

1 AMBIKA KUMAR (*pro hac vice*)
ambikakumar@dwt.com
2 DAVIS WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300
3 Seattle, Washington 98104
Telephone: (206) 757-8030
4

5 ADAM S. SIEFF (CA Bar No. 302030)
adamsieff@dwt.com
6 DAVIS WRIGHT TREMAINE LLP
865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
7 Telephone: (213) 633-6800

8 ROBERT CORN-REVERE (*pro hac vice*)
bobcornrevere@dwt.com

9 DAVID M. GOSSETT (*pro hac vice*)
davidgossett@dwt.com

10 MEENAKSHI KRISHNAN (*pro hac vice*)
meenakshikrishnan@dwt.com

11 DAVIS WRIGHT TREMAINE LLP
1301 K Street NW, Suite 500 East
12 Washington, D.C. 20005
Telephone: (202) 973-4200
13

14 Attorneys for Plaintiff
15 NETCHOICE, LLC d/b/a NetChoice

16
17 IN THE UNITED STATES DISTRICT COURT
18 THE NORTHERN DISTRICT OF CALIFORNIA
19 SAN JOSE DIVISION
20

21 NETCHOICE, LLC d/b/a NetChoice,
22 Plaintiff,

23 v.

24 ROB BONTA, ATTORNEY GENERAL OF
THE STATE OF CALIFORNIA, in his official
25 capacity,

26 Defendant.
27

Case No. 5:22-cv-08861-BLF

**DECLARATION OF DENISE PAOLUCCI
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Date: June 22, 2023
Time: 9:00 a.m.
Dept.: Courtroom 3 – 5th Floor

Action Filed: December 14, 2022

1 I, Denise Paolucci, declare:

2 1. I am the co-owner of Dreamwidth Studios, LLC, which operates the website
3 Dreamwidth.org. I have co-owned and operated Dreamwidth since the site's inception and have
4 worked in multiple roles, including as the head of the Trust and Safety team and head of product
5 development. I make this declaration from personal knowledge and a review of Dreamwidth's
6 records kept in the ordinary course of business.

7 2. Dreamwidth is an open-source social networking, content management, and
8 personal publishing platform, in operation since 2009. Dreamwidth's registered users can create
9 profiles, post content to their "Journal," comment on content posted by others, search for users
10 with similar interests, and post in community forums. Dreamwidth is committed to open access,
11 personal privacy, transparency, freedom of expression, accessibility, and inclusiveness. It operates
12 according to a set of Guiding Principles and a Diversity Statement. See
13 <https://www.dreamwidth.org/legal/principles>; <https://www.dreamwidth.org/legal/diversity>.

14 Dreamwidth provides a number of privacy, security, and content-control features, allowing our
15 users a high degree of control over their own data and their own online experience. Our users can
16 choose who sees their content, restrict access to their content in multiple ways, and control the
17 privacy and security of everything they post to the site. Dreamwidth prides itself on being a safe
18 space for marginalized communities, queer and transgender people, and individuals who self-
19 identify outside the norm. Dreamwidth has approximately 4 million registered accounts, and has
20 over 1.8 million unique visitors annually.

21 3. ***Business Model and Data Sharing.*** Dreamwidth does not serve ads or sell user
22 data, and does not accept payment to promote or otherwise change the order or priority of content
23 or to target content or posts to a subset of users.

24 4. However, like every small business with limited resources, we employ multiple
25 third-party vendors to provide commercially valuable business services we lack the resources to
26 offer ourselves, including Google Analytics (for website traffic and browser capability analysis)
27 and Stripe (for PCI-compliant payment processing). We also use cloud computing services to
28 host the servers that operate the website and to provide both security defense services (to prevent

1 cyberattacks from malicious actors) and content delivery services (to speed up access to the site).
2 These services are necessary to the operation of our site, but they are impossible to use without
3 transferring some amount of identifying user information to our vendors. We do not have the
4 resources to build self-hosted replacements for these systems, and there are no available
5 alternatives that do not involve some transfer of user information. I understand based on the text
6 of AB 2273 that because we share user information with these outside services to ensure the
7 functionality of our for-profit business, we may be a covered “business” under the law.

