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Sir/Madam,

IAB Canada on behalf of its members, would like to thank you for providing us with the opportunity to respond to your discussion paper "Modernizing Privacy in Ontario". The Canadian online advertising industry is more prepared than ever, to help navigate the issues that were tabled within the document as key priorities as well as those raised in the 2019 announcement of the new Canadian Digital Charter and the proposed CCPA, to help Canada thrive digitally in the coming years. Data and its various uses are the cornerstone of the estimated $9 billion Canadian digital advertising sector that employs more than 40,000 Canadians. Facing the possibility of amended provincial and federal privacy laws, it is imperative that the digital advertising industry is actively involved in practical discussions around potential amendments that can help maintain the balanced approach to privacy and innovation that Canada, and Ontario, are historically well known for.

IAB Canada and its members do not feel that it is appropriate for the Ontario government to introduce privacy legislation for the private sector given existing federal protections and ongoing efforts to modernize the national framework and believe that a patchwork approach to privacy is not good for citizens or business and should be avoided at all costs. With Quebec, British Columbia Alberta and Ontario all working towards reform, the potential for excessive and costly legal obligations is becoming a real threat to innovation. Instead, the provinces should turn their focus to working with the federal government to amend existing PIPEDA and the proposed CPPA. Eliminating undue legislative burden and the operational costs and challenges associated with cross-jurisdictional compliance is what is needed particularly while many are still dealing with the real financial impact of the COVID 19 pandemic. Adding additional layers of confusing legislation and increased

compliance and financial obligations in a post-pandemic recovery period where many are not yet back on their feet could bring industry to its knees. While we respect and understand Ontario's desire to be a true privacy leader, we strongly feel that now is simply not the time.

We recommend that provincial reform should wait until after federal reform in order to ensure a cohesive approach to privacy. Any provincial legislation should focus on addressing gaps in federal privacy protections.

IAB Canada took part in the Federal government's PIPEDA modernization review. As this is an ongoing process, we feel strongly that Ontario should continue to monitor these developments to ensure there is ongoing alignment. Alignment supports integrated industries that operate locally, nationally, and internationally.

Ontario's proposed privacy law should not overlap with PIPEDA, which currently applies to most Ontario businesses, but instead should focus on enhancing privacy protections for Ontarians where the sector or subject matter is not covered by PIPEDA or a newly reformed federal legislation. Introducing a duplicate legal privacy regime will only put unnecessary strain on businesses and not-for-profit organizations. It would also significantly hinder organizations' ability to be innovative in an agile manner in a highly competitive data-driven marketplace. Duplicitous regimes might also contribute to existing confusion amongst Ontarians as it pertains to their individual privacy rights.

Legislation should be flexible and adaptable to avoid burdening SMEs

Any new provincial law should be flexible and adaptable to a variety of business structures and markets. This is particularly important for Small and Medium Enterprises (SME) as they can easily be unfairly burdened by unduly onerous and cost prohibitive compliance expectations. Any new privacy law should include a purpose clause enshrining that the law be interpreted in a proportionate and reasonable manner based on the circumstances. This will ensure that we do not stifle innovation with regulation.

As representatives of the Canadian digital advertising industry, we hope that our feedback and participation will be useful. We look forward to participating in further productive discussions as we collectively work toward modernizing our digital capabilities to bring Canada to the forefront of global digital innovation and economic growth while simultaneously protecting the rights and privacy of Canadian citizens.

Who We Are:

Established in 1997, IAB Canada is a not-for-profit association exclusively dedicated to the development and promotion of the rapidly growing digital marketing and advertising sector in Canada.

IAB Canada represents over 250 of Canada's most well-known and respected stakeholders in the digital advertising and marketing sector, including advertisers, advertising agencies, media companies, digital media publishers and platforms, social media platforms, adtech providers and platforms, data companies, mobile and video game marketers and developers, measurement companies, service providers, educational institutions, and government associations operating within the space. Our members include numerous small and medium sized enterprises.

Companies in the digital advertising and marketing sector offer a wide range of highly innovative products and services, including valuable service offerings to individual Canadians. This sector is intensely competitive, and the long-term success of our members is fundamentally predicated on their ability to continually design, develop, offer and improve valuable digital products and services.

Our members include numerous small and medium sized enterprises and represent an estimated 80% of the estimated $9 billion industry in Canada. IAB Canada has a long history of creating programs that are designed to promote the responsible growth of the online advertising industry in Canada. Notably, IAB Canada was the founding member of the self-regulatory Ad Choices Program developed to enable industry compliance within the PIPEDA framework.

