



Maryland Senate Finance Committee
3 East
Miller Senate Office Building
Annapolis, Maryland 21401

March 8, 2023

RE: SB 844, the Maryland Age-Appropriate Design Code Act

Dear Chair Griffith and Vice Chair Klausmeier,

Thank you for your attention to the critical issue of online platform design, and the responsibility online platforms must take for the products they launch to the public—especially for children and teenagers. For over 80 years, Consumer Reports has worked with consumers for truth, transparency, and fairness in the marketplace.¹ We are strong proponents of public policy that protects consumer safety and bolsters consumers’ privacy. It is within this framework that we support the goals of SB 844, to ensure greater protections for the safety and privacy of children and teens online. However, we believe that significant changes are necessary to this legislation in order to achieve these goals and to not create new problems.

All Marylanders, including kids, need more protections online. And kids are online more than ever, leaving them vulnerable to inappropriate data practices. In 2020, there were nearly nine million apps worldwide, many of which were directed at children or are designed to work in conjunction with a connected-device for children. In 2021, 57% of kids between eight and twelve had a tablet, and 94% of households with children and teens between eight and eighteen had access to a smartphone.² And the amount of time children spend on these devices has increased over time, as well. In 2021, 64% of kids between eight and twelve reported that they watched online videos “every day,” up from 56% in 2019. Eighteen percent reported that they used social media each day, up from 13% in 2019.³

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S

² Rideout et al., *Common Sense census: Media use by tweens and teens, 2021* at 22, Common Sense (2022), https://www.commonsensemedia.org/sites/default/files/research/report/8-18-census-integrated-report-finalweb_0.pdf

³ Id.

And too often, businesses have skirted Children’s Online Privacy Protection Act (COPPA), the federal law that requires parental consent for processing the personal data of children under thirteen. For example, in 2018, researchers found that the majority of the 5,855 most popular free children’s apps were potentially in violation of COPPA, due to their use of third-party software development kits (SDKs).⁴ Although many SDKs offer the ability to comply with COPPA by disabling tracking and behavioral advertising, their study suggests that a majority of the apps tested either do not make use of these configurations or “incorrectly propagate them across mediation SDKs.”⁵

In recent years, the Federal Trade Commission has taken action against Google and YouTube, as well as Tik Tok, for COPPA violations.⁶ That’s why we particularly appreciate provisions in the bill that would strengthen privacy protections, including by requiring covered businesses to “Provide prominent, accessible, and responsive tools” to help children and guardians exercise their privacy rights and report concerns[,]” and to “provide an obvious signal to the child when they are being monitored or tracked.” These are reasonable mandates that would give parents and children greater ability to limit unwanted and unwarranted privacy invasions. Conversely, some of the provisions of the bill appear to undermine its privacy intent, and we make several suggestions to better ensure that privacy is adequately protected.

All told, current federal law which governs online platforms fails to provide sufficient incentives for platforms to reduce misinformation and prevent other abuses, such as artificial amplification; and indeed, it even shields platforms when their own algorithms *promote* harmful, misleading, or inflammatory extremist content.⁷ The largest social media platforms have been built to extract data while incentivizing and reward highly engaging content—despite the harms such content can cause—because their business models rely on, and optimize for, engagement. Engagement ultimately drives up both the amount of time spent on platforms where users can be shown advertisements and the amount of data that platforms can collect to more specifically

⁴ Narseo Vallina-Rodriguez, Serge Egelman, et al., *Won’t Someone Think of the Children? Examining COPPA Compliance at Scale*, 3 *Proceedings on Privacy Enhancing Technologies (PoPETS)* 63-83, 63 (2018), available at <https://blues.cs.berkeley.edu/wp-content/uploads/2018/04/popets-2018-0021.pdf>.

⁵ *Id.*

⁶ *Google and YouTube Will Pay Record \$170 Million for Alleged Violations of Children’s Privacy Law*, Fed. Trade Comm’n (Sept. 4, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/09/google-youtube-will-payrecord-170-million-alleged-violations-childrens-privacy-law>.; *Video Social Networking App Musical.ly Agrees to Settle FTC Allegations That it Violated Children’s Privacy Law*, Fed. Trade Comm’n (Feb. 27, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/02/videosocial-networking-app-musically-agrees-settle-ftc-allegations-it-violated-childrens-privacy>

⁷ John Bergmayer, “What Section 230 Is and Does — Yet Another Explanation of One of the Internet’s Most Important Laws,” *Public Knowledge* (May 14 2019), <https://www.publicknowledge.org/blog/what-section-230-is-and-does-yet-another-explanation-of-one-of-the-internet-s-most-important-laws/>.

target those ads.⁸ Yet high online engagement metrics have come at the cost of accelerating the spread of harmful, misleading, radicalizing content in the information ecosystem—where, lacking sufficient circuit-breaking context and curation, this content may self-reinforce in ways that keep engagement up — regardless of veracity.⁹ Platform-facilitated misinformation has contributed to the rapid proliferation of dangerous conspiracy theories that have compounded anti-vaccination and anti-mask sentiment, posing a significant risk to consumer health in the public sphere—even for adults, let alone children.¹⁰

CR has consistently advocated for stronger privacy protections and higher expectations of platform responsibility at both the state and federal level, and appreciates SB 844’s work to promote a healthier internet ecosystem for children and teenagers online. Simply, we believe that the best way to prevent businesses from misusing consumers—and childrens’—personal information is to simply prevent them from collecting it in the first place. Businesses should be prohibited from collecting, as well as selling, sharing, or retaining, any personal information that is not necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged.

