



**Comments in response to the State of California
Department of Justice (DOJ)
as part of the Preliminary Rulemaking Process
for the Protecting Our Kids from Social Media Addiction Act (SB 976)**

Respectfully submitted,

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Introduction.

On behalf of Common Sense Media we are pleased to submit these comments in response to the California Department of Justice (California DOJ) solicitation of public comment to inform the upcoming rulemaking on SB 976. We supported SB 976 as it traveled through the legislature last year, and we continue to support the California DOJ's efforts to protect children's safety while ensuring their privacy, and we offer constructive suggestions to achieve this balance below.

Common Sense Media is dedicated to improving the lives of children and families by providing the trustworthy information, education, and independent voice they need to thrive. Our ratings, research, and resources reach more than 150 million users worldwide, over 1.4 million educators, and more than 100,000 schools worldwide every year. Backed by the research that forms the foundation of everything we do, we champion quality media that entertains and inspires, and support legislation aimed at closing the digital divide and holding social media and AI platforms accountable for their effects on minors. We encourage students and educators to think critically about technology and become responsible digital citizens. And we help safeguard children's health and well-being by supporting protection of their data privacy and reducing potential online harms.

According to the U.S. Surgeon General's advisory, Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory, up to 95% of youth ages 13-17 report using social media, with more than a third saying they use social media "almost constantly."¹ The advisory noted that children and adolescents who spend more than 3 hours a day on social media face double the risk of mental health problems including experiencing symptoms of depression and anxiety. This is concerning as a recent survey showed that teenagers spend an average of 4.8 hours a day on social media.² And when asked about the impact of social media on their body image, 46% of adolescents aged 13-17 said social media makes them feel worse.³

Social media companies use personally tailored and targeted feeds (addictive feeds) to get kids and teens to engage and view the platforms for longer in order to make more money. Addictive feeds have had an increasingly devastating effect on children and teenagers; spending more time on social media has been tied to significantly higher rates of youth depression, anxiety, suicidal ideation, and self-harm.

In response to the negative impact of social media use on children and teens, the California Legislature passed, and Governor Newsom signed into law SB 976. SB 976 protects minors by

¹ U.S. Dept. of Health and Human Services, *Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory* (2024), <https://www.hhs.gov/surgeongeneral/priorities/youth-mental-health/social-media/index.html#:~:text=The%20Surgeon%20General's%20Advisory%20on.%2C%20technology%20companies%2C%20researchers%2C%20and>.

² Jonathan Rothwell, *Teens Spend Average of 4.8 Hours on Social Media Per Day* (Oct. 13, 2023), <https://news.gallup.com/poll/512576/teens-spend-average-hours-social-media-per-day.aspx>.

³ The Digital Wellness Lab's Pulse Survey, *Adolescent Media Use: Attitudes, Effects, and Online Experiences* (August 2022), https://digitalwellnesslab.org/wp-content/uploads/Pulse-Survey_Adolescent-Attitudes-Effects-and-Experiences.pdf.

regulating the use of algorithmic, or addictive feeds, and requiring heightened privacy settings by default.

Under the act, both can be overridden with parental consent.

Comments.

Our comments focus on several areas of this new law for which the California DOJ is seeking responses, including regarding methods of age determination, ongoing obligations for age assurance, and parental consent.

I. Methods and standards for age assurance on social media and other online platforms used by minors.

Age assurance on social media and other online platforms used by minors should be privacy protective, proportionate, fair, and equitable. California DOJ regulations should ensure that any age assurance technology used to comply with the Protecting Our Kids from Social Media Addiction Act (SB 976) meets standards for accuracy and fairness, and that the California DOJ considers requiring such systems to be independently verified. Technology is increasingly available to make age assurance effective and privacy protective, and efforts in other countries demonstrate this.

Protections for children online exist within the bounds of the First Amendment – especially in contexts like SB 976, which does not limit access to content. This is consistent with how we operate in an everyday world, and it should not be impossible to draw nuanced lines just because technology is involved. When assessing SB 976’s methods of age assurance, lawmakers should weigh the risk of harm to kids associated with the platform as well as the risk of harm related to an age assurance method improperly identifying someone as a minor (often claimed to be a violation of the user’s First Amendment rights in the form of limiting access to information content or free speech). SB 976 does not put any user’s access to information, content, or speech at risk. The Act instead focuses on regulating the addictive design features of the addictive feed and heightened privacy settings by default. Because of this lack of risk in loss of access to information, content, or the ability to speak online even if one is classified as a minor under SB 976, there is little risk of harm to a user for using age assurance methods. In other words, if the age assurance gets it wrong and assesses an adult as a minor, under SB 976, the adult wouldn’t lose access to any content; they would only not have access to the addictive feed and have heightened privacy settings by default.

Additionally, we would like to note that social media companies could choose to offer this feature of eliminating the algorithmic feed, or any privacy or safety feature by default, to all users. Age assurance would then only be required if the company wished to offer adults the addictive feed product design feature. In this scenario, only the adult users who would prefer to opt out of these default privacy and safety features would be subjected to an age assurance method—and such age assurance may happen entirely under the hood, for example, via transactional data that makes it clear someone is not a minor, for example.

II. Ongoing obligations for operators of social media platforms performing age assurance.

Operators of social media platforms should have ongoing obligations to perform age assurance.

First, even if a platform has determined that the user is not a minor - using age assurance - if at a later point if the company obtains information that the user is a minor then this should be knowledge under the act that the user is a minor. This means that there is an ongoing duty on the part of the company to ensure that users that are minors are in fact being treated as minors. Regardless of the method of age assurance utilized by the social media platform to determine the age of the user, the regulations drafted by the California DOJ should require that the social media company is required to change the way that they treat a user should they receive additional information about the age of the use .

Also, under Section 27001.(a)(1(A), where an operator is treating a user as not being a minor prior to January 1, 2027, because they do not have actual knowledge that the user is a minor, the company should use commercially reasonable and technically feasible age assurance methods in compliance with this act to reasonably determine that a covered user is not a covered minor after January 1, 2027. In other words, after January 1, 2027, the operator shall operate as though the user is a minor unless it reasonably determines through age assurance that the user is not a minor.

III. Parental consent for use of social media and other online platforms by minors.

Under the act parental consent is required for a minor to receive an addictive feed from an addictive internet-based service or application and to turn off a private-mode default setting.

The regulations promulgated by the California DOJ should require “informed consent.” This would mean that the information that the parents are presented with educates the parents about the risks of turning on the algorithmic feed and of turning off the default private-mode setting - which would allow unconnected users from communicating with their children or teens - prior to making changes to these settings. Not only should this information be provided to parents, but the information provided needs to be understandable to all communities - including the minor user. Additionally, we would urge the California DOJ to include provisions regarding withdrawal of parental consent. These provisions should include a requirement that the withdrawal of consent must be at least as easy as the mechanism to give consent and that dark patterns cannot be used in order to convolute this withdrawal process.