MPA THE ASSOCIATION OF MAGAZINE MEDIA

February 28, 2020

The Honorable Anne R. Kaiser
Chair
Ways and Means Committee
House Office Building - Room 131
Annapolis, MD 21401

The Honorable Alonzo T. Washington
Vice Chair

Re: House Bill 695 Digital Advertising Gross Revenues – Taxation (OPPOSE)

Dear Delegate Kaiser and Delegate Washington:

MPA – The Association of Magazine Media, the trade association of the magazine industry, respectfully submits the following written testimony to urge you and your colleagues to oppose House Bill 695, which seeks to impose a digital advertising gross revenues tax. MPA's membership includes more than 500 magazine media brands that span a vast range of genres across print, digital, mobile and video media. Most of these brands depend on advertising across all media to support their journalistic mission.

MPA submits this testimony on behalf of its national membership, noting that Maryland is home to dozens of magazines that are published in the state, and that Marylanders subscribe to hundreds of magazine brands that are published in the Mid-Atlantic region, and beyond. Most of these magazines feature digital content and are supported by digital advertising online.

<u>Imposing a Digital Advertising Gross Revenue Tax Would Disproportionately and Negative Impact Maryland's Local Businesses and Non-Profits</u>

House Bill 695, while aimed at large advertising platforms, would have significant unintended consequences and increase costs for local Maryland businesses, non-profits, and ultimately Maryland taxpayers. Digital advertising is an affordable awareness and audience generation tool for brick and mortar businesses and not-for-profit organizations. Billboards, television and radio, and even print ads can be cost-prohibitive for small businesses, local community groups and not-for-profit organizations seeking to raise visibility about their offerings.

Digital advertising is an effective and more affordable method for local businesses and non-profits to engage their communities. Despite the focus on large advertising platforms, the financial impact of House Bill 695 would be incurred locally. The likely outcome of a gross revenue-based tax applied on advertising platforms would be a pass-through of the tax onto local businesses, and from the local businesses onto their customers, Maryland taxpayers.

The proposed tax could also deter advertising that is critical to the continued growth of Maryland's economy. We urge you to consider the impact if businesses stopped running advertisements in Maryland that promoted tourism campaigns, or new developments in aerospace, or recruitments for the IT / cybersecurity workforce.

HB 695 Poses Multiple Constitutional Questions on Restricting Commercial Speech

Experts have noted that because HB 695 seeks to tax only digital advertising, rather than all media, the tax would likely be considered "discriminatory" under the federal Internet Tax Freedom Act.

Further, the bill raises First Amendment concerns. By imposing a tax on a specific channel of advertising revenue, including and especially on interfaces associated with news media, the bill raises concerns about restrictions on commercial speech.

Indeed, House Bill 695's Fiscal and Policy Note identifies the Maryland Court of Appeals ruling in 1958 that found a sales tax on advertising proposed by Baltimore City was an unconstitutional violation of the First Amendment.[1]

In the event of a legal challenge on these matters, Maryland taxpayers would incur the cost of defending the tax proposed in House Bill 695.

HB 695 Contains Significant Technical Flaws that Make it Difficult to Implement and Could Undermine Consumer Privacy

First, the bill's proposed method of identifying transactions subject to the tax does not align with standard technical practices. For example, IP address may not be an accurate indicator of location. With the advent of virtual private networks, IP addresses are not definitively an indicator of where an individual is located. This both over-includes and under-includes traffic that could be subject to a tax, and it could encourage advertisers to instead adopt other geographic identifiers for their campaigns.

Second, the bill creates new reporting and compliance requirements that could require a business to affirmatively collect and retain personally identifiable information it might not otherwise collect.

Third, while the bill attempts to single out so-called targeted advertising (e.g., advertising based on a user profile), the more privacy-forward contextual advertising (e.g., advertising based on the content of an article) would also be subject to the punitive tax.

We recognize the Legislature's efforts to fund The Blueprint for Maryland's Future Fund. However, House Bill 695 passes on costs to local Maryland businesses and not-for-profits and contains technical flaws that make it impossible to administer as envisioned.

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[1] Maryland General Assembly Department of Legislative Services, Fiscal and Policy Note First Reader Senate Bill 2 http://mgaleg.maryland.gov/2020RS/fnotes/bil_0002/sb0002.pdf

Ultimately, the proposed tax on digital advertising could slow or reverse the growth of economic activity in Maryland, which could result in further education funding shortfalls.

For these reasons, we urge this committee not to pass House Bill 695.

Respectfully submitted,

Rita Cohen	Emily Emery
Senior Vice President	Director, Digital Policy