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April 27, 2020

The Honorable Marc Berman
California State Assembly
State Capitol, Room 6011
Sacramento, CA 95814

**RE: AB 2811 (Berman) Auto-Renewals
As amended May 4th
OPPOSE**

Dear Assemblymember Berman,

Our organizations must respectfully **OPPOSE** your **AB 2811**, related to automatic renewal and continuous service offers. As currently written the language of AB 2811 is overly vague and would threaten the ability of companies to offer free gifts and trials to consumers in California. We appreciate the intent of AB 2811 to ensure that offers for continuous services and free trials are transparent and that consumers remain empowered to cancel services easily. However, as written, the bill will unintentionally impose substantial and unnecessary costs on businesses who are already doing the right thing.

In 2017, the business community worked with Senator Hertzberg on his SB 313, regarding automatic renewal and continuous service contracts, to ensure the language would protect consumers without also overburdening businesses

throughout California. Language was negotiated over months and AB 2811 would amend that balanced language that was finalized in 2017 and took effect less than two years ago on July 1, 2018. Current law requires businesses receive “affirmative consent” before charging a consumer’s credit or debit card for an auto-renewal agreement and requires that auto-renewal terms be presented in a “clear and conspicuous manner” and “in visual proximity...to the request for consent...” It further requires businesses to disclose how the consumer can cancel the service before paying for any goods or services. And companies must send information on cancellation in a retrievable format. AB 2811 would go further dictating how businesses offer automatic renewal and continuous service contracts in a way that is unworkable for businesses and not helpful to consumers.

Notice Requirement

AB 2811 would require a specific three to seven day notice before taking payment that would be a significant burden on businesses, while potentially inundating consumers with notices they would ignore, especially in the case of short trials. This notice requirement was also contemplated in SB 313 and was removed from the bill because it was unnecessary, especially in the case of recently entered into agreements. Studies show that consumers develop notice “fatigue” when overwhelmed with too many notices and they ignore them and therefore, it seems likely that prescribing this specific type and method of providing notice will be ineffective.

The very narrow notice window is also almost impossible to achieve reliably by mail in the current environment. This time window also differs unnecessarily from reminder notices periods under other state laws, and is unworkable for short term subscriptions. A new notice requirement would also force businesses to significantly restructure their services and systems, which could be particularly harmful during this time when businesses are focusing their resources on COVID-19 responses and economic impacts.

Immediate Cancellation

The language of AB 2811 is unclear regarding the intent of “immediate” cancellation. Consumers should not be able to abuse free trial or subscription agreements that allow them to take advantage of preferential rates, but then have a right to cancel in the middle of a subscription term. This creates significant economic concerns for businesses given that these types of subscriptions are often priced based on the term of the subscription. It would be more appropriate to ensure provide in the law that the cancellation takes effect at the end of the billing cycle.

Consumer Verification

AB 2811 requires a business to “allow a consumer to terminate... at will, and without engaging in any further steps...” As the language stands currently it is unclear if a business would be able to require a consumer to authenticate themselves before allowing a cancellation. It is often difficult for businesses to obtain the proper information they need from customers via email in order to verify the person is indeed authorized to cancel the subscription. At times requiring a

consumer to sign in to an account or verify by another method can resolve the cancellation faster and more securely for both the consumer and the business. This is not meant to complicate the process but rather ensure that another person is not cancelling a consumer's account without the consumer's knowledge.

Direct Link or Button

Finally, AB 2811 requires there to be "a direct link or a button" to cancel online, or a pre-formatted email. We, of course, support a reasonable standard that instructs consumers on how to terminate conveniently online, but oppose a mandate to provide a hyperlink. As technology evolves, the law should remain adaptable and encourage companies to design new and innovative ways to provide consumers with notice and cancellation options.

Sincerely,

Association of National Advertisers
California Chamber of Commerce
California Newspaper Publishers Associations (CNPA)
California Retailers Association
Computing Technology Industry Association (CompTIA)
Entertainment Software Association
International Health, Racquet & Sportsclub Association
Internet Association
Internet Coalition
MPA – The Association of Magazine Media
NetChoice
State Privacy & Security Coalition
TechNet

cc: The Honorable Ed Chau
Members, Assembly Committee on Privacy and Consumer Protection