



April 9, 2024

The Honorable Tom Umberg
Chair, Senate Judiciary Committee
1021 O Street, Room 6530
Sacramento, CA 95814

RE: SB 976 (Skinner) – Social media: algorithms – OPPOSE

Dear Senator Umberg,

TechNet and the following organizations must respectfully oppose SB 976 (Skinner), which would prohibit a platform from curating and recommending content via an algorithm unless they verify that a user is over 18 or obtain verifiable parental consent.

Our member companies prioritize the safety and privacy of kids who 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.

While we share the intent to provide greater protections for teens when using social media, this bill will not achieve those goals for the following reasons.

Algorithmic vs Chronological Feeds

SB 976 effectively requires a social media platform to institute a chronological rather than an algorithmically curated feed of user content. The bill prohibits the provision of an “addictive feed”, which it defines as any feed in which content is recommended or prioritized for display to a user based on information provided by the user, unless the user is not a minor or, in the case of a minor, their parent consents. By prohibiting this type of algorithmically curated feed, SB 976 effectively requires a chronological feed, in which content would be presented in order of what was posted most recently without any recommendations or curation.

This preference for a chronological feed is based on the faulty assumption that an algorithmically curated feed is harmful and that a chronological feed is safe. Chronological feeds numerous significant limitations and drawbacks. Namely, users experience posts and content from accounts that post the most, not necessarily accounts they want to see the most. This means that their friends’ posts and content will be drowned out by brands and influencers employing teams of people

to post throughout the day. A chronological feed can also be gamed by bad actors to spread more low quality or harmful content. A chronological feed isn't an improvement in many cases.

An algorithmic feed boosts user engagement precisely because it shows users information and posts that are most relevant to them; posts from their friends, family, and interests are prioritized. Personalized recommendation systems and algorithmic curation is vital and a core feature of many platforms. It's what organizes online content into something manageable and usable, making it easier and faster for users to find information. Personalized recommendations also help connect young users with high-quality, developmentally appropriate content that is better suited to their individual needs and interests, while helping them avoid inappropriate or content they do not want to see. Chronological feeds tend to bury this useful content under a flood of posts from all other accounts. Mandating a chronological feed yields the opposite user experience and safety improvements this bill assumes.

SB 976 is a De Facto Requirement to Age Verify All Users and Require Parental Consent for Minors to Access Social Media

SB 976 not only operates as a chronological feed mandate for teens but for all users. A platform cannot offer an algorithmic feed unless it can determine that a user is not a minor.

Age-verification is a complex challenge for our industry and government entities to address and requires consideration of how to properly balance the interests of privacy and security. While some companies are able to estimate a user's age range, these processes and tools are not nearly accurate enough to support the mandate of this bill. The fact is there isn't a reliable method of verifying age and identity without collecting users' personal information such as government IDs, birthdates, and other information. This is even more difficult when trying to verify minors, who often don't have identification. Efforts are ongoing to develop more privacy protective ways to verify age online. But until there are industry-wide tools available, age-verification will continue to have tradeoffs and be difficult to implement in practice.

If a platform cannot reasonably determine that a user is not a minor it must provide a chronological feed. This is a de facto requirement to verify the age of all users in order to recommend content via an algorithm. The only reliable method to accurately assess a user's age is by collecting more personal information such as birthdates, addresses, and government IDs meaning every California resident must submit more personal information just to access a social media platform.

The bill also restricts the use of an algorithmic feed for minors unless a platform obtains verifiable parental consent. One of the main benefits of a social media platform is the fact that, through algorithms, they condense the massive volume of user-generated content on the internet and recommend and show users information

that is entertaining, educational, and relevant to their interests. In order to access this benefit, teens will have to get their parent's permission, which puts a significant burden on their ability to access and share information freely online.

