



February 14, 2024

Senator Kesha Ram Hinsdale  
Chair of the Senate Committee on Economic Development, Housing and General Affairs  
115 State St.  
Montpelier, VT 05633-5301

Senator Alison Clarkson  
Vice Chair of the Senate Committee on Economic Development, Housing and General Affairs  
18 Golf Ave.  
Woodstock, VT 05091

**RE: S. 289 – Vermont Age-Appropriate Design Code**

Dear Chair Hinsdale, Vice Chair Clarkson, and Sponsors of S. 289:

We write to respectfully express our concerns with **S. 289**,<sup>1</sup> the Vermont Age-Appropriate Design Code. While we strongly agree with protecting Vermont’s children online, this bill would subject an excessively large range of companies to severe requirements and restrictions that would hamper innovation and hurt Vermont 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 percent of total U.S. gross domestic product (“GDP”) in 2020.<sup>2</sup> 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 S. 289 outlined here.

**I. S. 289 is modeled after legislation in California that a court found to likely violate the First Amendment of the U.S. Constitution.** Vermont should not advance a bill that is based on legislation being challenged in the courts.<sup>3</sup> S. 289 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.<sup>4</sup> Vermont’s legislature should not follow in California’s footsteps by passing a law that abridges minors’ constitutional protections and risks being invalidated.

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<sup>1</sup> Vermont S. 289 (2023-2024 Sess.), located [here](#).

<sup>2</sup> 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](https://www.iab.com/wp-content/uploads/2021/10/IAB_Economic_Impact_of_the_Market-Making_Internet_Study_2021-10.pdf).

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

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

**II. S. 289 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 bill's reach.** For example, the bill 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 bill's onerous standards and broad reach will severely hinder companies from doing business in Vermont and degrade the consumer experience online.

**III. S. 289 would deprive Vermont youth of access to and benefits from the Internet.** The bill would prevent Vermont'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 New Hampshire and Maine. Vermont's youth do not require a protectionist shield from information about the world. The bill will turn off Vermont minors' access to the greatest informational resource in modern history.

**IV. S. 289's definition of "child" to include teens will make them lose access to future opportunities.** The bill prohibits 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 Vermont high school seniors, which would deprive them of the ability to learn about colleges, trade programs, military recruitment, and myriad opportunities for their future. Vermont should not enact a law that could hurt minors' ability to plan for their futures.

While we understand the need to protect children as they navigate the Internet, S. 289 is the wrong way to accomplish this goal. The over-broad definitions included in the bill mean that while intended to protect children, the bill will apply to many websites and applications with intended audiences outside of this scope. Imposing the bill's 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 S. 289 takes the wrong approach to such protections. We therefore respectfully ask you to decline to advance the bill.

Thank you in advance for your consideration of this letter.

Sincerely,

Christopher Oswald  
EVP for Law, Ethics & Govt. Relations  
Association of National Advertisers  
202-296-1883

Alison Pepper  
EVP, Government Relations & Sustainability  
American Association of Advertising Agencies, 4A's  
202-355-4564

Lartase Tiffith  
Executive Vice President, Public Policy  
Interactive Advertising Bureau  
212-380-4700

Clark Rector  
Executive VP-Government Affairs  
American Advertising Federation  
202-898-0089

CC: Bill Sponsors  
Members of the Senate Committee on Economic Development, Housing and General Affairs