

No. 22-277

In the
Supreme Court of the United States

ATTORNEY GENERAL, STATE OF FLORIDA, et al.,

Petitioners,

v.

NETCHOICE, LLC, AND THE COMPUTER &
COMMUNICATIONS INDUSTRY ASSOCIATION,

Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit**

JOINT APPENDIX

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**Complaint for Declaratory and Injunctive
Relief, *NetChoice, LLC v. Moody*, No. 21-cv-00220
(May 27, 2021)**

Plaintiffs NetChoice, LLC (“NetChoice”) and Computer & Communications Industry Association (“CCIA”)—trade associations of online businesses that share the goal of promoting and protecting free speech and free enterprise on the Internet— jointly bring this Complaint for declaratory and injunctive relief against the Defendants in their official capacities, to enjoin the enforcement of Florida’s S.B. 7072, 2021 Leg. (Fla. 2021) (hereinafter, the “Act”),¹ which infringes on the rights to freedom of speech, equal protection, and due process protected by the First and Fourteenth Amendments to the U.S. Constitution. The Act also exceeds the State of Florida’s authority under the Constitution’s Commerce Clause and is preempted by Section 230 of the Communications Decency Act. Because the Act violates the constitutional rights of Plaintiffs’ members and contravenes federal law, it should be promptly enjoined before it takes effect on July 1, 2021.

Overview

1. The Act, a first-of-its-kind statute, was enacted on May 2, 2021 and signed into law on May 24, 2021 to restrict the First Amendment rights of a targeted selection of online businesses by having the State of Florida dictate how those businesses must

¹ The Act is codified in scattered sections of the Florida Statutes, including §§ 106.072, 287.137, 501.2041, 501.212. Below, the Act’s specific provisions are identified by Section (e.g., “Act § 2”), as well as the provision of the Florida Statutes where they will be codified (e.g., “§ 106.072”).

exercise their editorial judgment over the content hosted on their privately owned websites. The Act discriminates against and infringes the First Amendment rights of these targeted companies, which include Plaintiffs' members, by compelling them to host—and punishing them for taking virtually any action to remove or make less prominent—even highly objectionable or illegal content, no matter how much that content may conflict with their terms or policies.

2. These unprecedented restrictions are a blatant attack on a wide range of content-moderation choices that these private companies have to make on a daily basis to protect their services, users, advertisers, and the public at large from a variety of harmful, offensive, or unlawful material: pornography, terrorist incitement, false propaganda created and spread by hostile foreign governments, calls for genocide or race-based violence, disinformation regarding Covid-19 vaccines, fraudulent schemes, egregious violations of personal privacy, counterfeit goods and other violations of intellectual property rights, bullying and harassment, conspiracy theories denying the Holocaust or 9/11, and dangerous computer viruses. Meanwhile, the Act prohibits only these disfavored companies from deciding how to arrange or prioritize content—core editorial functions protected by the First Amendment—based on its relevance and interest to their users. And the Act goes so far as to bar those companies from adding their own commentary to certain content that they host on their privately owned services—even labeling such commentary as “censorship” and subjecting the services to liability

simply for “post[ing] an addendum to any content or material posted by a user.”

3. Under the Act, these highly burdensome restrictions apply only to a select group of online businesses, leaving countless other entities that offer similar services wholly untouched by Florida law—including any otherwise-covered online service that happens to be owned by The Walt Disney Company (“Disney”) or other large entities that operate a “theme park.” This undisguised singling out of disfavored companies reflects the Act’s true purpose, which its sponsors freely admitted: to target and punish popular online services for their perceived views and for certain content-moderation decisions that state officials opposed—in other words, to retaliate against these companies for exercising their First Amendment rights of “editorial discretion over speech and speakers on their property.” *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921, 1931 (2019).

4. Rather than preventing what it calls “censorship,” the Act does the exact opposite: it empowers government officials in Florida to police the protected editorial judgment of online businesses that the State disfavors and whose perceived political viewpoints it wishes to punish. This is evident from Governor Ron DeSantis’ own press release that touts the Act as a means to “tak[e] back the virtual public square” from “the leftist media and big corporations,” who supposedly “discriminate in favor of the dominant Silicon Valley ideology.”² The Governor’s press release

² Press Release, *Governor Ron DeSantis Signs Bill to Stop the Censorship of Floridians by Big Tech* (May 24, 2021) (“May 24, 2021 Gov. DeSantis Press Release”), www.flgov.com/2021/05/24

also leaves no doubt about the Legislature’s unconstitutional viewpoint discrimination: quoting a state legislator, it proclaims that “our freedom of speech as conservatives is under attack by the ‘big tech’ oligarchs in Silicon Valley. But in Florida, [this] ... will not be tolerated.”³

5. Although the Act uses scare terms such as “censoring,” “shadow banning,” and “deplatforming” to describe the content choices of the targeted companies, it is in fact the Act that censors and infringes on the companies’ rights to free speech and expression; the Act that compels them to host speech and speakers they disagree with; and the Act that engages in unconstitutional speaker-based, content-based, and viewpoint-based preferences. The legislative record leaves no doubt that the State of Florida lacks any legitimate interest—much less a compelling one—in its profound infringement of the targeted companies’ fundamental constitutional rights. To the contrary, the Act was animated by a patently unconstitutional and political motive to target and retaliate against certain companies based on the State’s disapproval of how the companies decide what content to display and make available through their services.

6. The Act is a frontal assault on the First Amendment and an extraordinary intervention by the government in the free marketplace of ideas that would be unthinkable for traditional media, book sellers, lending libraries, or newsstands. Could

[/governor-ron-desantis-signs-bill-to-stop-the-censorship-of-floridians-by-big-tech](#) (last accessed May 26, 2021).

³ *Id.*

Florida require that the *Miami Herald* publish, or move to the front page, an op-ed or letter to the editor that the State favored, or demand that the *Herald* publish guest editorials in a state-sanctioned sequence? The answer is obviously no—as the Supreme Court unanimously held five decades ago in *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). Yet the State now seeks to repeat that history—and to go even further by, for example, compelling the targeted companies to alter and disclose their editorial standards and to provide “detailed” information about the algorithms they use to curate content.

7. The Act is so rife with fundamental infirmities that it appears to have been enacted without any regard for the Constitution. The Act imposes a slew of hopelessly vague content-based, speaker-based, and viewpoint-based restrictions on the editorial judgments and affirmative speech of the selected online businesses that it targets. These include the following unconstitutional provisions (the “Moderation Restrictions”), all of which facially violate the First Amendment:

a. Through its unprecedented “deplatforming” provision, the Act prohibits targeted online services from terminating or suspending the accounts of “candidate[s]” for state or local political office.⁴ This

⁴ Act § 2 (adding § 106.072(2)). The Act adopts the preexisting definition of “candidate” under Florida’s election laws, *id.* (adding § 106.072(6)), which includes (among other things) “[a] person who files qualification papers and subscribes to a candidate’s oath as required by law.” F.S. § 106.011(3)(e). To qualify as a candidate for certain offices, the filing fee is only \$25. F.S. § 99.061(3); *see also* Florida Dep’t of State, Elections Div., 2020

ban applies no matter how egregious or illegal the candidate's conduct on a platform is—and regardless of whether that conduct violates the online businesses' terms of use and community standards. Its prohibition on the use of judgment over the display of content favored by the Legislature is backed by draconian fines of \$250,000 per day.⁵

b. The Act simultaneously bans the use of algorithms to organize, prioritize, or otherwise curate “content and material posted by *or about*” anyone paying the filing fee necessary to qualify as a political candidate.⁶ Under this sweeping moderation restriction, any post that even mentions a candidate is virtually immune from algorithmic moderation. This provision makes it unlawful for covered online businesses to use their editorial discretion to curate content posted by or about candidates in ways that respond to their users' interests. It would even prevent them from removing defamatory statements or “deepfake” falsifications of a candidate's words or movements. One Florida legislator who voted for the Act succinctly describes the issue: “My concern is about potential candidates, about crazy people, Nazis and child molesters and pedophiles who realize they can say anything they want ... if all they do is fill out those two pieces of paper.”⁷

State Qualifying Handbook 17 (2020), files.floridados.gov/media/702970/state-qualifying-handbook-2020-20200408.pdf (last accessed May 26, 2021).

