



September 18, 2023

Senate Communications and Technology Committee  
State Capitol  
501 N 3rd St  
Harrisburg, PA 17120

**RE: SB 22 - An Act Amending Title 50 (Mental Health) of the Pennsylvania Consolidated Statutes, providing for protection of minors on social media; and imposing penalties.**

Dear Chair Pennycuick and Members of the Senate Communications and Technology Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose SB 22, An Act Amending Title 50 (Mental Health) of the Pennsylvania Consolidated Statutes, providing for protection of minors on social media; and imposing penalties.

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup> 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.

However, it should be recognized that protecting children from harm online does not include a generalized power to restrict ideas to which one may be exposed. Speech that is neither obscene to young people nor subject to other legitimate laws cannot be suppressed solely to protect young online users from ideas or images that a legislative body thinks are unsuitable for them. While CCIA strongly supports the overall goal of keeping children safe online, there are many concerns we would like to raise about the policies this bill would implement.

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<sup>1</sup> 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>.

<sup>2</sup> 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](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3985&context=hastings_law_journal).

<sup>3</sup> 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/>.

## 1. Pennsylvania should not impede continuing efforts by private businesses to effectively moderate content on their services, including through the use of algorithms.

Just as digital services do not serve all users, they do not publish all content. In addition to prohibiting illegal content as required by relevant state and federal laws, many digital services remove content that is dangerous, though not inherently illegal. This includes, for example, content that exhorts users to self-harm or encourages young people to engage in dangerous or destructive behavior.

Setting aside the matter of whether the government should impose upon private companies the obligation to host or take down lawful speech, which raises First Amendment concerns, digital services are already taking aggressive steps to moderate and remove dangerous and illegal content consistent with their terms of service. The companies deliver on the commitments made to their user communities with a mix of automated tools and human review. In 2021, a number of online businesses announced that they have been voluntarily participating in the Digital Trust & Safety Partnership (DTSP) to develop and implement best practices to ensure a safer and more trustworthy internet, and have recently reported on the continuing efforts to implement and strengthen these commitments.<sup>4</sup>

As U.S. federal law limits the liability of both digital service providers and their users with regard to content created by third parties, this is a subject of ongoing federal attention. Recently, the U.S. Supreme Court declined to recommend any changes to a key tenet of U.S. Internet law in *Gonzalez v. Google*,<sup>5</sup> in which the Court was considering issues related to content moderation and organization methods, including through the use of algorithms. CCIA recommends pausing this proposal until legislators can act with fuller knowledge of the constitutional boundaries. Otherwise, any potential statute may be at greater risk of protracted, expensive litigation.

## 2. SB 22 lacks narrowly tailored definitions, creating serious compliance questions for businesses and users.

As currently written, the bill does not provide specific definitions that are necessary for businesses to comply. For example, “emotional or physical harm” is not defined in this bill. In the absence of any medical consensus on the topic of “addiction to social media platforms”, private businesses will not be able to coherently or consistently make diagnostic assessments of users. It is also very difficult to reliably describe what may “subject a minor to a risk of emotional or physical harm.” Human beings in general, especially children, have very nuanced opinions surrounding what may be harmful to them. The lived experiences of children, teens, and adults differ immensely, and businesses do not have a roadmap to users’ lived experiences, and what could potentially cause them harm. For example, based on videos a teenager viewed regarding current international events and global affairs, a digital service may recommend other videos about the war in Ukraine to a 15-year-old, but those videos could include depictions of bombings and death that could negatively affect or “harm” that user emotionally.

<sup>4</sup> Margaret Harding McGill, *Tech giants list principles for handling harmful content*, Axios (Feb. 18, 2021),

<https://www.axios.com/techgiants-list-principles-for-handling-harmful-content-5c9cfba9-05bc-49ad-846a-baf01abf5976.html>.

<sup>5</sup> Trevor Wagener, *A Ruling Against Google in Gonzalez Could Create a “World of Lawsuits” and “Economic Dislocation,”* Disruptive Competition Project, (Feb. 27, 2023), <https://www.project-disco.org/competition/gonzalez-v-google-could-create-a-world-of-lawsuits-and-economic-dislocation/>.

