



Testimony of Maureen Mahoney, Senior Policy Analyst, Consumer Reports
On SB 6, An Act Concerning Consumer Data Privacy and Online Monitoring
General Law Committee
March 3, 2022

Co-Chair Maroney, Co-Chair D’Agostino, and Members of the General Law Committee, thank you for the opportunity to submit written testimony on SB 6. Consumer Reports¹ thanks you for your work to advance consumer privacy in Connecticut. The bill would extend to Connecticut consumers the right to know the information companies have collected about them, the right to delete that information, and the right to stop the disclosure of certain information to third parties, with additional rights for sensitive data. New protections are long overdue: consumers are constantly tracked, and information about their online and offline activities are combined to provide detailed insights into a consumers’ most personal characteristics, including health conditions, political affiliations, and sexual preferences. This information is sold as a matter of course, is used to deliver targeted advertising, facilitates differential pricing, and enables opaque algorithmic scoring—all of which can lead to disparate outcomes along racial and ethnic lines.

Privacy laws should set strong limits on the data that companies can collect and share so that consumers can use online services or apps safely without having to take any action, such as opting in or opting out. We recommend including a strong data minimization requirement that limits data collection and sharing to what is reasonably necessary to provide the service requested by the consumer. A strong default prohibition on data sharing is preferable to an opt-out based regime which relies on users to hunt down and navigate divergent opt-out processes for potentially thousands of different companies. Consumer Reports has documented that some California Consumer Privacy Act (CCPA) opt-out processes are so onerous that they have the effect of preventing consumers from stopping the sale of their information.²

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today’s consumers, and provides ad-free content and tools to 6 million members across the U.S.

² Maureen Mahoney, *California Consumer Privacy Act: Are Consumers’ Rights Protected*, Consumer Reports (Oct. 1, 2020), https://advocacy.consumerreports.org/wp-content/uploads/2020/09/CR_CCPA-Are-Consumers-Digital-Rights-Protected_092020_vf.pdf.

But in the absence of strong data minimization requirements, at the very least, consumers need tools to ensure that they can better exercise their opt-out rights, such as a global opt out, which will be provided by this measure. We appreciate that it requires companies to honor browser privacy signals as a “Do Not Sell” signal. Privacy researchers, advocates, and publishers have already created a “Do Not Sell” specification, the Global Privacy Control (GPC),³ which could help make the opt-out model more workable for consumers.⁴

In addition, we support several other key provisions in the bill:

- *Authorized agent rights.* We also appreciate that the bill allows consumers to delegate to third parties the ability to submit opt-out requests on their behalf—allowing for a practical option for consumers to exercise their privacy rights in an opt-out framework. Consumer Reports has already begun to experiment with submitting opt-out requests on consumers’ behalf, with their permission, through the CCPA’s authorized agent provisions. We found that consumers are enthusiastic about this option.⁵ Authorized agent services can be an important supplement to platform-level global opt outs.
- *Non-discrimination.* The measure has strong non-discrimination language. Not only does the non-discrimination language clarify that consumers cannot be charged for exercising their rights under the law, but it makes it clear that legitimate loyalty programs, that reward consumers for repeated patronage, are supported by the law. We appreciate the work that has been done to ensure that privacy protections aren’t just for those who can afford them.
- *Prohibition on dark patterns.* We also appreciate that the measure would include a prohibition on dark patterns—deceptive user interfaces that can lead consumers to take actions they didn’t intend, including to share more personal information. This is important to ensure that opt-in consent for the processing of sensitive information is meaningful. Too often, companies often use dubious dark patterns to nudge users to click “OK,” providing the veneer, but not the reality of, knowing consent.⁶

³ Global Privacy Control, <https://globalprivacycontrol.org>.

⁴ Press release, Announcing Global Privacy Control: Making it Easy for Consumers to Exercise Their Privacy Rights, Global Privacy Control (Oct. 7, 2020), <https://globalprivacycontrol.org/press-release/20201007.html>.

⁵ Ginny Fahs, *Putting the CCPA into Practice: Piloting a CR Authorized Agent*, Digital Lab at Consumer Reports (Oct. 19, 2020), <https://medium.com/cr-digital-lab/putting-the-ccpa-into-practice-piloting-a-cr-authorized-agent-7301a72ca9f8>; Maureen Mahoney et al., *The State of Authorized Agent Opt Outs Under the California Consumer Privacy Act*, Consumer Reports (Feb. 2021), https://advocacy.consumerreports.org/wp-content/uploads/2021/02/CR_AuthorizedAgentCCPA_022021_VF_.pdf.

⁶ *Most Cookie Banners are Annoying and Deceptive. This Is Not Consent*, PRIVACY INTERNATIONAL (last visited Aug. 28, 2020), <https://privacyinternational.org/explainer/2975/most-cookie-banners-are-annoying-and-deceptive-not-consent>.

- *Data security requirements.* The measure would create new categories of personal information, and the bill appropriately requires companies to use reasonable security protocols to safeguard the confidentiality and integrity of covered information.
- *Sunset on the right to cure.* We also appreciate that the “right to cure” provision in administrative enforcement will expire. This “get-out-of-jail-free” card ties the AG’s hands and signals that a company won’t be punished for breaking the law.

However, to better ensure consumer privacy, we offer the following recommendations:

- *Limit exemptions for pseudonymous data.* We urge you to clarify that the opt out applies to pseudonymous data, as is the case in California, Virginia, and Colorado. Much of the data involved in ad tracking is associated with a particular device — not an individual name. Consumers should be able to opt out of the sale of this data to ensure that they have control over the disclosure of their data for targeted advertising. Pseudonymous data should be exempted from access and deletion requests, since this information could be associated with more than one person, but not from the opt out.
- *Broaden opt-out rights to include all data sharing and ensure targeted advertising is adequately covered.* The opt out should cover all data transfers to a third party for a commercial purpose (with narrowly tailored exceptions). In California, many companies have sought to avoid the CCPA’s opt out by claiming that much online data sharing is not technically a “sale”⁷ (appropriately, Prop. 24 expands the scope of California’s opt-out to include all data sharing and clarifies that targeted ads are clearly covered by this opt out).

Thank you again for your work on this legislation. We look forward to working with you to ensure that Connecticut consumers have the strongest possible privacy protections.

⁷ Maureen Mahoney, *Many Companies Are Not Taking the California Consumer Privacy Act Seriously—The Attorney General Needs To Act*, Digital Lab at Consumer Reports (Jan. 9, 2020), <https://medium.com/cr-digital-lab/companies-are-not-taking-the-california-consumer-privacy-act-seriously-dcb1d06128bb>.