February 21, 2023

Senator Donovan Dela Cruz
Hawaii State Capitol, Room 208
415 South Beretania Street
Honolulu, HI 96813

Dear Chair Dela Cruz:

BSA │ The Software Alliance[1] supports strong privacy protections for consumers and appreciates the Senate Committee on Commerce and Consumer Protection's work to improve consumer privacy through Senate Bill 974 (SB974). In our federal and state advocacy, BSA works to advance legislation that ensures consumers' rights — and the obligations imposed on businesses — function in a world where different types of companies play different roles in handling consumers' personal data. At the state level we have supported strong privacy laws in a range of states, including consumer privacy laws enacted in Colorado, Connecticut, and Virginia.

BSA is the leading advocate for the global software industry. Our members are enterprise software and technology companies that create the business-to-business products and services to help their customers innovate and grow. For example, BSA members provide tools including cloud storage services, customer relationship management software, human resource management programs, identity management services, and collaboration software. Businesses entrust some of their most sensitive information — including personal data — with BSA members. Our companies work hard to keep that trust. As a result, privacy and security protections are fundamental parts of BSA members' operations, and their business models do not depend on monetizing users' data.

We appreciate the opportunity to share our feedback on SB974. Our recommendations below focus on BSA's core priorities in privacy legislation: clearly distinguishing between controllers and processors and ensuring SB 974's interoperability with other state laws.

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[1] BSA's members include: Adobe, Alteryx, Atlassian, Autodesk, Bentley Systems, Box, Cisco, CNC/Mastercam, CrowdStrike, Databricks, DocuSign, Dropbox, Graphisoft, IBM, Informatica, Juniper Networks, Kyndryl, MathWorks, Microsoft, Okta, Oracle, Prokon, PTC, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, TriNet, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc.

I. Distinguishing Between Controllers and Processors Benefits Consumers.

We are writing to express our support for SB974's clear recognition of the unique role of data processors. Leading global and state privacy laws reflect the fundamental distinction between processors, which handle personal data on behalf of another company, and controllers, which decide when and why to collect a consumer's personal data. Every state to enact a comprehensive consumer privacy law has incorporated this critical distinction. In Colorado, Connecticut, Utah, and Virginia, state privacy laws assign important — and distinct — obligations to both processors and controllers.[2] In California, the state's privacy law for several years has distinguished between these different roles, which it terms businesses and service providers.[3] This longstanding distinction is also built into privacy and data protection laws worldwide and is foundational to leading international privacy standards and voluntary frameworks that promote cross-border data transfers.[4] BSA applauds you for incorporating this globally recognized distinction into SB974.

Distinguishing between controllers and processors better protects consumer privacy because it allows legislation to craft different obligations for different types of businesses based on their different roles in handling consumers' personal data. Privacy laws should create important obligations for both controllers and processors to protect consumers' personal data — and we appreciate SB974's recognition that those obligations must reflect these different roles. For example, we agree with the bill's approach of ensuring both processors and controllers implement reasonable security measures to protect the security and confidentiality of personal data they handle. We also appreciate the bill's recognition that consumer-facing obligations, including responding to consumer rights requests and seeking a consumer's consent to process personal data, are appropriately placed on controllers, since those obligations can create privacy and security risks if applied to processors handling personal data on behalf of those controllers. Distinguishing between these roles creates clarity for both consumers exercising their rights and for companies implementing their obligations.

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[2] *See, e.g.,* Colorado's CPA Sec. 6-1-1303(7, 19); Connecticut DPA Sec. 1(8, 21); Utah CPA Sec. 13-61-101(12, 26); Virginia CDPA Sec. 59.1-575.

[3] *See, e.g.*, Cal. Civil Code 1798.140(d, ag).

[4] For example, privacy laws in Hong Kong, Malaysia, and Argentina distinguish between "data users" that control the collection or use of data and companies that only process data on behalf of others. In Mexico, the Philippines, and Switzerland, privacy laws adopt the "controller" and "processor" terminology. Likewise, the APEC Cross Border Privacy Rules, which the US Department of Commerce has strongly supported and promoted, apply only to controllers and are complemented by the APEC Privacy Recognition for Processors, which helps companies that process data demonstrate adherence to privacy obligations and helps controllers identify qualified and accountable processors. In addition, the International Standards Organization in 2019 published its first data protection standard, ISO 27701, which recognizes the distinct roles of controllers and processors in handling personal data. For additional information on the longstanding distinction between controllers and processors — sometimes called businesses and service providers — BSA has published a two-pager available here.

II.   Promoting an Interoperable Approach to Privacy Legislation.

Finally, BSA appreciates your efforts to ensure that SB974 creates privacy protections that are interoperable with protections created in other state privacy laws. Privacy laws around the world need to be consistent enough that they are interoperable, so that consumers understand how their rights change across jurisdictions and businesses can readily map obligations imposed by a new law against their existing obligations under other laws.

As an initial matter, we appreciate the harmonized approach you have taken in aligning many of SB974's provisions with the Connecticut Data Privacy Act (CTDPA) and Colorado Privacy Act (CPA). BSA supported the Connecticut, Colorado, and Virginia privacy laws, which build on this same structural model of privacy legislation. In particular, we support SB974's focus on protecting the privacy of consumers, and excluding employment data from the bill's scope and in its definition of "consumer." We also support SB974's approach to enforcement, which provides the Attorney General with exclusive authority to enforce the bill, which we believe will help promote a consistent and clear approach to enforcement. We commend you for drafting SB974's provisions in a manner that is interoperable with protections included in other state privacy laws, which helps drive strong business compliance practices that can better protect consumer privacy.

Thank you for your thoughtful approach in establishing strong consumer privacy protections, and for your consideration of our perspective. BSA would be happy to provide further perspective on this legislation as it progresses through the legislative process.

Sincerely,

Olga Medina

Olga Medina
Director, Policy

CC: Senator Chris Lee