



January 29, 2024

House Communications, Technology and Innovation - Communications Subcommittee
Attn: Robert Asplund, Committee Clerk
1000 Bank Street
Richmond, VA 23219

RE: HB 1115 - "Consumer Data Protection Act; social media platforms." (Oppose)

Dear Chair Glass and Members of the House Communications, Technology and Innovation - Communications Subcommittee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose HB 1115 in advance of the House Communications, Technology and Innovation - Communications Subcommittee hearing on January 29, 2024.

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.¹ Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members. In recent sessions, there has been a notable surge in state legislation concerning children's online safety.

CCIA holds a firm conviction that children are entitled to a higher level of security and privacy in their online experiences. Presently, our members are actively engaged in various initiatives to integrate robust protective design features into their websites and platforms.² CCIA's members have been leading the effort to implement settings and parental tools to individually tailor younger users' online use to the content and services that are suited to their unique lived experience and developmental needs. For example, various services allow parents to set time limits, provide enhanced privacy protections by default for known child users, and other tools to allow parents to block specific sites entirely.³

This is also why CCIA supports the implementation of digital citizenship curriculum in schools, to not only educate children on proper social media use but also help educate parents on what mechanisms presently exist that they can use now to protect their children the way they see fit and based on their family's lived experiences.⁴ In fact, the Virginia General Assembly passed HB 1575 in 2023 establishing the Internet Safety Advisory Council for the purpose of advancing the goal of safe use of media and technology by students and teachers in public elementary and secondary schools in the Commonwealth. Among other duties, the Council must develop instructional content on the risks of transmitting personal information on the internet and the importance of privacy protection.

It should also be recognized that protecting children from harm online does not include a generalized power to restrict ideas to which one may be exposed. Speech that is neither obscene to young people nor subject to other legitimate laws cannot be suppressed solely to protect young online users from ideas or images that a legislative body disfavors. Proposals to keep children safe online should be established through a risk-based

¹ For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

² Jordan Rodell, *Why Implementing Education is a Logical Starting Point for Children's Safety Online*, Disruptive Competition Project (Feb. 7, 2023), <https://www.project-disco.org/privacy/020723-why-implementing-education-is-a-logical-starting-point-for-childrens-safety-online/>.

³ Competitive Enterprise Institute, *Children Online Safety Tools*, <https://cei.org/children-online-safety-tools/>.

⁴ See *supra* note 2.



approach to developing protections for different ages of users and by focusing on tangible harm. While CCIA shares the goal of increasing online safety, this bill presents the following concerns.

1. Virginia should not impede continuing efforts by private businesses to moderate content on their services, including through the use of algorithms.

Just as digital services do not serve all users, they do not publish all content. In addition to prohibiting illegal content as required by relevant state and federal laws, many digital services remove content that is dangerous, though not inherently illegal. This includes, for example, content that exhorts users to self-harm or encourages young people to engage in dangerous or destructive behavior.

Setting aside the matter of whether the government should impose upon private companies the obligation to host, curate, display, or take down lawful speech, which raises First Amendment concerns, digital services are already taking aggressive steps to moderate and remove dangerous and illegal content consistent with their terms of service. The companies deliver on the commitments made to their user communities with a mix of automated tools and human review. In 2021, a number of online businesses announced that they have been voluntarily participating in the Digital Trust & Safety Partnership (DTSP) to develop and implement best practices to ensure a safer and more trustworthy internet, and have recently reported on the continuing efforts to implement and strengthen these commitments.⁵

As U.S. federal law limits the liability of both digital service providers and their users with regard to content created by third parties, this is a subject of ongoing federal attention. Recently, the U.S. Supreme Court declined to recommend any changes to a key tenet of U.S. Internet law in *Gonzalez v. Google*,⁶ in which the Court was considering issues related to content moderation and organization methods, including through the use of algorithms. Additionally, *NetChoice & CCIA v. Moody*⁷ and *NetChoice & CCIA v. Paxton*⁸ are both cases this term in which the Supreme Court will examine how digital service providers may display third-party content. CCIA recommends taking on board the results of relevant legal proceedings so legislators can act with fuller knowledge of the constitutional boundaries. Otherwise, any potential statute may be at greater risk of protracted, expensive litigation.

2. HB 1115 lacks narrowly tailored definitions, creating serious compliance questions for both businesses and users.

As currently written, the bill does not provide definitions that are clear enough to enable businesses to comply. For example, “has *knowledge* that a user of the social media platform is a child” is not defined in this bill. Further, terms such as “infinite scroll” lack adequate scientific foundation. In the absence of any medical consensus on the topic, private businesses will not be able to coherently or consistently make diagnostic assessments of users.

Delving further into the concept of “infinite scroll” – the idea that users can develop a dependency on social media, and considering the recent release of the U.S. Surgeon General's Advisory entitled *Social Media and*

⁵ Margaret Harding McGill, *Tech giants list principles for handling harmful content*, Axios (Feb. 18, 2021), <https://www.axios.com/techgiants-list-principles-for-handling-harmful-content-5c9cfba9-05bc-49ad-846a-baf01abf5976.html>.

⁶ Trevor Wagener, *A Ruling Against Google in Gonzalez Could Create a “World of Lawsuits” and “Economic Dislocation,”* Disruptive Competition Project (Feb. 27, 2023), <https://www.project-disco.org/competition/gonzalez-v-google-could-create-a-world-of-lawsuits-and-economic-dislocation/>.

