

# SB 729

# Testimony

Measure Title: RELATING TO THE INTERNET PRIVACY.

Report Title: Internet; Privacy

Description: Requires operators of commercial websites or online services that collect personally identifiable information through the Internet about consumers in the State who use the websites or online services to conspicuously post their privacy policies on their websites or through any other reasonably accessible means.

Companion:

Package: None

Current Referral: TEC, CPN

Introducer(s): DELA CRUZ, SOLOMON, Baker, Kahele, Nishihara

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
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**Subject:** Submitted testimony for SB729 on Feb 5, 2013 13:15PM  
**Date:** Friday, February 01, 2013 4:52:19 PM  
**Attachments:** [SB0729\\_BED-HTDC\\_02-05-13\\_TEC.pdf](#)

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**SB729**

Submitted on: 2/1/2013

Testimony for TEC on Feb 5, 2013 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Yuka Nagashima		Comments Only	No

Comments: Written Statement of YUKA NAGASHIMA Executive Director & CEO High Technology Development Corporation before the SENATE COMMITTEE ON TECHNOLOGY AND THE ARTS Tuesday, February 5, 2013 1:15 pm State Capitol, Conference Room 414 In consideration of SB 729 RELATING TO INTERNET PRIVACY. Chair Wakai, Vice Chair Nishihara, and Members of the Committee on Technology and the Arts. The High Technology Development Corporation (HTDC) respectfully offers comments on HB39 requiring commercial websites to post their privacy policies. HTDC agrees with the intent of protecting consumer privacy. HTDC suggests that national policies would be best suited to address this issue as online presence is a global business. It is not clear that the requirement to post privacy policies will help protect consumers and also unclear how the policies will be enforced globally. The bill could unnecessarily burden Hawaii based companies with a requirement that is difficult to enforce on global competitors. Thank you for the opportunity to submit testimony on this bill.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Written Statement of  
**YUKA NAGASHIMA**  
**Executive Director & CEO**  
High Technology Development Corporation  
before the  
**SENATE COMMITTEE ON TECHNOLOGY AND THE ARTS**  
Tuesday, February 5, 2013  
1:15 pm  
State Capitol, Conference Room 414  
In consideration of

**SB 729 RELATING TO INTERNET PRIVACY.**

Chair Wakai, Vice Chair Nishihara, and Members of the Committee on Technology and the Arts.

The High Technology Development Corporation (HTDC) respectfully **offers comments** on HB39 requiring commercial websites to post their privacy policies.

HTDC agrees with the intent of protecting consumer privacy. HTDC suggests that national policies would be best suited to address this issue as online presence is a global business. It is not clear that the requirement to post privacy policies will help protect consumers and also unclear how the policies will be enforced globally. The bill could unnecessarily burden Hawaii based companies with a requirement that is difficult to enforce on global competitors.

Thank you for the opportunity to submit testimony on this bill.



Ron Barnes  
VP, State Affairs

February 4, 2013

The Honorable Glenn Wakai  
Chairman  
Senate Technology and the Arts Committee  
Hawaii State Capitol  
Room 216  
Honolulu, HI 96813

Dear Mr. Chairman:

I am writing on behalf of the Direct Marketing Association (DMA)<sup>1</sup> with concerns about SB 729, which requires the posting of a website or online service's privacy policy.

Let me begin by agreeing with the premise of the bill that consumers should have clear access to a website's privacy policy. DMA does not condone playing "hide the ball" with information that helps consumers understand how information is used. Having established this agreement though, there are two aspects of the bill that DMA believes could be narrowed and still achieve the same objectives without creating undue burdens on website operators.

First, the requirements in subpart 3a-c of the definition of "conspicuously post" are too specific and may not easily accommodate all of the types of devices on which consumers now have Internet access. Webpages are often optimized for a specific type(s) of device and mandating that a certain feature always appear in the same fashion regardless of any possible technical limitations of the device or screen is unnecessary. The bill could instead require that the text link to the privacy policy be "clearly and conspicuously" displayed, terms that have established meanings and which would achieve the same purpose.

Second, each of subparts 1-7 under the definition of "personally identifiable information" (PII) should be linked to an actual person in order to be personally identifiable information. For example, virtually any series of numbers in the following sequence, ###-###-####, could be a telephone number

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<sup>1</sup> DMA is the leading global trade association of businesses and nonprofit organizations using and supporting multichannel direct marketing tools and techniques, including the U.S. Mail. Founded in 1917, DMA today represents more than 2,400 members including catalogers, financial services, book and magazine publishers, retail stores, teleservices providers, industrial manufacturers, Internet-based businesses, and a host of other segments, as well as the service industries that support them, such as printers.

or any series of numbers in this sequence ###-##-####, could be a Social Security number. However, without a direct linkage to an actual person they are merely a sequence of numbers. Typically, the practice has been to define PII as “a first name or initial and last name in combination with” a specific identifier. Tailoring the definition this way would help to keep it in line with what has developed as current practice. The same goes for subparts 3 and 6, regarding “other identifiers”. Email addresses, screen names, “handles” or other aliases identify an individual only when there is a way to connect them with a certain individual. In the end, the point is to classify PII as information that specifically identifies an individual, not just information that can be linked to an individual, but without knowing to whom, is just a jumble of numbers or words with no context.

