



NetChoice



April 16, 2024

Senate Judiciary Committee
1021 O Street, Room 3240
Sacramento, CA 95814

RE: SB 1504 – “Cyberbullying Protection Act.” (Oppose)

Dear Chair Umberg and Members of the Senate Judiciary Committee:

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 April 3 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 SB 1504.

Key requirements still need to be clarified.

SB 1504 requires a “mechanism that provides, within 36 hours of receipt of a report, written confirmation to the reporting individual that the social media platform received that individual’s report.” However, the bill also requires that “the method is not a method that is within the control of the social media platform.” The proposed obligations conflict for services that provide social media services but also provide email services, making compliance impossible.

For example, many technology companies in the online space offer an array of products as part of their normal course of business including email, messaging, social media, gaming, music,

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>.

television and film streaming, among others. This could unnecessarily constrain social media platforms that receive a report of cyberbullying by not allowing the platform to contact a user via email if that service is provided by the same company. This could result in two scenarios: i) the user being unnecessarily limited in their options for receiving a response, or ii) the company risking non-compliance simply by acknowledging receipt of the user's report. Further, it is not clear how this would expressly benefit users given this broad restriction. For example, this could incentivize certain services to default to text responses, but not every user has a cell phone, and certain users may not want to provide their phone number or pay for the charges associated with such communication. The conflicting requirements outlined in this bill create compliance burdens without providing a clear roadmap for achieving compliance.

Key compliance definitions remain undefined and subjective.

SB 1504 defines "cyberbullying" by providing the effects certain content could have on a "reasonable minor." However, "reasonable minor" is undefined in the bill. Moreover, the content can be reported if it "causes a reasonable minor to experience a substantially detrimental effect on the minor's physical or mental health." Setting aside who a "reasonable minor" is, private businesses cannot coherently or consistently make diagnostic assessments of users.

It is also very difficult to reliably describe what may cause a "detrimental effect on the minor's physical or mental health." Humans in general, especially children, have very nuanced opinions surrounding what may be detrimental 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. 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 incentivize the removal of lawful speech.

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

SB 1504 specifies that covered social media companies in violation of the bill's provisions may be subject to a civil penalty of up to \$75,000 for each "intentional violation." In addition to those penalties, 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 detrimental 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, SB 1504 fails to tackle the underlying source of the harmful content. 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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