



**TECHNET**  
THE VOICE OF THE  
INNOVATION ECONOMY



**NetChoice**

April 4, 2023

The Honorable Cottie Petrie-Norris  
1021 O Street, Room 4230  
Sacramento, CA 95814

**RE: AB 1027 (Petrie-Norris) – Controlled Substances – OPPOSE**

Dear Assemblymember Petrie-Norris,

TechNet and the following organizations must respectfully oppose AB 1027, which raises serious privacy concerns around the content retention requirements and imposes such an extreme standard of liability on social media platforms for delivering user content that companies would have no choice but to limit or cease operations for kids under 18. Furthermore, AB 1027 runs afoul of established first amendment principles and jurisprudence and is unambiguously preempted by federal law.

Our member companies prioritize the safety and privacy of teens that access their sites and platforms. We strongly believe children deserve a heightened level of security and privacy and there are a number of efforts within the industry to incorporate protective design features into their websites and platforms. Our companies have been at the forefront of raising 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. This bill would upend those efforts in favor of an ill-conceived imposition of liability designed to punish our companies rather than protect teen users.

**AB 1027's content retention requirements raise serious privacy concerns**

AB 1027 requires a social media platform to not only maintain a record of all communications, including private messages, between users, but the content of those messages. Private and direct messages are intended to be private, which is why our platforms don't monitor or moderate content in them. This bill would require us to be able to access and turn over the content of these private messages if called upon by law enforcement. Even in service of the worthy goal of reducing drug trafficking, this raises serious privacy concerns for our platforms' users. Additionally, this is impossible for platforms that provide encrypted messaging, which prevents anyone other than the intended recipient, including our platforms, from accessing the content of the message.

**AB 1027's new private right of action and strict liability will result in a severe restriction or elimination of access for California teens**

AB 1027 authorizes a private right of action and a civil penalty of up to \$250,000 per violation, an injunction, litigation costs, and the promise of attorney's fees, all of

which will result in a flood of lawsuits. Furthermore, a platform doesn't need to be aware of the illicit content, have been involved in aiding or abetting the sale of the controlled substance, or even know that a sale occurred to be liable. If the prohibited action happens on a social media platform, then the social media platform is liable.

AB 1027 creates significant liability and will lead to a severe restriction or elimination of access to online platforms for California teens as platforms try to limit their risk. Platforms may begin by over removing lawful content in an attempt to ensure they remove all content related to controlled substances. Inevitably the easiest way to limit their risk and ensure a controlled substance is not sold to a minor is to limit their access to the platform. Companies will try to limit access either by severely restricting which aspects or features of the platforms teens can use or by cutting them off entirely.

The reduction of access to online spaces will harm teens as there is growing research that social media use and technology has numerous positive effects on adolescents. For example, a 2018 study found that digital communication serves as an important means of social connection by creating a forum that allows for the development of rapid and nuanced communication skills, identity exploration, artistic creativity, and even increased opportunities to safely express emotional vulnerability. (Anderson & Jiang, [2018](#)). Additionally, the beneficial role of digital media may be especially evident among adolescents who come from underrepresented or at-risk backgrounds. One study found that "adolescents who feel ostracized or stigmatized within their offline social contexts, such as members of ethnic, racial, gender, and sexual minority groups, often report access to online companionship, resource sharing, and emotional validation that is much harder to access otherwise" (e.g., Ybarra et al., [2005](#)).

Teens themselves self-report that social media has a positive effect on their lives. A survey by the Pew Research Center found that "eighty percent of the teens surveyed said social media makes them feel "more connected to what's going on in their friends' lives," while 71 percent said it offers them "a place where they can show their creative side," 67 percent said it provides them with "people who can support them through tough times," and 58 percent said it makes them feel "more accepted."<sup>1</sup> The survey also found that many teens say that life on social media is better than their parents and adults assume it is, with thirty-nine percent of respondents agreeing that "teens' experiences on social media are better than what parents think."

