



March 6, 2023

RE: Opposition—SB 152 (McKell), Social Media Regulation Amendments

Dear Governor Cox,

I write today on behalf of the Electronic Frontier Foundation, a non-profit organization that works to protect civil liberties in the digital age. EFF represents more than 35,000 active donors and members, including many in Utah. We are writing to submit our opposition to S.B 152, Senator McKell’s bill regarding social media usage for minors.

1. Young People Have a First Amendment Right to Information

The internet is an important resource for young people. There is clear evidence that young people benefit significantly from social media,¹ but in addition to those platforms, there are thousands of websites that help young people learn languages (DuoLingo), write computer code (StackOverflow), create and find communities (Reddit), and educate themselves on current events (YouTube). Under S.B. 152, before any minor can access the content on many of the most popular of these sites, they would have to get permission from a parent. This may make sense for a seven-year-old, but requiring the same restrictions for a seventeen year old greatly interferes both with the child’s rights and the parent’s.

Young people have First Amendment rights.² Federal attempts to restrict access to internet content generally have not withstood constitutional scrutiny when challenged in federal courts.³ In particular, the Supreme Court has emphasized that government “must specifically identify an ‘actual problem’ in need of solving” to allege a compelling interest” for limiting the rights of minors.⁴ If implemented as written, many young people will be almost immediately shut out of vast parts of the internet, despite lacking evidence that restricting young people from accessing the platforms at issue would solve a specific

¹ Atske, S. (2022) *Connection, creativity and drama: Teen life on social media in 2022*, Pew Research Center: *Internet, Science & Tech*. Pew Research Center. Available at: <https://www.pewresearch.org/internet/2022/11/16/connection-creativity-and-drama-teen-life-on-social-media-in-2022/> (Accessed: February 15, 2023).

² See, e.g., *Tinker v. Des Moines School Dist.* (1969); *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213 (1975)

³ See, e.g., *Reno v. ACLU*, 521 U.S. 844 (1997); *ACLU v. Mukasey*, 534 F.3d 181 (3d Cir. 2008).

⁴ See *Brown v. Enter. Merchants Ass’n*, 564 U.S. 786, 794–99 (2011)

RE: **Opposition—SB 152 (McKell), Social Media Regulation Amendments**

March 6, 2023

Page 2 of 5

problem. The majority of young Utahns will find themselves effectively locked out of much of the web, putting them at a severe disadvantage compared to others in the country.

This will harm some Utahns more than others. Children who, unfortunately, don't have an obvious caregiver to act as a parent in the first place will be forced off these important spaces entirely as a result. Likewise, some parents do not always have their childrens' best interest in mind, or are unable to make appropriate decisions for them. Those young people—some of whom are old enough to work a full-time job, drive a car, and apply to college entirely on their own—will not be able to use some of the largest and most popular online websites without parental consent. It goes without saying that those most harmed by this law will be those who see the web as a lifeline—those with fewer resources to begin with.

S.B. 152 doesn't only harm young people. It also removes parents' ability to determine for their family how their child can use the internet. By forcing guardians and parents to review every account on a huge number of often-benign platforms before a young person can use it, this law's parental consent requirements would make it much harder for parents to decide when their child deserves autonomy—perhaps an even more important choice than which websites a young person gets to visit. Under this law, no family will be able to give their child unrestricted online access until they are eighteen, even if that is their preference. Barring a vast majority of the internet's availability to young people, regardless of the type of speech it contains, without parental consent, effectively diminishes the rights of parents to make decisions for their children.

2. Giving Parents Account Access Harms Privacy and Free Speech

Young people deserve increasing levels of privacy, relative to their age. Despite the growing ubiquity of technology to make it easy, surveillance of young people is actually bad for them,⁵ even in the healthiest household, and is not a solution to helping young people navigate the internet. S.B. 152's requirements that parents have access to young people's accounts until they are eighteen will incalculably harm the ability of young people to protect their privacy, and deter them from exercising their freedom to access information and speak out. For example, young people seeking information about sexual health, reproductive rights, and gender identity in unsupportive households will not be able to do so privately. Another example: a majority of teens report using social media to

⁵ Harrell, Cyd. "The Kid Surveillance Complex Locks Parents in a Trap." Wired. Conde Nast. Accessed February 15, 2023. <https://www.wired.com/story/the-kid-surveillance-complex-locks-parents-in-a-trap/amp>.

RE: **Opposition—SB 152 (McKell), Social Media Regulation Amendments**

March 6, 2023

Page 3 of 5

show support for causes,⁶ but without a way to do so privately, their speech will be chilled in any case where the parent does not also show support.

Moreover, the bill's requirement that parents have access to all responses and messages sent to or by the Utah minor account holder on a covered platform will deprive young people of the ability to have a private conversation on a vast majority of the internet. There are any number of reasons why a young person may want to have privacy in their online conversations, and the majority of them are not nefarious. The United Nations Committee on the Rights of the Child has said that the right to privacy plays an important role in children's development, and is vital to children's agency, dignity and safety and for the exercise of their rights.⁷ Given the increasing importance of online platforms for communication of all sorts, childrens' rights groups suggest not only that young people have access to private spaces, but that encryption, which guarantees privacy in communication, be available to children.⁸

Any number of scenarios shows why this is so important. A young person physically abused by a parent will not be able to discuss getting help with her friends online. A gay sixteen year-old in a family where homosexuality is stigmatized may be outed by a conversation thought to be private, putting him at physical, emotional, and mental risk. A sexually active seventeen-year-old may be spied on by her parents in discussing or viewing information on reproductive access, ultimately hindering her from exercising autonomy over her body. Likewise, a young person who doesn't wish to have an abortion may be forced into doing so by parents that don't wish her to have a child. In all of these cases and many more, access to private spaces online for research, communication, and community are vitally important for young people. S.B. 152 will make such privacy impossible.

