



Harvey S. Perlman
Professor of Law

October 20, 2020

Justin Brookman
Director, Privacy and Technology Policy
Consumer Reports
Maureen Mahoney
Policy Analyst
Consumer Reports

Dear Mr. Brookman and Ms. Mahoney,

Thank you for your letter of October 16th providing comments to the October 12th draft of the Collection and Use of Personally Identifiable Data Act by the Uniform Law Commission. I appreciate receiving your views. I am responding because I believe you have significant misunderstanding of some of our provisions, although I also acknowledge we may disagree on some fundamental issues as well.

Our approach to an omnibus data privacy act is, admittedly, different from that of the CCPA and the Washington bill. Our effort is to protect the core interests of consumer privacy in an act that will inevitably apply to a variety of different industry sectors with very different data practices. To impose detailed prescriptive regulations with significant compliance costs in a one size fits all approach can be avoided, in our view, by setting a framework that prohibits the most egregious privacy violations while permitting industries to develop voluntary consensus standards with consumer and public sector participation. Our bet is that in the long run this will provide consumers with better protection for their real privacy interests while not unduly impeding the data economy.

Nonetheless I did want to clarify our current draft. The development of “compatible” and “incompatible” data practices under our draft does not leave “companies in control” of what is a compatible data practice. The company is required to articulate its views in a privacy policy which is subject to review and rejection by the state attorney general. You suggest we should have *per se* restrictions on data use which we provide in section 9 where we list prohibited practices. We believe those practices are at the core of what most consumers want for privacy purposes. I should emphasize here section 9, subsection 7, which prohibits practices that permit protected class discrimination—something you urge us to consider. We believe we have. If the language isn’t clear we would welcome your suggestions.

You also express the concern that we allow companies to withhold goods or services or impose different terms if consumers refuse to consent to incompatible data practices. As I understand your argument, this would unduly penalize poor consumers over wealthy ones. My

perspective is the opposite. A company that offers its services for free conditioned on use of personal data would allow consumers without wealth to access the services by using their personal data as a medium of exchange. If we do not allow this form of exchange, then the same company will charge for its service and thus reduce its availability for low income consumers.

At this point the draft seeks to limit but not prohibit cross context advertising. I can't speak for my committee but I have yet to hear a compelling argument for prohibiting tailored advertising which provides me with ads of interest to me. Certainly, the data collected to permit this may be used for other uses and we attempt to prohibit those uses. We also draw a distinction between tailoring the content of the advertisement, which we permit, from using the data to effectuate different decisional treatment – setting a differential price for example and thus extracting most of the consumer surplus from the transaction.

I hope these comments clarify some of our intentions, although they may not be enough to garner your support for our efforts. I do appreciate you being engaged with us in this way and invite you to participate personally in our meetings.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harvey Perlman".

Harvey Perlman
Professor of Law