



January 29, 2020

The Honorable Thomas “Mike” Miller
Maryland State Senate
Room 1 East Miller Senate Office Building
11 Bladen Street Annapolis, MD 21401-1991

**RE: SB 2 – Taxation of digital advertising gross revenues
OPPOSE**

Dear Senator Miller,

Internet Association (“IA”) must respectfully **OPPOSE** your **SB 2**. The internet industry opposes this measure because it would enact a discriminatory tax against a single segment of the advertising market, appears to violate both federal law and the U.S. Constitution, hurts Maryland businesses and consumers, and sends a concerning signal to the technology industry about the State’s willingness to foster continued growth in the sector. Given that SB 2 is intended to be a revenue source for new state education spending, we encourage the Legislature to find other, more legally viable approaches to generating this revenue than the fraught approach proposed by this bill.

IA is the only trade association that exclusively represents leading global internet companies on matters of public policy. Our mission is to foster innovation, promote economic growth, and empower people through the free and open internet. We believe the internet creates unprecedented benefits for society, and as the voice of the world’s leading internet companies, IA works to ensure legislators, consumers, and other stakeholders understand these benefits.

If enacted, SB 2 would make Maryland the only state or locality in the country to impose a discriminatory and punitive tax on gross revenues from digital advertising services. The bill only taxes advertisements delivered online (e.g. via a website or app) but does not tax offline equivalent ad services (e.g. print, radio, television). It also punitively imposes a higher tax rate on larger companies that provide digital advertising services (based on global annual gross revenues) than on smaller companies.

The flawed approach in SB 2 likely violates the federal Permanent Internet Tax Freedom Act (PITFA) as well as the U.S Constitution. PITFA prohibits states from imposing “discriminatory taxes on electronic commerce.” The digital advertising tax proposed by SB 2 would result in a prohibited discriminatory tax on electronic commerce in violation of PITFA because Maryland does not also tax service providers of non-digital advertising. Even if it did tax advertising more broadly, other elements of SB 2 might still be considered discriminatory and in violation of federal law, such as the differences in rate or incidence of the tax.



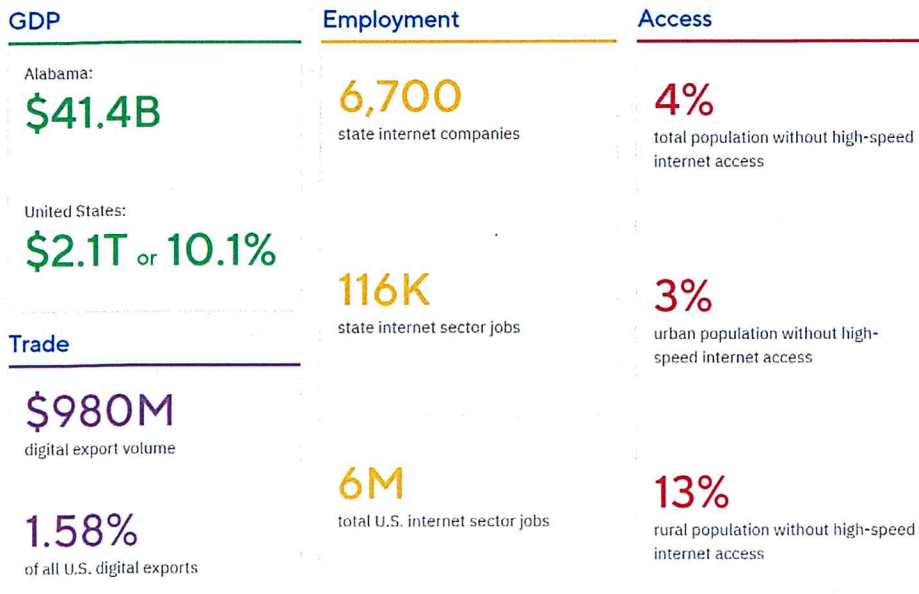
Second, SB 2’s discriminatory elements also likely violate the U.S. Constitution. The law likely violates the Constitution’s Equal Protection Clause due to a lack of a rational basis for discriminating against advertising services provided on a digital interface versus offline. Moreover, the law is constitutionally suspect on both First Amendment grounds (impacts on commercial speech) and Commerce Clause concerns (taxing out-of-state companies more than in-state businesses).