3. Compliance Will Result in Privacy Dangers to All Utahns

Under S.B. 152, covered platforms would have to confirm the age of every visitor, or contract with a third-party to do so. That verification requires collecting and analyzing private information, like government issued identification, for every user. There is no foolproof method for protecting private data like this, and this law offers insufficient protection against that private data being shared. As a result, S.B. 152 will lead to large

⁶ Sara Atske, "1. Teens and Their Experiences on Social Media," Pew Research Center: Internet, Science & Tech (Pew Research Center, December 31, 2019), <https://www.pewresearch.org/internet/2018/11/28/teens-and-their-experiences-on-social-media/>.

⁷ UN Committee on the Rights of the Child, General comment No. 25 (2021) on children's rights in relation to the digital environment, CRC/C/GC/25, 2 March 2021, para. 67.

⁸ Daniela Kazuko Muenzel, "Privacy and Protection: A Children's Rights Approach to Encryption," CRIN (CRIN, February 8, 2023), <https://home.crin.org/readlistenwatch/stories/privacy-and-protection>.

platforms, many which have been regularly critiqued⁹ by Utah’s elected officials for harvesting private data, collecting even more of it.

4. S.B. 152 Will Also Restrict the First Amendment Rights of Adults

When the government exercises its power to regulate material, it must narrowly tailor the regulation to avoid interfering with the First Amendment freedoms of adults.¹⁰ As a result of the age verification process, this law will also interfere with the broader public’s First Amendment right to receive information. Collecting private data like this not only creates dangers of hacking and privacy breaches, it means that no user on a social media platform can remain anonymous. Anonymous communications have an important place in our political and social discourse, and the Supreme Court has ruled repeatedly that the right to anonymous free speech is protected by the First Amendment.¹¹ Requiring that all users in Utah tie their accounts to their age, and ultimately, their identity, will lead to fewer people expressing themselves, or seeking information online.

This bill would severely impact those Utahns without a form of government-issued identification. There are tens of millions of U.S. residents—nearly 10%—without a form of government-issued identification¹² who would also be age-gated offline. These are primarily low-income urban and rural residents who are often already marginalized, and for whom the internet may be a critical part of life.¹³

⁹ See e.g., Winslow, Ben. “Utah’s Attorney General Meets with Facebook over Data Sharing and Privacy.” FOX 13 News Utah (KSTU). FOX 13 News Utah (KSTU), June 22, 2018. <https://www.fox13now.com/2018/06/22/utahs-attorney-general-meets-with-facebook-over-data-sharing-and-privacy>; KUTV Jim Spiewak, “Utah Part of \$391 Million Google Settlement over Misleading User Tracking Information,” KUTV (KUTV, November 15, 2022), <https://kutv.com/news/local/utah-part-of-391-million-google-settlement-over-misleading-user-tracking-information-40-general-attorneys-xmission-2018>; Ailan Evans, “‘Reckless Disregard’: Sen. Mike Lee Blasts Facebook’s ‘Stunning Lapses’ in Its Ability to Protect Users,” The Daily Caller (The Daily Caller, September 21, 2021), <https://dailycaller.com/2021/09/21/mike-lee-josh-hawley-facebook/>.

¹⁰ See *Butler v. Michigan*, 352 U.S. 380, 382–83 (1957); *Ginsberg*, 390 U.S. at 634–35

¹¹ See e.g., *Talley v. California* (1960), *McIntyre v. Ohio Elections Commission* (1995), *Buckley v. American Constitutional Law Foundation* (1999), and *Watchtower Bible and Tract Society of New York v. Village of Stratton* (2002)

¹² “Debunking Misinformation on Photo ID,” Brennan Center for Justice, accessed February 15, 2023, <https://www.brennancenter.org/our-work/analysis-opinion/debunking-misinformation-photo-id>.

¹³ Sari Horwitz, “Getting a Photo ID so You Can Vote Is Easy. Unless You’re Poor, Black, Latino or Elderly.,” The Washington Post (WP Company, May 23, 2016), https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html.

RE: Opposition—SB 152 (McKell), Social Media Regulation Amendments

March 6, 2023

Page 5 of 5

S.B. 152 will not improve the safety of young people online. Instead, it will require all users to hand over significant power, and private data, to websites and third-party identity verification companies; it will harm the privacy and speech rights of young people and adults; and it will severely impact the ability of all Utahns to make use of the internet as an educational resource, a tool for building community, and a necessary element of everyday life. For these reasons, we respectfully ask you to veto S.B. 152.

We thank you for considering this important issue. If you have any further questions, please reach out to me, Jason Kelley, at jason@eff.org. Thank you.



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