Furthermore, there's a growing body of research showing that social media also helps in times of crisis. One study by Common Sense Media found that young people are far more likely to say that using social media makes them feel better rather than worse when they are feeling down. Forty-three percent of all 14- to 22-year-old social media users say that when they feel depressed, stressed, or

---

<sup>1</sup> Pew Research Center, November 2022, "Connection, Creativity and Drama: Teen Life on Social Media in 2022"

anxious, using social media usually makes them feel better, compared to just 17% who say it makes them feel worse (the rest say it makes no difference either way).<sup>2</sup>

**AB 1027 invites a flood of litigation that will likely result in companies severely limiting or completely eliminating online spaces for teens.**

Litigation leads to uneven and inconsistent outcomes, with different companies choosing to limit the immense exposure this bill will create in different ways.

As the studies above demonstrate, limiting teens' access to social media will cause harm. Teens would be shut out of one of their few solaces during the COVID-19 pandemic. When schools were shut down and they could no longer interact with their friends and peers in person, they used social media to maintain connections and a sense of normalcy and belonging. AB 1027 would ensure that teens would have fewer online communities to turn to.

More research is warranted into both the positive and negative effects of social media use on adolescents, particularly on the types of usage. But without a clearer understanding of how one impacts the other, AB 1027 is unjustifiable.

**AB 1027 regulates speech and violates established First Amendment principles**

AB 1027 is unconstitutional because it imposes liability on social media platforms for whether certain types of third-party content is shown to child users. This violates both the First Amendment rights of minors but also social media platforms. Courts have repeatedly upheld and protected platforms' First Amendment rights to decide how to moderate and present content on their platforms. Likewise, because the bill would result in limited or restricted access to teens, it infringes their First Amendment rights to receive information and express themselves.

The bill also directly interferes with expressive rights of both the minors who will be banned from social media services and the service providers themselves. The imposition of liability for harm to a minor (the bill does not require the provider to know that a user is under 18 to trigger liability) amounts to a requirement to age verify all users of social media services, interfering with constitutionally-protected rights of adults and minors alike. As the Supreme Court emphasized in *Packingham v. North Carolina*, 582 U.S. \_\_\_, 137 S.Ct. 1730 (2017): "For many," social media platforms "are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge," such that "to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights." *Id.* at 1737. To the extent AB 1027 has the practical effect of foreclosing minors' access to social media "altogether" (e.g., because AB 1027 makes it practically impossible for social media platforms to offer their services to children in California), the law would raise grave concerns under the First Amendment.

---

<sup>2</sup> Rideout, V., Fox, S., Peebles, A., & Robb, M. (2021). Factsheet: The coronavirus, depression, and social media use among U.S. teens and young adults. Common Sense and Hopelab.

For these reasons we believe a court would find AB 1027 to be unconstitutional.

**AB 1027 is preempted by Federal Law**

Section 230 of the Communications Decency Act (47 U.S.C. §230) generally protects platforms from liability for content that users generate with limited exceptions. This protection enables platforms to host third party content and to moderate third-party content on their platforms without fear of liability.

Without the protections of Section 230, the internet ecosystem would be dramatically different with a limited ability for users to post, share, read, view, and discover the content of others.

Fortunately, Section 230 explicitly preempts state laws such as AB 1027 that would conflict with this protection. This bill creates liability for platforms based on third party content by applying to any feature that allows users to encounter content. It effectively assumes all features are harmful and imposes liability on a site for offering any of those features to children. Platforms' algorithms and features that allow users to encounter or share content from other users are inextricably linked to the underlying content. Therefore, by imposing liability on platforms for these features, AB 1027 conflicts with Section 230 and is likely preempted.

Thank you for your consideration. If you have any questions regarding our opposition to AB 1027 (Petrie-Norris), please contact Dylan Hoffman, Executive Director, at [dhoffman@technet.org](mailto:dhoffman@technet.org) or 505-402-5738.

Sincerely,



Dylan Hoffman  
Executive Director for California and the Southwest  
TechNet

Ronak Daylami, California Chamber of Commerce  
Tepring Piquado, Chamber of Progress  
Khara Boender, Computer and Communications Industry Association  
Tammy Cota, Internet Coalition  
Carl Szabo, NetChoice