

## COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

to the

California Department of Justice

Notice of Proposed Rulemaking for SB 976

Protecting Our Kids from Social Media Addiction Act

June 30, 2026

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The Electronic Privacy Information Center (EPIC) submits these comments with recommendations for the California Department of Justice’s rulemaking on SB 976, the Protecting Our Kids from Social Media Addiction Act. EPIC is an independent nonprofit research organization focused on protecting privacy, freedom of expression, and democratic values in the information age.<sup>1</sup> EPIC’s Platform Governance and Accountability program provides courts, legislators, and Attorneys General with guidance about the speech and privacy questions implicated by kids’ online safety legislation.<sup>2</sup> Since SB 976’s passage, EPIC has publicly supported the law and has filed amicus briefs supporting Attorney General Bonta at every step of the litigation so far.<sup>3</sup> Last year, EPIC filed comments in response to the Department of Justice’s solicitation for public comment on the

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<sup>1</sup> EPIC, *About EPIC*, <https://epic.org/about/>.

<sup>2</sup> EPIC, *Platform Accountability & Governance*, <https://epic.org/issues/platform-accountability-governance/>.

<sup>3</sup> Brief EPIC as Amicus Curiae Supporting Defendant, *NetChoice v. Bonta*, No. 5:24-cv-07885-EJD (N.D. Cal. Nov. 12, 2024), <https://epic.org/wp-content/uploads/2024/12/EPIC-Amicus-SB-976-NDCal.pdf>; Brief of EPIC et al. as Amici Curiae Supporting Defendant-Appellee and Affirmance, *NetChoice v. Bonta*, No. 25-146 (9th Cir. Mar. 6, 2025), <https://epic.org/wp-content/uploads/2025/03/EPIC-Amicus-Brief-NetChoice-v-Bonta-SB-976.pdf>; Brief of EPIC et al. as Amici Curiae Supporting Defendant, *TikTok v. Bonta*, No. 5:25-cv-09789-EJD (N.D. Cal. Feb. 27, 2026), <https://epic.org/wp-content/uploads/2026/03/EPIC-Amicus-TikTok-Meta-Google-v.-Bonta-NDCal.pdf>.

upcoming SB 976 rulemaking.<sup>4</sup> EPIC has also provided comments on the New York Attorney General’s rulemaking to implement the NY SAFE for Kids Act.<sup>5</sup>

EPIC applauds the proposed rules for SB 976. The rules reflect privacy- and speech-protective age assurance principles that will ensure that kids get the protections intended by the law while not compromising the constitutional rights and privacy interests of users. EPIC has limited suggestions for further strengthening the rules.

## I. Privacy- and Speech-Protective Age Assurance Principles

Age assurance can be deployed in a way that respects the privacy and speech rights of users by following a set of basic principles. California’s proposed rules for SB 976 are already well-aligned with these principles. EPIC offers some additional suggestions for further alignment.

### a. Make age assurance a condition of accessing regulated *features*, not regulated *products*.

Age assurance should not be a condition of access to any online product that operates as a speech intermediary. Making age assurance a condition of access to such a product as a whole burdens a wide array of user speech interests, including their interests in accessing information and speaking online. Instead, age assurance should be a condition of accessing *features* of such products that cause harm.

This is precisely the approach described in the proposed rules for SB 976: an operator must determine a user’s age before providing the user with *covered features*. This allows operators to

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<sup>4</sup> EPIC, Comments to the California Department of Justice on Hearing to Solicit Public Comment on Rulemaking for SB 976 (Nov. 5, 2025), <https://epic.org/wp-content/uploads/2025/11/EPIC-SB-976-Hearing-Comment.pdf>.

<sup>5</sup> EPIC, Comments to the NY Attorney General on the Notice of Proposed Rulemaking for the NY SAFE for Kids Act EPIC (Dec. 1, 2025), [https://epic.org/wp-content/uploads/2025/12/EPIC\\_NY-SAFE-for-Kids-Act-NPRM-Comments.pdf](https://epic.org/wp-content/uploads/2025/12/EPIC_NY-SAFE-for-Kids-Act-NPRM-Comments.pdf); Comments to the NY Attorney General on the Advanced Notice of Proposed Rulemaking for the NY SAFE for Kids Act (Sep. 30, 2024), [https://epic.org/wp-content/uploads/2024/10/EPIC-Comments\\_NY-SAFE-For-Kids-Act.pdf](https://epic.org/wp-content/uploads/2024/10/EPIC-Comments_NY-SAFE-For-Kids-Act.pdf).

comply with the law by turning covered features off by default for all users until they request a covered feature, ensuring full access to user-generated content on the platform without the need to assure age.

**b. Include strong data protection requirements.**

Strong data protection requirements include data minimization, use limitation, deletion, and data security mandates. These measures help ensure that age assurance does not contribute to the commercial surveillance system and broader data protection crisis.

The proposed rules include each of these data protection requirements.<sup>6</sup> The Department of Justice could further strengthen the data minimization requirement by requiring operators collect “no more than is *strictly* necessary to comply with this section.”<sup>7</sup> The Department should also require that operators implement these data protections for any personal data collected to verify a parental relationship.

