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**Re: Public Comment on New Jersey Privacy Regulations ([N.J.A.C. 13:45L](#))**

A thriving, free, and independent press is an essential part of any healthy democracy and plays a vital role in supporting New Jersey's economy and local communities. Please accept this letter, which is jointly submitted by the New Jersey Press Association ( " NJPA") and the News Media Alliance (The Alliance"), in opposition to provisions of the proposed Data Privacy Regulations ("Proposed Rules"). NJPA is a non-profit organization incorporated in 1857 under the laws of the State of New Jersey. The mission of NJPA is to help newspapers remain editorially strong, financially sound, and free from outside influence. NJPA pursues these goals as a service both to its members and to the people of New Jersey. NJPA is an organization comprising 16 New Jersey dailies, three out-of-state dailies, 165+ community weeklies, four non-English language newspapers, seven specialty publications, over 60 digital news websites, and over 70 associate members with interest in news media and the news business. The Alliance is a nonprofit organization representing the newspaper, magazine, and digital media industries and empowers members to succeed in today's fast-moving media environment. The Alliance represents over 2,200 diverse publishers in the United States and internationally, ranging from the largest news and magazine publishers to hyperlocal newspapers and from digital-only outlets to papers that have printed news since before the Constitutional Convention. Alliance members are trusted and respected providers of quality journalism, and The Alliance diligently advocates on a broad range of current issues affecting news media entities, including consumer privacy laws and regulations that relate directly to Alliance members' trusted relationships with their readers.

Article I, Paragraph 6 of the New Jersey Constitution enshrines the freedom of the press and provides, in part, : "No law shall be passed to restrain or abridge the liberty of speech or of the press." NJPA and The Alliance urge the New Jersey Division of Consumer Affairs ("the Division") to take a more moderate approach in its proposed Data Privacy Regulations ("Proposed Rules") to avoid constraining New Jersey citizens' access to high-quality journalism.

We implore the Division to refrain from an overbroad rulemaking that exceeds the scope of the New Jersey Data Privacy Act (the “Act”) passed by the legislature. Instead, we encourage the Division to promulgate rules that are consistent with the Act and both protect the privacy rights of New Jersey consumers without overburdening businesses (particularly, publishers) with compliance obligations that offer little appreciable consumer benefit and do not exceed the Division’s authority.

### **The Proposed Rules Introduce A “Duty of Care” Which Could Expose Publishers to Unknown and Unnecessary Liability**

**Section 13:45L-6.4** of the Proposed Rules seeks to impose a “duty of care” regarding data security practices and safeguards. The Proposed Rules include language that resembles a fiduciary duty, which would impose a liability standard that is not included in the Act and therefore beyond the scope of the Division’s authority. The Proposed Rules do not specifically define important requirements (“appropriate data security safeguards”), and instead, introduce a number of factors that may be considered when trying to determine what is “appropriate.” The Division’s new duty of care standard is too onerous and subjective, and could expose already vulnerable publishers to additional (and unnecessary) legal liability. This administratively created “duty of care” could provide opportunities for the plaintiffs’ bar to attack publishers with new and creative causes of action under the New Jersey Consumer Fraud Act. The Proposed Rules may not introduce new liability standards for enforcement – that responsibility is for the legislature alone. For these reasons, we urge the Division to strike any references to a new “duty of care.”

### **The Proposed Rules Create Tension Between Standard Newsgathering Practices and Undermine the Constitutionally Protected Freedom of the Press**

The Proposed Rules impose unnecessary restrictions that undermine publishers’ abilities to report accurately and effectively, and impede essential journalistic functions. **Section 13:45L-1.3(d)(1)(ii)** of the Proposed Rules prohibits publishers from using outputs (either data or resulting research) from internal research to develop, improve, or repair products, services, or technology to train “artificial intelligence” (“AI”), unless the consumer has affirmatively consented to such use. This provision effectively creates a new “opt-in” consent requirement for using lawfully-collected personal data. This improper exercise of the Division’s regulatory authority goes beyond what the legislature determined to be appropriate under the Act and also extends beyond current privacy laws in other states. Publishers already rely on various types of “artificial intelligence” to run their businesses, by, among other things, helping them to serve and suggest content and advertising to readers while on the publisher’s website/mobile app, filtering comments and reader-provided content, processing feedback and leads, or analyzing primary source materials (including large data sets) including for First Amendment-protected reporting purposes.

