

April 26, 2011

Senator Alan Lowenthal and Members  
State Capitol  
Sacramento, CA 95814  
By email to: [Leticia.Garcia@SEN.CA.GOV](mailto:Leticia.Garcia@SEN.CA.GOV)  
By fax to: 916-327-9113

**RE: SB 761 - Support If Amended**

Dear Senator Lowenthal:

The Electronic Frontier Foundation (EFF) shares the concerns about online privacy that led you to introduce SB 761, the California Do Not Track Bill, which would protect online privacy by providing consumers with a method of opting-out of online tracking.

EFF's policy<sup>1</sup> and technical<sup>2</sup> analysis of online tracking has led us to conclude that most consumers cannot easily prevent online tracking by third parties—companies that consumers have no direct relationship with, and often do not even know about—making it impossible for them to keep those companies accountable. Given the online tracking industry's failure to adopt robust and effective means of self-regulation, EFF has joined the Federal Trade Commission and companies like Mozilla and Microsoft in supporting Do Not Track, a simple, universal, browser-based signaling mechanism that would make it easy for consumers to say “don't track me.” We have written numerous articles explaining and supporting this technical and policy solution to the problem of pervasive online tracking.<sup>3</sup>

We have various concerns about the language of the bill, but we are particularly troubled by its failure to clearly distinguish between first parties and third parties. A “first party” is a website a user knowingly visits and thus has a direct relationship with. A “third party,” such as a cross-domain advertising company, is often embedded within a first party site so that consumers may not even realize that the third-party tracking company is present, and thus cannot protect themselves.

While we acknowledge privacy concerns about data collection by first-party websites, we believe

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<sup>1</sup> *Six Tips to Protect Your Search Privacy*, a whitepaper of the Electronic Frontier Foundation, September 2006, <https://www.eff.org/wp/six-tips-protect-your-search-privacy> and *EFF's Top 12 Ways to Protect Your Online Privacy*, a whitepaper of the Electronic Frontier Foundation, April 2002, <https://www.eff.org/wp/effs-top-12-ways-protect-your-online-privacy>

<sup>2</sup> *Panopticlick: How Unique – and Trackable – is Your Browser?* a research project of the Electronic Frontier Foundation, released January 2010, <https://panopticlick.eff.org/>

<sup>3</sup> Recent publications include:

- *FTC's New Privacy Report Endorses 'Do Not Track' Mechanism to Empower Online Consumers* Rainey Reitman December 1, 2010 <https://www.eff.org/deeplinks/2011/04/well-meaning-privacy-bill-rights-could-codify>
- *Mozilla Leads the Way on Do Not Track*, Rainey Reitman, January 24, 2011, <https://www.eff.org/deeplinks/2011/01/mozilla-leads-the-way-on-do-not-track>
- *What Does the 'Track' in 'Do Not Track' Mean* Peter Eckersley, February 19, 2011 <https://www.eff.org/deeplinks/2011/02/what-does-track-do-not-track-mean>
- *Tracking Protection Lists: A privacy enhancing technology that complements Do Not Track*, Peter Eckersley, March 16, 2011, <https://www.eff.org/deeplinks/2011/03/tracking-protection-lists>.
- *Well Meaning Privacy 'Bill of Rights' Wouldn't Stop Online Tracking*, Rainey Reitman., April 14, 2011 <https://www.eff.org/deeplinks/2011/04/well-meaning-privacy-bill-rights-could-codify>

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that these websites do not currently raise the same serious privacy issues as third parties. The rampant, cross-domain, invisible data collection by third-party tracking companies is a grave threat to online consumer privacy. We believe SB 761 should be amended to focus specifically on third parties, ensuring that consumers can easily opt-out of such tracking.

EFF would welcome an opportunity to work with you and your staff to amend the language of the bill to ensure that it is effective and focused on third-party trackers.

Sincerely,

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cc: John Simpson, Consumer Watchdog