April 9, 2024

Assembly Committee on Privacy and Consumer Protection
Legislative Office Building, Room 162
1020 N Street
Sacramento, CA 95814

RE: AB 2481 – "Social media-related threats: reporting." (Oppose)

Dear Chair Bauer-Kahan and Members of the Assembly Committee on Privacy and Consumer Protection:

The above four co-signed organizations take seriously the shared responsibility of protecting online users from cyberbullying threats. Responsible digital service providers have already taken aggressive steps to moderate 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. Doing so is an evolving industry practice: since its launch, the Digital Trust & Safety Partnership (DTSP) has quickly developed and executed initial assessments of how participating companies implement the DTSP Best Practices Framework,[1] which provides a roadmap to increase trust and safety online meaningfully.

Although we acknowledge that the amendments provided on March 21 have addressed a few of our concerns, critical components essential for compliance have yet to be addressed. We appreciate the opportunity to expand on the issues raised under the proposed provisions in AB 2481.

Key compliance definitions remain undefined and subjective.

AB 2481 requires a "large social media platform" to establish an internal process to receive and "substantively respond" to a "verified reporter" if they submit content deemed to be a risk to a minor within 72 hours unless the reported content is deemed to be a "severe risk." In those scenarios, a large social media platform must respond within 24 hours. Additionally, a covered platform must respond "as quickly as necessary" to mitigate the danger posed by an "imminent threat." However, the bill's lack of clear definitions for terms such as "substantively respond," "severe risk," "as quickly as necessary," and "imminent threat" poses significant challenges for covered platforms to comply.

[1] Margaret Harding McGill, *Tech giants list principles for handling harmful content*, Axios (Feb. 18, 2021), https://www.axios.com/2021/02/18/tech-giants-list-principles-for-handling-harmful-content.

In order to achieve compliance, a platform must have a clear understanding of what each of these key terms means. If not, a platform risks not responding in an adequately appropriate or timely manner. Due to the subjective nature of determining what constitutes a “severe risk” and an “imminent threat,” platforms face the risk of making inaccurate determinations, potentially resulting in violations under AB 2481. This is particularly worrisome considering the compliance obligations currently structured around user thresholds and civil penalties per violation.

It is also possible that because these definitions are subjective, platforms may consider taking an overly broad takedown approach to avoid penalties. This raises significant First Amendment concerns, as it has the potential to jeopardize the removal of lawful speech.

Furthermore, this bill presents an issue with government employees having a special mechanism to report and request social media platforms remove content and granting those reports priority over others. The U.S. Supreme Court is currently considering this issue in Murthy v. Missouri. In that case, the Biden Administration is arguing that their communications with social media companies regarding user generated content were not coercive and did not violate the First Amendment because their reports were treated the same as any other report and did not receive priority treatment. In contrast, AB 2481 would create a streamlined process and elevate reports from K-12 principals and school counselors. The upcoming decision in Murthy will provide more guidance in this area but this bill seems to be at odds with the arguments made by the Biden Administration.

Finally, “verified reporters” are defined as a K-12 school principal, counselor, or a licensed mental health professional who provides services to minors. However, the bill lacks a clear definition of what constitutes a “readily accessible and easy-to-use verification process” to confirm the employment status claimed by these individuals. In the absence of a defined “verification process,” covered entities face a moving compliance target, risking inadvertent verification of individuals who do not qualify as “verified reporters.” Uncertainties also arise concerning potential scenarios, such as when a "verified reporter" no longer maintains their employment status. There is also no defined duration for which someone can retain their verified status. This is concerning considering there are potentially tens of thousands of people who could qualify as verified reporters under this bill.

Compliance obligations should not be designed around user thresholds or carve-outs.

Currently, AB 2481 requires “large social media platforms” to substantively respond to a submitted report within 10 days but requires platforms that are not “large social media platforms” to substantively respond to a submitted report within 21 days. We urge legislators to reconsider a statutory definition gerrymandered around particular businesses with user thresholds and an assortment of carve-outs, and instead, craft compliance obligations that are

manageable by all entities operating in the relevant sector, regardless of the number of users they have.

The application of such definitions regularly leads to ambiguities about scope. The current definition, for example, leaves questions regarding how to treat user thresholds in international markets that operate in California. Given the disproportionate penalties contemplated for compliance failures, these definitions demand greater clarity.

The proposed penalties for violations are unduly burdensome due to the lack of clarity required for compliance.

AB 2481 specifies that covered social media companies in violation of the bill's provisions may be subject to a civil penalty of up to $7,500 per violation. In addition, in a successful action brought by the Attorney General, the court may order injunctive relief to obtain compliance. However, the bill does not provide what injunctive relief could look like. This leaves room for significant questions and subjective interpretation. For example, there are questions regarding how to approach harmful content, as defined under this bill, if it is found to be on another platform. It is unclear whether injunctive relief achieved on one platform can stop the proliferation of that same harmful material on another platform. Additionally, it is unclear how platforms would address harmful content that is re-uploaded by a nefarious user once it has been taken down through a successful injunctive relief ruling.

Moreover, AB 2481 fails to tackle the underlying source of the harmful content, including content that falls under the definition of "social media-related threat." As previously stated, responsible digital service providers use a variety of proactive measures to uphold their terms of service and moderate dangerous and illicit content. Nonetheless, it's important to acknowledge that no content moderation mechanism, including through human review or artificial intelligence, is infallible. Therefore, it is important that those who upload harmful material to any platform, regardless of the number of users, are held accountable. Without a mechanism in place, bad actors, such as cyberbullies, will continue to perpetuate harmful content even if that content has been taken down in one instance on one platform. Nothing would prevent a cyberbully from continuing to harass other individuals via other means such as on another service, via text message or other messaging services, or even offline, if the individual engaging in such activity is not held accountable.

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For the above reasons, we urge you to resist advancing legislation that fails to provide a meaningful compliance roadmap for covered services, while simultaneously not addressing the underlying pervasive issues that allow cyberbullying to occur in the first place.

Respectfully submitted,

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