8 5. Dreamwidth’s revenue comes entirely from fees from subscriptions for paid
9 accounts, which are eligible for extra services on top of the standard services available to all users.
10 For example, paid accounts can add icons to their profiles, have access to additional custom styles
11 and expanded search functionality, and can create an @dreamwidth.org email address.
12 Dreamwidth operates on a limited budget. It is staffed by myself and the company’s other co-
13 owner, two part-time employees, and approximately 200 volunteers.

14 6. **Content.** Content posted to Dreamwidth runs the full gamut of subject matter,
15 reflecting the interests and creative drives of its users. Users post shortform and longform original
16 content, artwork, photographs, and commentary to their individual journals, and also participate
17 in interest-based community forums. Many of the most popular Dreamwidth communities are
18 “fan” communities, meaning they are devoted to discussion of one or more fiction books, series,
19 television programs, films, or real life individuals or groups. Fanfiction and role-playing games
20 (“RPGs”) are also popular formats for content on Dreamwidth. Fanfiction refers to original
21 fictional works featuring the characters of an existing work. RPGs involve a user taking the
22 identity of another person—generally a fictional character—for purposes of creative writing and/or
23 interactions with other users who may themselves be in character. For example, someone may
24 wish to roleplay a character who has just received their invitation to a magical boarding school
25 they didn’t know existed, a character who serves on the crew of a spaceship dedicated to exploring
26 the galaxy, or a character who hunts and fights supernatural beings. This content may be sexual
27 in nature, and indeed, fanfiction in general is an extremely popular format for erotic literature.
28 Some of our users’ original content may also touch on other extreme or transgressive themes as

1 well. Dreamwidth believes that users should be able to express themselves fully in a safe
2 environment, and that includes giving them the freedom to explore these themes.

3 7. Dreamwidth does not “recommend” accounts or content to users. Dreamwidth also
4 does not offer any “algorithmic timeline” that adjusts the display of content based on a prediction
5 that a particular user will be interested in a particular piece of content. Instead, a user’s “Reading
6 Page” (our equivalent of a “timeline” or “feed”) is populated entirely by content from accounts
7 that user has subscribed to and will always appear in reverse chronological order. The site has
8 rudimentary additional content discovery areas, including a simple keyword search (“Content
9 Search”), a “firehose” feed of public posts that have recently been made to the site (“Latest
10 Things”), and the ability to search for “Interests” other users have added to their profiles.
11 Dreamwidth allows users to opt out of having their posts or accounts included in these additional
12 content discovery areas.

13 8. *User Safety.* Dreamwidth provides its users a significant amount of control over
14 who can see their content. Registered users can specify privacy settings for nearly every piece of
15 information they post to the site. Privacy settings can be applied to entire user accounts or
16 community accounts, to individual posts, and even to individual pieces of information users have
17 chosen to add to their profiles such as their email address, their location, or their birthday. For
18 example, posts made to Dreamwidth can be set as “public” (visible to anyone who accesses the
19 user’s URL), “access locked” (visible only to other users the poster has affirmatively authorized
20 to see the post), “custom filtered” (visible only to a user-defined subset of the other users the poster
21 has affirmatively authorized to see the post) or “private” (visible only to the user).

22 9. Users also have the option to add one of two different content restrictions to a post,
23 or to an entire journal or community (in which case each post inherits the same restriction by
24 default). The first form of content restriction, “Viewer Discretion Advised,” puts the content
25 behind a click-through warning notice that the poster has advised the content “should be viewed
26 with discretion.” Clicking an acknowledgment button will reveal the content. Users who apply
27 this restriction can also enter a specific reason that discretion is advised, which the warning will
28 display. Reasons may include that the content contains “spoilers,” may upset or trigger certain

1 audiences, or may contain adult or “not safe for work” content. The second content restriction,
2 “Adult Content,” prevents users who are under eighteen years old (based on the birthdate entered
3 by the user during account set up) from loading the content at all. Users registered as over eighteen
4 will get a click-through warning reading “you are about to view content that [username] marked
5 as inappropriate for anyone under the age of 18,” though they can disable these warnings in their
6 account settings. If the content is posted publicly, users who are not logged in to Dreamwidth will
7 receive a click-through warning that the content has been “marked as inappropriate for anyone
8 under the age of 18,” and have to click a button reading “Yes, I am at least 18 years old” before
9 viewing.

