



March 6, 2023

The Office of Governor Spencer J. Cox
350 N. State Street, Suite 200
P.O. Box 142220
Salt Lake City, UT 84114-2220

RE: SB 152 - “Social Media Regulation Amendments” and HB 311 - “Social Media Usage Amendments” Veto Request

Dear Governor Cox:

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.¹ Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members. Recent sessions have seen an increasing volume of state legislation related to regulating what digital services host and how they host it. While recognizing that policymakers are appropriately interested in the digital services that make a growing contribution to the U.S. economy, these bills require study, as they may raise constitutional concerns,² conflict with federal law, and risk impeding digital services companies in their efforts to restrict inappropriate or harmful content on their platforms.

CCIA strongly believes children deserve an enhanced level of security and privacy online. Currently, there are a number of efforts among our members to incorporate protective design features into their websites and platforms.³ CCIA's members have been leading the effort to raise the standard for teen safety and privacy across our industry by creating new features, settings, parental tools, and protections that are age-appropriate and tailored to the differing developmental needs of young people.

While CCIA strongly supports the overall goal of keeping children safe online, there are many concerns we would like to raise about the policies these bills would implement.

1. These bills may actually put Utahns at greater risk of harm, including children that the bills seek to protect.

This legislation will inevitably result in companies being required to collect additional information about all users, including adults. These bills provide several examples of how to obtain verifiable consent, however, this raises questions about whether such unspecified verification mechanisms would conflict with data minimization principles and other consumer data privacy protection measures. CCIA is concerned that

¹ For over 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

² Eric Goldman, *The Constitutionality of Mandating Editorial Transparency*, 73 *Hastings L.J.* 1203 (2022), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3985&context=hastings_law_journal.

³ Jordan Rodell, *Why Implementing Education is a Logical Starting Point for Children's Safety Online*, Disruptive Competition Project (Feb. 7, 2023), <https://www.project-disco.org/privacy/020723-why-implementing-education-is-a-logical-starting-point-for-childrens-safety-online/>.

businesses may be forced to collect age verification data, which would paradoxically force companies to collect a higher volume of data on users.⁴ Businesses may be forced to accumulate personal information they do not want to collect and consumers do not want to give, and that data collection creates extra privacy and security risks for everyone. This mandated data collection would include collecting highly sensitive personal information about children, including collecting and storing their geolocation to ensure they do not reside outside of the state when confirming that they are of age to be using these services.

California also recently enacted legislation that would implement similar age verification measures which is currently being challenged for similar reasons.⁵ CCIA recommends that lawmakers permit this issue to be more fully examined by the judiciary before burdening businesses with legislation that risks being invalidated.

2. Restricting access to the internet for children may further isolate those who are in unsafe households.

When businesses are required to deny access to social networking sites or other online resources, this may also unintentionally restrict children's ability to access and connect with supportive resources, particularly for those who may be in unsafe or abusive households. For example, many social networking sites provide a means to communicate with those who may have experienced and worked through similar challenges or those who may be able to offer them safer environments.

An online central meeting place where kids can share their experiences and find support can have positive impacts. Teens themselves also paint a nuanced picture of the effects of social media. It is one in which majorities credit these platforms⁶ with deepening connections and providing a support network when they need it. In a recent survey, 80% of teens say that what they see on social media makes them feel more connected to what's going on in their friends' lives, while 71% say it makes them feel like they have a place where they can show their creative side. Additionally, 67% also say these platforms make them feel as if they have people who can support them through tough times.

3. These bills do not provide how a user's age will be verified and how penalties for those who do not abide by the law will be enforced.

CCIA recognizes that if SB 152 becomes law, the Division of Consumer Protection will implement a rulemaking process that will allow for additional engagement with stakeholders. In order to achieve meaningful children's safety protections, it is imperative for businesses to have a roadmap of how to properly comply and avoid unintentional violations.

It would also be helpful for businesses to understand whether such verification mechanisms would potentially conflict with data minimization principles and other consumer data privacy protection measures.

⁴ Caitlin Dewey, *California's New Child Privacy Law Could Become National Standard*, The Pew Charitable Trusts (Nov. 7, 2022), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/11/07/californias-new-child-privacy-law-could-become-national-standard>.

⁵ *NetChoice v. Bonta* (N.D. Cal. 22-cv-08861).

⁶ Monica Anderson *et al.*, *Connection, creativity and drama: Teen life on social media in 2022*, Pew Research Center: Internet, Science & Tech (Nov. 17, 2022), <https://www.pewresearch.org/internet/2022/11/16/connection-creativity-and-drama-teen-life-on-social-media-in-2022/>.



CCIA is concerned that businesses may be forced to collect age verification data, which would paradoxically force companies to collect a higher volume of data on children.⁷ Businesses may be forced to collect personal information they don't want to collect and consumers don't want to give, and that data collection creates extra privacy and security risks for everyone. When the Communications Decency Act was passed, there was an effort to sort the online population into kids and adults for different regulatory treatment. That requirement was struck down as unconstitutional because of the infeasibility. Yet, after 25 years, age authentication still remains a vexing technical and social challenge.⁸ Though the intention to keep kids safe online is commendable, these bills are counterproductive to that initiative by requiring more data collection about young people.

Further, it is unclear what impact the use of virtual private networks (VPNs) and similar mechanisms to evade age verification by users could have on organizations' liability under these bills.

4. The private right of action would result in the proliferation of frivolous lawsuits.

SB 152 and HB 311 permit users to bring legal action against companies that have been accused of violating new regulations. By creating a new private right of action, the measure would open the doors of Utah's courthouses to plaintiffs advancing frivolous claims with little evidence of actual injury. As lawsuits prove extremely costly and time-intensive, it is foreseeable that these costs would be passed on to individual users and advertisers in Utah, disproportionately impacting smaller businesses and startups across the state.⁹

It is also important to note that the civil penalty for each violation does not allow companies the opportunity to course correct and consult with the Attorney General to find a solutions-based approach. We suggest putting in place a cure period to allow businesses the chance to come into compliance and help ensure that these unintended events are not likely to occur again.

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While we share lawmakers' concerns regarding the potential impact the internet may have on children, we respectfully encourage you to resist signing legislation that is not adequately tailored to this objective. We appreciate your consideration of these comments and stand ready to provide additional information as your office considers proposals related to technology policy.

Sincerely,

Jordan Rodell
State Policy Manager
Computer & Communications Industry Association

⁷ See Dewey, *supra* note).

⁸ See Snow, *supra* note 6.

⁹ Trevor Wagener, *State Regulation of Content Moderation Would Create Enormous Legal Costs for Platforms*, Broadband Breakfast (Mar. 23, 2021), <https://broadbandbreakfast.com/2021/03/trevor-wagener-state-regulation-of-content-moderation-would-create-enormous-legal-costs-for-platforms>