⁷ *NetChoice & CCIA v. Moody*, <https://ccianet.org/litigation/netchoice-ccia-v-moody/>.

⁸ *NetChoice & CCIA v. Paxton*, <https://ccianet.org/litigation/netchoice-ccia-v-paxton/>.

*Youth Mental Health*⁹, many were quick to emphasize solely the adverse effects and risks outlined in the report, despite the absence of sufficient scientific grounding. The report is much more nuanced and also discusses many potential benefits of social media use among children and adolescents. For example, the report concludes that social media provides young people with communities and connections with others who share identities, abilities, and interests. It can also provide access to important information and create a space for self-expression. The report further details that the buffering effects against stress that online social support from peers provides can be especially important for youth who are often marginalized, including racial, ethnic, sexual, and gender minorities.¹⁰ It should also be highlighted that the report provides evidence that social media-based and other digitally-based mental health interventions may also be helpful for some children and adolescents by promoting help-seeking behaviors and serving as a gateway to initiating mental health care.

Further, the report itself notes the lack of evidence to support a causative relationship between social media and anticipated negative impacts on younger users. For example, the research openly acknowledges that “...social media use may be a risk factor for mental health problems in adolescents. However, few longitudinal studies have investigated this association, and none have quantified the proportion of mental health problems among adolescents attributable to social media use.”¹¹ It is also reasonable to examine that compared to previous decades, young people face increased financial pressure, greater competition, more complex tertiary education pathways, and increased loneliness specifically due to the COVID-19 pandemic. Factors such as increased mental health resources and the general acceptance of having and reporting mental health conditions also play a role. In order to take a measured approach to these complicated and sensitive issues, it is imperative to remember that correlation does not equal causation.

3. This legislation may halt services for individuals under 18, hindering teenagers' internet access and, consequently, restricting their First Amendment right to information. This includes access to supportive online communities that might not be available in their physical location.

The vague standard of conduct and the lack of narrowly tailored definitions could create an incentive to simply prohibit minors from using digital services rather than face potential legal action. As previously mentioned, the First Amendment, including the right to access information, is applicable to teens. Speech cannot be suppressed in the name of “protecting” minor users online nor is a state legislative body the arbiter of what information is suitable for younger users to access. Moreover, when businesses are required to deny access to social networking sites or other online resources, this may also unintentionally restrict children’s ability to access and connect with like-minded individuals and communities. For example, children of racial or other minority groups may not live in an area where they can easily connect with others that represent and relate to their own unique experiences. An online central meeting place where kids can share their experiences and find support can have positive impacts.

The connected nature of social media has led some regulators to allege that online services may be negatively impacting teenagers’ mental health. However, some researchers argue that this theory is not well supported

⁹ U.S. Surgeon General, *Social Media and youth mental health*, U.S. Department of Health and Human Services (May 23, 2023), <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf>.

¹⁰ Jennifer Marino, Matthew Berger, Megan Lim, Melody Taba, Rachel Skinner, *Social Media use and health and well-being of lesbian, gay, bisexual, transgender, and Queer Youth: Systematic Review*, *Journal of Medical Internet Research* (Sept. 22, 2021), <https://www.jmir.org/2022/9/e38449>.

¹¹ Kayla Tormohlen, Kenneth Feder, Kira Riehm, *Associations Between Time Spent Using Social Media and Internalizing and Externalizing Problems Among US Youth*, *Jama Psychiatry* (Sept. 11, 2019), <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2749480>.



by existing evidence and repeats a “moral panic” argument frequently associated with new technologies and new modes of communication. Instead, social media effects are nuanced,¹² individualized, reciprocal over time, and gender-specific. Additionally, a study conducted by researchers from Columbia University, the University of Rochester, the University of Oxford, and the University of Cambridge found that there is no evidence that associations between adolescents’ digital technology engagement and mental health problems have increased.¹³ Particularly, the study shows that depression has virtually no causal relation to TV or social media.

CCIA believes that an alternative to solving these complex issues is to work with businesses to continue their ongoing private efforts to implement mechanisms such as daily time limits or child-safe searching so that parents can have control over their own child’s social media use. This is also why CCIA supports the implementation of digital citizenship curriculum in schools, to not only educate children on proper social media use but also help educate parents on what mechanisms are already out there that they can use now to protect their children the way they see fit and based on their family’s lived experiences.¹⁴

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While we share the concerns of the sponsor and the House Communications, Technology and Innovation - Communications Subcommittee regarding the safety of young people online, we encourage Subcommittee members to resist advancing legislation that is not adequately tailored to this objective. We appreciate the Subcommittee’s consideration of these comments and stand ready to provide additional information as the General Assembly considers proposals related to technology policy.

Sincerely,

Khara Boender
State Policy Director
Computer & Communications Industry Association

¹² Amy Orben et al., *Social Media’s enduring effect on adolescent life satisfaction*, PNAS (May 6, 2019), <https://www.pnas.org/doi/10.1073/pnas.1902058116>.

¹³ Amy Orben, Andrew K. Przybylski, Matti Vuorre, *There Is No Evidence That Associations Between Adolescents’ Digital Technology Engagement and Mental Health Problems Have Increased*, Sage Journals (May 3, 2021), <https://journals.sagepub.com/doi/10.1177/2167702621994549>.

¹⁴ See supra note 2.