10 10. Dreamwidth has decided to treat the un-logged-in general public as over-18, in part
11 because we have seen evidence that blocking access to anyone other than users registered as over-
12 18 results in users under-utilizing the Adult Content flag, making Dreamwidth less safe to its
13 registered under-18 users. Users can avoid this workaround using their privacy settings. For
14 example, they can apply the Adult Content restriction and set their content to only be viewable to
15 registered users who subscribe to their journal, so that only subscribers registered as over-18 will
16 be able to view the content. Dreamwidth relies on its users to apply privacy settings in an
17 appropriate manner to ensure the safety of the community. Dreamwidth does not proactively
18 moderate for adult content. In fact, doing so would be contrary to our belief that our users are
19 entitled to wide discretion in how they choose to express themselves. The exception is when
20 someone reports a journal to us that contains a large percentage of adult content. In that case, we
21 retain the right to set an Adult Content restriction on the journal. We also reserve the right to set
22 the Adult Content restriction on pornographic or violent imagery we encounter in the course of
23 our standard site maintenance, but do not proactively search for such content. We do not apply
24 this practice to all written works that include erotic or other mature content.

25 11. *User Accounts.* When a user signs up for a Dreamwidth account, they must enter
26 a username, an email address that can be verified through an automatic email link, a password, and
27 a birthdate. The birthdate field displays a notice that “This information is required by law” and
28 “You must enter your real birthdate.” We do not accept registrations from users who identify

1 themselves as under thirteen years old. A user cannot change the birthdate entered at setup, and
2 this information is not displayed or used for any other purpose.

3 12. *Age Verification.* Despite our efforts to encourage accurate reporting of birthdates
4 at registration, there is no way to verify that the user has entered their real birthdate. Dreamwidth’s
5 users are extremely privacy-conscious. We go to great lengths to assure users that the legal
6 birthdates they enter at account registration will be used for no purpose other than legal
7 compliance. We even allow users to specify a separate birthdate to display on their profile.
8 Despite these efforts, our records support the theory that users regularly enter false birthdates when
9 registering their accounts: A review of the legal birthdates supplied at registration indicate over
10 13,000 registered users reported a legal birthdate of 1923 or earlier, which seems unlikely to be
11 accurate. Additionally, registered users reported a legal birthdate of either 1/1/1990 or 1/1/1980,
12 which I know to be common “dummy” birthdates used by the privacy-conscious, on 87,545
13 individual accounts—a highly disproportionate 6.7% of our total individual accounts. 1,955
14 accounts reported a legal birthdate that would make them under 18 years old, but the true number
15 could be higher or lower. It would be contrary to Dreamwidth’s principles to demand our users
16 supply proof of legal birthdate, because the only way to do so would be to require identity
17 verification. Dreamwidth’s users come to our platform expecting their privacy and anonymity to
18 be respected. Demanding any form of identity verification would alienate our privacy-conscious
19 users. We do not want to be forced to collect this data, and our users do not want to be forced to
20 provide it to us.

21 13. I am also not aware of any technology—much less technology available to a site
22 with Dreamwidth’s limited resources—that could allow us to verify or even estimate our users’
23 ages with any degree of accuracy. I have looked into several proposals for using algorithmic
24 artificial-intelligence-based analysis to estimate the ages of users. Yet these proposals would apply
25 scientifically unvalidated black box systems to our users. Moreover, they carry significant risks
26 of biased and inaccurate results. For example, one proposal I have seen involves using textual
27 analysis of a person’s writing style or reading level to estimate that person’s age. I believe that
28 any analysis based on writing style or reading level will result in discrimination against people

1 with an underprivileged educational background and, given the reality of disparate educational
2 access, that discrimination will inevitably be worse for people who are already marginalized on
3 the basis of race or national origin. This method would also have a disparate impact on those who
4 are writing in a second language and those experiencing temporary or permanent cognitive
5 disabilities.

6 14. Another proposal I have seen involves employing facial recognition technology to
7 estimate the age of the person being recorded. I consider the privacy violation inherent in
8 biometric software unconscionable. But even putting that aside, studies have shown that facial
9 recognition technology is more likely to class members of certain racial and ethnic backgrounds
10 as younger than they actually are. *See* Dahlan, Hadi A. “A Survey on Deep Learning Face Age
11 Estimation Model: Method and Ethnicity.” *INTERNATIONAL JOURNAL OF ADVANCED COMPUTER*
12 *SCIENCE AND APPLICATIONS* 12.11 (2021). Accordingly, this method would have a significant
13 disparate impact on those users. It could also have a disparate impact on our users who are less
14 financially stable, since they may be less likely to be able to afford a device capable of capturing
15 and transmitting photo or video. It is also common for disabled people to use older technology,
16 which is less likely to have a webcam, because their accessibility software won’t run on newer
17 hardware, or the cost of an updated software license is prohibitively expensive. In fact, our
18 analytics show that at least some of our users access the site using computers that are too old to
19 have webcam technology or devices that don’t have the ability to capture images. Blind people in
20 particular also experience significant problems using any software that requires facial recognition
21 technology, because it is difficult for them to determine when the camera’s field of vision includes
22 their face.

