



February 12, 2024

Senator Pamela Beidle
Chair of the Maryland Senate
Finance Committee
3 East Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

Senator Benjamin F. Kramer
401 Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

Senator Chris West
322 James Senate Office Building
11 Bladen Street
Annapolis, MD 21401

Delegate Brian M. Crosby
231 Taylor House Office Building
6 Bladen Street
Annapolis, MD 21401

Delegate Sara Love
210 Lowe House Office Building
6 Bladen Street
Annapolis, MD 21401

Senator Katherine Klausmeier
Vice Chair of the Maryland Senate
Finance Committee
123 James Senate Office Building
11 Bladen Street
Annapolis, MD 21401

Senator Katie Fry Hester
304 James Senate Office Building
11 Bladen Street
Annapolis, MD 21401

Delegate C. T. Wilson
Chair, Maryland House Economic Matters
Committee
231 Taylor House Office Building
6 Bladen Street
Annapolis, MD 21401

Delegate Jared Solomon
312 Lowe House Office Building
6 Bladen Street
Annapolis, MD 21401

RE: SB 571 and HB 603 – Maryland Age-Appropriate Design Code Act

Dear Chair Beidle, Vice Chair Klausmeier, Senator Kramer, Senator Hester, Senator West, Chair Wilson, Vice Chair Crosby, Delegate Solomon, and Delegate Love:

We write to respectfully express our concerns with **SB 571 and HB 603**,¹ the Maryland Age-Appropriate Design Code Act (“Maryland Kids Code”). While we strongly agree with protecting Maryland’s children online, these bills would subject an excessively large range of companies to severe requirements and restrictions that would hamper innovation and hurt Maryland consumers.

As the nation’s leading advertising and marketing trade associations, we collectively represent thousands of companies across the country. These companies range from small businesses to household brands, advertising agencies, and technology providers. Our combined membership includes more than 2,500 companies that power the commercial Internet, which accounted for 12

¹ Maryland SB 571 (Gen. Sess. 2024), located [here](#) and Maryland HB 603 (Gen. Sess. 2024), located [here](#).

percent of total U.S. gross domestic product (“GDP”) in 2020.² Our group has more than a decade’s worth of hands-on experience it can bring to bear on matters related to consumer privacy and controls. We would welcome the opportunity to engage with you further issues with the Maryland Kids Code outlined here.

I. The Maryland Kids Code is modeled after legislation in California that a court found to likely violate the First Amendment of the U.S. Constitution. Maryland should not advance bills that are based on legislation being challenged in the courts.³ The Maryland Kids Code contains several provisions that very likely abridge First Amendment and Fourth Amendment protections, as well as the Due Process and Commerce Clause of the United States Constitution. California courts granted a preliminary injunction halting enforcement of a very similar law enacted in California based on these challenges.⁴ Maryland’s legislature should not follow in California’s footsteps by passing a law that abridges minors’ constitutional protections and risks being invalidated.

II. The Maryland Kids Code sweeps in any property that displays even minimal advertising that could appeal to U-18s, which will result in nearly every company falling under the bills’ reach. For example, the bills could be read to apply to the online offerings of clothing retailers, professional sports organizations, and restaurants, simply because it’s possible 17-year-olds may access them. In addition, to help ensure “children” are not “likely” to access an online service, product or feature, businesses may require visitors to pass through “age gates” for access. Anyone attempting to access a website would have to provide specific age information to the site owner before reading its contents. The legislation would significantly hamper an individual’s ability to seamlessly move from one website to the next to reach desired information or content. Moreover, the bills’ onerous standards and broad reach will severely hinder companies from doing business in Maryland and degrade the consumer experience online.

III. The Maryland Kids Code would deprive Maryland’s youth of access to and benefit from the Internet. The bills would prevent Maryland’s minors from accessing a wealth of information that otherwise would be at their fingertips. Shrinking the variety of content, viewpoints, voices, and information 17-year-olds can reach will not protect them, but instead will ensure they will not have the same experience with the Internet as their contemporaries living in other states, such as Virginia or Washington D.C. Maryland’s youth do not require a protectionist shield from information about the world. The bills will turn off Maryland minors’ access to the greatest informational resource in modern history.

IV. The Maryland Kids Code’s definition of “child” to include teens will make them lose access to future opportunities. The bills prohibit use of personal information about a child for any reason other than the reason the personal information was collected. This prohibition could functionally end access to information for Maryland high school seniors, which would deprive them of the ability to learn about colleges, trade programs, military recruitment, and myriad opportunities for their future. Maryland should not enact a law that could hurt minors’ ability to plan for their futures.

² John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 15 (Oct. 18, 2021), located at https://www.iab.com/wp-content/uploads/2021/10/IAB_Economic_Impact_of_the_Market-Making_Internet_Study_2021-10.pdf.

³ Complaint, *NetChoice LLC v. Bonta* (N.D. Cal., Dec. 14, 2022), located [here](#).

⁴ Order Granting Motion for Preliminary Injunction, *NetChoice LLC v. Bonta* (N.D. Cal., Sept. 18, 2023), located [here](#).

While we understand the need to protect children as they navigate the Internet, the Maryland Kids Code is the wrong way to accomplish this goal. The over-broad definitions included in the bills mean that while intended to protect children, the bills will apply to many websites and applications with intended audiences outside of this scope. Imposing the bills' requirements onto most of the Internet will decrease innovation, remove vital benefits of the internet for children, harm the consumer experience, and hamper the data driven economy.

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We and our members support privacy protections for children. We believe, however, that the Maryland Kids Code takes the wrong approach to such protections. We therefore respectfully ask you to decline to advance the bills.

Thank you in advance for your consideration of this letter.

Sincerely,

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CC: Bill Sponsors
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