IAB Canada is the only organization fully dedicated to the development and promotion of digital/interactive advertising in Canada delivering:

- Globally accepted digital ad standards;
- Advocacy for the Canadian digital advertising industry to the Canadian government;
- Trained human capital, through globally standardized courses, certification and custom workshops;
- Original Canadian digital marketing research;
- Information to the industry and enhanced communication between members.

A Rights Based Approach to Privacy

In a complex world of patchworked privacy obligations, increasing consumer expectations and an immense amount of data, the preamble to a significantly reformed privacy legislation should act as a guide and set the stage for a **balanced** approach of the principles, values, and reasoning behind what we are all trying to achieve with these changes. It should simply set the stage for the guiding principles of the law in a non-confrontational, unbiased manner. In the Ontario whitepaper we are not only being introduced to the controversial inclusion of privacy as a human right but are also met with the idea that what business needs is to be more prescriptively governed to regain the trust of Ontarians. To directly quote the proposal, “to establish the trust and confidence of individuals, organizations must be subject to rules, guided by principles of proportionality,

fairness and appropriateness with respect to the collection, use or disclosure of personal information".

Putting the burden onto industry does not signify balance or openness but instead frames the legislation with a misleading perception that more stringent rules are all that are required to gain citizen trust. Legislation and "rules" undoubtedly play a key role but are not the sole basis for success. This unfair prioritization of individual needs not only gives precedence to individual rights over business practicalities but also does not consider how personal data is being used responsibly by business to create true value exchange for consumers. This shift in the provinces recognition of privacy as a human right, coupled with the untenable responsibility being placed on industry, will not only negatively impact innovation and the overall economy it will simply hinder the ability for industry to carry out normal business activity.

Recognizing privacy as a fundamental human right first made mention in the Liberal's Digital Charter proposal and has since then appeared in both Ontario's consultation paper as well as the Privacy Commissioner's response to proposed Bill C-11. This well intended notion has always been positioned to establish public trust and confidence in the right to privacy – ensuring every individual is entitled to fundamental right to privacy and the protection of their personal information. IAB Canada and its members do believe that Canadians have the right to privacy protection but also believe that human privacy rights should prevail in the context of state surveillance and not in the commercial context. The right to be free of surveillance should not be equated with the right to not receive targeted advertising or given precedence over the over business practicalities and commercial interests. The inclusion of this right in privacy legislation should be first discussed and debated at the federal level prior where officials are currently working on modernizing the national framework.

The need to protect consumer privacy needs to be balanced with a law that recognizes the legitimate interests of both consumers and business and that normal business activities should be expected – such as targeted advertising, personalized consumer experiences, managing inventory and determining how to better serve customers. Citizens should reasonably expect these scenarios and business should be expected to implement safeguards throughout the process to protect the personal data of Ontarians keeping it confidential and secure.

Fair and Appropriate Purposes

The proposed Ontario privacy legislation also introduces the concept of fair in determining what is valid consent with the intention of reinforcing a more citizen-oriented interpretation of the law further enhancing a rights-based approach to privacy. Contrary to PIPEDA's principle-based approach, which outlines practices while remaining flexible through an objective consent standard, this proposed requirement for consent is highly

prescriptive and impractical. IAB Canada members believe that this is an unnecessary modification on the existing federal consent requirements and that not only does it essentially create "no go zones" for business, it brings with it issues around interoperability, operational challenges, and an overall threat to innovation as well as confusion for Canadians.

Current federal legislation includes the language that personal data can be processed for those purposes that a "**reasonable person would deem appropriate".** This concept has arguably served us well and the principles based, non-prescriptive approach to legislation is one of the core features of existing PIPEDA. It outlines practices while remaining flexible making it both operational and future-proof. The newly proposed CPPA builds upon the principles of PIPEDA incorporating adequate flexibility leaving us wondering what exactly is the addition of "fair" addressing that is not already being addressed? Even after a business goes through the legal process of gaining consent a consumer can still subjectively deem whether it was gained fairly or not with significant financial repercussions for non-compliance.

Moving to a more directive approach also does not seem to consider what we have learned from prescriptive legislation such as our own anti-spam law CASL and the European GDPR. In both cases onerous prescriptive rules created unnecessary challenges and resistance. A recent UK task force report included recommendations asking for the EU to move away from detailed requirements to a more proportionate approach as the current regime is negatively impacting innovation.