23 15. All of these categories of marginalized people are named in our Guiding Principles
24 as groups whose needs we explicitly seek to not only accommodate, but center. Because of our
25 track record in upholding those Guiding Principles and considering the needs of marginalized
26 groups, members of those groups have grown to trust our services and have become loyal users.
27 To provide only a few illustrative examples of the kinds of marginalized groups who have turned
28 to Dreamwidth, our users include large groups of: (a) Russian or Chinese activists protesting their

1 government’s human rights abuses, who are comfortable using our site because we do not
2 cooperate with their government’s mandated censorship and do not require them to provide us
3 personally identifying information that may be discoverable by their government; (b) disabled
4 people who are looking for community or seeking to share information on their conditions, who
5 are comfortable using our site because we do not require them to provide us personally identifying
6 information that may be used against them by doctors, insurance companies, employers, etc., and
7 because we employ significant effort to make sure the site is accessible to multiple conflicting
8 disability access needs; (c) blind people who can use our site easily because of the significant effort
9 we employ to ensure the site is one of the most screenreader-accessible products on the internet
10 and because we minimize the steps it takes to create an account; (d) people of marginalized genders
11 and sexualities, who are comfortable using our site because we don’t accept advertising and
12 therefore are not affected by companies who are more likely to treat LGBTQ content as age-
13 inappropriate while heterosexual content is treated as acceptable. AB 2273 will require us to betray
14 the promises we have made to respect these people’s privacy and to refrain from placing
15 unnecessary barriers to their use of the site.

16 16. **DPIAs.** I understand that AB 2273 requires covered businesses to complete a Data
17 Protection Impact Assessment (“DPIA”) for any existing “online service, product, or feature likely
18 to be accessed by children” as well as prior to launching any additional such service, product, or
19 feature. I understand further that these DPIAs must include an assessment of a number of factors,
20 including, for example, an evaluation of whether the service, product, or feature at issue could
21 expose a minor to “harmful, or potentially harmful, content.” Finally, I understand that AB 2273
22 requires covered businesses to mitigate any “risk of material detriment to children” that its
23 services, products, or features could create. Preliminarily, Dreamwidth has limited resources to
24 devote to this requirement. We have only two part-time employees, in addition to myself and my
25 co-owner, and do not have the resources to add more staff. We do not have an in-house lawyer
26 who can advise on whether every new service, product, or feature we offer would be “likely to be
27 accessed by children” in the view of California regulators, nor do we have the resources to keep
28 an outside lawyer on retainer to provide this advice on a continuing basis. In order to produce

1 DPIAs for every new service, product, or feature we offer, we would need to somehow train our
2 200 volunteers to create DPIAs, when many of those volunteers have limited time to contribute in
3 the first place. Even the training process alone—not to mention the time required to actually
4 complete DPIAs and staff time required to review them to ensure completeness—would be a huge
5 drain on our resources and divert attention from more critical issues concerning site functionality
6 and/or user trust and safety. Moreover, our volunteer program is entirely self-directed, with
7 volunteers choosing which tasks to complete. It would change the face of this program to impose
8 additional mandatory training sessions or other time commitments beyond what volunteers choose
9 to contribute.