⁵ Act § 2 (adding § 106.072(2)).

⁶ Act § 4 (adding § 501.2041(2)(h)) (emphasis added).

⁷ Steven Lemongello & Gary Rohrer, *Florida law seeks to rein in large social media companies*, S. Fla. Sun Sentinel (May 24,

c. The Act bans covered online businesses from engaging in a broad range of constitutionally protected moderation activities—not only removing or taking down content, but also editing content and even “post[ing] an addendum to any content” (*i.e.*, engaging in their own affirmative speech)—with respect to the novel and loosely defined concept of a “journalistic enterprise.”⁸ The term “journalistic enterprise” reaches far beyond traditional media outlets (sweeping in online propaganda outlets and conspiracy theorists, among others), without affording protections to prevent imposters, foreign agents, or insurrectionists from exploiting these rigid content-based mandates. And these mandates make no exception for violent, sexually explicit, fraudulent, or otherwise unlawful content.⁹

d. The Act establishes a vague and unworkable requirement that covered online businesses, which moderate billions of posts from billions of users around the world every day, apply nearly all content decisions “in a consistent manner”—a term not defined or clarified in any way, but that necessarily requires reference to the underlying content and thus is content-based.¹⁰ Even if this mandate were sufficiently clear and administrable (which it is not), this is yet another example of the State dictating how online businesses exercise their discretion in

2021), www.sun-sentinel.com/news/politics/os-ne-desantis-signs-big-tech-bill-20210524-dvycnrscjbbfnnh7vbs3wimv5q-story.html (last accessed May 26, 2021) (statement of Rep. Fine).

⁸ Act § 4 (adding § 501.2041(2)(j)).

⁹ *Id.*

¹⁰ *Id.* (adding § 501.2041(2)(b)).

organizing and displaying content on their private websites. Like the provisions discussed above, the chilling effect on speech is amplified by a new private right of action authorizing awards of up to \$100,000 in statutory damages per claim and potential “punitive damages.”¹¹

e. The Act compels covered online businesses to allow users to “opt out” of algorithms governing content moderation altogether¹²—again without regard to the egregious, unlawful, or dangerous nature of the content—and requires targeted businesses to publicly disclose and justify their exercise of curatorial judgment, including revealing highly confidential and proprietary methodologies used to moderate content.¹³ The Act further prohibits covered online businesses from changing their editorial policies more than once every 30 days, even in response to changed circumstances, newly discovered threats, or local or national emergencies.¹⁴

8. The Act further violates the First Amendment and Equal Protection Clause by (i) targeting only larger digital services and social media companies, while (ii) irrationally exempting Disney and Universal Studios (owned by Comcast Corporation) from its scope, simply because they own

¹¹ *Id.* (adding § 501.2041(2)(b)).

¹² The Act requires covered businesses to allow all users to opt out of the presentation of content that the websites normally offer, and to “allow sequential or chronological posts and content.” *Id.* (adding § 501.2041(2)(f)(2)).

¹³ *Id.* (adding § 501.2041(2)(a) & (d), (3), (8)).

¹⁴ *Id.* (adding § 501.2041(2)(c)).

well-attended “theme parks” in Florida.¹⁵ The Act’s legislative sponsors acknowledged that they chose this protectionist carveout to ensure that companies with especially large economic footprints in Florida—like Disney—are not “caught up in this.”¹⁶ None of the Moderation Restrictions apply to traditional media or non-digital hosts of third-party material (such as book publishers or businesses that use traditional bulletin boards). Nor do they apply to online businesses that offer the same types of services, but do not meet the arbitrary statutory requirements of having \$100 million in annual revenues or 100 million users anywhere in the world and thus qualifying as covered “social media platforms.”¹⁷ None of these arbitrary distinctions are supported by any legislative findings, or anything other than the impermissible desire to punish specific, disfavored online services. This underscores that the Act unconstitutionally discriminates against only certain speakers, that it is gravely under- and overinclusive, that it is neither narrowly tailored nor closely drawn, and that it is not justified by any legitimate (much less compelling) governmental interest.

9. The Act doubles down on its unconstitutional singling out of “social media platforms” (a misleading

¹⁵ *Id.* (adding § 501.2041(1)(g)).

¹⁶ Jim Saunders, *Florida’s ‘Big Tech’ crackdown bill goes to DeSantis, but with a special exemption for Disney*, CL Tampa Bay (Apr. 30, 2021), www.cltampa.com/news-views/floridanews/article/21151908/floridas-big-tech-crackdown-bill-goes-to-desantis-but-with-a-specialexemption-for-disney (last accessed May 26, 2021).

¹⁷ Act § 4 (adding § 501.2041(1)(g)(4)).

term that also covers other digital services) by allowing the State Attorney General to create a blacklist of companies (and a broad range of related persons) that may be banned from bidding on or doing business with the State merely because they are *accused* of violating state or federal antitrust laws.¹⁸ This blacklist applies only to targeted “social media platforms”—not to any other kind of business that may have been accused of violating or found to have actually violated antitrust laws. The legislative and public record of the Act shows that this punitive provision, like the rest of the Act, was designed to retaliate against the targeted digital companies precisely because of their exercise of core First Amendment free speech rights, including their perceived political viewpoints, their prior exercise of editorial judgment, and their alleged views on particular political candidates and office holders. The statements about the Act by the Governor of Florida and the law’s sponsors confirm that its passage was motivated by retaliatory and discriminatory animus, including their characterizations of Plaintiffs’ members as part of “leftist media” that are advancing a supposedly “dominant Silicon Valley ideology.”¹⁹

10. The Act is also unconstitutionally vague and overbroad. It fails to define with sufficient definiteness what conduct is punishable. It sets nebulous standards for enforcement that encourage arbitrary and discriminatory enforcement of the law. And its astronomical fines and punitive damages for

¹⁸ Act § 3 (adding § 287.137(2)(a)-(b)).

¹⁹ May 24, 2021 Gov. DeSantis Press Release.

violations of these opaque provisions will inevitably chill constitutionally protected practices and the availability of protected expression.²⁰

11. The Act exceeds the limitations on state authority under federal law by seeking to regulate wholly extraterritorial conduct in ways prohibited by the Constitution’s Commerce and Due Process Clauses. First, the Act impermissibly engages in protectionist discrimination *against* online businesses—and at the same time, discrimination *in favor of* major Florida-based businesses and Florida candidates. Second, the Act regulates large swaths of content-moderation decisions that have no meaningful connection to (and indeed nothing at all to do with) the State of Florida, based on business operations and transactions conducted outside of Florida.

12. On top of all these constitutional infirmities, the Act’s restrictions on content moderation conflict with Section 230 of the Communications Decency Act, a federal statute enacted with the specific goal of protecting the decisions of online services from state-based regulation and liability. As Congress intended, Section 230 affords online service providers the freedom to make their own decisions about whether and how to restrict objectionable content.²¹ Because the Act purports to apply “to the extent not inconsistent with federal law,” including Section 230, its limitations on content moderation are not only preempted by federal law, but also rendered unenforceable under the Act itself. And given the

²⁰ Act § 2 (adding § 106.072(2)), § 4 (adding § 501.2041(6)).

²¹ See 47 U.S.C. § 230(c)(2), (e)(3).

vague sweep of the Act and its harsh penalties, its inclusion of a one-line claim that it, in effect, does not do any of the things it otherwise purports to do will not avoid its chilling effect on the moderation of content protected by the U.S. Constitution and federal law.

13. For all these reasons, and as described further below, Plaintiffs seek (1) an order declaring the Act unconstitutional on its face and (2) a preliminary and permanent injunction enjoining its enforcement.²²

Jurisdiction

14. This Court has jurisdiction over this federal civil rights action under 28 U.S.C. § 1331 because the claims in this action arise under the U.S. Constitution and federal law. Plaintiffs' claims arise under the First and Fourteenth Amendments, and seek to invalidate certain provisions of the Act based on federal preemption under the Constitution's Supremacy Clause.

15. This Court has authority to grant relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, and the Civil Rights Act, 28 U.S.C. 1343(a), 42 U.S.C. § 1983.

