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

RE: HB 603 (Solomon) - Consumer Protection - Online Products and Services - Data of Children (Maryland Kids Code).

Dear Chair Wilson and Members of the Committee,

On behalf of TechNet, I'm writing to offer remarks on HB 603 related to children's data privacy.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.2 million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance. TechNet has offices in Austin, Boston, Chicago, Denver, Harrisburg, Olympia, Sacramento, Silicon Valley, and Washington, D.C.

TechNet strongly believes children deserve a heightened level of security and privacy and there are several efforts within the industry to incorporate protective design features into their websites and platforms. Our companies have been at the forefront of raising standards for teen safety and privacy across the industry by creating new features, settings, parental tools, and protections that are age appropriate and tailored to the differing developmental needs of young people. Our member companies are committed to providing a safe, age-appropriate experience for young people online; however, we are opposed to this bill's approach for several reasons.

The requirement that companies consider the "Best interests of children" is incredibly difficult to interpret. Different companies, even parents in one household, will have very different interpretations of what is and isn't in the "best interests" of children. In addition, the definition "Reasonably likely go be accessed

by children” is an overinclusive standard and would capture far more websites and platforms. Consideration should be given to websites, such as online news, which are likely to be accessed by users of all ages and do not require visitors to register to view content. Additionally, this bill is preempted by the Children’s Online Privacy Protection Act, or “COPPA”. HB 603 would change the threshold from COPPA’s “directed to children” to “reasonably likely to be accessed by children”.

HB 603 would require companies to set default privacy settings to a high level and restrict use of algorithms to augment, inform, or analyze the customer experience unless the company can prove with reasonable certainty the user is not a minor. Furthermore, companies would be required to prepare data protection impact assessments on data management and processing practices, targeted advertising, automatic playing of media, rewards, notifications, algorithms, and “any other factor that may indicate that the online product is designed and offered in a manner that is consistent with the best interests of children”. Again, the reference to “any other factor” is overinclusive and ambiguous, making compliance with this provision difficult.

There is currently a preliminary injunction against the California AADC, which contains similar provisions outlined in HB 603. The lawsuit brought alleged that the AADC violates the First and Fourth Amendments and the Dormant Commerce Clause, is unconstitutionally vague, and is preempted by COPPA and Section 230 of the Communications Decency Act. Because of this pending litigation, TechNet recommends waiting until the litigation is concluded before considering similar legislation.

In conclusion, the best way to keep young people safe online is by promoting the education of safe internet practices. We support policies that help prepare young people to be a successful part of a global, interconnected, and technology-driven economy. Such policies include supporting digital learning resources and technology integration in student learning environments, fully funded K-12 education, and rigorous computer science standards. Digital citizenship education is a top priority for TechNet and its member companies. Several businesses participate in the Digital Trust & Safety Partnership (DTSP), which outlines best practices for those operating in the digital space. We would suggest that concerned stakeholders proactively partner with organizations and companies supporting digital citizenship and online safety education.

TechNet also suggests shifting the focus to an omnibus privacy solution, such as the one being proposed in Maryland presently, and other states’ models. Other states’ omnibus privacy laws already include children’s data protections and rights to access, correct, port, and delete personal data. An omnibus privacy law to cover the protection of minors would provide for increased flexibility for Maryland businesses, parents, and those under eighteen, as well as the interoperability among states.

We recognize the importance of strong protections for children and teens, but those efforts should account for teens' autonomy and aim to achieve consistency with emerging norms. For the above stated reasons, including pending litigation, TechNet is opposed to HB 603. Thank you for your time and we look forward to continuing these discussions with you.

Sincerely,

Margaret Durkin

Margaret Durkin
TechNet Executive Director, Pennsylvania & the Mid-Atlantic