

Illinois SB 3325

OPPOSITION TESTIMONY

March 12, 2024

Illinois General Assembly
Senate Judiciary Committee

NetChoice respectfully asks that you reject SB3325. This bill suffers from significant legal and constitutional flaws that would have far-reaching negative impacts on dozens of industries in Illinois.

SB3325 imposes a harmful "reason to know" standard of liability that violates the First Amendment and Due Process rights of companies:

- The "reason to know" standard is vague and overbroad, failing to provide fair notice of what conduct is prohibited. This violates core Due Process principles.
- The standard would chill and suppress vast amounts of lawful and constitutionally protected speech by incentivizing over-removal out of caution. This violates the First Amendment.
- The standard would impact not just social media companies and AI providers, but many other adjacent industries like ISPs, CDNs, cloud providers, and more. This broad scope magnifies the constitutional issues.

Simply put, the government cannot hold companies liable for the speech of others based on an amorphous "reason to know" standard. The Supreme Court has made clear that "a law may be invalidated as overbroad if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'"¹ That is precisely the case with SB3325.

Moreover, the "reason to know" standard would create a legal minefield for companies, who could never be certain if their moderation efforts shielded them from massive liability. Faced with this untenable

¹ *United States v. Stevens*, 559 U.S. 460, 473 (2010)

situation, many would likely adopt overly restrictive policies that suppress users' First Amendment rights. Others may cease operating in Illinois entirely. Neither outcome benefits Illinoisans.

We humbly request that any such legislation be limited to only an actual knowledge standard and that such penalties apply to the creator of the content, not a mere intermediary.

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While well-intentioned, SB3325's "reason to know" liability standard is a blunt instrument that would cause significant collateral damage to the free speech rights of Illinois residents and businesses. We respectfully urge you to reject this unconstitutional and harmful approach. NetChoice welcomes the opportunity to work with you on more targeted, legally sound ways to address the challenges posed by AI and digital technologies.

Sincerely,

Carl Szabo
Vice President & General Counsel
NetChoice

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