



Maryland | Delaware | DC Press Association

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To: House Economic Matters Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

Date: March 28, 2024

**Re: SB571 – OPPOSE (and suggested amendments)**

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of newspaper publications, from large metro dailies such as the Washington Post and the Baltimore Sun, to hometown newspapers such as the Star Democrat and Maryland Independent, to publications such as The Daily Record, Baltimore Jewish Times, and online-only publications such as the Baltimore Banner, MoCo 360, Maryland Matters and Baltimore Brew.

The Press Association recently recorded a podcast episode with noted privacy expert, Cobun Zweifel-Keegan, Managing Director of the International Association of Privacy Professionals. [Listen to learn more](#) about the issue and the context of these types of bills nationally and internationally.

<https://www.buzzsprout.com/2218409/14497685>

We commend the Legislature’s commitment to addressing young people’s well-being, especially online. As noted below we continue to have significant concerns with the impact that the Maryland Kids Code will have on access to critical news and information for teenagers without providing a corresponding benefit to their privacy or protection from detrimental impacts the bill seeks to mitigate. As you reconcile the bills, we urge the following amendments:

**CONCERN 1. NEWS MEDIA EXEMPTION FOR CONSISTENCY AND CONSTITUTIONALITY**

Fundamentally, we remain concerned that, as written and amended, the legislation will curtail access to vital news resources to consumers of all ages, posing Constitutional concerns for the bill. Free speech restraints would have a disproportionate impact on consumers of news media.

In placing an injunction on the California Age Appropriate Design Code Act, Judge Labson Freeman found that requiring covered businesses to consider various potential harms to children would make it “almost certain that news organizations and others will take steps to prevent those under the age of 18 from accessing online news content, features, or services.” There is every reason to believe that similar challenges will be made against the Maryland Kids Code.

We strongly suggest an exemption for news media entities, which have an exemption in the U.S. Senate’s “[Kids Online Safety Act](#)” S. 1409 which has 62 bipartisan cosponsors. At the state level, both the [Minnesota Age Appropriate Design Code](#) and the [Vermont Age Appropriate Design Code](#) contain exemptions for news media.

Accordingly, we recommend incorporating language, mirroring the “news media entity” as defined in the



**We believe a strong news media is central to a strong and open society.**

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**legislation establishing the Maryland Digital Ad Tax:**

14-4601. (M) (2) "ONLINE PRODUCT DOES NOT INCLUDE:" (IV) A NEWS MEDIA ENTITY, WHICH MEANS AN ENTITY ENGAGED PRIMARILY IN THE BUSINESS OF NEWSGATHERING, REPORTING, OR PUBLISHING ARTICLES OR COMMENTARY ABOUT NEWS, CURRENT EVENTS, CULTURE, OR OTHER MATTERS OF PUBLIC INTEREST. "NEWS MEDIA ENTITY" DOES NOT INCLUDE AN ENTITY THAT IS PRIMARILY AN AGGREGATOR OR REPUBLISHER OF THIRD-PARTY CONTENT."

Maryland has already decided that digital advertising restrictions should apply to social media platforms and not news media, as news media is exempt from digital advertising taxes. NOT granting a media exemption would be confusing.

**CONCERN 2. PROFILING LANGUAGE IS WIDELY SCOPED, INCONSISTENT WITH OTHER MODELS**

If news media is not exempted, the bill's broad definition of "profiling" would include virtually any form of automated processing, including that used to support professionally curated content recommendations and advertising including while on a particular site. Providing meaningful content and support of advertising are critical for sustaining the news media industry.

We also strongly recommend that the language in the definition be restored and amended to be made consistent with other states' profiling language:

14-4601— (Q) (2) "PROFILING DOES NOT INCLUDE THE PROCESSING OF PERSONAL DATA THAT DOES NOT RESULT IN AN ASSESSMENT OR JUDGMENT ABOUT AN INDIVIDUAL LEGAL OR SIMILARLY SIGNIFICANT EFFECTS CONCERNING AN INDIVIDUAL."

We strongly recommend amending the language to 14-4606. (A)(2)(II) to state: "PROFILING IS NECESSARY TO PROVIDE OR SUPPORT THE ~~REQUESTED~~ ONLINE PRODUCT, AND IS DONE ONLY WITH RESPECT TO THE ASPECTS OF THE ONLINE PRODUCT THAT THE CHILD IS ACTIVELY AND KNOWINGLY ENGAGED WITH; OR 2. THE COVERED ENTITY CAN DEMONSTRATE A COMPELLING REASON THAT PROFILING IS ~~IN THE BEST INTERESTS OF CHILDREN~~ NOT MATERIALLY DETRIMENTAL TO THE CHILD."

The trusted, curated content is the "online product" of news media, but the language as written could significantly curtail expected targeted advertising practices, which we understand is not the bill's intent.

We greatly appreciate your consideration.