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18 IN THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF CALIFORNIA
19 SAN JOSE DIVISION

20 NETCHOICE, LLC d/b/a NetChoice,

21 Plaintiff,

22 v.
23

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

26 Defendant.
27

Case No. 5:22-cv-08861-BLF

**SUPPLEMENTAL DECLARATION OF
MICHAEL MASNICK IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

Date: January 23, 2025
Time: 9:00 A.M.
Dept.: Courtroom 3 – 5th Floor

Action Filed: December 14, 2022

28

1 I, Michael Masnick, declare:

2 1. **Identity of Declarant.** I am the founder and CEO of Floor64, Inc., a California
3 small business that operates a widely-read blog at Techdirt.com (Techdirt), which for over 25 years
4 has been chronicling developments in technology law and policy and their convergence with civil
5 liberties. I am also the founder and editor of Techdirt. I make this declaration from personal
6 knowledge and a review of Techdirt’s and Floor64’s records kept in the ordinary course of
7 business. I submit this declaration as a supplement to my February 15, 2023 declaration in support
8 of NetChoice’s motion for a preliminary injunction against enforcement of AB 2273.

9 2. In my 2023 declaration, I discussed the ways in which the provisions of AB 2273
10 threatened Techdirt’s ability to operate and publish content.

11 3. I understand that this Court granted NetChoice’s motion and issued a preliminary
12 injunction against enforcement of AB 2273 but that, on appeal, the Ninth Circuit Court of Appeals
13 partially vacated that order and remanded the case for further consideration regarding certain of
14 the provisions of AB 2273. In particular, I understand that the Ninth Circuit held that the
15 provisions of AB 2273 related to the requirement that certain businesses prepare “Data Protection
16 Impact Assessments” (DPIAs) was facially unconstitutional and should be enjoined but vacated
17 the injunction as to the other challenged provisions pending further analysis.

18 4. I am relieved that the Ninth Circuit recognized that the DPIA requirement was
19 unconstitutional, as compliance with that requirement was infeasible for Techdirt and would have
20 jeopardized Techdirt’s ability to continue publishing content available to readers in California.
21 But the other provisions of AB 2273 still raise many of the same problems for Techdirt and thus
22 put Techdirt’s ability to publish at same risk. I highlight a few of the most serious problems in
23 this declaration.

24 5. **Definition of Covered Businesses.** AB 2273 (even with the DPIA provisions
25 removed) still reaches Techdirt, and as such imposes a number of burdens. These burdens hinge
26 on whether websites choose to publish content that, in the eyes of California regulators, is “likely
27 to be accessed by children,” where “children” defined to include everyone from ages 0-18.

28 6. As I explained in my 2023 declaration, readers under 13 are forbidden from creating

1 a registered Techdirt account. But many topics covered by Techdirt’s reporting—which includes
2 online harassment, school censorship, and social media usage—are particularly relevant to teenage
3 users. To avoid the burdens of—and potential penalties for non-compliance with—the many
4 provisions of AB 2273, Techdirt would have either have to exclude these readers, which, as
5 discussed below, is not possible, or cease publishing material on these subjects. The end result
6 would be severe self-censorship of Techdirt’s reporting and commentary.

7 7. **Age Estimation.** Among other compliance difficulties, the statute still imposes an
8 obligation to “[e]stimate the age of child users with a reasonable level of certainty appropriate to
9 the risks that arise from the data management practices of the business or apply the privacy and
10 data protections afforded to children to all consumers.” In my 2023 declaration, I detailed the
11 many burdens and logistical problems with this requirement, including that complying with it
12 would be prohibitively expensive and would perversely require that Techdirt collect far more
13 private data from its readers than it does now. The requirement would also undermine Techdirt’s
14 purposeful choice to facilitate discussion on the important issues covered by Techdirt while
15 remaining anonymous. *See* Prior Declaration ¶¶ 11-13. The absence of the DPIA requirement
16 does not remove the “age estimation” obligation, nor the burdens it imposes. It would therefore
17 chill Techdirt’s ability to publish and to facilitate further discussion, including anonymous
18 discussion.

19 8. I am aware that AB 2273 would theoretically excuse a website from estimating the
20 age of its users by “apply[ing] the privacy and data protections afforded to children to all
21 consumers.” But AB 2273 defines and discusses “data protections” in extremely broad terms that
22 depend on the nature of content, including whether material on a website would “harm children”
23 or expose them to “harmful, or potentially harmful content.” My only alternative to age-estimation
24 is to censor content for all users.

25 9. **Data Collection, Retention, Processing, and Use.** Even without this express age-
26 estimation requirement, other provisions of the Act effectively require Techdirt to know the ages
27 of its readers before it can publish content available for them to read. For example,
28 §§ 1798.99.31(b)(1)-(4) and (b)(7) restrict online providers from collecting, using, processing,

