

## California Senate Appropriations Committee

### **AB 2879's Unintended Consequences Fail Parents, Teens, and Innovation**

Aug. 2, 2022

Dear Chair Portantino, Vice-Chair Bates, and Members of the Senate Appropriations Committee:

We ask that you **oppose** AB 2879 as it:

- Fails the teens and parents it is designed to help;
- Has unintended consequences for small players and legitimate speech; and
- Is likely unconstitutional.

While the California legislature's concern about cyberbullying is important and well-intentioned, the unintended consequences of this bill could make things more difficult for young people, parents, and innovators.

As a former educator myself, I understand the good intentions behind such a proposal and the damage cyberbullying can do; however, this legislation is not the solution.

As a result, even though the intentions of protecting teenagers online are laudable, the committee should **not advance AB 2879.**

#### **The Bill Fails to Help Parents and Teens**

Parents and young people face new challenges in the digital age and new versions of old problems like bullying. Unfortunately, AB 2879 fails to solve these challenges and instead has the government dictate how cyberbullying should be dealt with. In doing so, it could make it harder for bullying victims to seek help from trusted adults due to a false sense of security of what happens online.

AB 2879 has good intentions of making it easier to report cyberbullying and making online spaces safer for vulnerable populations; however, in doing so, it creates a false sense of security that the government has made these spaces safe. This could mean that parents and other trusted adults are less likely to have individual conversations with teenagers about what to do if they are getting bullied online because they will presume that the resources are already readily available. Furthermore, bullied teens may be more embarrassed that the mandated resources were not enough in their case, or worse, be dismissed by adults who assume everything is taken care of on a platform level.

Unfortunately, bullies will use almost any service to go after the individuals they choose to harass. AB 2879 presumes that the same processes would work for Peloton to deal with cyberbullying that work for Twitter or Facebook. It also presumes that bullies will not find the loopholes in policies that keep their vindictive and vile content outside of the terms of the law.

A better solution is to work on creating positive communities where young people feel supported by trusted adults like parents and teachers against cyberbullying and can safely explore the beneficial portions of the internet that can create positive online communities around everything from religion or

sexual orientation to video games or musicians. The internet can provide young people with a positive voice and positive experiences. Education and empowerment rather than government mandates are a better way to deal with cyberbullying.

## **The Bill Hurts Innovation and Makes It Harder for Small Companies and Positive Speech**

While bills like AB 2879 may only be intended to deal with cyberbullying content, they will have far wider reaching impacts, especially on smaller players with fewer resources. Unfortunately, proposals like AB 2879 are blunt tools that do not take into account the complexity of content moderation and the difficulty in identifying and responding to bullying.

Mandatory disclosure of these policies can result in bad actors like bullies finding gray areas so they can continue their malicious behavior while also requiring more takedowns of non-malicious speech to insure compliance with these proposals. While transparency may be good in theory, the constant evolution of online culture can make it more problematic in practice particularly when dealing with what teenagers use to cyberbully each other.

As has been seen for specific content at a federal level, even when the underlying content is agreed to be bad, these carve-outs often impact more than just the problematic speech they were intended to target. Cyberbullying is not as easily defined as AB 2879 may make it seem. Teenagers can make almost any term derogatory, while other terms can be reclaimed by groups for the purpose of empowerment. Given the sheer amount of content, it can be difficult for content moderation to distinguish between the two. The stiff fines mean that a company is likely to take down content if there is any possibility it could fall under the terms of the law. While some of this content may be “lawful but awful,” other content could be legitimate and empowering for certain marginalized communities or about individuals exploring their own identity. Furthermore, even legitimate conversations about how to deal with and respond to bullying could be caught up in attempts to comply with the law out of an abundance of caution.

These burdens will be particularly felt by smaller platforms who may have fewer resources in terms of moderators or engineers to respond to the new requirements. Even if a company is seeking to create a positive space that is bullying-free, that can quickly go awry, and they will find themselves subject to substantial fines despite their best efforts. Additionally, even if they are later found to have been in compliance with the law, the company still must endure the legal and reputational costs associated with defending the case. The result is, rather than focusing on actually solving issues related to bullying, small companies will be using up their time and content moderation resources on complying with the law.

## **The Bill Violates the First Amendment**

Perhaps most concerning, the law is likely unconstitutional as a regulation of the distribution of speech.

While the government is entitled to take reasonable steps to protect minors from harmful content that might otherwise be constitutionally protected, it may not do so in a way that is so broad that it limits adults’ access to legal content. In *Ashcroft v. ACLU*, the Supreme Court struck down a federal law that attempted to prevent the posting of content harmful to teenagers on the web due to such impact as well as the harm and chilling effect that the associated fines could have on legal protected speech. This bill will face similar challenges.

This proposal should be considered distinct from other proposals that require libraries and schools to have filters on computers or other connected devices through which children and teens access the internet. This is constitutional, in part, because the restrictions are based on receipt of federal and state funding.

However, AB 2879 enjoys no such protections as it is a mandate that a specific type of design must be used by online services to protect users from harmful content.

The disclosure requirements in AB 2879 are also likely unconstitutional. Unlike generally applicable disclosure requirements such as nutrition labels that are often constitutional, AB 2879 requires disclosure about covered platforms' editorial policies and practices. As a result, AB 2879 is requiring disclosure of constitutionally protected editorial practices.

The internet by its very nature is interstate, and state regulations such as the ones proposed in AB 2879 place a significant impact on interstate commerce and interactions well beyond the young people the law seeks to protect. This bill will only further contribute to an emerging patchwork of laws disrupting the advantages of the internet for consumers and burden small businesses, resulting in fewer opportunities and innovations while failing to protect children from bullying.

Given the likely unconstitutionality and negative impacts on innovation, speech, parents, and young people themselves, we ask you to **not** advance AB 2879.

Thank you, and we welcome the opportunity to speak with you further about how technology can improve user experience and help combat cyberbullying.

Sincerely,

Jennifer Huddleston  
Policy Counsel  
**NetChoice**

*NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.*