SB 844 in particular would in many ways contribute to a stronger, healthier online ecosystem for kids: it offers robust privacy protections, would force platforms to take responsibility for their product design choices before exposing children to that product. We especially applaud the bill’s dedication to utmost data protections, preventing dark patterns and requiring impact assessments that would force platforms to consider and mitigate risks to

⁸Robert H. Frank, “The Economic Case for Regulating Social Media” *The New York Times* (February 11, 2021), <https://www.nytimes.com/2021/02/11/business/social-media-facebook-regulation.html>.

⁹Katherine J. Wu, “Radical ideas spread through social media. Are the algorithms to blame?” PBS (March 28, 2019), <https://www.pbs.org/wgbh/nova/article/radical-ideas-social-media-algorithms/>; *see also* Filippo Menczer and Thomas Hills, “Information Overload Helps Fake News Spread, and Social Media Knows It” *Scientific American* (December 1, 2020),

<https://www.scientificamerican.com/article/information-overload-helps-fake-news-spread-and-social-media-knows-it/>.

¹⁰Olivia Rubin, Lucien Bruggeman, and Will Steakin, “QAnon emerges as recurring theme of criminal cases tied to US Capitol siege,” *ABC News*, (January 19, 2021)

<https://abcnews.go.com/US/qanon-emerges-recurring-theme-criminal-cases-tied-us/story?id=75347445>. *see also* EJ Dickson, “Instagram Is Pushing Anti-Vaccine Misinformation and QAnon Content, Study Finds,” *Rolling Stone*, (March 9, 2021),

<https://www.rollingstone.com/culture/culture-news/instagram-anti-vaccine-misinformation-qanon-study-1139002/>; Committee on Energy and Commerce Staff to Subcommittee on Consumer Protection and Commerce Members and Staff, September 21, 2020, “Hearing on ‘Mainstreaming Extremism: Social Media’s Role in Radicalizing America,’”

<https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/09.24.20%20CPC%20Hearing%20Memo.pdf>; *see also* Ben Collins, “How QAnon rode the pandemic to new heights — and fueled the viral anti-mask phenomenon” *NBC News* (August 14 2020):

<https://www.nbcnews.com/tech/tech-news/how-qanon-rode-pandemic-new-heights-fueled-viral-anti-mask-n1236695>; *see also* Tanya Lewis, “Nine COVID-19 Myths That Just Won’t Go Away,” *Scientific American* (August 18, 2020), <https://www.scientificamerican.com/article/nine-covid-19-myths-that-just-wont-go-away/>.

children—indeed, we would encourage regulators to empower such protections for all consumers.

In order to strengthen the legislation, we would urge consideration of the following:

- **Remove the age verification requirement.** Section 1405-05 (B)(5)(I) of the bill would appear to functionally mandate that the services verify ages of all users (or change their sites to protect the data of consumers of all ages—a highly unlikely industry shift). The type of mandated identity verification likely required in order to ensure coverage for services would require invasive, expensive data collection—eliminating any-aged consumers’ right to read and speak anonymously. And while part of the bill requires that data collected for compliance not be used unless it is in the best interest of a child, what a borderless platform considers in the “best interest of a child” may differ greatly between Maryland and other jurisdictions with differing views on childrens’ civil rights.¹¹
- **Clarify applicability & obligations.** Currently the bill applies to any service that is “determined ... to be routinely accessed by a significant number of children” —which could apply to a great many websites and businesses. More granularity in what is considered “significant” would help inform which businesses consumers can expect to comply with all provisions. seemingly apply to the vast majority of websites and businesses. Furthermore, more specificity with respect to expectations that platforms “configure all default privacy settings to offer a high level of privacy” unless there is a compelling reason in the interest of the child demanding otherwise would also strengthen consumer expectations.

Thank you for your work on this issue and your dedication to protecting childrens’ data and wellbeing online. We look forward to working with you to ensure a healthier online ecosystem for children alongside consumers of all ages.

Sincerely,

Laurel Lehman
Policy Analyst

CC: Members, Maryland Senate Finance Committee

¹¹ Senate Bill 844, *Maryland Age-Appropriate Design Code Act*.
<https://mgaleg.maryland.gov/2023RS/bills/sb/sb0844F.pdf>