



June 28, 2021

Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602

RE: Uniform Personal Data Protection Act

Dear Uniform Law Commission:

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies across the country, from small businesses to household brands, advertising agencies, and technology providers. Our combined membership includes more than 2,500 companies, is responsible for more than 85 percent of U.S. advertising expenditures, and drives more than 80 percent of our nation's digital advertising spend. While we appreciate the efforts of the Uniform Law Commission ("ULC" or "Commission") to develop a uniform privacy law, the Uniform Personal Data Protection Act ("UPDPA") would neither provide uniformity, nor an approach consistent with privacy laws currently in the states and around the world.

I. A National, Preemptive Privacy Law Is the Best Approach for Consumers and Business

We and our members believe that American consumers deserve meaningful privacy protections, and that these protections should be consistent regardless of which state they live in. For this reason, we are key supporters of Privacy for America, a framework for a **national** data privacy standard that would clearly define prohibited practices that make personal data vulnerable to breach or misuse, while preserving the benefits that come from responsible use of data.¹ We believe that the United States is in need of a new federal framework for nationwide privacy legislation that would fundamentally change the way personal data is protected and secured in the United States. A comprehensive federal law is the best path forward to define a clear and consistent approach to data privacy that would provide the same protections for consumers across the country, regardless of geographical location or state of residency.

Because the ULC's goal is to "promote uniformity in the law among the several States on subjects" where "uniformity is desirable and practical,"² the Commission should seriously consider whether it is the most appropriate body to advance a model approach to data privacy at this time. While we agree that harmonizing data privacy laws would enable consistent and reliable protections for all Americans, Congress is designed and best suited to provide a single uniform data privacy standard that will work for consumers regardless of the state in which they call home. The Privacy for America framework would achieve this goal by supporting preemptive, **federal** data privacy legislation that provides uniform privacy rights to all Americans, regardless of the states in which they live, and sets forth clear rules of the road for businesses to follow. Such a single, federal standard would allow for joint enforcement by the Federal Trade Commission ("FTC") and state Attorneys General, but it would not be open to interpretation by various state Attorneys General via regulation. As a result, this approach would foster much needed consistency for consumers and businesses. A single federal law regulating privacy would present a better approach to this issue rather than a model law for states to adopt (and potentially adapt) as they see fit.

¹ Privacy for America, *Principles for Privacy Legislation* (Dec. 2019), located at

<https://www.privacyforamerica.com/overview/principles-for-privacy-legislation-dec-2019/>.

² Uniform Law Commission, *Constitution, Bylaws, and Rules of Procedure*, § 1.2, located [here](#).

II. The UPDPA Would Foster Disharmony and Be Counterproductive

When it comes to state privacy laws, it is clearly much too early for the ULC to discern a uniform approach to data privacy legislation. To date, only three states have enacted broad consumer privacy-related laws, and these laws vary significantly. In addition, UPDPA does not resemble any of the approaches taken by the three states' laws. Instead, the UPDPA sets forth an entirely new model that would create a baseline of disharmony instead of one of uniformity. If the UPDPA is adopted by the Commission, it would only add confusion by setting forth another "model" for states to choose from in beginning their legislative drafting process, further muddying the waters across state legislatures considering this issue.

Moreover, we strongly believe that the UPDPA does not set forth an effective model law for states to adopt. For instance, the draft includes the potential for private rights of action by allowing for enforcement under state consumer protection laws, and it would create broad regulatory authority for state Attorneys General. These are concepts that should not be included in a model state privacy law. Of the three states that have thus far enacted privacy laws, none include a private right of action for all privacy violations. While one of the states currently provides for broad regulatory authority in its privacy laws, establishing this as a standard would foster the creation of significant variation among state privacy requirements, and therefore be counterproductive to establishing uniform legal text.

Because the UPDPA does not present an effective uniform approach to regulating privacy across the United States, and because the time is not ripe for ULC action on this issue when only a very few states have passed privacy legislation, we encourage the Commission to reject the draft legislation at this time.

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Sincerely,

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