Data Rights of Mobility, Disposal, Access, and Correction

As referenced in the discussion paper, other privacy regimes such as the GDPR take a rights-based approach to privacy protection. Two digital rights that the province is proposing, and are not currently available to Ontarians, relate to "data portability" and the "right to be forgotten".

PIPEDA grants important data rights to Canadians allowing them to access and correct one's own personal information. In Bill C-11 these rights are further expanded, granting data portability allowing citizens to obtain and transfer their own information upon request. Not unlike the Ontario proposal, Bill C-11 also introduces the concept of a Right to Disposal which would obligate organizations who receive written requests for disposal from an individual to dispose of the information under most circumstances. This concept of disposal was first brought to light within the Liberal Digital Charter expressing the need for Canadians (specifically youth) to have the ability to control their online reputation with instructions in the Minister's mandate to apply these rights to online platforms. IAB Canada members understand that portability and data mobility are very important components of increasing Canadians' individual control and consumer choice, and we also understand that

some stakeholders may be concerned that organizations are retaining personal information for longer periods than necessary.

Data portability allows individuals to obtain their personal information and to transfer it between organizations if they wish. Again, IAB Canada members understand that this is a critical component to citizens' control over their data. However, it is imperative to remember that although data mobility provides certain advantages, it comes with inherent risks to consumer protection, privacy, confidentiality, cybersecurity, innovation, and competition. Our members believe that when considering data portability, one needs to examine the process through the lens of both the individual and the business.

As expressed in our response on PIPEDA reform, IAB Canada would recommend a system that supports the principle of increased individual control over data and some limited additional choice, but that makes full portability conditional on there being adequate frameworks/infrastructure in place to protect economic growth.

When approaching portability, government should work to achieve the following:

- manage expectations of both individuals and businesses;
- recognize the need for businesses to invest in this area while avoiding unnecessary and excessive business costs;
- provide clear, simple and easily implemented obligations;
- limit uncertainty for all parties;
- allow for phased-in approach as infrastructure and frameworks are developed; and,
- allow for the continuation of innovation as other needed frameworks and infrastructures are rolled out.

Should a new portability requirement be introduced, IAB Canada believes it should be targeted and deliberate to meet stated objectives, needs and expectations. In the case of the GDPR, European markets have struggled with the technical realities around the legislation's sweeping data portability right that simply requires organizations to provide data in a "structured, commonly used and machine-readable format" and transmit it directly from one controller to another "where technically feasible". Any equivalent amendment in provincial legislation should provide far greater clarity on implementation.

Third-party organizations should not be empowered to exercise the portability right on behalf of an individual and therefore, we believe that initially, any data portability right should be limited in scope. To mitigate the risk of fraud and identity theft, the right should apply only between the individual and the organization. Any transfer of personal information between organizations must be made at the request of an individual.

Also, the data covered by the right to portability should be limited to the personal information the individual has provided to the organization and certain data (e.g.

transactions) created through interaction with products and services. The right should not apply to other forms of data that may be proprietary, are not related to personal information or not easily portable from one system to another, for example:

- derived data, insights, observed data
- de-identified data (not PI and no obligation to re-identify)
- any other data not conducive to portability such as call notes or complaints

In addition, we believe that there must be reasonable verification of the individual making the request. Also, to be realistic and feasible in practice, the portability obligation would have to be limited to information under the organization's control and there would need to be a clear definition of a standardized digital format.

In response to the notion of providing citizens with a "right to be forgotten", IAB Canada and its members strongly feel that this should be discussed and undertaken by the federal government under PIPEDA reform as it impacts all Canadian citizens. This would also serve to avoid undue confusion, expense, and an inconsistent approach to privacy. From a business perspective a federal approach is more attenable and less cost prohibitive to manage. There are also certain industries where the long-term impact of data deletion is detrimental to business, and this should be carefully contemplated prior to putting this into effect. The "right to be forgotten" should only be considered in certain cases and not across all business models.

Overall, we encourage the province to undertake an approach that is reflective of our own unique environment all while learning from the challenges that other jurisdictions, such as the EU, have faced in implementing similar requirements. Importantly, as mentioned throughout this response, it will be critical for Ontario to monitor the PIPEDA modernization review to ensure there is ongoing alignment to support integrated industries and businesses of all sizes.

