



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

 **CalChamber**
CALIFORNIA CHAMBER OF COMMERCE



**entertainment[®]
software
association**

 **MPA** THE ASSOCIATION OF
MAGAZINE MEDIA

June 21, 2022

The Honorable Tom Umberg
Chair, Senate Judiciary Committee
1021 O Street, Room 3240
Sacramento CA 95814

RE: AB 2273 (Wicks) – Age-Appropriate Design Code – **OPPOSE UNLESS AMENDED**

Dear Senator Umberg,

TechNet and the following organizations are respectfully opposed unless amended to AB 2273 (Wicks). While we appreciate the intent and similarly believe in providing a safe and secure experience for kids online, we have some suggestions to ensure our companies can implement this bill effectively.

Our companies prioritize the safety and privacy of kids that 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.

Scoping The Bill Appropriately

In order to ensure our companies are able to implement this bill effectively we suggest aligning the scope of AB 2273 with existing law and definitions, namely by changing “likely to be accessed by a child” to “directed to children”. “Likely to be accessed by a child” is an overinclusive standard and would capture far more websites and platforms than necessary and subject them to this bill’s requirements. It is also an unfamiliar standard that will present problems for companies trying to determine whether they are in the scope of the bill.

“Directed to children” on the other hand is a term and scope that online services are familiar with as it is defined in COPPA, which companies have been implementing and complying with since its passage over 20 years ago. Similarly, we suggest aligning the definition of “child” with COPPA as a person under the age of 13.

Fair and Consistent Enforcement

We also suggest enumerating a clear enforcement mechanism such as the one found in CCPA, which grants the Attorney General the authority to investigate and enforce violations. We believe the Attorney General is the appropriate agency to enforce this bill provided our companies have the ability to seek guidance on this

bill's subjective requirements and fix mistakes before fines or penalties are levied. The Attorney General's office is best equipped to provide consistent interpretations, guidance, and to enforce this bill's provisions.

Finally, we suggest placing the proposed Children's Data Protection Taskforce under the Attorney General's authority to line up with the enforcement mechanism and to clearly identify the composition of the taskforce.

Consistency with the UK Law

We ask that this bill be as consistent with the UK ICO Age Appropriate Design Code as possible for California law. We recognize some differences for our legal regime will be required but this bill has been discussed and considered in the frame of consistency. Working toward consistency will serve the goals of the author and the companies that will be complying.

The goal of AADC is to provide clear actionable guidelines to companies developing services for youth. The prohibition on offering any service that "more likely than not causes or contributes to more than de minimis risk of harm" to children is a massive departure from the UK standard that prohibits using data in any way that is "obviously detrimental to children's physical or mental health and wellbeing."

This standard of harm is irrationally low and is tied to a single child, rather than to children or the average child. Without adjusting this standard, it's likely that streaming music services may have to reduce their music offerings or provide expletive-free music to kids under 18, because businesses will not be able to individually determine the risk of possible harm to the adolescent. It would also impact how news is reported on various sites, possibly requiring a kids or teens version of the site to avoid news reports that could be "upsetting" or "harmful" and an adults only version.

Shifting from the "obviously detrimental" standard to "de minimis" turns the AADC on its head. We ask that AB 2273 be consistent with the UK standard here.

A second important area of inconsistency is on AB 2273's ban on profiling. This practice, however, is an important pro-consumer practice that the UK ICO recognizes. As the ICO standard recognizes, companies *should profile* youth users to "help estimate the age of individual users so that you can apply the standards in this code" and ". . . provide age appropriate privacy information and nudges; provide high privacy settings for child users by default; and don't serve children content deemed detrimental to their health and wellbeing." We ask that the prohibition on default profiling be made consistent with the UK and focused on other practices such as advertising.

For these reasons, we must respectfully oppose AB 2273 unless amended. If you have any questions regarding our position, please contact Dylan Hoffman at dhoffman@technet.org or 505-402-5738.

Best,

A handwritten signature in black ink, appearing to read 'Dylan Hoffman', with a long horizontal flourish extending to the right.

Dylan Hoffman
Executive Director for California and the Southwest, TechNet

California Chamber of Commerce
Electronic Software Association
MPA – The Association of Magazine Media