There are also important economic concerns related to broad advertising taxes. Arizona, Iowa, and Florida each passed broad advertising taxes years ago, and each state later repealed the tax because it hurt their local economy and was impossible to administer. Since 1987, when the Florida services tax was repealed, broad advertising taxes have been considered in more than 40 states and rejected every time.

SB 2’s punitive and discriminatory provisions also send a concerning signal to the technology sector about the State’s continued willingness to support innovation within its borders. Other states have not followed this approach and for good reason: a robust internet sector means a stronger economy, greater digital exports, and higher employment¹².

Maryland

The internet means jobs, opportunity, and growth for every community in every state. Individuals, businesses, and community organizations rely on it for their continued success. Below is a snapshot of why the internet matters to people in Maryland and across the United States.



¹ For the most recent stats on Maryland’s internet economy, see IA’s “Internet Economy State by State” feature, available at: <https://internetassociation.org/internet-economy-state-by-state/#/m/MD>

² See also IA’s “Measuring the U.S. Internet Sector” report, available at: <https://internetassociation.org/publications/measuring-us-internet-sector-2019/>



The discriminatory policy targeting digital services in SB 2 not only jeopardizes future growth in these areas, but also hurts main street businesses in Maryland that rely on digital advertising to promote their products and services to consumers in a cost-effective way.

Benefits of Digital Advertising Services

The digital advertising ecosystem benefits entities of every type across the entire spectrum of Maryland's economy. For example, ad publishers like newspapers, small blogs, and small business sites, as well as advertisers such as local small businesses, charitable organizations, and common consumer brands all derive immense benefits from modern online advertising.

The ad-supported business model empowers online creators and allows them to support themselves through their content. Small publishers that make a living by writing their own blogs on everything from cooking to covering community news are supported by modern online advertising. Large publishers and content providers also rely on ad revenue to support their businesses.

By delivering ads to consumers who are most likely to be interested in them, modern online advertising is critical to organizations that want to reach the right audiences in a cost-effective manner:

- Nonprofits can reach new donors and supporters who are likely to be interested in supporting their cause.
- Ads for movies about superheroes can be shown to consumers who actually like superheroes.
- Public service announcements about water conservation targets can be shown to water users living in the applicable communities.
- Calls to action in defense of environmental causes can be shown to people interested in protecting the environment.
- Startup small businesses can advertise their services to audiences who are most likely to be interested and try them over the "big guys".

By allowing these high-value ads to be shown on their sites, publishers of all kinds are able to stay in business and continue creating content, including local newspapers and special interest blogs. But all these entities would suffer from the increased higher cost of digital ads that SB 2 would mandate, and of course that would ultimately be passed on to the Maryland consumer.

Finally, we understand you have referenced concerns over data privacy as a reason for SB 2. IA members are committed to providing consumers with strong privacy protections and control over personal information, as well as to compliance with applicable laws, and advocate for a modern privacy framework in the IA Privacy Principles³. We would be more than happy to discuss these issues with you at any time if it would be helpful.

³ A Privacy Principles for a Modern National Regulatory Framework, available at: https://internetassociation.org/files/ia_privacy-principles-for-a-modern-national-regulatory-framework_full-doc/



Thank you for your consideration of our concerns regarding SB 2. Should you have any questions, please feel free to contact me at callahan@internetassociation.org or (916) 836-8983.

Sincerely,
Robert Callahan

A handwritten signature in black ink that reads "Robert Callahan".

Senior Vice President, State Government Affairs

cc: The Honorable Bill Ferguson, Senate President
Members of the Senate Budget and Taxation Committee