



September 30, 2024

The Honorable Letitia James
New York State Attorney General
The Capitol
Albany, NY 12224

Re: Advanced Notice of Proposed Rulemaking pursuant to New York General Business Law section 1500 et seq

Dear Attorney General James:

On behalf of Chamber of Progress – a tech industry association supporting public policies to build a more inclusive society in which all people benefit from technological advance – I write to share these comments in the Office of the Attorney General’s (OAG) Advanced Notice of Proposed Rulemaking (ANPRM) concerning the Stop Addictive Feeds Exploitation (SAFE) For Kids Act.

We agree that the internet should be a safe place for young people. There is always more policymakers, caregivers, and technology companies can do to promote online safety. However, the SAFE For Kids Act raises highly fraught implementation issues:

- Exposing young people to harmful content online, including cyberbullying and harassment, while restricting access to safe and inclusive educational content, community, and resources,
- Jeopardizing youth privacy, above all for LGBTQ+ youth, those without valid ID including undocumented minors, and
- Significant constitutional challenges.

We appreciate the opportunity to share these comments and highlight the serious potential for harm to disadvantaged youth. We call on New York policymakers to halt implementation and enforcement of the SAFE For Kids Act until these issues are satisfactorily addressed. The SAFE For Kids Act must not further marginalize the most vulnerable New Yorkers.

Algorithmic feeds are essential to online safety

The ANPRM includes several questions about the nature of so-called “addictive feeds,” including how to assess which online services are covered. In particular, the ANPRM asks “What are the costs and benefits of assessing significance based on a totality-of-the-circumstances test guided by the specified relevant factors?”

We appreciate the OAG acknowledging that there are significant benefits to algorithmic curation of online feeds. Indeed, rather than rendering feeds “addictive,” algorithmic curation is essential to keeping them safe and age-appropriate.¹

When assessing services that are in scope, we encourage you to account for the manifold benefits of algorithmic curation, including how when a teen shows interest in healthy content – like journalism, sports figures, or book trends – online platforms can nurture that spark and build community with peers who share the same interests by serving relevant content. These benefits can be life-saving: algorithmic tools can also steer young people who are struggling with eating disorders, bullying and harassment, or suicidal ideation towards life-saving resources.

Indeed, research shows that LGBTQ+ youth are significantly more likely (78%) to have tried to tailor their digital feeds to better align with their interests vs. non-LGBTQ+ youth (65%). The same research showed 81% of youth with moderate to severe depressive symptoms had taken actions to curate their social media feeds.² Clearly, young people depend on algorithmic tools to create safe spaces online.

Furthermore, algorithmically curated feeds can protect users from harassment and cyberbullying. Hasty or careless implementation guidelines that force social platforms to display all content based purely on who a user follows in reverse chronological order would be disastrous. Consider a closeted LGBTQ+ teen who follows all of their classmates. One morning, a teen wakes to learn that a student has outed them and begun a mass online harassment. A mandated chronological feed would consist of a wall of hate speech that the platforms would be forced to deliver. Algorithmic content curation allows platforms to downrank or even remove unwanted interactions like coordinated abuse.

We strongly encourage you not to force platforms to be complicit in the targeted harassment of vulnerable New York youth.

Age verification and estimation compromise fundamental privacy for all New Yorkers

¹ See AI Shields Kids By Revolutionizing Child Safety And Online Protection, <https://www.forbes.com/sites/neilsahota/2024/07/20/ai-shields-kids-by-revolutionizing-child-safety-and-online-protection/>

² See A Double-Edged Sword: How Diverse Communities of Young People Think About the Multifaceted Relationship Between Social Media and Mental Health, <https://www.common sense media.org/research/double-edged-sword-how-diverse-communities-of-young-people-think-about-social-media-and-mental-health>

There are no safe ways to conduct age verification. To reliably identify minors, online services must verify the age of ALL users - a tremendous encroachment of individual privacy. Privacy violations online often lead to offline violence. In 2022, 54% of LGBTQ+ survey respondents reported experiencing severe harassment, including stalking, physical threats, and doxing.³ Any company holding an enormous trove of sensitive personally identifying information (PII) is a cybersecurity or ransomware risk. These are not theoretical concerns. Recently, a company that provided identity verification services to online platforms was found to have left PII insecure for more than a year,⁴ jeopardizing the safety of users for over a year.

Even if one could overcome the inherent privacy and cybersecurity defects of age verification, we must not ignore its disparate impact on historically marginalized groups. Recent research from the University of Maryland finds,

“Over a quarter of Black adult citizens and Hispanic adult citizens do not have a driver’s license with their current name and/or address (28% and 27% respectively), compared to about one out of five adult citizens who identify as Asian/Pacific Islander (21%) or White (18%). **Eighteen percent of Black adult citizens, 15% of Hispanic adult citizens, and 13% of Asian/Pacific Islander adult citizens do not have a license at all**, compared to just 5% of White adult citizens.⁵” (emphasis added).