With the bill leaving all details about parental verification to the Office of the Attorney General, it's unclear what types of information and documentation a parent would have to provide a platform to provide their verifiable consent. Verifiable parental consent requirements raise even more issues than age verification. Beyond identity verification, parental consent entails verifying parental relationships and parental rights, which will likely also lead to privacy-invasive processes unless companies can get protection and rely on representations from parents about their parental relationships and rights. For example, even with a birth certificate, there are custody agreements and other issues that could prevent a caregiver listed on that certificate from exercising parental rights to provide consent.

Furthermore, as mentioned above, without any details on the age verification and parental verification regulations this bill requires, it is highly likely that social media platforms would have to collect far more personal information from all users. The standards and requirements in this bill conflict with industry best practices regarding data minimization and California's reputation as a leader in data privacy.

Constitutionality

Though it attempts to avoid the outright regulation of speech and online content, our coalition believes SB 976 violates the First Amendment rights of platforms and minors alike.

As noted above, one of the main benefits of a social media platform is its curation of vast amounts of user-generated content to highlight what a particular user will be most interested in viewing. By restricting access to these features with age verification and parental consent, SB 976 impermissibly and unconstitutionally burdens adults' access to lawful content and minors' ability to access and share information. As the Supreme Court emphasized in *Packingham v. North Carolina*,¹: "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."² SB 976 effectively requires a platform to age verify or obtain parental consent to offer an algorithmically curated feed of information and content. While protecting children from harm is an important interest and a goal we share, SB 976 does not attempt to reasonably scope the restrictions on social media platforms to that goal, let alone to "narrowly tailor" the law as the Constitution requires.³

¹ *Packingham v. North Carolina*, 582 U.S. ____, 137 S.Ct. 1730 (2017)

² *Id.* at 1737.

³ *Entertainment Software Ass'n v. Blagojevich*, 469 F.3d 641, 646-47 (7th Cir. 2006)

Furthermore, courts have long held that social media platforms are entitled to First Amendment protection for their editorial discretion akin to more traditional types of media, like newspapers. As the District Court noted in *NetChoice v. Moody*, social media platforms “routinely manage . . . content, allowing most, banning some, arranging content in ways intended to make it more useful or desirable for users”, all of which are expressions of editorial discretion.⁴ Several cases have established that the tools that implement a social media platform’s editorial discretion, its computer code, source code and algorithms, are protected speech under the First Amendment.⁵

The de facto ban on providing content suggestions and recommendations, unless a user’s age can be verified or their parent consents, likely runs afoul of platforms’ protected discretion to present content on their sites. For these reasons we believe a court is likely to find SB 976 to be unconstitutional.

Thank you for your consideration. If you have any questions regarding our opposition, please contact Dylan Hoffman, Executive Director, at dhoffman@technet.org or 505-402-5738.

Sincerely,



Dylan Hoffman
Executive Director for California and the Southwest
TechNet

Ronak Daylami, California Chamber of Commerce
Naomi Padron, Computer & Communications Industry Association
Carl Szabo, NetChoice

⁴ *NetChoice, LLC v. Moody*, 2021 WL 2690876, at *7 (N.D. Fla. June 30, 2021)

⁵ See *Search King, Inc. v. Google Technology, Inc.*, Case No. CIV-02-1457-M (W.D. Okla. May. 27, 2003) (finding that Google’s use of its algorithm to determine appropriate rankings in a search engine is free speech protected by the First Amendment); *Langdon v. Google, Inc.*, 474 F. Supp. 2d 622 (2007) (finding that injunctive relief sought against search engines to place a plaintiff’s ads in prominent places and to re-rank search results would contravene the search engines’ First Amendment rights); *Jian Zhang v. Baidu.Com Inc.*, 10 F. Supp. 3d 433 (2014) (dismissing a complaint regarding the “decision to design its search-engine algorithms to favor certain expression on core political subjects over other expression on those same political subjects” because allowing the lawsuit to continue “would plainly violate the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message”).