March 2, 2021

Senator Wil Schroder

Chair of Senate Economic Development, Tourism and Labor

Capitol Annex, Rm 209

702 Capitol Avenue

Frankfort, KY 40601

Wil.schroder@lrc.ky.gov

Committee Staff Administrator, Andrew Manno

Senate Standing Committee Economic Development, Tourism and Labor

Capitol Annex

700 Capital Avenue

Frankfort, KY 40601

Andrew.manno@lrc.ky.gov

Sponsor of SB 190

Senator Whitney Westerfield

Capitol Annex, Rm 228

702 Capital Avenue

Frankfort, KY 40601

Whitney.westerfield@lrc.ky.gov

**Re: Kentucky Senate Bill 190**

Dear Senators Schroder and Westerfield and Mr. Manno,

The State Privacy & Security Coalition, which is comprised of 29 major technology, media, communications, payment card, online security, and retail companies, and eight trade associations writes respectfully to request that you not move forward with SB 190. We appreciate the sponsor’s good intentions in drafting this bill, but unfortunately the bill is too overbroad to be workable, would result in consumers being asked to consent to any presentation of advertising on the Internet, and would prevent businesses from using core operational functions which consumers expect in today’s digital economy.

While increased consumer transparency should be a goal of any state privacy legislation, it is also important that legislation complement existing technology and not create additional barriers for consumers and invite increased data collection to carry out its purpose. Senate Bill 190, which requires a user’s express consent to collect, use, or store data from connected devices for the purpose of distributing advertisements, would result in delays in service or functions as consumers will be required to click through pop-up consents each time a business seeks to collect personal data. This is because almost all free content on the Internet is supported by advertising, and this advertising requires collecting some data from a user device, if only to avoid presenting the same ad to the same user and to establish that the advertiser’s ad actually was displayed. Additionally, deploying a consent mechanism is a complicated process to implement and, as a result, the bill would impose significant costs on local businesses, particularly because the requirement in this bill differs from any advertising privacy requirement anywhere in the US.

The most significant unintended consequence of this bill is that it would require website operators to *collect more information* – specifically, location information – about users to comply with the statute. All businesses with websites, including small, local mom-and-pop shops, would need to devote significant resources to establish a perimeter to ensure pop-up consents are delivered to every person within Kentucky’s borders.

Even more confusing is this bill does not specify to whom it applies. It appears the bill imposes a requirement to issue pop-up consents across the state of Kentucky, which would apply not only to Kentucky residents, but also to visitors within the state. When out-of-state visitors enter the state to attend the Kentucky Derby or visit one of the state’s famous bourbon distilleries, they would be deluged with pop-up consents from businesses they already have a relationship with and already expect to perform services on their behalf any time they visit those business’ websites on a mobile phone or tablet.

This bill as presented is unworkable and would disrupt the digital economy and seamless online experience of which so many Kentucky residents and visitors take part. We respectfully request that the Senators withdraw this bill from consideration.

Respectfully submitted,

Maya McKenzie

Counsel

State Privacy and Security Coalition

maya.mckenzie@dlapiper.com