**c. Minimize the burden of age determination by requiring operators to use information they currently possess before requesting additional personal data.**

Many online companies already have sufficient information to make a reasonable determination of a user’s age. Regulations should require companies to use this information before requesting any additional personal information from users.

The proposed rules include some important provisions toward minimizing the burden on users, including § 560(b), which states that operators do not need to make a reasonable determination of age if they have actual knowledge that a user is not a minor. The Department could further strengthen the rule by including more direction to operators on what information they currently possess would constitute actual knowledge that a user is or is not a minor. Specifically,

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<sup>6</sup> § 561(e).

<sup>7</sup> § 561(e)(1).

EPIC suggests that the Department add a provision stating that operators have actual knowledge that a user is not a minor when the user’s account is over ten years old, which will minimize the number of adult users who have to go through age assurance on the major platforms.

Information operators currently collect and use for marketing, content selection, and other purposes, and inferential data that follows from this data, could also be a source of actual knowledge that a user is or is not a minor. The rules currently only provide that operators take this information into account if it conflicts with the operators’ age determination,<sup>8</sup> but this information could also obviate the need for a user to go through the age determination process. The Department should clarify that this information constitutes actual knowledge of a user’s minor status. The rules should also require companies to establish reasonable methods for resolving conflicts between the various information and inferences a company possess about a user.

The rules currently appear to allow operators to use self-attestation data stating that a user is a minor as a reasonable determination that a user is a minor.<sup>9</sup> This is laudable, as such self-attestation in this context is likely an accurate and minimally burdensome way to determine that a user is a minor. The rules should clarify that previously collected self-attestations that a user is a minor also constitute actual knowledge that a user is a minor.

The rules also appropriately state that self-attestation that a user is a minor is not a reasonable determination that a user is not a minor.<sup>10</sup> However, the Department should also clarify that self-attestation that a user is not a minor does not constitute actual knowledge that a user is not a minor.

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<sup>8</sup> § 567.

<sup>9</sup> § 563(a)(1) (stating only that it is unreasonable for an operator to rely on “self-declaration that the user is not a minor.”)

<sup>10</sup> *Id.*

Finally, the rules currently require operators to treat a user as a minor across their many points of access.<sup>11</sup> This will ensure that minors are protected on all of their devices. EPIC suggests that the rules state that companies should use age determination information *in general* across all points of access to an operator’s platform in order to minimize the number of times a user must submit personal data for age determination purposes. For instance, if a user has undergone age determination on their phone, and the operator has determined that the user is not a minor, the operator should apply that determination when that user accesses the product from another device.

**d. Minimize the burden of age determination by providing users with a choice of age determination methods, including a mandatory privacy-protective technology option.**

User choice, and the availability of privacy-protective age determination options, can also decrease the burden of age assurance on users. Not all users are comfortable with the same age determination methods. Some users may be comfortable submitting to a face scan, while others may not. Real or perceived biases in age determination methods may also influence which methods are likely to give any specific user an accurate determination. The use of privacy-protective technology, meanwhile, is likely to enhance user trust and decrease privacy and civil liberties risks.

The rules appropriately prohibit operators from offering government identification as the only method of determining age.<sup>12</sup> However, the rules should go further and require operators to offer at least two other methods of determining age, one of which must use a cryptographic technique, such as a zero-knowledge proof, that allows a user to demonstrate whether they are a minor using verified data that does not reveal any other information about the user to the operator or

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<sup>11</sup> § 566.

<sup>12</sup> § 562.

a third-party. This will help ensure that users have palatable and privacy-protective options should they wish to access covered features.

**e. Provide an effective and responsive appeals process.**

Age determination methods are not perfect, and the law should not require accuracy at the expense of privacy. An effective and responsive appeals process is necessary to correct any inaccuracies in an operator’s actual knowledge or age determination.

The rules include a strong appeals process requirement.<sup>13</sup> However, EPIC suggests a few improvements. First, the Department should set a timeline for when operators must respond to user appeals, otherwise operators may not properly staff the appeals process and users may experience extensive delays. The Department should also clarify that providing government identification cannot be the only method of appeal, for the same reason that such information should not be the only method of providing an initial age determination.

**f. Provide users with transparency about age determination methods.**

Transparency on operators’ use of age determination is beneficial both for accountability purposes and to bolster user confidence. Effective transparency will detail how operators implement their age determination methods, including the personal information collected from users, how that information is processed, and who has access to the information.

The rules contain strong transparency requirements.<sup>14</sup> EPIC suggests a few additional measures to further strengthen the rule. First, in addition to the information required in § 561(c)(1), the rules should also require operators to describe how personal data is stored; how long the data is stored for; any third parties that process the data on the operator’s behalf; and any other third parties

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<sup>13</sup> § 564.

<sup>14</sup> § 561(c).

to whom the data is transferred. Second, EPIC suggests that the operator provide a link to this report whenever it requests that a user go through the age determination process.

## **II. Conclusion**

EPIC applauds the Department's proposed rules to implement SB 976. EPIC is eager to engage with the Department further regarding this rulemaking. Please contact the Director of EPIC's Platform Governance and Accountability program, Megan Iorio, at [iorio@epic.org](mailto:iorio@epic.org) with any questions.

Respectfully submitted,

*/s/ Megan Iorio*

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