16. In addition, this Court has authority to issue injunctive relief under the All Writs Act, 28 U.S.C. § 1651.

²² Plaintiffs separately reserve all rights to challenge the lawfulness of the Act under the Florida Constitution in the state courts of Florida. This Complaint is limited to claims arising under federal law, and it does not raise issues of state constitutional law.

17. This Court's jurisdiction is properly exercised over the Defendants in their official capacities, *Ex parte Young*, 209 U.S. 123 (1908), as Plaintiffs are seeking declaratory and injunctive relief.

18. There is an actual controversy of sufficient immediacy and concreteness relating to the legal rights and duties of Plaintiffs' members to warrant relief under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201, 2202. The harm to Plaintiffs' members as a direct result of the actions and threatened actions of Defendants is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment and prospective injunctive relief.

19. The restrictive and discriminatory provisions of the Act will become law effective July 1, 2021. Plaintiffs' members will then become subject to the risk of liability, as described more fully below.

20. Plaintiffs' members include online businesses, online social media platforms, online marketplaces, and e-commerce businesses and range from well-known online businesses to individual users of e-commerce services.²³

21. As private businesses, Plaintiffs' members have the right to decide what content is appropriate

²³ Members of one or both Plaintiff organizations include Airbnb, Alibaba.com, Amazon.com, AOL, DJI, DRN, eBay, Etsy, Expedia, Facebook, Fluidtruck, Google, HomeAway, Hotels.com, Lime, Nextdoor, Lyft, Oath, OfferUp, Orbitz, PayPal, Pinterest, StubHub, TikTok, Travelocity, TravelTech, Trivago, Turo, Twitter, Verisign, VRBO, Vigilant Solutions, VSBLTY, Waymo, Wing, and Yahoo!. See NetChoice, www.netchoice.org/about; & CCIA, www.ccianet.org/about/members. Collectively, these members employ tens of thousands of Floridians.

for their sites and platforms. Those decisions are a constitutionally protected form of speech.

22. Plaintiffs' members are the direct targets of the Act, engage in content-moderation activities that are covered by the Act, and will face serious legal consequences from failing to comply with its requirements. These members meet the statutory definition of a covered "social media platform" under the Act, because they (i) allow users to post or upload content onto their platforms, (ii) are incorporated legal business entities, (iii) do business in the State of Florida, (iv) meet the Act's revenue or user-based thresholds, and (v) are not exempted under the exception for certain operators of theme parks. *See* Act § 4 (adding § 501.2041(1)(g)). Accordingly, the members have standing to challenge the Act.

23. In addition, the Act's Moderation Restrictions compel members to host content or speakers contrary to their policies and community standards, require that they fundamentally change the types of content available on their privately owned platforms, and force them to subject certain of their users and posters to arbitrary and irrational disfavored treatment because of the content- and speaker- based restrictions that the State of Florida has imposed. These requirements will have long-term reputational effects on Plaintiffs' members, which are enduring and thus irreparable. Failure to comply would expose members to severe penalties, including civil and administrative actions by the Attorney General, fines of \$250,000 per day by the Florida Elections Commission, as well as private rights of action that include up to \$100,000 in statutory damages per claim, "[a]ctual damages,"

“equitable relief,” and potential “punitive damages.” *Id.* (adding § 501.2041(6)). That risk casts a serious chilling effect on activity protected by the First Amendment, including both members’ content-moderation practices and their own speech concerning user-generated content.

24. Given the Act’s inevitable and imminent impact on Plaintiffs’ members’ ability to engage in their moderation practices consistent with their terms of service and community standards, the Act will harm Plaintiffs’ members in numerous ways, including by (i) interfering with their content judgments on their privately owned sites, (ii) exposing them to potential liability at the hands of the State Attorney General and Florida Elections Commission, (iii) exposing them to potential liability under the new private right of action discussed above, (iv) subjecting them to unlawful compelled disclosure of private, competitively sensitive and proprietary business information, and (v) making it harder for them to provide high-quality services to their users and customers. Specifically, the Act would compel Plaintiffs’ members to degrade the services they provide and the content they host on their private platforms: the Act requires members to display and prioritize user-generated content that runs counter to their terms, policies, and business practices; content that will likely offend and repel their users and advertisers; and even content that is unlawful, dangerous to public health and national security, and grossly inappropriate for younger audiences.

25. In addition, Plaintiffs’ members will be required to expend time and substantial resources to

change the operations of and redesign their privately owned services and platforms to comply with numerous arbitrary and State-mandated requirements. These include obligations to (i) “[c]ategorize algorithms used for post-prioritization and shadow banning,” Act § 4 (adding § 501.2041(2)(f)(1)); (ii) develop processes and procedures to track and manage user opt-outs, *id.* (adding § 501.2041(2)(f)(2)); (iii) “allow a user who has been deplatformed to access or retrieve all of the user’s information, content, material, and data for at least 60 days” after receipt of notice, *id.* (adding § 501.2041(2)(i)); (iv) “[p]rovide a mechanism that allows a user to request the number of other individual platform participants who were provided or shown the user’s content or posts,” *id.* (adding § 501.2041(2)(e)(1)); and (v) “[p]rovide, upon request, a user with the number of other individual platform participants who were provided or shown content or posts,” *id.* (adding § 501.2041(2)(e)(2)). And if Plaintiffs’ members do not comply with these highly burdensome obligations, they face the imminent threat of massive penalties under an unconstitutional and federally preempted law. Plaintiffs’ members will thus suffer an immediate injury or would be threatened by one if the Act were allowed to stand. Plaintiffs anticipate that their members will face enforcement actions, brought by the Attorney General or by private litigants, immediately after the law goes into effect because they are engaging in and intend to continue engaging in moderation activity that is covered by the Act and that the Attorney General would likely allege to be a violation of the Act.

26. Because the statute so clearly targets, and was specifically intended to target, Plaintiffs' members and their activities, this fear is well-founded and credible. The statements of Governor Ron DeSantis and the law's sponsors demonstrate that Defendants and the State of Florida plan to target Plaintiffs' members in state proceedings to enforce the Act's unconstitutional restraint of their editorial judgment, content-moderation practices, and First Amendment rights. For example, Governor DeSantis proclaimed in his May 24 press release that "[i]f Big Tech censors enforce rules inconsistently, to discriminate in favor of the dominant Silicon Valley ideology, they will now be held accountable."²⁴ Similarly, on February 2, 2021, Governor DeSantis stated that "if a technology company uses their content- and user-related algorithms to suppress or prioritize the access of any content related to a political candidate or cause on the ballot, that company will also face daily fines," and added that "[t]he message is loud and clear: When it comes to elections in Florida, Big Tech should stay out of it."²⁵ Governor DeSantis also declared that Florida was "going to take aim at those companies," which include Plaintiffs' members.²⁶

²⁴ May 24, 2021 Gov. DeSantis Press Release.

²⁵ Michael Moline, Gov. *DeSantis pushing to punish 'Big Tech' companies that 'censor' political speech*, Florida Phoenix (Feb. 2, 2021), www.floridaphoenix.com/2021/02/02/gov-desantispushing-to-punish-big-tech-companies-that-censor-political-speech-such-as-trump-speech (last accessed May 26, 2021).

²⁶ Corbin Barthold & Berin Szóka, *No, Florida Can't Regulate Online Speech*, Lawfare (March 12, 2021) www.lawfareblog.com/no-florida-cant-regulate-online-speech

27. Plaintiffs have associational standing to bring this suit on behalf of their members. As described above, Plaintiffs' members have standing to challenge the statute. *See supra* ¶¶ 20-26. Further, the Act is fundamentally at odds with Plaintiffs' policy objectives, and challenging the Act is germane to Plaintiffs' respective missions. *See supra* ¶¶ 32-34. The claims and relief sought do not require proof specific to particular members and, in any event, Plaintiffs are able to provide evidence about the Act's impact on the companies they represent. The members' individual participation is thus not required.

28. This Court's immediate review of the Act's constitutionality is necessary to prevent an imminent infringement of Plaintiffs' members' fundamental constitutional rights.

29. Under these circumstances, judicial intervention is warranted to resolve a genuine case or controversy within the meaning of Article III of the U.S. Constitution regarding the constitutionality and legality of the Act.

30. A declaration that the Act is unconstitutional and preempted by federal law would definitively resolve that controversy for the parties.