Further, “almost half of Black Americans ages 18-29 do not have a driver’s license with their current name and/or address (47%), and 30% do not have a license at all.⁶”

Requiring parental consent jeopardizes the safety and privacy of LGBTQ+ youth

The ANPRM asks several questions about how to implement parental consent including “How can OAG ensure that parents are likely to understand the risks before providing consent?” Instead, OAG should ask about the *risks of parental consent*.

The ANPRM does not inquire about how to handle situations where parents differ on consent, or worse, when parents weaponize consent. If parents are at odds with each

³ See Online Hate and Harassment Survey, <https://www.adl.org/sites/default/files/pdfs/2022-09/Online-Hate-and-Harassment-Survey-2022.pdf>

⁴ See ID Verification Service for TikTok, Uber, X Exposed Driver Licenses, <https://www.404media.co/id-verification-service-for-tiktok-uber-x-exposed-driver-licenses-au10tix/>

⁵ See Who Lacks ID in America Today? An Exploration of Voter ID Access, Barriers, and Knowledge, <https://cdce.umd.edu/sites/cdce.umd.edu/files/pubs/Voter%20ID%202023%20survey%20Key%20Results%20Jan%202024%20%281%29.pdf>

⁶ *Ibid.*

other, they can use consent provisions to override each other's decisions, especially when they disagree on what's in the best interest of their child.

Worse still, the ANPRM does not inquire about how to handle closeted teens in unsupportive households. Online spaces may be the only places where some LGBTQ+ youth can safely be themselves. Obtaining parental consent to access inclusive online spaces or use LGBTQ+-affirming services may jeopardize their mental or even physical well-being. Similarly, youth in abusive households who turn to the internet for supportive resources may not be able to obtain parental consent safely. In fact, only 38% of LGBTQ+ youth report living in affirming households, while 60% reported finding online spaces to be supportive.⁷

The First Amendment restricts governmental interference with the editorial discretion of private entities and the rights of individuals, regardless of age, to access lawful expression. As highlighted by recent decisions in *NetChoice v. Bonta*⁸, *NetChoice v. Griffin*⁹, and *NetChoice v. Yost*¹⁰, laws imposing governmental control over speech access, particularly under the pretext of protecting minors, encounter a formidable obstacle in justifying their constitutionality under strict scrutiny, and the courts have consistently rejected them in other states.

Furthermore, the Supreme Court has indicated that algorithmic curation of content is entitled to First Amendment protection and subject to strict scrutiny. In *Netchoice v. Moody*, the Supreme Court stated that "Deciding on the third-party speech that will be included in or excluded from a compilation—and then organizing and presenting the included items—is expressive activity of its own. And that activity results in a distinctive expressive product."¹¹ This decision emphasizes that regulatory measures affecting social media companies' core editorial and curatorial functions, even if intended to safeguard young users, are likely to be set aside by the courts.

Advancing constitutionally-flawed policies will do nothing to help the most vulnerable New Yorkers. Even worse, implementing the SAFE For Kids Act in a way that compromises privacy and core online protections will leave them even worse off.

We appreciate the opportunity to share these comments.

Sincerely,

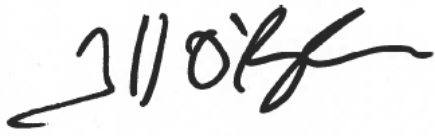
⁷ See 2023 U.S. National Survey on the Mental Health of LGBTQ Young People, <https://www.thetrevorproject.org/survey-2023/>

⁸ <https://netchoice.org/wp-content/uploads/2023/09/NETCHOICE-v-BONTA-PRELIMINARY-INJUNCTION-GRANTED.pdf>

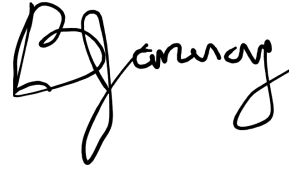
⁹ <https://netchoice.org/wp-content/uploads/2023/08/GRIFFIN-NETCHOICE-GRANTED.pdf>

¹⁰ <https://netchoice.org/wp-content/uploads/2024/01/2024.01.09-ECF-27-ORDER-Granting-TRO.pdf>

¹¹ https://www.supremecourt.gov/opinions/23pdf/22-277_d18f.pdf

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Todd O'Boyle, Senior Director,
Technology Policy

A handwritten signature in black ink, appearing to read 'Brianna January', with a stylized flourish at the end.

Brianna January, Director,
State and Local Government
Relations, Northeast Region