10 17. The definition of “service, product, or feature” is also unworkably vague, and does
11 not correspond to how our business operates. The nature of our open source development means
12 that very few changes to our site are made by Dreamwidth employees or owners. Instead, they are
13 made by individual volunteer contributors from around the world. In accordance with our Guiding
14 Principles, we have focused a significant amount of time in teaching our website users how to
15 program, including many people from underrepresented or marginalized groups who have never
16 been given the opportunity to learn programming before. In service of this goal, we have done
17 significant work to lower the barrier to entry for contributions, and to make it easy and simple for
18 volunteer programmers to submit proposed changes, from small typo fixes to the addition of
19 entirely new features. For example, our volunteer programmers developed a feature that made it
20 possible for users to customize the look of their journal any way they would like, Volunteer
21 programmers also built most of our pre-built journal layouts, improved the accessibility of the site
22 for disabled people by introducing assistive features, modernized the code that generates each of
23 our site’s pages for contemporary browsers, and have contributed security fixes that help us protect
24 our users’ accounts and personal data. AB 2273 is vague and uncertain about which of these user-
25 submitted proposed changes would require an accompanying DPIA. If we are forced to assume,
26 to avoid the risk of fines, that *any* change requires a DPIA, that would place an additional step on
27 the contributing process which would unduly burden our volunteer developers and our limited
28 staff. We may have to withdraw certain services entirely to comply with AB 2273, and have been

1 forced to consider whether our site can continue to operate at all given the burdens the law imposes.
2 In addition to significantly slowing our ability to improve the site, completing DPIAs pursuant to
3 AB 2273 would add significant delays to the process of resolving any privacy or security issue or
4 potential improvement that we discover, since it would add a complex additional prerequisite to
5 implementing many of these changes. This is explicitly contrary to the stated purpose of the AB
6 2273 to ensure “strong privacy protections” for young web users.

7 18. I am also very concerned about AB 2273’s requirement that we create DPIAs to
8 evaluate, and then mitigate, “the risks of material detriment to children that arise from the data
9 management practices” of our business and the potential that minors could be exposed to
10 “potentially harmful” content on Dreamwidth. These standards of “material detriment” and
11 “potentially harmful” are extremely vague and inherently subjective, and would put us at the
12 whims of whatever a given administration believes at a given time. For example, in the past year,
13 a number of state legislatures have introduced bills that classify providing information about
14 gender-affirming care to any person under age 18 as harmful, with the Texas Attorney General
15 even defining providing gender-affirming care to minors as “child abuse,” *see*
16 <https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf>, and the California
17 Attorney General could in theory adopt this definition as well. Yet, at the same time, transgender
18 adolescents are at high risk of suicide: One study found that 86% of transgender adolescents in
19 the study (with a mean age of 16) had experienced suicidal ideation, and 56% had attempted
20 suicide, *see* Austin, Ashley, et al. “Suicidality among transgender youth: elucidating the role of
21 interpersonal risk factors.” *JOURNAL OF INTERPERSONAL VIOLENCE* 37.5-6 (2022): NP2696-
22 NP2718. Another found transgender adolescents had 5 times the risk of suicidal ideation and 7.6
23 times the risk of attempting suicide. *See* Kingsbury, Mila, et al. “Suicidality among sexual
24 minority and transgender adolescents: a nationally representative population-based study of youth
25 in Canada.” *CMAJ* 194.22 (2022): E767-E774. Although it is impossible to quantify the exact
26 number of transgender individuals on Dreamwidth, our site statistics show that at least 3% of
27 Dreamwidth users identify as neither male nor female, and a full 50% choose not to specify their
28 gender. I expect that a significant amount of content on the site touches on transgender issues,

1 including the process of accessing gender-affirming care. If Dreamwidth restricts access to this
2 content to avoid the specter of huge fines under AB 2273, that could ultimately increase the risk
3 of suicidality among our adolescent transgender users. Thus, under AB 2273, we could be in a
4 scenario where both restricting and not restricting content related to gender-affirming care could
5 be considered “harmful” to adolescents.

6 19. This is only one of numerous areas where state legislators are waging culture wars
7 by defining certain subject matters as harmful to children. For example, in the past year, a number
8 of state legislatures have introduced or passed bills that target speech about LGBTQ relationships,
9 or speech about structural inequalities experienced by certain marginalized groups. “Potentially
10 harmful” could also arguably be read to encompass original content produced by our users that
11 explores adult themes, since some believe such content could be “detriment[al]” or “harmful” to
12 minors. Dreamwidth operates on a fundamental principle that our users should feel safe to express
13 themselves, and should not be censored even when that expression involves erotic themes.
14 Imposing the government’s value judgments on our users’ expression would be a knife in the heart
15 of our platform and its community. Dreamwidth is strongly opposed to operating as a proxy for
16 government censorship.

17 I declare under penalty of perjury that the foregoing is true and correct to the best of my
18 knowledge.

19 Executed this 15 day of February, 2023, in Baltimore, MD.

20 

21 Denise Paolucci