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The Honorable Letitia James
Attorney General, New York
Office of the New York State Attorney General
The Capitol
Albany NY 12224-0341

Re: Rule making for New York's SAFE for Kids Act

Dear Attorney General James:

On behalf of the undersigned organizations, we write to encourage you to sincerely consider industry feedback at all stages of rulemaking for the recently enacted "SAFE for Kids Act."

The SAFE for Kids Act left significant questions on implementation and enforcement unanswered. While we appreciate the State's efforts to mitigate harm to minors, the legislative process of S.7694 left several major questions unanswered about the Act's implementation and enforcement, which may have adverse consequences. As such, tech industry stakeholders remain concerned about how the State will address the following in rulemaking.

The law lacks sufficient guidance on age verification. Online services are working hard to design age-appropriate services for teenagers, particularly younger teens. They use algorithms to provide a different experience for a thirteen-year-old than the experience they provide for a seventeen-year-old. Just like movie ratings restrict access to films depending on the age of a minor, algorithms tailor content by age. However, the SAFE for Kids Act bars technology

platforms from curating social media feeds by default, forbidding services from tailoring content to younger teens based on age inference.

Yet, the law does not provide guidance on *how* the State will determine and implement age verification. Without clear and industry-responsive guidance, the law compromises online privacy and risks self-censorship for users of *all* ages. The rulemaking process must consider how to handle tricky situations such as when a New Yorker lacks official identification. For example, recent research suggests that Black, Hispanic, and City residents are most likely to lack a photo ID.¹ Additionally, as recently as of May of this year, less than half of New Yorkers are reported to have Real IDs.²

Furthermore, rulemaking must also consider the sensitive circumstances of undocumented New Yorkers who cannot apply for a Real ID and generally lack official identification. Lastly, rulemaking should consider tricky circumstances in which IDs may not match a person's lived identity and expression, like that of some LGBTQ+ people.³ The Attorney General's Office should seriously consider these concerns during rulemaking.

Rulemaking will need to consider how consenting New Yorkers can opt-in to a customized experience. Concerningly, the law also does not address the process by which New York guardians and families wishing to grant access to curated algorithmic feeds for their teenage children can do so. The rulemaking process must consider how to handle fraught situations such as when one parent supports access to LGBT-affirming information, but another does not. Or when only one parent supports access to reproductive care information. Again, it is critical that rulemaking prioritize the needs of New York's most vulnerable youth.

The Office of Attorney General must meaningfully engage industry stakeholders in rulemaking. It is critical that the Office of the Attorney General comprehensively engage the tech industry during all phases of rulemaking. As the primary industry impacted by the law and the forthcoming regulatory framework,

¹ https://www.voteriders.org/wp-content/uploads/2023/04/CDCE_VoteRiders_ANES2020_Report_Spring2023.pdf

² <https://gothamist.com/news/a-year-before-deadline-less-than-half-of-new-yorkers-have-real-ids>

³ https://www.common sense media.org/research/double-edged-sword-how-diverse-communities-of-young-people-think-about-social-media-and-mental-health?j=9664249&sfmc_sub=232043373&l=4953157_HTML&u=235541285&mid=6409703&jb=5046&utm_source=advocacy_hopelab_research_20240521&utm_medium=email

platforms must be sincerely considered to safely, accurately, and appropriately implement the law while preserving access to online communities and resources for New Yorkers.

We are happy to be a resource for you as you undergo rulemaking and we intend to engage robustly in that process.

Sincerely,

Chamber of Progress

Computer & Communications Industry Association (CCIA)

Engine

Software & Information Industry Association (SIIA)

State Privacy & Security Coalition (SPSC)

TechNet