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February 28, 2020

Delegate Anne Kaiser
Chair, Ways and Means Committee
House Office Building, Room 131
6 Bladen St., Annapolis, MD 21401

Dear Madam Chair and Members of the Committee:

I am writing today to explain Google's opposition to HB 695 due to the bill's inequities, potential legality, and technical challenges.

First though, let me provide some context for Google's existing contributions to Maryland's businesses and its economy. In 2018, our most current figures, Google helped provide $3.92 billion of economic activity for Maryland businesses, website publishers, and nonprofits; we provided $8.74 million of free advertising to Maryland nonprofits through our Google Ad Grants program; and 32,000 Maryland businesses, website publishers and nonprofits benefited from using Google's advertising tools. We are proud to help Maryland thrive.

Specific to the bill, tax policies should apply core principles of legal certainty, equity, and comity. This is a particular need for businesses operating across multiple jurisdictions, including the 50 states. Google is concerned that HB 695 diverges from these core principles and protections underpinning U.S. federal and state tax policies. This legislation, if enacted, would impair interstate commerce within the U.S. and would result in a discriminatory tax on electronic commerce prohibited by the *Permanent Internet Tax Freedom Act*. In addition, it would violate the U.S. Constitution's Commerce Clause by targeting *global* annual gross revenues of affected businesses, among other Constitutional concerns.

Google is concerned that this bill will damage the foundation for an Internet that is mostly free-of-charge for consumers -- digital advertising. Society has seen great benefits from an Internet that is largely free to users and assessing a tax on the advertising that undergirds these benefits is a step in the wrong direction. Further, the legislation would create an imbalance between similar businesses that obtain revenue through online advertising and those that employ other revenue models, including subscription fees, to support their sites. This becomes more regressive for people unable to afford making that choice.

The bill also presents significant technical challenges for achieving compliance. A company serving a digital ad will not be able to tell for certain that an ad was displayed to a user in Maryland with enough confidence to avoid question under this bill. Respectfully, that premise exposes a misunderstanding of how Internet advertising works. Devices may not always use a local IP address. Take for instance a user of a corporate network with servers outside the state, someone using a virtual private network, or a user who lives near Washington D.C. or one of the four states that border Maryland and even vice versa, residents of those jurisdictions who may show up on a Maryland IP address. Ads served to any one of these examples could conceivably be seen in-state, but served on an IP address in another. Also stretching the ability to comply is the instance of a user transiting through the state. It seems highly questionable whether Maryland could tax an ad potentially delivered by an out-of-state company on an out of state website and seen by a non-resident who is only passing through the state.

In addition to this technical imprecision, the bill raises privacy concerns. On our platforms, for example, an individual users' settings determine both the granularity of location data stored in their account and the duration of time we retain it. Users can also delete data in their account at any time. This bill would threaten those user controls by effectively requiring us to keep a record of the location of every user who sees advertisements in Maryland. To ensure we are prepared for audits and other financial reporting, we would have to retain relevant data for several years. This is directly contrary to our promise to keep users in control of their data, and specifically undermines our efforts to minimize the amount of incidental location data we collect and store.

Everyone has access to the same Google Search. Tax policies that steer online services toward subscription fees would make them less accessible, limiting a wide range of powerful tools for knowledge, communication, and entertainment to a smaller group of people. Maryland should not risk these harms.

Sincerely,

Ron Barnes
Head of State Legislative Affairs

Cc: Members of the House Ways and Means Committee