



March 29, 2022

The Honorable Thomas J. Umberg, Chair  
California Senate Judiciary Committee  
1021 O Street, Room 3240  
Sacramento, CA 95814

Re: SB 1172 (Pan, Test proctoring services privacy) – SUPPORT

Dear Chair Umberg,

Consumer Reports<sup>1</sup> writes in support of SB 1172, to protect the privacy of data collected by test proctoring services in an educational setting. For over 80 years, Consumer Reports has worked with consumers for truth, transparency, and fairness in the marketplace. We are strong proponents of public policy that bolsters consumers' privacy, and it is within this framework that we support this bill, which would uphold and expand privacy protections consistent with the intent of the California Consumer Privacy Act (CCPA). This bill would protect the privacy of students' test data by default, by requiring businesses providing proctoring services in an educational setting to limit its collection, sharing, and retention of data to what is reasonably necessary to provide the service. By passing this bill, legislators can ensure that students are better able to enjoy the privacy rights that are guaranteed to them under the California constitution.

While the CCPA advances consumer protections in several ways, such as by giving consumers the right to access, delete, and stop the sale of their personal information, in many ways, the CCPA does not fully protect consumer privacy. SB 1172 would help correct this imbalance. Consumer Reports has found that consumers experienced significant difficulty exercising their rights under the CCPA's opt-out provision. In our study, of data broker opt outs, about 14% of the time, burdensome or broken DNS processes prevented consumers from exercising their rights

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<sup>1</sup> Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

under the CCPA.<sup>2</sup> Instead, privacy should be ensured by default.<sup>3</sup> Consumers need data minimization—meaning data collection that is reasonably necessary to operate the service requested by the consumer—which is included in this bill.<sup>4</sup> This is particularly important for testing software, because students typically do not have a choice as to whether they use it or not; they should be able to use it safely without having to take any additional action.

We also appreciate that the strong enforcement provisions will ensure that companies have appropriate incentives to comply—an issue brought into relief by non-compliance with respect to the CCPA, which currently lacks strong privacy enforcement provisions.<sup>5</sup>

Testing data clearly warrants these additional protections. Collecting and maintaining unnecessary data is a serious security risk.<sup>6</sup> This software collects video recordings, facial recognition data, and copies of ID cards, information which could be easily exploited for identity theft and fraud purposes.<sup>7</sup> But concerns about inappropriate disclosure go far beyond its potential misuse for the purposes of fraud. Aside from the inherent privacy interest in keeping this information private, its disclosure could lead to reputational or emotional harm. One student, for example, told Consumer Reports that the proctoring company Proctortrack had a video of her crying. Further, a Consumer Reports evaluation of Proctortrack software, leaked in a data breach, suggests that the company disregarded basic security practices. Particularly in light of these problems, these businesses should not be permitted to collect, maintain, and share data unnecessarily.<sup>8</sup>

For these reasons, we support SB 1172, and urge your aye vote.

Sincerely,

Maureen Mahoney  
Senior Policy Analyst

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<sup>2</sup> *California Consumer Privacy Act: Are Consumers' Digital Rights Protected?*, Consumer Reports (Oct. 1, 2020), [https://advocacy.consumerreports.org/press\\_release/consumer-reports-study-finds-significant-obstacles-to-exercising-california-privacy-rights/](https://advocacy.consumerreports.org/press_release/consumer-reports-study-finds-significant-obstacles-to-exercising-california-privacy-rights/).

<sup>3</sup> *Model State Privacy Act*, Consumer Reports (Feb. 23, 2021), <https://advocacy.consumerreports.org/research/consumer-reports-model-state-data-privacy-act/>.

<sup>4</sup> *California Consumer Privacy Act: Are Consumers' Digital Rights Protected?*, *supra* note 2.

<sup>5</sup> Maureen Mahoney, *Many Companies Are Not Taking the California Consumer Privacy Act Seriously—The Attorney General Needs to Act*, (Jan. 9, 2020), <https://medium.com/cr-digital-lab/companies-are-not-taking-the-california-consumer-privacy-act-seriously-dcb1d06128bb>.

<sup>6</sup> Compl., *FTC v. Infotrax Systems L.C.*, at ¶ 10 (Jan. 6, 2020), [https://www.ftc.gov/system/files/documents/cases/162\\_3130\\_infotrax\\_complaint\\_clean.pdf](https://www.ftc.gov/system/files/documents/cases/162_3130_infotrax_complaint_clean.pdf).

<sup>7</sup> Angela Chen, *Why a DNA Data Breach Is Much Worse than a Credit Card Leak*, The Verge (Jun. 6, 2018), <https://www.theverge.com/2018/6/6/17435166/myheritage-dna-breach-genetic-privacy-bioethics>.

<sup>8</sup> See, Thomas Germain, *Poor Security at Online Proctoring Company May Have Put Student Data at Risk* (Dec. 10, 2020), <https://www.consumerreports.org/digital-security/poor-security-at-online-proctoring-company-proctortrack-may-have-put-student-data-at-risk-a8711230545/>.

cc: Members, California Senate Judiciary Committee  
Christian Kurpiewski, Counsel