



January 16, 2024

Office of Attorney General Rob Bonta
Attn: Anabel Renteria, Initiative Coordinator
1300 "I" Street
Sacramento, CA 95814-2919

RE: Initiative 23-0035, "The Common Sense Initiative to Protect California Kids Online" (Oppose)

Dear Honorable Attorney General Rob Bonta:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully express several concerns about Initiative 23-0035 in advance of the comment period deadline.

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. In recent sessions, there has been a notable surge in state legislation concerning children's online safety.

CCIA holds a firm conviction that children are entitled to a higher level of security and privacy in their online experiences. Presently, our members are actively engaged in various initiatives to integrate robust protective design features into their websites and platforms.² CCIA's members have been leading the effort to implement settings and parental tools to individually tailor younger users' online use to the content and services that are suited to their unique lived experience and developmental needs. For example, various services allow parents to set time limits, provide enhanced privacy protections by default for known child users, and other tools to allow parents to block specific sites entirely.³

This is also why CCIA supports the implementation of digital citizenship curriculum in schools, to not only educate children on proper social media use but also help educate parents on what mechanisms presently exist that they can use now to protect their children the way they see fit and based on their family's lived experiences.⁴ In fact, the California Legislature passed AB 873 in 2023 establishing the Instructional Quality Commission and requiring the Commission to consider incorporating media literacy content at each grade level, including into the mathematics, science, and history-social science curriculum frameworks that currently exist. The frameworks will also provide guidance in the instruction of media literacy, thereby building critical thinking skills and developing strategies to strengthen digital citizenship for every pupil.

It should also 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 disfavors. Proposals to keep children safe online should be established through a risk-based

¹ For more than 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 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/>.

³ Competitive Enterprise Institute, *Children Online Safety Tools*, <https://cei.org/children-online-safety-tools/>.

⁴ See *supra* note 2.

approach to developing protections for different ages of users and by focusing on tangible harm. While CCIA shares the goal of increasing online safety, this ballot initiative presents the following concerns.

1. California should not impede continuing efforts by private businesses to moderate content on their services.

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, the proposal fails to provide clear definitions of key terms like ‘harmful content,’ leaving businesses vulnerable to inconsistent application and potential legal challenges. Additionally, “the responsibility of ordinary care and skill to a child” is not defined. It is also very difficult to reliably describe what the “maximum protection of the health, safety, and well-being of children” is. Private businesses will not be able to coherently or consistently make diagnostic assessments of all users. 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.

After the U.S. Surgeon General recently released an Advisory entitled Social Media and Youth Mental Health,⁵ many were quick to highlight only the harms and risks detailed in the report. However, the report is much more nuanced and also discusses many potential benefits of social media use among children and adolescents. For example, the report concludes that social media provides young people with communities and connections with others who share identities, abilities, and interests. It can also provide access to important information and create a space for self-expression. The report further details that the buffering effects against stress that online social support from peers provides can be especially important for youth who are often marginalized, including racial, ethnic, sexual, and gender minorities.⁶ It should also be highlighted that the report provides evidence that social media-based and other digitally-based mental health interventions may also be helpful for some children and adolescents by promoting help-seeking behaviors and serving as a gateway to initiating mental health care.

Further, the report itself notes the lack of evidence to support a causative relationship between social media and anticipated negative impacts on younger users. For example, the research openly acknowledges that “social media use may be a risk factor for mental health problems in adolescents. However, few longitudinal studies have investigated this association, and none have quantified the proportion of mental health problems among adolescents attributable to social media use.”⁷ It is also reasonable to examine that compared to previous decades, young people face increased financial pressure, greater competition, more complex tertiary education pathways, and increased loneliness specifically due to the COVID-19 pandemic. Factors such as increased mental health resources and the general acceptance of having and reporting mental health conditions also play a role. In order to take a measured approach to these complicated and sensitive issues, it is imperative to remember that correlation does not equal causation.

⁵ U.S. Surgeon General, *Social Media and youth mental health*, U.S. Department of Health and Human Services (May 23, 2023), <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf>.

