadly to 3rd parties, making access, correction, and deletion rights difficult to exercise in practice. Worse, data that is linkable to consumers and could be used to make consequential decisions about them may fall outside of the scope of the bill altogether.

We appreciate the time, thought, and effort that the Committee has made to try and develop model privacy legislation. This is an incredibly complex subject and an exceedingly challenging task. We remain committed to working with you and the Committee to develop legislation that would provide U.S. consumers with robust privacy protections and allow industry to innovate. To that end, we would be happy to discuss these and other concerns that we have with you, and we would welcome the opportunity to answer any questions that you may have. Thank you for your consideration.

Respectfully submitted,

Chris Calabrese
Senior Director, Privacy and Regulatory Affairs
Microsoft Corporation