



March 26, 2026

The Honorable Christopher Cabaldon
Chair, Senate Privacy, Digital Technologies, and Consumer Protection
1021 O Street, Suite 7320
Sacramento, CA 95814

RE: AB 2 (Lowenthal) – Social Media – OPPOSE

Dear Chair Cabaldon,

TechNet and the following organizations must respectfully oppose AB 2, which imposes such an extreme and subjective standard of liability on social media platforms that companies would have no choice but to dramatically restrict content or cease operations for users under 18.

Our member companies prioritize the safety and digital well-being of children who access their sites and platforms. Our members strongly believe children deserve a heightened level of protection and have been at the forefront of raising the standard for digital well-being across the industry by creating new features such as settings, parental tools, and protections that are age-appropriate, empowering families to create the online experience that fits their needs, and tailoring features to the differing developmental needs of young people.

The Legislature is Advancing Dramatic New Proposals on Youth Access to Digital Platforms

The Legislature is considering a number of proposals which will regulate or completely restrict youth access to digital platforms. The bills that pass will impact the legal tools that are available to the state and members of the public who experience harm as a result of violations. AB 2 was proposed before the 2026 introduction of many of these pending measures. The Legislature should act on these substantive provisions regarding youth access to digital platforms, including social media, and the enforcement mechanisms for those provisions before taking up AB 2.

AB 2's Vagueness Will Result in a Flood of Litigation

It is entirely unclear what will constitute a violation of a platform's "responsibility of ordinary care and skill" in this context. Feasibly, any sort of negative impact on a child could be sufficient for a plaintiff to allege a breach of the platform's responsibility of ordinary care and skill. Every platform feature, every interaction between users, and every post that a teen sees could be the basis for a lawsuit. Reasonable people, even parents in the same household, might disagree about what is harmful to a particular teen. AB 2 asks social media platforms to decide what is harmful to every user and exercise ordinary care to prevent that harm. This ambiguity will be impossible for platforms to operationalize.

This vagueness, combined with high per-violation statutory penalties (up to \$1 million per violation per child per social media platform) that are decoupled from a plaintiff's actual harm will invite a flood of frivolous litigation. AB 2 does not limit suits to only California users or

residents; rather, any platform with users in California could face liability. Feasibly, a user in Texas could try to bring suit in California against not only those platforms that are domiciled in California but against those that are not domiciled in California but that have California users, under the current wording of the bill. Consequently, litigants from across the country could file suits in California state courts, potentially resulting in judgments in the hundreds of millions per case and encouraging opportunistic plaintiffs' attorneys.

Even after lawsuits are filed, decisions are rendered, or cases are settled, it'll be impossible for platforms to learn or anticipate what sort of features violate this duty as each case will be heavily fact intensive. What might be found to violate a platform's duty in one case, might not in another. Platforms can't draw sound conclusions and make decisions about their features or policies from a conflicting patchwork of precedents. As a result, AB 2 will not lead to improvements in platform safety.

Restrictions on Teen Access to the Internet

To the extent this bill creates incentives for platforms to change their policies and features, the extreme risk of liability will likely result in companies severely limiting or completely eliminating online spaces for teens. The Legislature should set clear rules rather than leave outcomes to a litigation lottery that could result in teens losing access to the very services they rely on to connect with family and social groups, to learn, and to express themselves creatively.

There are two main ways platforms could respond to the vague requirements and extreme liability in this bill, neither of which are good outcomes for teens.

First, companies could adjust their policies and terms of service to exclude all users under the age of 18. This would be a tremendous and detrimental blow to teens' ability to access information and the open internet. As discussed below, this raises serious First Amendment concerns. Moreover, even if a platform prohibited users under 18 in its terms of service and took steps to prevent their access, that may not be enough to avoid liability for a teen who accesses the site anyway and has a negative outcome.

Second, companies could impose a heavily sanitized version of the platform on users under 18 — limiting which users teens can interact with, which features they have access to, and what content they can view. This might reduce but would not prevent every instance of harm given the inherent subjectivity of defining "harm."

Faced with an impossible task and severe liability, some platforms may over-restrict content that could be considered harmful. This would sweep in beneficial resources — such as anti-drug programs, smoking cessation support, mental health information, and gender identity resources — because it is impossible to determine what is harmful to every individual user. Fundamental platform features like direct messaging could similarly be removed even though they are safe for the overwhelming majority of users.

Teens will seek out the ability to interact online regardless, whether on our platforms or on others, including those that don't prioritize their safety and well-being. The Legislature can avoid this outcome by enacting specific, workable standards rather than leaving these questions to courts.

AB 2 Creates an Incentive for Platforms to Surveil and Moderate Direct Messages

Direct messaging is a common feature of social media platforms and is a safe feature for the overwhelming majority of users. But in rare circumstances, messaging can be abused by bad actors to victimize other users. To the extent that this bill creates a strong incentive to drastically reform any features that present even a slight risk of harm, it would incentivize

platforms to remove end-to-end encryption for user messaging. End-to-end encryption protects user privacy by ensuring that the message cannot be read by the platform or other users if it is intercepted. Unencrypting private messages would allow platforms to surveil and moderate content in users' private messages, which is a tremendous invasion of privacy. This is an outcome our members are firmly against. Not only does it completely undermine users' trust in our platforms not to monitor their private communications but would seem to conflict with the principles of the California Privacy Rights Act.

AB 2 is Likely Unconstitutional and Violative of Teens' Rights to Access Information

AB 2 seeks to regulate speech by requiring platforms to exercise "ordinary care and skill" for teen users. This will inevitably lead to lawsuits based on harmful content as well as content-serving features, both of which violate first amendment principles.

