ECOMMERCE INNOVATION ALLIANCE

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Senator Jesse Arreguín
Chair, Senate Committee on Public Safety
1021 O Street, Room 6710
Sacramento, CA 95814-4900

Senator Lena Gonzalez
Member, Senate Committee on Public Safety
1021 O Street, Suite 8610
Sacramento, CA 95814-4900

Senator Kelly Seyarto
Vice Chair, Senate Committee on Public Safety
1021 O Street, Suite 7120
Sacramento, CA 95814-4900

Senator Sasha Renée Pérez
Member, Senate Committee on Public Safety
1021 O Street, Suite 6720
Sacramento, CA 95814-4900

Senator Anna Caballero
Member, Senate Committee on Public Safety
1021 O Street, Suite 7620
Sacramento, CA 95814-4900

Senator Scott Wiener
Member, Senate Committee on Public Safety
1021 O Street, Suite 8620
Sacramento, CA 95814-4900

RE: Support for Senate Bill 690 – Clarifying the Scope of the California Invasion of Privacy Act (CIPA) and Protecting California's Small and Mid-Sized Ecommerce Businesses

Dear Chair Arreguín and Members of the Senate Public Safety Committee,

I am writing to you today on behalf of the Ecommerce Innovation Alliance, a trade association dedicated to supporting the growth and innovation of small and mid-sized ecommerce companies serving California, including many who are based there. We are writing to express our strong support for Senate Bill 690 (SB 690), which seeks to clarify the application of the California Invasion of Privacy Act (CIPA) to standard online business activities already governed by the California Consumer Privacy Act (CCPA).

Our member companies, like many businesses with an online presence accessible to California consumers, are facing an alarming increase in lawsuits and arbitration demands under CIPA. These claims allege that the use of common website tracking technologies, such as cookies, pixels, tags, and beacons, to collect and use personal information constitutes an unlawful "pen register" or "trap and trace" device under CIPA. Plaintiffs' attorneys are leveraging this decades-old criminal statute, originally enacted in 1967 to prevent eavesdropping on telephone calls, to circumvent the limitations of more recent privacy laws like the CCPA, which generally do not provide a private right of action for violations beyond data breaches.

This wave of CIPA litigation places an **unfair and significant burden** on our member companies. Small and mid-sized ecommerce businesses often rely on third-party technologies for essential functions, including marketing, analytics, and customer engagement. They are now finding themselves the target of what many perceive as **"shakedown lawsuits"** and demand letters, often with the threat of costly litigation and potential statutory damages of **$5,000 per violation**. The choice for these businesses is often a **lose-lose situation**: either settle these claims, incurring significant and often unaffordable costs, or face protracted and expensive legal battles.

While large corporations may be able to absorb the cost of these nuisance lawsuits, it is particularly painful for small businesses. For many, paying thousands of dollars in legal fees to defend themselves or settling for substantial sums may be the difference between putting food on the table for their families or, perhaps, creating a job for someone in our communities. These cases are a drain on innovation, investment, and fair access to digital tools that help small businesses compete.

CIPA was codified to prevent the recording of telephone calls without a warrant or consent. It was not designed to address the complexities of modern internet technologies and online business practices. The application of CIPA to website tracking effectively criminalizes standard online business activities that are already subject to the comprehensive regulatory framework of the CCPA. The CCPA requires businesses to disclose their data practices and provide consumers with rights regarding their personal information, including the right to opt out of the sale of their data. Businesses have invested significant resources to comply with the CCPA's opt-out framework, and now face CIPA lawsuits despite, and sometimes due to, their CCPA compliance.

SB 690 offers a **common-sense solution** by clarifying that business activities already regulated by the CCPA are not within the scope of CIPA. Senator Caballero's proposed amendments to CIPA aim to clarify the statute's intent and scope, ensure that it protects real privacy interests, and prevent opportunistic litigation that capitalizes on outdated language in a pre-internet law. This amendment would help to **restore the intended purpose of CIPA** and prevent its misuse to target legitimate online business operations.

Moreover, SB 690 aligns with the reasoning of **recent key decisions in California state courts** that have begun to limit the expansive interpretation of CIPA in the context of website tracking technologies. These courts have recognized that CIPA was not intended to regulate standard website analytics and that website users may not have a reasonable expectation of privacy in their IP addresses when voluntarily interacting with websites.

By passing SB 690, the Legislature can provide **much-needed clarity and uniformity** for California's ecommerce businesses, allowing them to continue to innovate and serve consumers without the constant threat of meritless litigation under an outdated statute. SB 690 will ensure that the CCPA remains the governing framework for data privacy in California, as originally intended.

The Ecommerce Innovation Alliance strongly urges your support for SB 690. Thank you for your time and consideration of this important legislation.

Sincerely,

G. David Carter
President & CEO
Ecommerce Innovation Alliance