



September 14, 2022

The Honorable Gavin Newsom  
California State Capitol, Suite 1173  
Sacramento, California 95814

**Re: A.B. 2273 – Veto**

Dear Governor Newsom:

I write today on behalf of the Electronic Frontier Foundation<sup>1</sup> to respectfully urge you to veto A.B. 2273, authored by Asm. Wicks, which would establish the Age-Appropriate Design Code.

We have always appreciated Asm. Wicks' leadership in seeking and protecting privacy for all Californians. EFF advocates for strong privacy, but we are also dedicated to upholding free expression. This can be a difficult balance to strike. However, we believe A.B. 2273, while seeking to protect the privacy and well-being of children, runs the risk of imposing surveillance requirements and content restrictions on a broader audience than intended.

EFF understands the importance of protecting children's privacy. Yet, we believe many of the terms in A.B. 2273 are vague and risk being interpreted to sweep up all people into some provisions that would prove problematic. The bill covers all businesses that provide a “good, service, or product features likely to be accessed by a child” – meaning any service that is likely to be accessed by someone who is as old as 17. That covers a large portion of businesses, if A.B. 2273 is read broadly.

To that end, we have concerns about this bill's interaction with the First Amendment of the U.S. Constitution. Courts have ruled that statutes are unconstitutionally vague if, among other reasons, they punish people for behavior they could not have known was illegal. The standard for this unconstitutional vagueness is whether the statute “provide[s] a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages serious discriminatory enforcement.”<sup>2</sup> As currently written, we believe that the standard businesses are asked to consider—“the best interests of children”—is too vague and perhaps incoherent. No service provider that operates with any kind of scale can make such decisions for an

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<sup>1</sup> The Electronic Frontier Foundation is a San Francisco-based, non-profit organization that works to protect civil liberties in the digital age. EFF represents more than 35,000 active donors and members, including thousands of supporters in California.

<sup>2</sup> *U.S. v. Williams*, 553 U.S. 285, 304 (2008), <https://supreme.justia.com/cases/federal/us/553/285>

EFF letter requesting veto of A.B. 2273  
September 14, 2022  
Page 2 of 2

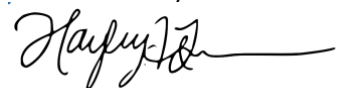
individual child unless there is a specific case, incident, or set of facts. Any service provider that operates with any kind of scale will face many different groups of children with different vulnerabilities. There will always be reasonable disagreements about what's "best" in this larger context. Indeed, parents or guardians may have different ideas about what is in a child's best interest than a child themselves does—a potential conflict of particular concern where a child's parent disagrees with their expression of their gender or sexual orientation.

This standard grows out of the United Kingdom law upon which it is based, which itself relies on a definition of "best interests" of a child derived from UK case law. No such standard has been similarly codified in the U.S., or to consider an American framework of rights. This bill does not set out a clear definition.

Finally, we are concerned that the bill defines a child as anyone under the age of 18. While the bill does suggest that companies be sensitive to the needs of different age ranges, it provides no mechanism to solicit feedback from young people on what may be in their best interests. The [United Nations Convention on the Rights of the Child](#) recommends that companies seek input directly from young people through surveys or panels. A.B. 2273 makes no such directive.

We respect the aims of this bill and Asm. Wicks' willingness to address complex and difficult issues. However, on balance, we regret that we must respectfully ask for your veto on A.B. 2273. Thank you.

Sincerely,



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