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February 16, 2024

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 772 (Henson) - Internet-Connected Devices and Internet Service Providers
– Default Filtering of Obscene Content (Maryland Online Child Protection Act).*

Dear Chair Wilson and Members of the Committee,

On behalf of TechNet, I'm writing to offer comments on HB 772, related to device filters.

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.

While the intent of HB 772 is laudable, we are concerned with the operational challenges this bill requires, as well as the subjective nature of terms within the legislation.

Currently, there are many paid and free content filtering and blocking solutions available to the public that enable consumers to protect their families from illegal or inappropriate content. These solutions are widely available as both integrated and independent solutions for a wide range of technologies. Completely reliable identification, blocking, and filtering capabilities like the bill calls for, however, are not technologically feasible, and therefore compliance with HB 772 would be difficult. For example, an inevitable but unintended consequence of HB 772 would be the inadvertent blocking of legal, non-obscene content, which would limit Maryland's citizens access to legitimate information. The definition "Harmful to minors" is incredibly broad, further leading to inadvertent restriction of age-

appropriate material. The definition of "Obscene" is also subjective, using language such as "lacks serious artistic, educational, literary, political, or scientific value".

Additionally, the legislation would place device manufacturers in the impossible role of deciding what content is obscene and whether or not it should be restricted, especially given the subjective nature of the definition of "obscene". If a private company inadvertently blocked lawful content, the company would face public backlash from website owners and users, including potential civil liability and monetary damages. The courts, working closely with law enforcement, are the only lawful authority in the position to make these determinations.

The bill also calls for a "Qualifying Age Verification Procedure". Age-verification is a complex challenge for our industry to address and requires consideration of how to properly balance the interests of privacy and security. Stringent age-verification requirements would require the collection of more personal information such as birthdates, addresses, and government IDs, which conflicts with data minimization principles. Efforts are ongoing to develop more privacy protective ways to verify age online. But until there are industry-wide tools available, age-verification will continue to have tradeoffs and be difficult to implement in practice. Unfortunately, no system is infallible.

The bill contains a private right of action, which encourages an abundance of frivolous lawsuits and costly litigation. Companies should be focusing their resources on supporting digital citizenship and online safety education, as opposed to focusing time and resources on expensive and time-consuming litigation.

Finally, products are not manufactured in a manner that tailors them to consumers living in a specific state. Tablets and smart phones are the result of years-long design efforts, incredibly complicated international supply chains, mass production, and global shipping to consumers. Manufacturers are unable to design operating systems on a state-by-state basis.

Our members work with law enforcement, educational institutions, government agencies, and a wide range of organizations to provide consumer education to help protect children and adults from illegal and distasteful content on the internet. An educated consumer armed with technology is always the best protection against unwanted online interactions. For the above state reasons, TechNet is opposed to this bill. 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