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Industry Association
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NetChoice



FLOOR ALERT
AB 1791 (Weber)
OPPOSE as Amended – 5/2/24

Due to recent proposed amendments, TechNet and the following organizations must respectfully **oppose AB 1791 (Weber)**. We previously submitted suggested amendments and tried to work with the author and your committee on this bill in good faith without taking a formal position. The recent amendments are significant and greatly expand the bill. As discussed below, many of these requirements are technically infeasible or in conflict with other policies passed by the Assembly Privacy and Consumer Protection Committee. Additionally, the bill is now enforced by a punitive private right of action that includes a \$10,000 statutory penalty, which only exacerbates the difficulties in complying with the substantive requirements.

As we stated in our previous letter, we agree with the intent to create greater trust in user generated content online by fostering the adoption of content provenance verifications and watermarks. However, the significant changes to the bill combined with the upcoming legislative deadline leaves our organizations and our member companies with very little time to analyze and provide substantive feedback to you, members of the committee, and their staff. As a result, we have no choice but to oppose this bill as it has moved us farther from consensus.

Conceptually, we've agreed that online platforms should not remove what this bill now calls "system provenance data". We also previously noted that platforms should be allowed to remove certain personal information found in the metadata of user content to protect users' privacy and security. We have long agreed that users should ultimately have control over their personal information and believe in this case they should decide whether to remove or include personal information in their content.

The new amendments alter those concepts to instead require the removal of personal information in all instances, now referred to as "personal provenance data", and to remove both if personal provenance data cannot be removed without removing the system provenance data. This seems to remove the ability for a user, say a photographer or digital artist, to keep their identification as part of the embedded provenance.

If a platform must remove both types of provenance, they are then required to re-add or embed the system provenance data with an indelible label that will remain on the content when it is reshared, downloaded, or uploaded to another platform. This requirement is in direct conflict with AB 3211 (Wicks), which this committee passed unanimously on April 16. As amended, AB 3211 requires a provider of

generative AI software to place “imperceptible and maximally indelible watermarks containing provenance data” into content it creates and requires camera and recording device manufacturers to include “authenticity” and “provenance” watermarks in images and videos created by their devices. A social media platform cannot remove the “maximally indelible watermark” required by AB 3211. If it can, it is not maximally indelible. The platform could also violate copyright law if it removes that information from a photograph.

Furthermore, the technology to redact this kind of information and re-embed it does not exist yet and would have to be engineered to handle the hundreds of millions of pieces of content social media platforms process every day. This type of system would detract from current investments to develop the tamper-evident, maximally indelible provenance technology required by AB 3211.

Finally, the amendments add a punitive private right of action to enforce these conflicting and technically infeasible new requirements. Where previously the bill was intended to prevent the intentional removal of content provenance by a social media platform, this new enforcement mechanism will punish a platform if content unintentionally or inadvertently is uploaded without its provenance data by an error or a glitch. A platform would also be punished, whether intentional or not, for failing to remove all personal provenance data, failing to re-embed system provenance data, and failing to adequately ensure that the re-embedded system provenance data remains even when shared, reposted, downloaded, or uploaded to another platform, all of which is currently not possible.

The amendments create a strong incentive for attorneys to file claims for technical violations. The amendments allow a successful plaintiff to recover actual damages or \$10,000, whichever is higher. A plaintiff will almost always recover \$10,000 and their attorneys’ fees in this kind of action and serves little purpose other than to punish platforms for failing to be perfect.

Vote “NO” on AB 1791