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January 31, 2023

The Honorable Curtis Bramble
Chair, Senate Business and Labor Committee
3663 North 870 East
Provo, UT, 84604

RE: SB 152 (McKell) – Social Media Regulations Amendments – OPPOSE

Dear Chair Bramble,

TechNet must respectfully oppose SB 152 (McKell), which creates an extensive new age verification system in tension with consumer privacy, impedes parental consent, and creates an expansive new private right of action.

TechNet is the national, bipartisan network of technology CEOs and senior executives. Our diverse membership includes dynamic American businesses ranging from startups to some of the most recognizable companies in the world. TechNet represents over four million employees and countless customers in the fields of information technology, e-commerce, sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

Age Verification

SB 152 (McKell) would seem to create the standard that a user is a child unless they can verify that they are not. With this bill's requirements, every Utah resident must submit more personal information to social media platforms before they can create a new account or use their existing account. Age-verification is a complex challenge for our industry to address and requires consideration of how to properly balance the interests of privacy and security. Stringent age-verification as in SB 152 requires the collection of more personal information such as birthdates, addresses, and government IDs. In order for a minor to gain access a parent or guardian must provide their own identification and personal information *and* personal information about the minor. The standards and requirements in this bill conflict with industry best practices regarding data minimization.

Efforts are ongoing to develop more privacy protective ways to verify age online. But until there are industry-wide tools available, age-verification will continue to have trade offs and be difficult to implement in practice.

Parental Consent and Controls

TechNet members have empowered consumers and parents with a number of tools to customize their online experience. Parents have options when it comes to filtering the content their children experience online.

Additionally, there are many commercial, as well as free, content filtering and blocking solutions available that enable consumers to protect their families and themselves from illegal or inappropriate content as well as set time limits. These solutions are widely available as both integrated and independent solutions for a wide range of technologies.

However, SB 152 (McKell) goes beyond these already available tools and requires parental consent before a minor can even create or access their social media account. This bill steps in between parents and their children and makes the determination that parents must take an extra step and provide their own personal information as well as that of their child's before they can allow their child access to social media.

Furthermore, this bill's requirements to allow parents access to any and all content that a minor has accessed is problematic. First, some social media platforms have time-limited content that disappears after a certain period. Mandating that this content be preserved for inspection by parents would be incredibly burdensome to re-engineer an entire platform and to retain massive amounts of data and information.

Second, allowing parents to access direct messages shared between users, even for minors, is a violation of their privacy. Privacy is a value held not just by the recipient of a message but also by the sender. Allowing access to a message therefore violates not only the recipient's privacy but also the sender's and vice versa. SB 152 (McKell) would set a concerning new standard regarding minor's privacy rights.

Enforcement

SB 152 (McKell) imposes a punitive amount of new liability on social media platforms that could have many unintended consequences. This bill creates a private right of action for any parent or guardian to sue social media companies for their child's access of social media and allows plaintiff attorneys to challenge the sufficiency of the company's age verification and to pounce on any mistake. This increase in liability could lead to companies deciding to not allow any Utah minors on their platform in order to limit their risk.

Constitutionality

There are numerous constitutional problems with the bill. It is in many ways similar to regulations state and local governments have attempted to enact to protect minors from effects of playing violent video games. Such laws have repeatedly been found unconstitutional. *American Amusement Machine Ass'n v. Kendrick*, 244 F.3d 572 (7th Cir. 2001); see also *Entertainment Merchants Association v. Henry*, No. CIV-06-675-C, *3 (W.D. Okla. Sep. 17, 2007)(collecting cases).

The bill directly interferes with expressive rights of both the minors who will effectively be banned from social media services and the service providers themselves. The imposition of a private right of action and requirements to age verify all users of social media services interferes with constitutionally-protected rights of adults and minors alike.

Children have First Amendment rights both to receive information and to express themselves. While protecting children from harm is an important interest, SB 152 does not attempt to reasonably scope the restrictions on social media platforms to that goal, let alone to “narrowly tailor” the law as the Constitution requires. *Entertainment Software Ass'n v. Blagojevich*, 469 F.3d 641, 646-47 (7th Cir. 2006).

Additionally, the prohibitions against providing content suggestions in SB 152 likely violate the First Amendment. Online service providers have a First Amendment right to make decisions about how to present the content on their sites, including through ranking and recommendation algorithms. The prohibitions against providing content suggestions in SB 152 likely run afoul of this principle.

For these reasons we believe a court is likely to find SB 152 to be unconstitutional.

Thank you for your consideration. If you have any questions regarding TechNet’s opposition with SB 152 (McKell), please contact Dylan Hoffman, Executive Director, at dhoffman@technet.org or 505-402-5738.

Sincerely,

A handwritten signature in black ink, appearing to be 'Dylan Hoffman', written over a white background.

Dylan Hoffman
Executive Director for the Southwest
TechNet