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13  
14 Attorneys for Plaintiff  
NETCHOICE, LLC d/b/a NetChoice

15  
16 IN THE UNITED STATES DISTRICT COURT  
17 THE NORTHERN DISTRICT OF CALIFORNIA  
18 SAN JOSE DIVISION

19  
20 NETCHOICE, LLC d/b/a NetChoice,

21 Plaintiff,

22 v.

23 ROB BONTA, ATTORNEY GENERAL  
OF THE STATE OF CALIFORNIA,  
24 in his official capacity,

25 Defendant.

Case No. 5:22-cv-8861

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

## I. PRELIMINARY STATEMENT

1  
2 1. Although styled as a privacy regulation to protect minors, the California Age-  
3 Appropriate Design Code Act (AB 2273)<sup>1</sup> is a content-based restriction on speech that will subject  
4 a global communications medium to state supervision and hobble a free and open resource for  
5 “exploring the vast realms of human thought and knowledge.” *Packingham v. N. Carolina*, 137  
6 S. Ct. 1730, 1737 (2017).

7 2. Among its many infirmities, AB 2273 presses companies to serve as roving censors  
8 of speech on the Internet. The law imposes on private firms, big and small, the obligation to  
9 identify and “mitigate” speech that is “harmful or potentially harmful” to users under 18 years old,  
10 and to “prioritize” speech that promotes such users’ “well-being” and “best interests.” If firms  
11 guess the meaning of these inherently subjective terms wrong—or simply reach different  
12 conclusions than do government regulators—the State is empowered to impose crushing financial  
13 penalties. The State can also impose such penalties if companies fail to enforce their content  
14 moderation standards to the Attorney General’s satisfaction. AB 2273 does this without so much  
15 as a nod to whether the law’s restrictions are necessary to serve a compelling state interest.

16 3. Rather than protect minors, AB 2273 will harm them, along with the Internet as a  
17 whole. Faced with arbitrary application of AB 2273’s draconian penalties, online businesses will  
18 face overwhelming pressure to over-moderate content to avoid the law’s penalties for content the  
19 State deems harmful. Such over-moderation will restrict the availability of information for users  
20 of all ages and stifle important resources, particularly for vulnerable youth who rely on the Internet  
21 for life-saving information.<sup>2</sup> Separately, AB 2273 will require businesses to verify the ages of  
22 their users, which—to the extent it can even be done to the State’s satisfaction—will frustrate  
23 anonymous and casual browsing, magnify privacy concerns, and wrest control over minors’ online  
24 activities from parents and their children.

25  
26 <sup>1</sup> AB 2273 as enacted is attached as Exhibit A and will be codified in relevant part beginning at Section 1798.99.28 to Part 4 of Division 3 of the California Civil Code.

27 <sup>2</sup> See “Coalition Letter on Privacy and Free Expression Threats in Kids Online Safety Act” Regarding Opposition to  
28 S. 3663 (Nov. 28, 2022) (“Online services would face substantial pressure to over-moderate, including from state Attorneys General seeking to make political points about what kind of information is appropriate for young people.”), available at <https://cdt.org/wp-content/uploads/2022/11/Coalition-letter-opposing-Kids-Online-Safety-Act-28-Nov-PM.pdf>.



1 Clause, art. I, § 8, cl. 3, and Supremacy Clause, art. VI, and the First, Fourth, and Fourteenth  
2 Amendments, as well as the California Constitution, art. I, §§ 2(a) and 7(a). It also arises under  
3 the Civil Rights Act, 42 U.S.C. §§ 1983 and 1988, the Communications Decency Act, 47 U.S.C.  
4 § 230, and COPPA, 15 U.S.C. §§ 6501 *et seq.*

5 10. This Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331,  
6 1343(a), and 1367(a) because NetChoice’s claims either arise under federal law or else share a  
7 common nucleus of operative fact with claims that arise under federal law.

8 11. This Court has authority under the Declaratory Judgment Act, 28 U.S.C. § 2201(a),  
9 to decide this dispute and award relief because it presents an actual case or controversy within the  
10 Court’s jurisdiction.

#### 11 IV. VENUE

12 12. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) & (2) because  
13 Defendant performs his duties and thus resides in this District, and because the injuries giving rise  
14 to this action have been and will continue to be suffered by NetChoice and its members in Santa  
15 Clara County, California.

#### 16 V. DIVISIONAL ASSIGNMENT

17 13. Assignment to the San Jose Division is proper under Local Civil Rule 3-2(c) & (e)  
18 because the injuries giving rise to this action have been and will continue to be suffered by  
19 NetChoice and its members in Santa Clara County, California.

#### 20 VI. FACTUAL ALLEGATIONS

##### 21 A. Online Businesses and Website Architecture

22 14. Online businesses interact with users in different ways. Most have universally  
23 accessible areas, in which a user can view product listings, preview services, and read reviews  
24 without creating or logging into an account. Many online businesses also have features that are  
25 optimized and available only for individuals who create an account or sign up for membership.  
26 Some social media services, for example, permit non-members to view public portions of a user’s  
27 profile, but not to view each post in detail. Similarly, many online businesses require users to  
28 create accounts before they can use or purchase an online service.

1           15.     Some businesses opt for a free account-based model, where access to online  
2 services is provided without charge, but users must provide certain information and create accounts  
3 to access those services. Other businesses use a subscription-based model requiring users to create  
4 accounts and pay fees to use the online service. Irrespective of model, many online businesses  
5 rely on advertisements to earn a significant share of—and in some cases, *all* of—the revenue that  
6 supports the content and services they provide.

7           16.     Many online businesses that are principally ad-supported publish and deliver  
8 content to users, who engage with particular content by, for example, writing a review, reading a  
9 news article, downloading a movie, streaming an album, “liking” a post, or purchasing books based  
10 on author or genre. This engagement, in turn, enables online businesses to serve users with  
11 advertisements or marketing targeted to their expressed interests.<sup>3</sup> Ads can appear alongside  
12 hosted content, in promoted search results, or in email marketing or newsletters. At its core,  
13 targeted advertising leverages technology to improve commercial speech and makes possible a  
14 wide range of protected *non-commercial* speech. Advertisers pay a premium for the ability to  
15 reach a more specific audience; users benefit from subsidized access to content and more relevant  
16 advertisements; and online business operators—including smaller niche bloggers and individual  
17 “influencers” who use larger services—are able earn a living by monetizing their talents for  
18 creating, curating, and publishing popular and interesting content.<sup>4</sup>

19           17.     Even independently of advertising, content promotion is a key service that online  
20 businesses offer—and often a key source of revenue. An online service’s ability to suggest a new  
21 release based on the user’s browsing history, for example, creates value for the user, generates  
22 business for the service, and connects content creators with an audience. This is true across  
23 industry—music, movies, television shows, social media posts, and anything else an Internet user  
24 might be interested in purchasing, reading, hearing, or viewing.

25  
26 \_\_\_\_\_  
27 <sup>3</sup> See generally David S. Evans, “The Economics of the Online Advertising Industry,” 7 REV. OF NETWORK ECON. 3  
(2008), available at <https://doi.org/10.2202/1446-9022.1154>.

28 <sup>4</sup> See, e.g., Joel Matthew, “Understanding Influencer Marketing And Why It Is So Effective,” FORBES (July 30, 2018),  
available at <https://tinyurl.com/3fr7zban>; Jacob Goldenberg *et al.*, “The Research Behind Influencer Marketing,” J.  
OF MARKETING RESEARCH (Feb. 2021), available at <https://tinyurl.com/2j2863m5>.

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