



July 27, 2021

**Memo in Opposition to Int. 2311-2021
July 2021**

Dear honorable members of the New York City Council,

I write to you today on behalf of the Electronic Frontier Foundation, the leading digital rights nonprofit organization dedicated to furthering privacy, free expression, and innovation. EFF is supported by more than 35,000 donors nationwide, including in New York City. We regret that we must respectfully oppose Int. 2311-2021.

We understand and sympathize with the goal to set a more level playing field for all businesses, particularly after the year we all have faced. Yet mandated data-sharing is not the way to regulate technology companies. Such mandates come at the cost of privacy; this measure compels consumers to share information with entities they may not wish to, and likely without their knowledge. Regulators should be looking for ways to limit needless consumer data collection to protect consumers, not to expand it.

First and foremost, consumer choice should be the primary consideration for any data-sharing program. While appreciate the changes that have been made to this provision to better protect and give consumers some choices of their information, it does not go far enough. If consumers do nothing, their information will be shared with every restaurant they order from. But privacy should be the default of any transaction, and consumers should be asked to opt-in to sharing of their information every time it could be transferred to a new entity.

This should not be something they have to ask to be opted-out from every time they turn to their phones to order food, as a step in every transaction. This places too much burden on consumers. The default should be that they are given the opportunity to share their information with businesses they trust.

Second, it is not clear from this version of the bill what information may be collected, only that “applicable” information must be shared. That could easily include information that extends beyond what a reasonable person would expect to share when ordering food normally, again compelling consumers to share information they may not wish to share.

Finally, this bill places consumer information at risk. While we do appreciate the changes to the bill to limit how restaurants may use the information they obtain, there are still no requirements outlining security measures for this information. A trove of information derived from delivery apps could include, for example, name, phone number, address, or email address.

This sets up a ripe target for hackers and data thieves who want to exploit that information. It’s unlikely that all restaurants will have the means or the knowledge to properly protect the information they receive from delivery platforms, again exposing

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consumers to risk. And, as noted in our previous letter, given the lack of security protections after this data is shared, most concerning is that the bill is silent on notice to consumers if their personal information held by a restaurant is accessed by a third party without the restaurant's permission. Since the information to be shared is not covered by the New York State Shield Act, this is most concerning that there could be a security breach and no notice would be provided to customers that their name, address, email address, and telephone numbers had been improperly disclosed to a person or entity.

Additionally, consumers are also offered no remedy in this bill if their information is shared, sold, or otherwise disclosed without their permission.

Int. 2311-2021 needlessly forces consumer data to be shared with food facilities, offers no protection for that information, and offers no remedies to consumers whose privacy is violated. It sets up a massive data-sharing program that consumers are enrolled in automatically. Those who use a delivery platform likely do not expect that their information will be shared with every restaurant on that platform. They should be given the power to say whether they want to have their information collected in the first place.

For these reasons, we are opposed to Int. 2311-2021. Thank you for your consideration and your work; we would be happy to speak more with you about changes to this bill that would make it more consumer protective.

Sincerely,



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