Venue

31. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1)-(2). The Defendants are considered to reside in the Northern District of Florida because this

(last accessed May 26, 2021); *see also* Gov. Ron DeSantis, Facebook, www.facebook.com/GovRonDeSantis/posts/3849516841773014 (last accessed May 26, 2021).

is where they perform their official duties. 28 U.S.C. § 1391(b)(1). Additionally, the Attorney General of Florida, in her official capacity, regularly conducts business and proceedings in her offices in this District, and the events giving rise to Plaintiffs' claims occurred in this District.

The Parties

Plaintiffs

32. Plaintiff NetChoice is a national trade association of online businesses who share the goal of promoting free speech and free enterprise on the Internet. NetChoice is a 501(c)(6) nonprofit organization headquartered in Washington, D.C.

33. For over two decades, NetChoice has worked to promote online commerce and speech and to increase consumer access and options through the Internet, while minimizing burdens on businesses that are making the Internet more accessible and useful.

34. Plaintiff CCIA is an international, not-for-profit membership association representing a broad cross-section of companies in the computer, Internet, information technology, and telecommunications industries. CCIA is a 501(c)(6) trade association headquartered in Washington, D.C. For almost fifty years, CCIA has promoted open markets, open systems, and open networks.

Defendants

35. Defendant Ashley Brooke Moody is the Attorney General of the State of Florida. She is the State's chief law enforcement officer and representative of the State in "all suits or

prosecutions, civil or criminal or in Empowerment,” brought or opposed by the State. F.S. §§ 16.01, *et. seq.* In her official capacity, Ms. Moody oversees the Florida Department of Legal Affairs, which is responsible for enforcing Section 4 of the Act. Section 4 expressly authorizes the Attorney General to “investigate” a “suspect[ed] violation” of that section of the Act and “to bring a civil or administrative action under this part.” Section 3 instructs the Attorney General to determine whether “there is probable cause that a person has likely violated the underlying antitrust laws,” and, if so, to initiate procedures for temporarily placing that person on the Antitrust Violator Vendor List. Defendant Moody is sued for declaratory and injunctive relief in her official capacity as the Attorney General of the State of Florida.

36. Defendant Joni Alexis Poitier is a Commissioner of and the Vice Chair of the Florida Elections Commission, which is the administrative agency charged with enforcing, among other things, Chapter 106 of Florida’s Election Code and thus has jurisdiction under Florida law to investigate and determine violations of Section 2 of the Act.²⁷ Section 2 expressly authorizes the Elections Commission to find a violation of subsection (2) of that Section and to assess fines of up to \$250,000 per day for “deplatforming” a candidate for statewide office, and

²⁷ The term of service for each of the Commissioners of the Florida Elections Commission has expired. However, the named individuals are still serving as Commissioners and will continue to do so until Florida’s Governor makes new appointments to their positions.

of \$25,000 per day for “deplatforming” a candidate for any other office. Ms. Poitier is sued for declaratory and injunctive relief in her official capacity as Florida Elections Commission Commissioner and Vice Chair.

37. Defendant Jason Todd Allen is a Commissioner of the Florida Elections Commission, which is the administrative agency charged with enforcing, among other things, Chapter 106 of Florida’s Election Code and thus has jurisdiction under Florida law to investigate and determine violations of Section 2 of the Act. Mr. Allen is sued for declaratory and injunctive relief in his official capacity as Florida Election Commissions Commissioner.

38. Defendant John Martin Hayes is a Commissioner of the Florida Elections Commission, which is the administrative agency charged with enforcing, among other things, Chapter 106 of Florida’s Election Code and thus has jurisdiction under Florida law to investigate and determine violations of Section 2 of the Act. Mr. Hayes is sued for declaratory and injunctive relief in his official capacity as Florida Elections Commission Commissioner.

39. Defendant Kymberlee Curry Smith is a Commissioner of the Florida Elections Commission, which is the administrative agency charged with enforcing, among other things, Chapter 106 of Florida’s Election Code and thus has jurisdiction under Florida law to investigate and determine violations of Section 2 of the Act. Ms. Smith is sued for declaratory and injunctive relief in her official capacity as Florida Elections Commission Commissioner.

40. Defendant Patrick Gillespie is the Deputy Secretary of Business Operations of the Florida Department of Management Services (the “Department”). Under Florida law, the Department is responsible for developing and overseeing the procedures under which the State and its agencies purchase commodities and services. The Act tasks the Department and the Deputy Secretary with enforcing Section 3 of the Act by, among other things, creating and maintaining the “Antitrust Violator Vendor List.” In February 2021, the Secretary of the Department resigned, and Governor DeSantis has not appointed a replacement. Accordingly, Deputy Secretary Gillespie is currently responsible for enforcing Section 3 of the Act.

41. The above-identified Defendants (collectively, the “Defendants”) are charged with enforcing the provisions of the Act challenged by this action. The Defendants have the authority under the Act to investigate, fine, and otherwise penalize Plaintiffs’ members for exercising their constitutional rights under the First and Fourteenth Amendments to the U.S. Constitution.

42. The Defendants are charged to act—and would continue to act if not enjoined—under color of state law.

43. Plaintiffs sue the Defendants here in their official capacities to prevent imminent violations of the constitutional rights of Plaintiffs’ members.

**Plaintiffs' Members Engage In Beneficial
Content Moderation That Is Directly
Restricted By The Act**

44. Plaintiffs' members operate online services that host and publish an enormous amount and variety of user-generated content, including text, videos, audio clips, and photographs. The material that is uploaded to these services comes from all over the world and is unfathomably diverse. These online services showcase the best of human thought: material that is endlessly creative, humorous, intellectually stimulating, educational, and politically engaging. Unfortunately, however, some of the material submitted to these services is none of these things. The openness of the Internet is a magnet for some of the best and worst aspects of humanity, and any online service that allows users to easily upload material will find some of its users attempting to post highly offensive, dangerous, illegal, or simply unwanted content. This content may be problematic in a variety of ways, including (among other things) featuring hardcore and illegal "revenge" pornography, depictions of child sexual abuse, terrorist propaganda, efforts by foreign adversaries to foment violence and manipulate American elections, efforts to spread white supremacist and anti-Semitic conspiracy theories, misinformation disseminated by bot networks, fraudulent schemes, malicious efforts to spread computer viruses or steal people's personal information, spam, virulent racist or sexist attacks, death threats, attempts to encourage suicide and self-harm, efforts to sell illegal weapons and drugs, pirated material that violates intellectual property rights, and false and defamatory statements.

45. Without serious and sustained effort by online services to stop, limit, and control such content—and the people or entities who seek to disseminate it—these services could be flooded with abusive and objectionable material, drowning out the good content and making their services far less enjoyable, useful, and safe.

46. That is why Plaintiffs' online service members—and nearly every online service that is open to hosting user-generated content—have rules and policies setting out what content and activities are, and are not, permitted on their services. And it is why those services devote enormous amounts of time, resources, personnel, and effort to engaging in content moderation. As is clear from the above discussion of their moderation practices, Plaintiffs' members make individualized decisions and do not serve the public indiscriminately. They are private speech forums operated by private companies that “exercise editorial control over speech and speakers on their properties or platforms.” *Manhattan Community Access Corp.*, 139 S. Ct. at 1932.

47. Content moderation can take many different forms, involving both human review and algorithmic or other automated moderation tools. Sometimes, content moderation involves removing objectionable or unlawful content or terminating the accounts of users who post such material. Sometimes it is more nuanced, involving decisions about how to arrange and display content, what content to recommend to users based on their interests, and how easy or difficult it should be to find or search for certain kinds of content. Content moderation sometimes can take

the form of “zoning” or “age-gating,” whereby certain content is made accessible to adults but not minors, or to teenagers but not younger children. In other instances, content moderation involves empowering users with tools so they can decide for themselves what content to avoid, such as by blocking or muting others, making certain content inaccessible to their children, or opting into special sections of an online service that exclude material likely to offend or upset especially sensitive users. Content moderation can also involve direct speech by service providers themselves, in the form of warning labels, disclaimers, or commentary appended to certain user-submitted material. For example, an online service provider might inform users that the relevant content was posted by a hostile foreign government, that it has not been verified by official sources, that the information has been found to be false, or that it contains sensitive or potentially upsetting imagery that is not appropriate for everyone. It would then be up to the user to decide whether to review the content. Content moderation is even necessary for the most basic online functions that users may take for granted, like searching for local businesses, movie showtimes, or weather reports. Without organizing and curating the unfathomable volume of online content, online services would have no way to identify and deliver to users the content that they want—or may critically need—to see.