⁶ Jennifer Marino, Matthew Berger, Megan Lim, Melody Taba, Rachel Skinner, *Social Media use and health and well-being of lesbian, gay, bisexual, transgender, and Queer Youth: Systematic Review*, *Journal of Medical Internet Research* (Sept. 22, 2021), <https://www.jmir.org/2022/9/e38449>.

⁷ Kayla Tormohlen, Kenneth Feder, Kira Riehm, *Associations Between Time Spent Using Social Media and Internalizing and Externalizing Problems Among US Youth*, *Jama Psychiatry* (Sept. 11, 2019), <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2749480>.

2. This proposal may result in shutting down services for all users under 18. Restricting children’s access to the internet infringes their First Amendment right to access information, including access to supportive communities that may not be accessible forums in their physical location.

The standard of conduct and the lack of narrowly tailored definitions could create an incentive to simply prohibit minors from using digital services rather than face potential legal action and hefty fines, up to \$1,000,000 per violation as described in the proposed initiative, for non-compliance. As previously mentioned, the First Amendment, including the right to access information, is applicable to teens. Speech cannot be suppressed in the name of “protecting” minor users online nor is a state legislative body the arbiter of what information is suitable for younger users to access. Moreover, 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, children of racial or other minority groups may not live in an area where they can easily connect with others that represent and relate to their own unique experiences. An online central meeting place where kids can share their experiences and find support can have positive impacts.

The connected nature of social media has led some regulators 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,⁸ individualized, 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.⁹ Particularly, the study shows that depression has virtually no causal relation to TV or social media.

3. Several ongoing legal challenges raise concerns about the framing of the initiative.

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*,¹⁰ in which the Court was considering issues related to content moderation and organization methods, including through the use of algorithms. Additionally, *NetChoice & CCIA v. Moody*¹¹ and *NetChoice & CCIA v. Paxton*¹² are both cases this term in which the Supreme Court will examine how digital service providers may display third-party content. CCIA recommends taking on board the results of relevant legal proceedings so legislators can act with fuller knowledge of the constitutional boundaries. Otherwise, any potential statute may be at greater risk of protracted, expensive litigation.

⁸ 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>.

⁹ 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>.

¹⁰ 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/>.

¹¹ *NetChoice & CCIA v. Moody*, <https://ccianet.org/litigation/netchoice-ccia-v-moody/>.

¹² *NetChoice & CCIA v. Paxton*, <https://ccianet.org/litigation/netchoice-ccia-v-paxton/>.



4. CCIA encourages California policymakers to work with relevant stakeholders to foster practicable solutions that minimize risks for users while maintaining access to beneficial services.

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.¹³ It is also worth noting that attributing malicious intent (“knowingly harming children”) to companies without concrete evidence can inadvertently have detrimental consequences. This framing could discourage individuals and organizations from engaging in crucial research and critical evaluation, ultimately hindering ongoing efforts to protect children.

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.

CCIA believes that an alternative to solving these complex issues is to work with businesses to continue their ongoing efforts to implement mechanisms such as daily time limits or child-safe searching so that parents can have control over their own child’s social media use. This is also why CCIA supports the implementation of digital citizenship curriculum in schools, to not only educate children on proper social media use but also help educate parents on what mechanisms are already out there that they can use now to protect their children the way they see fit and based on their family’s lived experiences.¹⁴ CCIA understands that California lawmakers have been active in attempting to tackle this complex issue during several recent legislative sessions. CCIA looks forward to continuing to work directly with lawmakers to ensure any approach to further meaningful online safety measures is risk-based, narrowly tailored to known harms, and technically feasible. The legislative process helps to ensure full transparency, adequate debate and conversation about proposed solutions, and the ability for all concerned and interested entities to participate in the process.

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While we share the concerns of the proponent of the measure and your Office regarding the safety of young people online, we encourage the Office of the Attorney General to resist advancing the ballot initiative 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

¹³ 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>.

¹⁴ See *supra* note 2.