DMA firmly believes that consumers should have access to privacy policies and that access should not be hidden. These suggestions are not intended to dilute the intention of the bill only to help shape it to the contours of a more widely adopted form of PII and how the Internet is accessed by consumers. I would be pleased to provide any further information that might be helpful to the committee as it considers these comments and the bill.

Sincerely,



Ron Barnes  
Vice President, State Affairs

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**Subject:** Submitted testimony for SB729 on Feb 5, 2013 13:15PM  
**Date:** Friday, February 01, 2013 12:38:38 PM  
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**SB729**

Submitted on: 2/1/2013

Testimony for TEC on Feb 5, 2013 13:15PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rick Tsujimura	T-Mobile	Oppose	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**SENATE COMMITTEE ON  
TECHNOLOGY AND THE ARTS**

February 5, 2013

Senate Bill 729 Relating to the Internet Privacy

Chair Wakai and members of the Senate Committee on Technology and the Arts, I am Rick Tsujimura, representing T-Mobile USA, Inc.

T Mobile opposes Senate Bill 729 and offers the following observations.

Our primary but not singular concern with this measure is the definition of “conspicuously post” on page 1, line 7. This is problematic, and T-Mobile is concerned that it could even meet these definitions. We have a consistent look across all our websites and we definitely post a link to our privacy policy on the home page in a manner we consider to be “conspicuous”. But, for instance, we don’t believe we would satisfy the typography requirements. Attached is a screen shot of our home page showing the link to our Privacy Policy, as well as to Privacy Resources. You can see that it is visible, “conspicuous”, and yet probably wouldn’t meet even the definitional requirements of the bill.

We have worked hard to develop a consistent look and feel to our website, including consistent placement of links to our privacy policy to make it easy for our customers to find the information they are looking for. Furthermore, designs and consumer expectations change over time and such rigid requirements can lead to an overall creative constraint that is inappropriate. We want our customers to be able to find our privacy policy and information about our programs, but we don’t believe that government should be dictating how that should look.

In general, we oppose legislation that is this prescriptive and this directive, particularly at the state level. We are concerned that we will have to conform our website to meet conflicting requirements of multiple states and other jurisdictions. For a national company, this is a nightmare. We believe that by doing so the state may be interfering in interstate commerce by establishing what would be national web requirements. If permitted in this state, all other states might begin to engage in similar practices, leaving providers having to guess which state law applies and/or supersedes.

Finally, the fines that would be imposed are excessive. We oppose legislation of this type that would impose fines of this nature on companies doing business in Hawaii.

The bottom line is that we’re concerned about this bill moving forward. We would be less concerned if it didn’t include the onerous definitions of “conspicuously”, but we would still oppose the bill.

Thank you for the opportunity to present this testimony.

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**Testimony of  
Gary M. Slovin  
on behalf of  
USAA**

DATE: February 4, 2013

TO: Senator Glenn Wakai  
Chair, Committee on Technology and the Arts  
*Submitted via email [TECtestimony@capitol.hawaii.gov](mailto:TECtestimony@capitol.hawaii.gov)*

RE: **S.B. 729 – Relating to the Internet Privacy**  
**Hearing Date: Tuesday, February 5, 2013 at 1:15 pm**  
**Conference Room 414**

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Dear Chair Wakai and Members of the Committee on Technology and the Arts:

I am Mihoko E. Ito, testifying on behalf of USAA. USAA, a diversified financial services company, is the leading provider of competitively priced financial planning, insurance, investments, and banking products to members of the U.S. military and their families. USAA has over 82,000 members in Hawaii, the vast majority of which are military-based members.

USAA **opposes** S.B. 729, which requires operators of commercial websites or online services that collect personally identifiable information through the Internet about consumers in the State who use the websites or online services to conspicuously post their privacy policies on their websites or through any other reasonably accessible means.

USAA posts its privacy promise on its website. The placement of the notice is two clicks away, but the proposed bill seems to require it to be one click away. If an organization has several privacy promises (e.g., one that applies to all data collection, one that applies to only online data collection, one that is required by GLBA, etc), then it is not feasible to have them all one click away. USAA has a Security and Privacy Center, which is linked from its homepage that contains links to USAA's privacy and security information. At a minimum, we suggest amending (3) to something like...“to a webpage on which the actual privacy policy is accessible, if the text link is...”

Thank you for the opportunity to submit testimony on this measure.

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Gary M. Slovin  
Mihoko E. Ito  
Christine Ogawa Karamatsu  
Tiffany N. Yajima

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