48. Content moderation, in these myriad forms, serves many significant functions. *First*, it is the means by which the online service expresses itself. Just as a newspaper or magazine has the freedom to choose a cover story, leave out certain letters to the

editor, or ban profanity from its pages, an online service performs the same curation function according to its terms and policies. At the same time, a service's policies concern more than just what it does or does not publish: they influence the kind of online community, environment, and atmosphere that users experience. A website aiming to be family-friendly, for example, cannot produce that experience for its users if it is prevented from limiting or removing graphic or viscerally offensive posts. Content moderation thus goes to the heart of their editorial judgment, just as it does when a newspaper like the *Miami Herald* decides whether to publish a letter to the editor.

49. *Second*, moderating content on services open to billions of users, including families and children, is essential to ensure safer communities online. For instance, restricting access for younger users to adult content is analogous to applying age-based ratings to movies or scheduling mature programming for later hours. To constrain how the online service can manage offensive content, conspiracy theories, incitements to violence, and other egregious forms of content is to require them, against their will, to offer their virtual tools and space for unintended uses that endanger the public.

50. *Third*, aside from public safety, State-mandated controls on how platforms must permit, organize, and present content also renders an online service less useful and undermines Plaintiffs' members' core business models. Imagine if a search engine or social media company returned its results in a random or purely chronological order instead of prioritizing what is most helpful or relevant to the

user based on her own activities and demonstrated preferences. As a result, the user might miss content from her close friends and family and instead see a slew of more recent, but less *relevant* content. Or imagine if an e-commerce website presented a random assortment of products or listings instead of those for which the user is searching. The main value many online services offer is curating, sorting, and displaying the vast amount of information available online.

51. Florida's Act directly targets—and would profoundly disrupt—these vital, and constitutionally protected, content moderation efforts. As discussed below, the Act's expansive restrictions constrain and burden nearly every type of content moderation activity that is critical to online services' ability to express their editorial judgments; protect users from offensive, harmful or dangerous material; and provide useful online tools on which billions of people rely every day. The Act applies not merely to decisions removing content or users from a service. It equally covers—in some instances outright prohibits—more fine-grained approaches, such as limiting the exposure of younger or more sensitive users to potentially upsetting content. The Act goes so far as to control how the services can use automated processes like algorithms to arrange and curate content, and it seeks to limit these services' own direct speech by prohibiting them from posting warning labels or commentary. In short, the Act subjects nearly every content-moderation judgment a covered service might make to the State's regulatory control, saddling those judgments with burdensome new obligations, restrictions, and the ever-present threat of

government or private enforcement action. The Act thus threatens not just the types of experience and community those services can offer, but also how they fundamentally operate.

Florida’s Unconstitutional Act

52. The Act was enacted by the Florida Legislature on May 2, 2021, signed into law by Governor DeSantis on May 24, 2021, and goes into effect on July 1, 2021. Act § 7.

53. The Act’s legislative history, as well as public statements by state legislators and public officials, make clear that the Act was motivated by animus toward popular technology companies—animus specifically driven by disapproval of the companies’ perceived political and other viewpoints. *See supra* ¶¶ 3-4. One of the Act’s sponsors declared during the signing ceremony, “[D]o not think a handful of kids behind a desk in Silicon Valley get to be the arbiter of what free speech is ... it’s about time someone took them head on.”²⁸ Lieutenant Governor Jeanette Nuñez agreed, condemning what she characterized as “an effort to silence, intimidate, and wipe out dissenting voices by the leftist media and big corporations.”²⁹ And Governor DeSantis praised the Act as a way to “tak[e] back the virtual public square” from “the leftist media and big corporations.”³⁰

²⁸ *Governor Ron DeSantis press conference in Miami*, YouTube (May 24, 2021), www.youtube.com/watch?v=O67BF-2IWY, at 18:08 (last accessed May 26, 2021) (statement of Rep. Ingoglia).

²⁹ May 24, 2021 Gov. DeSantis Press Release.

³⁰ *Id.*

54. This animus toward disfavored online businesses is well documented in the public record. When discussing the proposed legislation in February 2021, Governor DeSantis described online businesses targeted by the Act as “big brother,” because of his stated view that these companies are “tougher on those on the political right than left.”³¹ Speaker of the Florida House of Representatives, Chris Sprowls, has expressed similar sentiments.³²

i. “Social Media Platforms”

55. The Act targets various online businesses (including operators of social media platforms, search engines, and online marketplaces) that the Florida Legislature sweeps under the misleading term, “social media platforms.”

56. Consistent with the legislative history described above, the Act was drafted to target popular technology companies, while carving out Florida-based Disney and Universal Studios. To single out these targeted companies, the Act applies its Moderation Restrictions, onerous affirmative obligations, and antitrust blacklist only to the defined “social media platforms.” And the Act limits these covered online businesses to those that host third-party content and have either (i) “annual gross revenues in excess of \$100 million, as adjusted in January of each odd-numbered year to reflect any

³¹ John Kennedy, *Gov. DeSantis says ‘big tech’ looks like ‘big brother’*, Sarasota Herald-Tribune (Feb. 2, 2021), www.heraldtribune.com/story/news/politics/2021/02/02/ron-desantis-backingeffort-stop-tech-censorship/4352705001 (last accessed May 26, 2021).

³² May 24, 2021 Gov. DeSantis Press Release.

increase in the Consumer Price Index” or (ii) “at least 100 million monthly individual platform participants globally”—subject to an arbitrary exception (*see infra* ¶ 57) for powerful and influential Florida-based businesses. Act § 4 (adding § 501.2041(1)(g)). Nothing in the Act, including the legislative findings, explains how or why the perceived problems that the statute supposedly addresses is limited to these entities.

57. For openly protectionist reasons, the Act excludes companies that are politically influential in Florida from its definition of “social media platform,” even when those companies operate online services that would otherwise meet the statutory definition. The Act carves out companies that own and operate well-attended theme parks—an exemption that conveniently covers Disney and Universal Studios (owned by Comcast Corporation).³³ No legitimate government interest could be advanced by such an exemption, nor was any such interest identified. Rather, as one of the law’s sponsors remarked, the exemption was added with the undisguised objective of ensuring that certain companies with big economic footprints in Florida—like Disney—are not “caught up in this.”³⁴ The decision to exempt those major

³³ Under the law, “social media platform” does not include any “information service, system, Internet search engine, or access software provider operated by a company that owns and operates a theme park or entertainment complex as defined in s. 509.013.” Act § 4 (adding § 501.2041(1)(g)).

³⁴ Jim Saunders, *Florida’s ‘Big Tech’ crackdown bill goes to DeSantis, but with a special exemption for Disney*, CL Tampa Bay (Apr. 30, 2021), www.cltampa.com/news-views/floridanews/article/21151908/floridas-big-tech-crackdown-bill-goes-to-

companies confirms that the law’s true objective is to control the private speech of politically disfavored companies who have online platforms, but not to control the speech of similarly situated but politically favored companies with power and influence in the State of Florida.

58. As explained above (*see supra* ¶¶ 20-22 & n.23), several of Plaintiffs’ members fall within the statutory definition of “social media platform,” and do not “own and operate a theme park or entertainment complex.”

59. The Act infringes on the rights of Plaintiffs’ members in numerous ways. Key provisions of the Act are summarized below.

ii. Ban on Restricting Postings by Candidates (Section 2)

60. Section 2 of the Act prohibits any “social media platform” from “willfully deplatforming a candidate for office who is known by the social media platform to be a candidate, beginning on the date of qualification and ending on the date of the election or the date the candidate ceases to be a candidate.” Act § 2 (adding § 106.072(2)). Section 2 further requires covered online businesses to “provide each user a method by which the user may be identified as a qualified candidate and which provides sufficient information to allow the platform to confirm the user’s qualifications.” *Id.*

61. Under the Act, “deplatform” is broadly defined to mean the “action or practice by a social media

desantis-but-with-a-specialexemption-for-disney (last accessed May 26, 2021).

platform to permanently delete or ban a user or to temporarily delete or ban a user from the social media platform for more than 14 days.” Act § 4 (adding § 501.2041(1)(c)); *cf.* Act § 2 (adding § 106.072(1)(b)).