Regarding the original policy intent outlined in the mandate to protect youth, IAB Canada, and its members, wholeheartedly agree that the privacy rights of youth need to be appropriately protected, and that youth must be able to understand how to control the use of their personal information in different contexts, and that they are empowered to learn, grow, and develop safely. Youth are an extremely vulnerable population whose information privacy and access rights merit special consideration and support. Jurisdictions across the globe are recognizing this need as exampled in California with the 'right to request deletion of personal history' from social media platforms included in the CCPA. Giving youth tools and resources they need to understand their rights and how to exercise those rights, is a great first step toward empowerment of control over their digital footprint. However, IAB Canada members feel that what is being proposed in this whitepaper goes far beyond the original intent of the mandate and as a result, is too far reaching. Granting disposal rights across all business sectors, with few exceptions, could

significantly impair the ability of organizations to retain personal information for reasonable and legitimate business purposes. For example, if a former customer of an organization left an unpaid balance on their account, the organization should be able to retain a record of that debt for a reasonable period, in case the individual subsequently sought to return as a customer. It's hard to see why it would be in the public interest to provide the debtor with a statutory right to require the organization to erase such a record.

Overall, we once again encourage the province to wait for federal policy makers to undertake an approach that is reflective of our own unique environment all while learning from the challenges that have been experienced in other jurisdictions. This will allow Ontario to monitor major legislative reform, identify any gaps and amend to fill them. While we see merit in exploring expanded portability/disposal rights we strongly believe this is an area that needs greater exploration as the impacts on business practice could be quite serious. We would welcome further discussion and propose a collaborative, problem solving approach so we could help you see how our industry is equipped and able to help government meet their policy objectives in a less commercially damaging way.

We do believe that now is the time for privacy reform but that it should be first addressed at the federal level with a re-examination of PIPEDA and a close look at the proposed CPPA. We continue to be actively involved in discussions with ISED and the OPC and feel that there has been great progress made in the pursuit of a new piece of legislation that balances both consumer privacy and business needs – addressing many of the concerns in this whitepaper. If we can first amend the consent requirements and data portability rights at a broader level, we may find that we can achieve the balance your office is seeking, and we hope that once the federal regime is introduced you can then commence the process of filling in the remaining gaps with the collaborative support of industry. The province should use its resources to help establish a strong localized backbone for privacy protection.

Safe Use of Automated Decision Making and Artificial Intelligence

With leading tech hubs in Montreal, Edmonton, Waterloo, and Toronto, Canada has put itself on the global map with its work in AI. In 2018, upon announcing a significant investment in AI in Canada, Prime Minister Trudeau declared that "Artificial intelligence has the potential to unlock unprecedented social and economic benefits and keep our workers and our industries competitive in a rapidly changing economy. As a global leader in innovation, Canada is harnessing new technologies like artificial intelligence to shape a better future for all our citizens." In conjunction with increased Canadian presence and investment by companies such as Uber, Google, Microsoft and Amazon, the Canadian economy and job market are seeing notable growth.

With significant government and corporate investment and support, many of our members including large scale marketers and Canadian publishers alike, have invested heavily in AI to intelligently and responsibly identify and segment audiences, build advertising creative,

test variations, improve performance, and optimize spend—automatically, in real-time, and at scale. In today's competitive market which is both dominated by global platforms and limited by third party data restrictions, AI is virtually the only way for Canadian businesses to survive. The use of AI has provided a transformative and profound impact on our members' competitive advantage in the Canadian digital advertising sector. AI tools allow advertisers to increase revenue, reduce costs, and develop an important competitive advantage. Custom content, chatbots for customer service and targeted marketing geared toward consumer preference are just a few of the ways in which AI works to serve Canadian consumers today within the digital advertising industry.

As we move toward a future reality where third party data will become less available, marketers will need to develop and leverage any first party data they have rightful access to. Marketers will require the freedom and ability to be more creative and innovative with first party data and will need to find new ways to use AI to connect and serve their customers all within a privacy-first strategy. This new world will take time to navigate and adapt to and the freedom to explore and test new approaches and models should not be undermined. Being restricted to first party data will undoubtedly increase the cost of reaching consumers for most organizations, which will certainly impact their bottom line. A privacy regulation with prescriptive obligations around AI will not only magnify the current downslide in our industry but will also further diminish the ability for businesses to deliver the products and services their customers have come to expect.

We believe that the government should take a balanced approach in reforming privacy legislation. While we acknowledge some of your outlined risks associated with automated decision making and AI and believe that privacy concerns related to AI should be addressed to bolster citizens' trust in the digital economy, government should refrain from adopting prescriptive legislative provisions to avoid inhibiting innovation in a growing digital Canadian economy. We also believe that any reform or legislative guidance should first be adopted at the federal level to avoid a patchwork approach and increased compliance challenges for industry and confusion among citizens.