The Proposed Rules should not prevent or otherwise restrict publishers from responsibly leveraging data using artificial intelligence to make their personalized, edited content more readily available to readers at a reasonable cost (and in some instances no cost), particularly in an environment otherwise rife with disinformation.

Moreover, the Act makes no mention of “artificial intelligence,” making it even clearer that the Division is not authorized to regulate it. Even if the Division were authorized to regulate “artificial intelligence, which it is not, the Proposed Rules never formally define the term. Without a clear definition of what qualifies as “artificial intelligence,” publishers are faced with uncertainty, as technologies they currently use could suddenly require additional compliance.

**Section 13:45L-6.3(b)(5)** of the Proposed Rules also requires controllers to conduct an annual assessment of biometric identifiers, and non-biometric data such as photographs, and audio or video recordings to determine if they are still “necessary” for the specific processing purposes. This additional requirement, particularly as concerns photographs and audio/video recordings, should not apply to newspapers and other newsgathering publications that publish fact-checked information of interest to New Jersey residents, such as the newsgathering offered by members of the Alliance and NJPA. The Division should either exempt newsgathering entities from this onerous review or eliminate the requirement entirely.

The restrictions on the use of artificial intelligence and mandatory annual assessments are overbroad, beyond the Division’s authority and contrary to long-standing and well-established journalism practices. These provisions of the Proposed Rules also violate Article I of the New Jersey Constitution. Considering their detrimental impact on newsgathering entities, we urge the Division to either remove these provisions or exempt publishers from these unreasonable and harmful obligations.

### **The Proposed Rules Impose Burdensome Restrictions and Compliance Obligations on Publishers, Without Adding Meaningful Consumer Privacy Benefits**

The Proposed Rules impose several burdensome restrictions on publishers’ ability to engage in the practice of targeted advertising, which generates revenue necessary for publishers to continue to create fact-checked content available to New Jersey residents at low cost or sometimes no cost. The restrictions impermissibly go beyond the scope of the Act and will require publishers to expend precious time and resources on additional disclosures and internal assessments that will not provide consumers with any appreciable privacy benefits. The Division should eliminate these restrictions.

**Section 13:45L-2.4** of the Proposed Rules require publishers who engage in targeted advertising or the sale of personal data to provide a detailed notice to opt-out in a manner that is inconsistent with the already well-established opt-out mechanisms in place in other state consumer privacy laws. In addition to creating inconsistency and being unreasonably burdensome and impractical, this requirement impermissibly exceeds the requirements of the Act and is therefore improper. The requirement will significantly affect publishers’ ability to engage in targeted advertising, which is a significant source of revenue for news and media outlets that helps keep high-quality journalism free or affordable in a time when subscription and print revenues continue to decline. Requiring a lengthy and timely notice will disrupt the reader’s experience, cause friction, and lead to decreased reader engagement. Ultimately, regulations like this threaten to undermine the financial sustainability of newsgathering entities, which will result in fewer voices, less diversity, and a less informed New Jersey public.

The Proposed Rules also include several additional privacy policy disclosures, including record retention requirements in **Section 13:45L-2.2(a)(3)**. Where these record retention requirements may change, publishers must update their privacy policy and notify consumers under **Section 13:45L-6.2(e)**. These mandatory disclosures could have a chilling effect on the editorial process. For news organizations, decisions about how long to retain sensitive materials (such as drafts, unpublished notes, recordings, communications with sources, or confidential investigative files) are often closely protected for journalistic integrity. Publicly disclosing record retention policies could reveal important details about newsgathering practices, investigatory timelines, or the methods used to protect sources' identities, and other sensitive information. Ultimately, mandatory public posting of record retention policies erodes editorial independence as well publishers' abilities to manage information the way they deem necessary for responsible newsgathering, striking at the core of a free press.

## Conclusion

New Jersey consumers deserve access to high-quality journalism, but the Proposed Regulations will be deeply harmful to New Jersey readers who deserve access to affordable, high-quality journalism. Overly restrictive Proposed Rules will constrain the press and will exacerbate the developing news deserts across the state. The burden of compliance will disproportionately affect smaller and local news outlets, who may lack the technical and legal resources to comply.

To maintain a free and fair press for New Jersey readers, NJPA and The Alliance urge the Division to reject the above sections of the Proposed Rules or, consistent with other state privacy laws and the state Constitution, introduce an exception for newsgathering entities.



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