62. The Act inexplicably contains exemptions that allow online businesses to favor *paid* content by third parties or candidates over *unpaid* content—seemingly in violation of the “post-prioritization” and “shadow banning” prohibitions. Act § 4 (adding § 501.2041(1)(e)-(f), (2)(d)).

63. The Florida Elections Commission is vested with jurisdiction to determine whether Section 2 has been violated, and to impose fines as high as \$250,000 per day for violations involving candidates for statewide office (and \$25,000 per day for candidates for other offices). Act § 2 (adding § 106.072(3)).

64. The Act provides that Section 2 may not be enforced if it is inconsistent with federal law or 47 U.S.C. 230(e)(3). *Id.* (adding § 106.072(5)). Section 2 is inconsistent with the First and Fourteenth Amendments of the U.S. Constitution, and other federal law, for the reasons explained below.

**iii. Additional Moderation Restrictions
(Section 4)**

65. Section 4 of the Act is a frontal attack on the constitutional rights of Plaintiffs’ members to make editorial judgments about speech hosted on their property. It directly restricts and burdens the content moderation judgments of covered online businesses. In particular, Section 4 enacts restrictions that effectively ban most, if not all, moderation of content posted “by or about” political candidates. And it severely restricts and burdens moderation practices

with respect to postings or content from a loosely defined category of “journalistic enterprises.” These provisions compel a disfavored group of private businesses to host—and dramatically limit their ability to restrict, decide how to display, or even offer their own commentary on—highly objectionable or even illegal content, such as sexually explicit material, user posts that incite or glorify violence and acts of terrorism, online harassment and bullying, anti-Semitic and racist hate speech, defamation, and misinformation (such as hoaxes involving public health issues).

66. Section 4 also imposes on covered online businesses a broad, but wholly undefined, mandate to apply any possible editorial judgments they might make about the virtually unlimited amount of content they host “in a consistent manner among [their] users”—an obligation that is all but impossible to understand, much less comply with. And Section 4 imposes onerous notice and other affirmative requirements regarding the editorial judgments made by these businesses. The notice requirements are particularly burdensome and problematic because by prescribing specific disclosures about the reason for the removal of virtually any category of content, covered online businesses would be providing a host of badfaith actors (from terrorists to hostile foreign governments and spammers) a roadmap for how to post unwanted, harmful content by circumventing the protections currently in place.

67. In sum, Section 4 impermissibly subordinates covered businesses’ judgments about what content to display on their services and in what manner to the

State’s fiat. This is the modern-day equivalent of the unconstitutional attempt to force the *Miami Herald* to publish a letter affording a “right of reply,” which the Supreme Court soundly rejected in *Tornillo*. And it is eerily reminiscent of efforts by authoritarian regimes around the world to control private online services and force them to conform to a state-approved message. As just one example, Human Rights Watch has noted Russia’s enactment of “increasingly oppressive” laws targeting social media platforms that “forc[e] them” to alter their moderation practices concerning “online content deemed illegal by the government.”³⁵ A Russian bill currently under consideration “proposes fines for social media companies that ‘illegally block users,’” and “aims to prevent the potential blocking of Russian politicians’ social media profiles.”³⁶

68. Section 4 specifically delineates a list of “[u]nlawful acts and practices by social media platforms,” Act § 4 (adding § 501.2041), all of which seek to deprive covered online businesses of their editorial discretion and replace it with state-compelled speech by prohibiting numerous activities protected by the First Amendment. For example:

³⁵ See *Russia: Social Media Pressured to Censor Posts*, Human Rights Watch (Feb. 5, 2021), www.hrw.org/news/2021/02/05/russia-social-media-pressured-censor-posts (last accessed May 26, 2021). For instance, one recently enacted law “empower[s] the authorities to block websites” that restrict access to “Russian state media content.” *Id.*

³⁶ *Id.*; see also Adam Satariano & Oleg Matsnev, *Russia Raises Heat on Twitter, Google and Facebook in Online Crackdown*, N.Y. Times (May 26, 2021), www.nytimes.com/2021/05/26/technology/russia-twitter-google-facebook-censorship.html (last accessed May 26, 2021).

a. Covered online businesses must not edit the content of a “journalistic enterprise,” “post an addendum to” any content of such an enterprise, or “deplatform” the enterprise based on “the content of its publication or broadcast.” *Id.* (adding § 501.2041(2)(j), (1)(b)).³⁷ A “journalistic enterprise” is broadly defined as “an entity doing business in Florida” that (1) publishes more than 100,000 words online and has at least 50,000 paid subscribers or 100,000 monthly active users; (2) publishes online at least 100 hours of audio or video and has at least 100 million viewers annually; (3) “operates a cable channel that provides more than 40 hours of content per week to more than 100,000 cable television subscribers”; *or* (4) “[o]perates under a broadcast license issued by the Federal Communications Commission.” *Id.* (adding § 501.2041(1)(d)). This sweeping definition would

³⁷ While “censorship” is traditionally used to refer to the actions of government officials to limit free expression, the Act uses the misleading scare-terms “censorship” and “shadow banning” to cover routine moderation practices, such as editing objectionable content. *See* Act § 4 (adding § 501.2041(1)(b) (defining “censor” as “any action taken by a social media platform to delete, regulate, restrict, edit, alter, inhibit the publication or republication of, suspend a right to post, remove, or post an addendum to any content or material posted by a user. The term also includes actions to inhibit the ability of a user to be viewable by or to interact with another user of the social media platform.”); *see also id.* (adding § 501.2041(1)(f) (defining “shadow ban” as “action by a social media platform, through any means, whether the action is determined by a natural person or an algorithm, to limit or eliminate the exposure of a user or content or material posted by a user to other users of the social media platform.”)). Under these definitions, a decision that sexually explicit or violent content should be restricted to users above the age of 18 would potentially constitute forbidden “shadow banning.”

shield many outlets that publish foreign propaganda and conspiracy theories.

b. Covered online businesses must not use any algorithms to curate and arrange “content and material posted by or about” a candidate. *Id.* (adding § 501.2041(2)(h)) (characterizing actions as “post-prioritization” and “shadow banning”).

c. Covered online businesses must not edit a user’s content or “deplatform” the user, unless the social media platform gives the user detailed written notice, including “a thorough rationale” justifying such actions, a “precise and thorough explanation of how the social media platform became aware of the censored content or material, including a thorough explanation of the algorithms used, if any, to identify or flag the user’s content or material as objectionable.” *Id.* (adding § 501.2041(2)(d), (3)) (characterizing actions as “censoring” and “shadow banning”). This obligation to thoroughly justify content decisions applies even if the online business takes action to protect its users from highly objectionable material posted by terrorist groups or hostile foreign governments.

d. Covered online businesses must not use algorithms that arrange content other than in chronological order if the user has opted out of such algorithms under the mandatory opt-out provision. *Id.* (adding § 501.2041(2)(f)(2)).

e. Covered online businesses must not change editorial policies more than once every 30 days, even if responding to new and changed circumstances and threats. *Id.* (adding § 501.2041(2)(c)).

69. Section 4 also includes the vague mandate that these censorship, deplatforming, and shadow banning standards be implemented in a “consistent manner” among users on the platform. Act § 4 (adding § 501.2041(2)(b)). This subjective standard is not defined in the Act and may serve as the basis for a private cause of action by users with statutory damages of \$100,000 per day, actual damages, and “punitive” damages. *Id.* (adding § 501.2041(6)). The Act also includes the vague requirement that covered websites must “[c]ategorize algorithms used for post-prioritization and shadow banning.” *Id.* (adding § 501.2041(2)(f)(1)). Similarly vague is the requirement that covered online businesses “inform” a candidate if they have “willfully provide[d] free advertising for” the candidate, in which case the Act treats this “free advertising” (an undefined concept) as an “in-kind contribution” for purposes of Florida’s election laws. Act § 2 (adding § 106.072(4)).³⁸

70. In addition, the Act places numerous affirmative burdens on covered online businesses to:

a. “inform each user about any changes to its user rules, terms, and agreements before implementing the changes” (in addition to the ban on changes more frequent than once a month). *Id.* (adding § 501.2041(2)(c)).