IAB Canada supports the development and use of AI in business processes while also protecting individuals of their legal and human rights. The application of AI is context-driven and so too are the privacy and ethical concerns associated with its outcomes. As such, it is necessary to examine the use of AI within the sector or environment it plays a role in. Developing guidelines in the form of Standards or Codes of Conduct that is sectoral or technology-specific will be an effective tool in evaluating privacy and ethical concerns.

Regarding the specific provisions being outlined in this paper, we will turn to our response to ISED who included a similar provision in proposed Bill C-11. We believe that to manage the burden on organizations, the obligation to explain needs to focus on use of ADS and AI that may have potential for significant impact. What also needs to be included in the proposed clause is the element of "reasonablenesss" so it would read:

If the organization has used an automated decision system to make a prediction, recommendation or decision about the individual that could produce significant impacts on them, the organization must, on request by the individual, provide them with an explanation of the prediction, recommendation or decision that is reasonable in the circumstances and of how the personal information that was used to make the prediction, recommendation or decision was obtained

This leaves room for guidance from the regulatory office, a look to industry best practice and codes of practice. IAB Canada believes that industry Standards and Codes of Conduct should be recognized as tools that can help entities ensure compliance with PIPEDA and demonstrate accountability. Government should provide incentives to adhere to such Standards and Codes and play a more active and public role in supporting, enabling, and recognizing such codes. Entities should be encouraged to operationalize Standards and Codes of Conduct as a best practice.

In our submission on privacy reform to ISED, IAB Canada expressed support for the development of a co-regulatory model where government regulation and industry self-regulation work in tandem. This dual, collaborative model, formally recognized in law, would be an efficient mechanism for balancing consumer protections and business needs while also complementing the heavy compliance responsibilities of regulators.

Moreover, the development of Standards and Codes of Conduct in areas such as AI should involve a collective effort by industry stakeholders and be facilitated by the Standards Council of Canada. Obtaining a formal certification, recognized by the OPC at a federal level, and accredited by a third-party accreditation body, will represent a competitive differentiator for entities, who will gain consumer trust. Furthermore, certifications can also act as a risk management tool for entities as well as a method of demonstrating due diligence and proof of compliance with PIPEDA, Codes of Conduct and/or Standards (e.g. ethical AI).

This never ending, growing and necessary shift towards machine-based learning and decision making is impacting industry and society. We need to ensure that both sides of the table can benefit from the technology while protecting citizens from the potential risks relating to profiling and discrimination. How we address these types of risks should be addressed outside of privacy legislation as the issues are not the same. Again, we feel strongly that the subject of human rights belongs in a constitutional conversation and not in federal or provincial privacy legislation.

Consent and Transparency Rights for Ontarians

IAB Canada believes in providing consumers with transparency and meaningful control of their data for interest-based advertising throughout the digital supply chain. However, as

transparency and consent are the cornerstones of any successful privacy program, we believe that consent and transparency requirements should first be addressed at the federal level prior to the development of any new provincial legislation.

There has been a significant amount of work done by IAB globally, to create a standardized taxonomy around data purposes that has now been implemented by the vast majority of the ad tech industry. This work was critical towards providing a realistic means to develop enhanced consent management platforms that would allow consumers to effectively opt-out of advertising in an informed and transparent manner.

- IAB Tech Lab's technical solution – the Transparency Consent Framework (TCF) for example, was implemented widely in Europe to address the GDPR. Working with Data Protection Authorities (DPAs) across multiple countries while simultaneously representing numerous stakeholders in the digital space - great steps toward 100 percent compliance has been attained. The TCF was consequently adapted to aid in compliance within the CCPA framework in California and is currently being developed for Canada. The TCF framework has provided citizens with significantly enhanced transparency and control allowing improved navigation of their privacy options while helping the advertising industry stay in compliance with complex privacy legislation.
- In 2019, IAB Tech Lab launched Datalabel.org, a global framework for businesses to appropriately disclose their data source information. IAB Canada believes that this framework provides a tremendous first step towards citizen-facing transparency and that Canadian businesses should be encouraged to participate in this global initiative. Programs like DataLabel.org lay a solid foundation for future downstream efforts to provide citizens with accurate facts around data being used by brands and the online advertising platforms. IAB Canada is working hard to promote the benefits of these programs to our members and will continue to do so in the hopes of increased engagement.
- As evidenced through our work in developing and helping to launch the AdChoices program, IAB Canada has been working with our members to encourage greater transparency and consumer controls. We believe that this inherently improves customer relationships while helping businesses responsibly leverage consumer data to deliver value. As founding members of the program, IAB Canada continues to encourage the modernization of the AdChoices tool to reflect the changing technical realities of online advertising.

