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Wednesday, July 3, 2019

**Faxed to (916) 403-7394**

Senate Judiciary Committee  
State Capitol Room 2187  
Sacramento, CA 95814

RE: **SUPPORT AB 1395 (Cunningham) – Information privacy: Smart speaker devices**

Dear Committee Members:

The California Civil Liberties Advocacy is writing to express **support** for Assembly Bill 1395 (Cunningham). If enacted, AB 1395 will prohibit smart speaker devices, such as Google Home or Amazon Alexa, or their manufacturers, from saving or storing recordings of verbal commands or conversations heard by the device, regardless of whether the device was triggered by a key word or phrase. While we welcomed the previous amendments covering other connected devices, we understand the opposition concerns and feel that the scope is beyond the original intent of AB 1395 and warrants more careful consideration in subsequent legislative years. Thus, the CCLA is still in strong support of the current version of AB 1395.

According to Forbes, over 100 million Amazon smart speaker devices have been sold as of the start of 2019.<sup>i</sup> This is concerning as the population of the United States is about 330 million.<sup>ii</sup> It is reasonable to infer that nearly every household in the nation, including California, will have a smart speaker device in their home, vehicle, or practically anywhere internet connectivity is available.

Bloomberg recently reported that recordings from these devices are transcribed and annotated by live people before being fed back into the software. The purpose is to eliminate gaps in the voice assistant's understanding of human speech so it can better respond to commands.<sup>iii</sup> Workers sometimes pick up things that the users would probably rather be private, such as people singing in the shower or a child screaming.<sup>iii</sup> Interestingly, Bloomberg goes on to report that the teams who review these recordings use an internal chat room to share files when they need help determining certain words or when they "come across an amusing recording."<sup>iii</sup> Two workers reported that they picked what they believed was a sexual assault.<sup>iii</sup> The article did not elaborate but this poses a serious privacy issue.

Whether or not criminal conduct is taking place, the privacy of someone's dwelling is sacred and neither governments nor corporations have a right to spy on citizens. What if the workers were wrong or misinterpreting the situation? We already know that Amazon and other tech companies are sharing facial recognition data with law enforcement<sup>iv</sup>, an issue the CCLA has been trying to bring to the attention of members of this Legislature to no avail for nearly three years. And as of the day of this writing, there have been reports in the media that Amazon Alexa workers can access users' home address information.<sup>v</sup> It is starting to seem that every day there is a new report about some tech giant like Amazon, Google, or others invading consumers' privacy.

*"Indifference to personal liberty is but the precursor of the state's hostility to it."*

*— Justice Kennedy, U.S. Supreme Court*

Beginning late last year, Microsoft started calling on the government and contemporary tech corporations to uphold peoples' privacy as a human right and to enact laws and policies to uphold that right.<sup>vi</sup> Microsoft CEO Satya Nadella says "the tech industry and governments need to collectively consider the unintended consequences of every business becoming a digital company," highlighting three major considerations: privacy, cybersecurity and artificial intelligence.<sup>vi</sup> It is not uncommon for organizations like the CCLA to call for these type of regulations. But when the companies who created and continue to profit from this technology start asking the government to regulate them, it is time to seriously stop and address these issues.

### **Affirmative Written or Electronic Consent**

The CCLA also supports the current definitions for affirmative or electronic consent, which require a notice that is separate from the device terms of use, explaining how recordings will be used and that refusal to grant consent will not impact the basic functions of the device. End-User License Agreements (EULA's) are notorious for burying terms deep within a long document that is either provided on inquiry notice alone, or in such small margins or text, that people rarely, if ever, read them.<sup>vii</sup> Similar to EULA's, Terms of Use (or Service) cover a wide range of issues that govern the behavior of a user while in use of a website or mobile app, such as those used in conjunction with smart speaker devices. Ownership, third party websites, payments, copyright notices and more are included in the Terms of Use.<sup>viii</sup> By keeping the consent separate from the Terms of Use and/or EULA, AB 1395 will help consumers stay informed and ensure that they are given the chance to understand that fact that recordings of their private interactions can be made, how they will be used, and whether they really want to participate.

For all of the abovementioned reasons, the CCLA strongly **supports** AB 1395.

Very truly yours,



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Cc: Assembly Member Jordan Cunningham  
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<sup>i</sup> Kate O'Flaherty, Amazon Staff Are Listening to Alexa Conversations -- Here's What to Do (Forbes 2019), <https://www.forbes.com/sites/kateoflahertyuk/2019/04/12/amazon-staff-are-listening-to-alexa-conversations-heres-what-to-do/#6dd4fe3d71a2> (last visited Apr. 24, 2019).

<sup>ii</sup> U.S. and World Population Clock (U.S. Census Bureau 2019), <https://www.census.gov/popclock/> (last visited Apr.

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24, 2019).

- <sup>iii</sup> Matt Day, Giles Turner & Natalia Drozdiak, Amazon Workers Are Listening to What You Tell Alexa (Bloomberg, 2019), <https://www.bloomberg.com/news/articles/2019-04-10/is-anyone-listening-to-you-on-alex-a-global-team-reviews-audio> (last visited Apr. 24, 2019).
- <sup>iv</sup> Dave Lee, Amazon Defends Providing Police Facial Recognition Tech (2018), <https://www.bbc.com/news/technology-44220037> (last visited Apr. 24, 2019).
- <sup>v</sup> Matt Day, Giles Turner & Natalia Drozdiak, Amazon Alexa Reviewers Can Access Customers' Home Addresses (Bloomberg 2019), <https://www.bloomberg.com/news/articles/2019-04-24/amazon-s-alex-a-reviewers-can-access-customers-home-addresses> (last visited Apr. 24, 2019).
- <sup>vi</sup> Elizabeth Schulze, Microsoft CEO Satya Nadella: Tech Companies Need to Defend Privacy As a Human Right (CNBC 2018), <https://www.cnn.com/2018/11/01/microsoft-ceo-tech-companies-need-to-defend-privacy-as-a-human-right.html> (last visited Apr. 24, 2019).
- <sup>vii</sup> David Berreby, Click to Agree with What? No One Reads Terms of Service, Studies Confirm, 2017 The Guardian, Mar. 3, 2017 at (2017), <https://www.theguardian.com/technology/2017/mar/03/terms-of-service-online-contracts-fine-print> (last visited July 3, 2019).
- <sup>viii</sup> Law Trades, Inc., What Is the Difference Between "Terms of Service" and "EULA"?, L. Trades , What Is the Difference Between "Terms of Service" and "EULA"? (last visited July 3, 2019).