### **3. This bill may result in shutting down services for all users under 16. Restricting access to the internet for children restricts their First Amendment right to access information, including access to supportive communities that may not be accessible forums in their physical location.**

The Children’s Online Privacy Protection Act (COPPA) and associated rules at the federal level currently regulate how to address users under 13, a bright line that was a result of a lengthy negotiation process that accounted for the rights of all users, including children, while also considering the compliance burden on businesses. To avoid collecting data from users under 13, some businesses chose to shut down various services when COPPA went into effect due to regulatory complexity — it became easier to simply not serve this population. Users between 14 and 15 could face a similar fate as SB 22 would implement more complex vetting requirements tied to parental consent for users under 16.

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 like-minded individuals and communities. For example, in instances where children may be in unsafe households, this could create an impediment for children seeking communities of support or resources to get help.

Serious concerns also arise when verifying whether a “parent or guardian” is in fact a minor’s legal parent or guardian. Many parents and legal guardians do not share the same last name as their children due to remarriage, adoption, or other cultural or family-oriented decisions. If there is no authentication that a “parent or guardian” is actually a minor’s legal parent or guardian, this may incentivize minors to ask other adults that are not their legal parent or guardian to verify their age on behalf of the minor to register for an account with a “large social media platform.” It is also unclear who would be able to give consent to a minor in foster care or other nuanced familial situations, creating significant equity concerns. Further, scenarios where a legal parent or guardian is not located in Pennsylvania or is not a resident of the state creates significant confusion for consumers and businesses. Lastly, the bill’s requirement that parents or guardians have the “same access” to a minor’s account creates serious privacy and security concerns for the platform and all users.

The hyperconnected nature of social media has led many to allege that online services may be negatively impacting teenagers’ mental health. However, some researchers argue that this theory is not well supported by existing evidence and repeats a “moral panic” argument frequently associated with new technologies and new modes of communication. Instead, social media effects are nuanced,<sup>6</sup> small at best, reciprocal over time, and gender-specific. Additionally, a study conducted by researchers from Columbia University, the University of Rochester, the University of Oxford, and the University of Cambridge found that there is no evidence that associations between adolescents’ digital technology engagement and mental health problems have increased.<sup>7</sup> Particularly, the study shows that depression’s relation to both TV and social media use was practically zero. The researchers also acknowledged that it is possible, for example, that as a given technology becomes adopted by most individuals in a group, even individuals who do not use that technology could become indirectly affected by it, either through its impacts on peers or by them being deprived of a novel communication platform in which social life now takes place.

<sup>6</sup> Amy Orben et al., *Social Media’s enduring effect on adolescent life satisfaction*, PNAS (May 6, 2019), <https://www.pnas.org/doi/10.1073/pnas.1902058116>.

<sup>7</sup> Amy Orben, Andrew K. Przybylski, Matti Vuorre, *There Is No Evidence That Associations Between Adolescents’ Digital Technology Engagement and Mental Health Problems Have Increased*, Sage Journals (May 3, 2021), <https://journals.sagepub.com/doi/10.1177/2167702621994549>.



#### 4. The private right of action would result in the proliferation of frivolous lawsuits. Investing sole enforcement authority with the state attorney general would be beneficial to consumers and businesses alike.

SB 22 permits users to bring civil action against social media companies that have been accused of “intentionally, knowingly, recklessly or negligently causing or encouraging a minor to access content which subjects the minor to a risk of emotional or physical harm.” By creating a new private right of action, particularly for such a subjective violation, the measure would open the doors of Pennsylvania’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 Pennsylvania, disproportionately impacting smaller businesses and startups across the state.<sup>8</sup>

It is also important to note that though the bill includes a vague good faith defense clause, it does not allow companies the opportunity to course correct and consult with the Attorney General to find a solutions-based approach prior to being subject to a penalty. 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. This would allow for actors operating in good faith to correct an unknowing or technical violation, reserving formal lawsuits and violation penalties for the bad actors that the bill intends to address. This would also focus the government’s limited resources on enforcing the law’s provisions for those that persist in violations despite being made aware of such alleged violations. Such notice allows consumers to receive injunctive relief, but without the time and expense of bringing a formal suit. Businesses would also be better equipped with the time and resources to address potential privacy changes rather than shifting focus to defending against litigation.

#### 5. Sufficient time would be needed to allow covered entities to understand and comply with newly established requirements.

SB 22 fails to provide businesses with a sufficient onramp to achieve compliance. CCIA recommends that any legislation advanced in Pennsylvania include sufficient lead time to allow businesses to establish systems to bring themselves into compliance with the new regulations, which is why we propose pushing back the effective date to at least 18 months following the date of enactment.

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While we share the concern regarding the safety of young people online, we encourage policymakers to resist enacting 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

<sup>8</sup> 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>