IAB Canada believes that the "meaning" behind meaningful consent is losing value.

As discussed in previous submissions to both ISED and the province, IAB Canada is concerned around the overuse of express (opt-in) consent mechanisms in the digital media landscape. The sheer volume of consent touchpoints is diminishing the "meaning "of consent and contributing to consent fatigue. IAB has proven internationally, that a more

persistent opt-out consent while allowing for businesses across the entire supply chain to have greater security around compliance. It is therefore recommended that amendments look towards facilitating the implementation of effective technical frameworks.

- IAB Canada believes there is a significant amount of work to be done in educating citizens about the true value of digital advertising and how it actually works to deliver content and services to all Canadians. Canadians must be given an accurate account of how digital advertising works to provide free access to valuable content from music and instructional videos, and more critically, free and democratic access to Canadian journalism. Data-driven advertising is not an Internet phenomenon; it has been and continues to be a fundamental part of Canadian business.
- Significant efforts have been made by IAB Canada and its members to provide citizens with comprehensive rationale around data usage that impacts the various advertising they see.

Protecting Children and Youth

IAB Canada is fully committed to helping where we can, to improve the online experience and privacy protections and rights of our youth. We have and continue to collaborate with industry coalitions and government officials at Health Canada to help develop a set of best practices for the targeting and delivery of "unhealthy" food advertising to children. We have also recently participated in a research study focusing on youth and the use of AI. The purpose of this study is to determine where vulnerabilities exist as to develop strategies amongst educators and policy makers to ensure our young are not being exploited by technology. We also consult with ISED, the OPC, Elections Canada, as well as our member companies, on an ongoing basis to ensure we are up to speed on all pressing issues and working collectively to do the best that we can.

IAB Canada's work with the Business privacy group combined with our board of director positions at both Ad Choices and Ad Standards as well as our development of a best-in-class privacy framework, the Transparency and Consent framework, for the online advertising industry in Europe and California, makes us a natural choice for this collaboration. Our work in privacy is respected across all our stakeholder groups and we have an extremely active privacy committee consisting of publishers, advertisers, marketers, and ad tech who could work with us to bring a unique perspective to your work in this area.

With both federal and provincial policy makers demanding increased youth privacy protection, it should be no surprise that pre-emptive changes are being made by the world's largest platforms, and IAB Canada members, ahead of legislative amendments. There have been some bold steps taken by several of the tech giants that will not only serve to better protect our young, but they will also simplify and possibly solve the dilemma of age-gating – something that marketers are struggling to get right. As thought

leaders in the online advertising industry, protecting our youth online is a responsibility that we take seriously, and we are committed to driving change forward.

As we stated in the response to the IPC priority setting discussion paper, IAB Canada would encourage you to focus on your idea of bringing together a broad group of partners to work toward a Children's Access and Privacy code for Ontario which would set out a framework for guiding all initiatives that impact the access and privacy rights of children and youth in the province. This is an initiative that could have a profound impact on the advancement of this priority, unifying multiple sectors across our province. We would welcome the opportunity to be included in this group and feel that we have some real, on-the-ground knowledge, as well as cross-border experience and use cases that could help you to answer and address your outlined discussion questions. We would also suggest that you work with federal policy makers to ensure that there is alignment nationwide.

A Fair, Proportionate and Supportive Regulatory Regime

In general, IAB Canada would like to see a more collaborative effort between the regulators and the business community to ensure a meaningful and more robust enforcement regime particularly in a regulatory sphere that is so rapidly evolving. In light of the uncertainty and unpredictability of the market, Canadians and organizations would benefit most from a collaborative model that allows the regulator to play an active part in helping enable creative and well-balanced solutions, rather than police activity that risks alienating responsible actors in the marketplace. While we agree there should be consequences for egregious actions, we also require procedural fairness and when the privacy laws themselves may not be sufficient or there exists a desire for consistent rules for specific sector or activity, industry codes or standards could be developed and recognized in legislation.

We would like to see a more collaborative effort between regulators and the business community to ensure a meaningful and more robust enforcement regime particularly in a regulatory sphere that is so rapidly evolving. Considering the uncertainty and unpredictability of the market, Canadians and organizations would benefit most from a collaborative model that allows the regulator to play an active part in helping enable creative and well-balanced solutions, rather than police activity that risks alienating responsible actors in the marketplace.