³⁸ The Act merely states that certain things will not be deemed free advertising, without specifying what *will* be considered to fall within that category. *See id.* (“Posts, content, material, and comments by candidates which are shown on the platform in the same or similar way as other users’ posts, content, material, and comments are not considered free advertising.”).

b. “provide users with an annual notice on the use of algorithms for post-prioritization and shadow banning and reoffer annually the opt-out opportunity in subparagraph (f)2.” *Id.* (adding § 501.2041(2)(g)).

c. “allow a user who has been deplatformed to access or retrieve all of the user’s information, content, material, and data for at least 60 days after the user receives the notice required under subparagraph (d)1.” *Id.* (adding § 501.2041(2)(i)).

d. “publish the standards, including detailed definitions, it uses or has used for determining how to censor, deplatform, and shadow ban.” *Id.* (adding § 501.2041(2)(a)).

e. “provide a mechanism that allows a user to request the number of other individual platform participants who were provided or shown the user’s content or posts.” *Id.* (adding § 501.2041(2)(e)(1)).

f. “[p]rovide, upon request, a user with the number of other individual platform participants who were provided or shown content or posts.” *Id.* (adding § 501.2041(2)(e)(2)).

71. A covered online business that fails to comply with Section 4 is deemed to have committed “an unfair or deceptive act or practice as specified in [§] 501.204,” and is subject to an investigation by the Department of Legal Affairs and civil or administrative enforcement action. *Id.* (adding § 501.2041(5)). The Act also empowers the State to use its subpoena power to intrusively investigate the highly confidential and competitively sensitive methodologies online companies use to exercise their content judgment. *Id.* (adding § 501.2041(8)). Finally, the Act creates a private right of action against any platform that

(i) applies its “censorship, deplatforming, and shadow standards in an [in]consistent way,” or that (ii) “censor[s] or shadow ban[s] a user’s content or material” without giving written notice of its reasons for doing so. *Id.* (adding § 501.2041(6)).

iv. Antitrust Blacklist (Section 3)

72. Section 3 of the Act creates a new statutory provision, F.S. § 287.137, that imposes state contracting restrictions for covered online businesses that are alleged to have violated antitrust laws and placed on a newly established “Antitrust Violator Vendor List.” Act § 3 (adding § 287.137(2)(a)-(b)). The targeted “social media platforms” are the *only* businesses that may be placed on the antitrust vendor list. *Id.* (adding § 287.137(1)(b), (1)(f)). Again, other large businesses—including the favored theme-park owners—are exempted.

73. Section 3 is another example of the Act’s irrational targeting of a select, disfavored group of online businesses. Although federal antitrust laws—and Florida’s counterpart statutes—apply across different industries, Section 3 irrationally singles out only the defined “social media platforms” for disfavored treatment because of their role in hosting and moderating online content. *Id.* Section 3 establishes an “Antitrust Violator Vendor List” of companies and individuals subject to an absolute contracting bar with the State of Florida. *Id.* (adding § 287.137(3)(b)). These persons and affiliates are also prohibited from receiving “economic incentives” such as “state grants, cash grants, tax exemptions, tax refunds, tax credits, state funds, and other state

incentives” under Florida law. *Id.* (adding § 287.137(5)).

74. The Antitrust Violator Vendor List may include those merely “*accused of*” violations by the Florida “Attorney General,” “a state attorney,” or federal authorities (subject to a cumbersome and inadequate process for contesting the Attorney General’s decision before a state administrative law judge). The Act empowers the Florida Attorney General to place an accused company “temporarily” on the Antitrust Violator Vendor List upon a finding of mere “probable cause that a person has likely violated the underlying antitrust laws.” *Id.* (adding § 287.137(3)(d)(1)). The absolute state contracting bar extends to an ill-defined group of officers, directors, shareholders, and even employees involved in “management” of a company placed on the List, as well as a broad group of “affiliates” of companies that are permanently placed on the List. *Id.* (adding § 287.137(1)(a), (f)-(g)).

* * *

75. The Act is a smorgasbord of constitutional violations. Sections 2, 3, and 4—specifically, those provisions adding F.S. §§ 106.072, 287.137 and 510.2041(2)(a)-(j)—violate the First Amendment, due process, and equal protection principles, and run afoul of the Commerce Clause and Supremacy Clause.

COUNT I

(42 U.S.C. § 1983)

**Violation of Free Speech and Free Press Rights
Under the First and Fourteenth Amendments
to the Constitution of the United States
(Challenge to Sections 2, 3, and 4 of the Act)
(As to All Defendants)**

76. Plaintiffs incorporate by reference paragraphs 1 to 75 above as if fully and separately set forth herein.

77. Sections 2 and 4 of the Act—specifically, those sections adding F.S. §§ 106.072 and 510.2041(2)(a)-(j)—violate the First and Fourteenth Amendments. As discussed above, in numerous, interrelated ways, all of the Moderation Restrictions, as well as the affirmative obligations discussed above,³⁹ impose

³⁹ This includes the requirements to (i) “inform” a candidate if the covered online business “willfully provide[d] free advertising for” the candidate, Act § 2 (adding § 106.072(4)); (ii) provide users with a “a thorough rationale explaining the reason” for a covered online business’ moderation decision, including a “precise and thorough explanation of how the [business] became aware of the ... content or material” and “a thorough explanation of the algorithms used, if any, to identify or flag the user’s content or material as objectionable,” Act § 4 (adding § 501.2041(3)); (iii) “inform each user about any changes to its user rules, terms, and agreements before implementing the changes,” *id.* (adding § 501.2041(2)(c)); (iv) “provide users with an annual notice on the use of algorithms for post-prioritization and shadow banning and reoffer annually [an] opt-out opportunity,” *id.* (adding § 501.2041(2)(g)); (v) “allow a user who has been deplatformed to access or retrieve all of the user’s information, content, material, and data for at least 60 days after the user receives the [mandated] notice,” *id.* (adding § 501.2041(2)(i)); (vi) “publish the standards, including detailed definitions, it uses or has used for determining how to censor, deplatform, and shadow ban,” *id.*

content-based, viewpoint-based, and speaker-based restrictions and burdens on covered online businesses' speech rights and editorial judgment entitled to full First Amendment protection. These provisions also unconstitutionally compel covered online businesses to speak in ways that significantly burden and chill their constitutionally protected content judgments and speech. In addition, the provisions lack the scienter requirements that the First Amendment demands, effectively imposing a set of strict-liability speech bans and mandates. Separately and collectively, these provisions single out the covered online businesses for disfavored treatment. Because Sections 2 and 4 restrict speech based on its content and based on its speaker, they are subject to strict scrutiny and are presumptively unconstitutional. Further, the Act authorizes the State to engage in highly intrusive investigations of content moderation processes and judgments, separately burdening speech. Because the State has no legitimate (much less compelling) governmental interest that supports these provisions, and because none of the provisions are narrowly tailored, they do not survive strict scrutiny. Indeed, they would fail under any standard of review.

78. Plaintiffs' members include online businesses subject to the Act. They are private companies that

(adding § 501.2041(2)(a)); (vii) “[p]rovide a mechanism that allows a user to request the number of other individual platform participants who were provided or shown the user’s content or posts,” *id.* (adding § 501.2041(2)(e)(1)); and (viii) “[p]rovide, upon request, a user with the number of other individual platform participants who were provided or shown content or posts,” *id.* (adding § 501.2041(2)(e)(2)).

have the right to choose what content they host on their platforms and how to arrange, display, organize, and curate such content, irrespective of the platforms' popularity. The operative provisions of Sections 2 and 4 of the Act violate those rights.

79. Government action that compels speech by forcing a private social media platform to carry content that is against its policies or preferences violates the First Amendment.

80. The First Amendment is not limited to traditional forms of media and expression, but applies with equal force to modern media, technology, and communications. Online businesses that make editorial decisions regarding what content to publish, including content created or posted by third parties, engage in speech that is fully protected by the First Amendment. *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997).