These applications of the bill are likely subject to "heightened scrutiny" because they are neither content- nor speaker-neutral (i.e., they impose liability for disseminating some types of content but not others and distinguish between large social media platforms and other services).¹ Where heightened scrutiny applies, the government must show that the statute (1) "directly advances a substantial governmental interest" and (2) "is drawn to achieve that interest."²

AB 2 is unconstitutional because it imposes liability on social media platforms for whether certain types of third-party content are shown to young users, as well as the expressive choices social media platforms make in designing the user experience. This violates the First Amendment rights of both minors and social media platforms. Courts have repeatedly upheld and protected platforms' First Amendment rights to decide how to moderate and present content on their platforms. Likewise, because the bill would result in limited or restricted access to teens, it infringes upon their First Amendment rights to receive information and express themselves.

Additionally, the bill's "overbreadth" appears both "real" and "substantial,"³ and is thus arguably unconstitutional, because it sweeps in social media activity that might negatively affect a relatively small amount of children but prove to be of utility to many more (i.e., organizing children's social media feeds to highlight content they are more interested in).

AB 2 also directly interferes with the expressive rights of both the minors who will be banned from social media services and the service providers themselves. The imposition of liability for harm to a minor (the bill does not require the provider to know that a user is under 18 to trigger liability) amounts to a requirement to age verify all users of social media services, interfering with constitutionally-protected rights of adults and minors alike. As the Supreme Court emphasized in *Packingham v. North Carolina*, 582 U.S. ___, 137 S.Ct. 1730 (2017): "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." *Id.* at 1737. To the extent AB 2 has the practical effect of foreclosing minors' access to social media "altogether" (e.g., because the

¹ See *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011).

² *Sorrell*, 564 U.S. at 562.

³ *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)

bill makes it practically impossible for social media platforms to offer their services to children in California), the law would raise grave concerns under the First Amendment.

Children also have First Amendment rights to both receive information and to express themselves. Protecting children from self-harm is an important objective, but AB 2 makes no attempt to even reasonably scope the restrictions on social media platforms to that goal, let alone to “narrowly tailor” the law as the Constitution requires.⁴ Accordingly, broad regulations restricting youth expression have been struck down on First Amendment grounds, including a California law that prohibited the sale of violent video games to minors where the Supreme Court declared that, “whatever the challenges of applying the Constitution to ever-advancing technology, the basic principles of freedom of speech and the press, like the First Amendment’s command, do not vary when a new and different medium for communication appears.”⁵

Additionally, online service providers have a First Amendment right to make decisions about how to present content on their sites, including through ranking and recommendation algorithms. Courts have repeatedly upheld platforms’ rights to rank and even favor certain expression over others. To do otherwise 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.”⁶

For these reasons, we believe that a court would find AB 2 to be unconstitutional.

Federal Preemption

Section 230 of the Communications Decency Act (47 U.S.C. §230) generally protects platforms from liability for content that users generate with limited exceptions. This protection enables platforms to host third party content and moderate third-party content on their platforms without fear of liability.

Without the protections of Section 230, the internet ecosystem would be dramatically different with a limited ability for users to post, share, read, view, and discover the content of others.

Fortunately, Section 230 explicitly preempts state laws such as AB 2 that would conflict with this protection. This bill creates liability for platforms based on third party content by applying to any feature that allows users to encounter content. It effectively assumes that all features are harmful and imposes liability on a site for offering any of those features to children. Platforms’ algorithms and features that allow users to encounter or share content from other users are inextricably linked to the underlying content. Therefore, by imposing liability on platforms for these features, AB 2 conflicts with Section 230 and is likely preempted.

⁴ *Entertainment Software Ass’n v. Blagojevich*, 469 F.3d 641, 646-47 (7th Cir. 2006).

⁵ *Brown v Entertainment Merchants Ass’n*, 564 U.S. 786, 790 (2011)

⁶ See, e.g., *Jian Zhang v. Baidu.com Inc.*, 10 F. Supp. 3d 433, 440 (S.D.N.Y. 2014) (dismissing a lawsuit seeking to hold a search engine liable for the “decision to design its search-engine algorithms to favor certain expression on core political subjects over other expression on those same political subjects.” See also *Langdon v. Google, Inc.*, 474 F. Supp. 2d 622, 629-30 (D. Del. 2007) (holding 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); *Search King, Inc. v. Google Tech., Inc.*, No. CIV-02-1457, 2003 WL 21464568, at *3-4 (W.D. Okla. May 27, 2003) (concluding that a search engine’s search ranking decisions were protected opinions under the First Amendment).

Active Litigation Should Progress Before the Legislature Acts

Finally, the need for AB 2 is unclear in light of ongoing litigation against social media platforms. There are more than 10,000 individual cases and 1200 school district cases pending across the country. The first bellwether case in KGM v. Meta and YouTube resulted in a \$6 million verdict. The State of New Mexico was awarded \$375 million in their case against Meta. These are early verdicts and likely to be appealed, thus this area will be subject to substantial developments in coming months.

Given the substantial volume of cases, it is premature to conclude that statutory penalties are necessary or would be beneficial.

Thank you for your consideration. We would be happy to discuss alternative policies that provide a better incentive for companies to incorporate best practices into the design and function of platforms, without an excessive imposition of liability. However, for the reasons outlined above, we must respectfully oppose AB 2.

If you have any questions regarding our position, please contact Robert Boykin at rboykin@technet.org or 505-402-5738.

Sincerely,



Robert Boykin
Executive Director for California and the Southwest
TechNet
Ronak Daylami, California Chamber of Commerce
Aodhan Downey, Computer and Communications Industry Association

CC: The Honorable Josh Lowenthal, California State Assembly
Members and Consultants, Senate Privacy, Digital Technologies, and Consumer
Protection