Certification Programs and Codes of Practice

With over 21 years of developing codes, standards, and best practices, IAB Canada and its global network have first-hand experience in developing technical frameworks that are grounded in the reality of digital media transactions while addressing nuanced regulatory compliance. As previously outlined, IAB Tech Lab's technical solution addressing the stringent requirements of the GDPR, Transparency Consent Framework (TCF) is a great

example of a best-in-class technical solution to address complex privacy legislation requirements. The framework has provided citizens with significantly enhanced transparency and control allowing improved navigation of their privacy options while helping the advertising industry stay in compliance. Currently in Canada we are in the developmental stages of bringing the TCF Canada to life which will aid in compliance with all Canadian privacy legislation including federal, provincial, public, and private sector. This is a scalable technical framework that can be modified as new amendments are set. We have shared this framework with both the OPC and ISED and more opportunities like this should also be found for regulators to engage in external collaboration with industry. For instance, the province could become more actively involved in enabling the development and recognition of industry standards and codes of conduct and participate in innovative mechanisms such as regulatory sandboxes and the like.

Representing the entire digital advertising industry in Canada, IAB Canada is a critical stakeholder. Every new regulatory change can have significant impacts to the complex online advertising ecosystem and requires careful technical consideration to implement effective mechanisms with the desired policy outcomes. The entire infrastructure of the digital advertising landscape will inevitably be impacted over the coming months and years due to privacy reforms. IAB Canada, and our members, want to help in the quest to provide solutions that are technically sound for both citizens and the business community as exampled in our work with the TCF, the development of datalabel.org and our leadership on the AdChoices and Ad Standards board of directors.

IAB Canada also supports the development of a co-regulatory model where government regulation and industry self-regulation work in tandem. This dual, collaborative model formally recognized in law would be an efficient mechanism for balancing consumer protections and business needs and complementing the heavy compliance responsibilities of regulators. For example, organizations should be encouraged to develop tools to help themselves comply with the law, as exampled in the TCF. At a minimum, IAB Canada believes that organizations should be encouraged to develop and follow standards and codes of conduct and self-declare adherence to such, as these are relatively flexible and low-cost instruments. Industry codes of practice and standards should also be recognized as tools that can help organizations ensure compliance with privacy legislation and help demonstrate accountability. It is important though that these codes and certification schemes, once developed, should be recognized across both federal and provincial jurisdictions making them functional and inter-operational. We should be incentivizing industry to do better not making it difficult or financially unattainable.

IAB Canada recognizes that publicly declaring self-adherence to codes and standards and not following the rules is a risk as with any other self-regulatory scheme. Nonetheless, it must be recognized that while these instruments are voluntary, they operate within a legal environment that holds organizations to account for them through regulatory regimes

governing consumer protection, competition, health and safety, labour, and environmental protection.

To the extent that your privacy office is afforded with more enforcement powers in new legislation, these should be carefully counterbalanced by express articulation of rules of natural justice and procedural fairness. As we stated in response to the OPC, while flexibility of process may work in an Ombud's regime where conciliation and resolution are the ultimate aims, fairness demands more certain and predictable rules when rights and obligations of the parties may be seriously impacted by an adversarial process. Enhanced powers of investigation, order-making and public interest naming should only be used in a manner proportionate to the conduct of the parties and their level of cooperation.

Moreover, where necessary, and depending on the sector, additional incentives could be embedded into privacy law to require (or authorize) the involvement of a third party to assess and attest to organizations' compliance with such industry codes and standards. Oversight by third parties (e.g. auditors, accountability agents) should, where warranted, be explicitly recognized in law as tools for compliance and enhanced privacy accountability and the third-party approvers themselves could be approved by the Standard Council of Canada. The process, criteria, and requirements for approving such certifications would need to be devised by privacy regulators and the Standards Council of Canada. These certifications of enforceable codes and certifications should act to shield companies from any random investigation by regulators without a reasonable cause to investigate.

IAB Canada is confident that a co-regulatory approach – rather than a strict policing approach - would better incentivize organizations to take on more ownership of their privacy compliance efforts; reduce the workload and resourcing needs of the privacy office; and foster increased collaboration between the regulator and industry in true co-regulatory fashion. To further incentivize organizations, participation in certification schemes should also be required to be taken into consideration when deciding on an appropriate remedy following a non-compliance event.

Having the regulators play more of an advisory role would be welcomed by well-meaning organizations seeking non-binding, advance opinions, and guidance to assist in their innovation and development efforts by providing greater certainty and predictability, without fear of being the subject of a surprise investigation.

