



February 8, 2022

Consumers need privacy protection; Bill could threaten ad-supported content, double downs on Europe's broken cookie requirements

Senator Kevin Thomas
Chair
Senate Consumer Protection Committee
New York State Assembly

Dear Chair Thomas and members of the committee,

Our organization, the Chamber of Progress, is a tech industry coalition promoting technology's progressive future. Our organization works to ensure that all Americans benefit from technological leaps. Our organization's commitment to a progressive society, economy, and workforce sets us apart from other business groups. For example, we strongly support legislation to protect voting rights; supported President Biden's proposed corporate tax increase to fund infrastructure investments; and back a national emissions reduction target of 50% by 2030.

Privacy laws come with great benefits: they grant citizens autonomy over their personal information through the ability to protect, delete, move, and access their information; give citizens more influence over the content and ads they are exposed to; and help to promote transparency and choice.

When it comes to tech regulations, voters place high priority on protecting consumers from potentially harmful actors.¹ We thank Chair Thomas for identifying the concerns of consumers and leading the charge to make New York a safer, more equitable place for consumers. It is important that we all work towards implementing smart consumer privacy legislation and we appreciate Chair Thomas and this committee's commitment to ensuring New Yorkers' information is protected.

However, we are concerned that S. 6701A as written could cause New York consumers and small businesses to lose access to affordable or no-cost services, because of the bill's limitations on targeted advertising. In addition, the bill's consumer notification requirements – while well-intentioned – repeat the mistakes of Europe's failed "cookie banner" law, putting endless opt-in buttons ahead of more meaningful privacy protections. Excessive notice requirements may actually lead to consumers being more unprotected than they ever were before.

Ad-supported services can be useful to New Yorkers if regulated properly. New York consumers rely on data-driven advertising to receive information, discover new products, and to be entertained. Small businesses and niche markets depend on targeted advertising to provide these

¹ https://progresschamber.org/wp-content/uploads/2022/01/CoP_DLCC-conference-VF-PPT.pdf

services, and the limitations set in S. 6701A threaten the ability to utilize these resources to reach and grow the audiences that support their businesses. The restrictions will cause a sharp increase in advertising costs which can eliminate smaller businesses from the competitive market as they may not be able to afford to keep up with larger companies with big pockets. S. 6701A will harm the effective use of online ads to drive traffic to offline business, like restaurants and specialty retailers.

We have seen the value of data-driven advertisements, and how they influence consumers to act on initiatives. For example, New York's "Vaccinate NY" campaign was featured not only in traditional, cable commercials, but in streaming services as well, reaching thousands upon thousands of New Yorkers who rely strictly on streaming services and the internet to stay well-informed.² Not only do targeted ads provide valuable information to New Yorkers, but they also fund free and independent services for residents.

According to the US Census, almost 20% of New York state's population is of Hispanic or Latino descent. DistroTV, an independent free ad-supported streaming television platform, recently announced the launch of a new Spanish-language bundle called DistroTV Espanol.³ This service provides a free-to-stream package and includes over 20 Spanish-speaking channels, giving audiences access to programming that's not available through other over-the-top media services for free. Services like this must be readily available and accessible to all New Yorkers, and advertising support allows them to be.

Consumers and small businesses are likely to lose access to affordable or no-cost services because of the limitations on targeted advertising. Many online sites, such as hyper local news sites, are only able to exist because of the revenue they derive from selling advertising on their sites. If S. 6701A is implemented, all New York consumers are likely to be charged for services as ad-supported businesses will not be able to generate enough revenue from alternatives such as contextual advertising and cannot charge only consumers who do not opt-in to receive targeted ads.

The proposed notice and consent model will offload the responsibility of holding companies accountable on to consumers, doubling down on the EU's cookie banner law. Under S. 6701A, consumers will be forced to "opt in" and manually consent to interact with businesses in order to engage in almost all data processing activity. Consumers, who may or may not have legal savvy, will have to read through numerous detailed disclosures; repeatedly consent to new processing purposes and new third parties who will receive their data; and assess information from businesses that report any risk of harm from processing. Users will have to consent to all of these notices through an affirmative action, as inferred consent from inaction is prohibited. S. 6701A will create responsibilities the average user may not be equipped or want to handle. This will place an extreme, and unnecessary, strain on consumers who wish to simply complete their routine or essential tasks and expected data processing activities.

²

<https://www.governor.ny.gov/news/governor-cuomo-announces-statewide-launch-vaccinate-ny-campaign-and-encourage-s-all-new-yorkers>

³ <https://martech.org/distrotv-announces-spanish-language-ad-supported-free-streaming-bundle/>

By overwhelming consumers with oversight responsibilities, it will lead to consent fatigue and will ultimately leave consumers unprotected due to frustration. In an ideal world, this bill would educate consumers on where their information is going and what it is being used for. However, consumers simply do not have the bandwidth, patience, or desire to toggle through an excessive amount of consent notices when trying to complete mundane tasks. With the amount of information users will have to sift through, coupled with the frequency with which consumers will have to consent, privacy and data protection partner attorney Laura Jehl says it would be a “full-time job to protect your privacy in a notice and consent model.”⁴

Consumers rely on websites to not only be safe, but to be efficient and user friendly. If S. 6701A is passed as written, this legislation will completely destroy the user experience services provide by overwhelming and exhausting users who will in turn skim and haphazardly click through toggles without fully understanding what they are agreeing to. By doing this, consumers will be legally consenting to the access, use, and sharing of their information without scrutiny, ultimately ending up in situations this bill aims to prevent. Users could also decline all consent requests in hopes of ending notices out of frustration, seriously limiting their access to features and services they want, but cannot access without consenting to certain processing activities.

Privacy laws and safeguards are crucial to the protection of New York consumers. We welcome the opportunity to work with Chair Thomas and this committee to create legislation that will benefit consumers without the aforementioned unintended consequences. Thank you for your time and consideration on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'M Williams', followed by a long horizontal line extending to the right.

Montana Williams
Director of State & Local Public Policy

⁴ <https://www.cnbc.com/2019/05/04/gdpr-has-frustrated-users-and-regulators.html>