In general, IAB Canada and its members would like to engage in a collaborative effort with the province to ensure that if enforcement is to become a part of the legislation, it is meaningful and fair. Canadians and organizations would benefit most from a collaborative model that allows the regulator to play an active part in helping enable creative and well-balanced solutions, rather than police activity that risks alienating responsible actors in the marketplace.

The province should work with industry in a model that allows the regulator to play an active part in endorsing and enabling innovative and well-balanced solutions to encourage compliance and consider Initiatives such as developing innovative strategies around education, research, guidance, and advisory services as well as regulatory sandboxes.

IAB Canada also recommends that any PIPEDA, or provincial amendment to this effect should not prescribe specific codes or standards, but rather, formally recognize the importance of such tools as a way of enhancing compliance with privacy law.

Monetary Penalties

Should a regime of administrative monetary penalties be introduced to dissuade bad behavior in the marketplace, it should be accompanied by specific ranges, along with a clear articulation of mitigating and aggravating factors to limit their arbitrariness. Serious consideration must also be given to the quantum of fines, given the real risk of stifling innovation as organizations will be hesitant to innovate for fear that they could unintentionally contravene the law. Fines should also be administered on a sliding scale that considers such things as size of the organization in terms of its revenue and capacity to pay. IAB Canada and its members would caution against GDPR-like penalties of 4% of global revenues that have created significant deterrent to data driven innovation in the EU. We believe there should be a more proportionate approach in Canada. We also caution against the potential for organizations to receive overlapping fines stemming from other jurisdictions both provincial and federal. There has been a good history to date of cooperation on investigations between regulators and we suggest that perhaps any provincial legislation should include a clause that lays out parameters which would prevent someone from being investigated by multiple commissioners simultaneously. We believe that fines should be a last resort and that the privacy office would be better served if they focused on education in the form of:

- Earmarking resources for public campaigns and the development of easy-to- use and publicly accessible toolkits. These would target consumers and businesses and could follow some of the best practices in the UK, the EU and Australia.
- Publishing all findings in a timely way to provide more adequate guidance to businesses in Ontario and report more transparently, in a consistent and ongoing manner, on items such as the number of times they have used their audit powers, initiated investigations based on reasonable grounds, used any formal powers, etc.

In terms of financial consequences, PIPEDA already contains the possibility for courts to award statutory damages to compensate individuals, and for the Attorney General to pursue criminal offences under the Act for the most egregious violations that may lead to fines or imprisonment so something to this effect could be considered for Ontario as well.

Support for Ontario Innovators

As noted in Ontario's Digital and Data Strategy, data privacy should be a competitive advantage for Ontario businesses. The provincial government's proposed approach would hamper Ontario's competitive advantage by adding to the patchwork of regulatory uncertainty, it would make it more difficult for businesses to expand across Canadian and international markets and discourage innovators from investing in digital services that benefit Ontarians. We know that it is your intention to support economic growth and innovation in the province and therefore we urge you to consider the detrimental impact this additional layer of legislation would have particularly on small business who are in the midst of post-pandemic recovery.

Privacy rules must be consistent across Canada to enable companies to operate seamlessly across inter-provincial and international borders. We firmly believe that a consistent federal framework is the best way to achieve this outcome. We also believe that consistent rules around citizen privacy take away the element of confusion allowing Canadians to clearly understand the rules and know how their privacy is being protected regardless of their location in Canada while giving industry more flexibility and freedom to innovate and grow.

While well-intentioned and important developments in bringing deserved attention to the issue of data privacy, putting into place more rigid frameworks only impose significant burdens on consumers while failing to stop many practices that are truly harmful; they also fail to recognize the various ways in which digital advertising subsidizes the plentiful, varied, and rich digital content and services consumers use daily and have come to expect. Consumers enthusiastically embrace the ad-supported model because of the free content and services it enables. They are aware of, and support, the exchange of value in which data-driven advertising funds the free or reduced- cost services they receive.

In Closing

On behalf of IAB Canada and all of its members, we thank you for the opportunity to submit our responses to the important questions being asked by the Government of Ontario. While we understand your desire for enhanced provincial privacy laws, we strongly encourage you to pause until federal reform takes place. Once an enhanced PIPEDA comes into play, the province can then work to address any specific gaps that exist to specifically protect and safeguard Ontario citizens. It is our sincere hope that we will be invited by the province to engage in a truly collaborative approach to privacy through ongoing discussions with our sector and very much look forward to this.

Sincerely,

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