81. In addition to prohibiting the government from directly restricting speech, the First Amendment prohibits the government from *compelling* a person or business to communicate a message (including host a third party's message). In other words, it "prohibits the government from telling people what they must say." *Rumsfeld v. Forum for Acad. & Inst. Rights*, 547 U.S. 47, 61 (2006). A State may not require an online or other business to host or promote another's speech unless it meets the extraordinarily demanding standard of "strict scrutiny." *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 795 (1988).

82. A compelled-speech edict is presumptively invalid unless the State can show that its regulation is necessary to advance a "compelling" governmental

interest, is narrowly tailored to serve that interest, and is the least restrictive means available for establishing that interest. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015); *United States v. Playboy Entm't Grp.*, 529 U.S. 803, 813 (2000). Unless a State can satisfy this extremely demanding standard, it may not interfere with a private company's choices about what to say or not to say, and what content to distribute or not to distribute. *See, e.g., Tornillo*, 418 U.S. at 258. These settled principles apply with full force to protect the rights of online businesses, including "social media platforms" as defined in the Act.

83. Laws that regulate speech (1) based on its content *or* (2) based on the identity of the speaker are presumptively unconstitutional under the First Amendment. *Reed*, 576 U.S. at 163, 170. Moreover, "[w]hen the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

84. Further, where, as here, a regulation elevates certain speakers over others and disfavors the latter, it "suggests that the goal of the regulation is not unrelated to suppression of expression, and such a goal is presumptively unconstitutional." *Minneapolis Star & Tribune Co.*, 460 U.S. 575, 585, 592-93 (1983);

Arkansas Writers' Project, Inc. v. Ragland, 481 U.S. 221 (1987).

85. Content-based, viewpoint-based, and speaker-based discrimination can be discerned from both the text of the statute and evidence of the State's purposes in enacting the statute. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 564-65 (2011). Thus, where, as here (*see supra* ¶¶ 3-4, 53), a statute is animated by a desire to target selected speakers for disfavored treatment, and especially where the motive is to punish or retaliate against private parties for their perceived political or ideological viewpoints, evidence of that improper motive can further confirm that the statute amounts to impermissible speech regulation. *Sorrell*, 564 U.S. at 564-65.

86. First Amendment rights “are protected not only against heavy-handed frontal attack, but also from ... more subtle governmental interference.” *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 544 (1963) (citation omitted). Thus, a requirement that a company publish and disclose the rationale, processes, data, or methods concerning its editorial decisions runs afoul of the First Amendment. *United States v. Rumely*, 345 U.S. 41, 57 (1953) (Douglas, J., joined by Black, J., concurring). “It is the presence of compulsion from the state itself that compromises the First Amendment,” which “extends ‘not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid.’” *Washington Post v. McManus*, 944 F.3d 506, 518 (4th Cir. 2019) (quoting *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 570 (1995)).

87. These principles—both collectively and individually—establish that Sections 2 and 4 of the Act violate the First Amendment.

88. Sections 2 and 4 force covered online businesses to host content they otherwise would not allow under their policies and standards, or do not wish to feature, organize, display, or prioritize in the way that the Act mandates. No one, not even someone who has paid a filing fee to run for office, has a First Amendment right to compel a private actor to carry speech on their private property. On the contrary, the online businesses subject to the Act (including Plaintiffs' members) have a First Amendment right to free speech—and may therefore decide whom they will and will not host and with which speakers and speech they wish to associate (or not associate).

89. Sections 2 and 4 also limit and burden the exercise of covered online business' judgments about the display of content in myriad ways—including, but not limited to, by restricting their ability to (i) edit, remove, organize, de-prioritize, or prioritize certain third-party content or postings, (ii) to add commentary on or advisories or warnings to accompany such content or postings (e.g., flagging unverified factual claims), or (iii) curate or filter content so it is appropriate for certain audiences (e.g., restricting access to adult content based on parental settings).

90. Sections 2 and 4 also unconstitutionally restrict, burden, compel, and otherwise regulate speech based on its content. These sections reflect legislative preferences for certain types of content (*i.e.*, postings by or about political candidates and by

certain “journalistic enterprises,” as well as paid versus unpaid content). This triggers strict scrutiny.

91. The Act is also motivated by a viewpoint-based attack on the “social media platforms” it targets. As the Act’s champions trumpeted when the bill was signed into law, the core goal of the Act was to punish the targeted companies specifically because the Legislature and Governor dislike the perceived political and ideological viewpoints that those private businesses supposedly express through their content judgments. This is the essence of impermissible viewpoint-discrimination, and it violates the First Amendment.

92. Strict scrutiny also applies on the independent ground that the Act engages in speaker-based discrimination and targets a discrete category of speakers for disfavored treatment. The speech restrictions and compelled-speech requirements under Sections 2 and 4 apply only to covered online businesses that qualify as “social media platforms,” but do not apply to (a) non-digital hosts of third-party content with large audiences (such as certain book publishers or hosts of traditional bulletin boards); (b) online businesses that provide the same types of services but do not meet the arbitrary thresholds to qualify as a “social media platform” under the Act; and (c) any business that would otherwise be subject to the Act except that it also happens to own and operate a large “theme park or entertainment complex” (defined to include Disney and Universal Studios). This speaker-based discrimination is also evidenced by the legislative history and public record discussed above.

93. By forcing covered online businesses to prioritize postings by or about candidates and content from the loosely defined category of “journalistic enterprises,” the Act further exacerbates the speaker-based discrimination, including in an area (political speech) where the covered online businesses’ First Amendment protections are strongest.

94. The Act compounds these First Amendment violations by authorizing the State to conduct highly intrusive investigations into how the targeted companies organize and select content for inclusion on their private platforms, which separately burdens First Amendment rights.

95. For each of these independent reasons, Sections 2 and 4 are presumptively unconstitutional, and the State bears the burden of establishing that these requirements satisfy strict scrutiny.

96. Section 3—which adds F.S. § 287.137—also violates the First and Fourteenth Amendments. As discussed above, that section singles out certain speakers and online media businesses—covered “social media platforms”—for discriminatory treatment, including prohibiting covered entities from contracting with the State and from receiving tax breaks, refunds, and other economic incentives. And the Act’s irrational exceptions for favored entities show that “the State has left unburdened” other, favored speakers, in violation of the First Amendment. *Nat’l Inst. of Family & Life Advoc. v. Becerra*, 138 S. Ct. 2361, 2378 (2018) (quoting *Sorrell*, 564 U.S. at 580). For each of those reasons, Section 3 is presumptively unconstitutional and subject to strict scrutiny.

97. Additionally, as discussed above, Section 3 burdens “affiliates” of companies placed on an antitrust blacklist, where “affiliates” is defined to include any entities controlled by agents who are active in the management of the blacklisted company. If a company is blacklisted, its affiliates are subject to blacklisting as well, and a showing that the entity is an affiliate “constitutes a prima facie case” that blacklisting is warranted for the affiliate. An affiliate on the list may not bid on or be awarded any work under a public contract, or transact business with the State, and it may be ineligible for economic incentives. Section 3’s use of guilt by association violates the First Amendment rights of Plaintiffs, as well as their affiliates. It is not an “appropriate requirement” for the State to require disaffiliation in order to access public contracting and benefits.

98. The State of Florida’s decision to subject “social media platforms” (as defined in the Act) to “differential treatment, unless justified by some special characteristic of [their services], suggests that the goal of the regulation is not unrelated to suppression of expression, and such a goal is presumptively unconstitutional.” *Minneapolis Star*, 460 U.S. at 585. Section 3’s imposition of non-generally applicable burdens on “social media platforms,” including Plaintiffs’ members, is not justified by any special characteristic of their services, and therefore triggers strict scrutiny.

99. Sections 2, 3, and 4 do not meet the requisite standard of strict scrutiny (and would fail any standard of constitutional review).

100. First, the State cannot show that there is any real problem in need of solving and that these statutory provisions further a “compelling” governmental interest (or even any legitimate governmental interest).

101. Second, the State cannot show that Sections 2, 3, and 4 are narrowly tailored to meet the State’s asserted interest. To the contrary, these provisions are both over- and underinclusive in numerous respects. See supra ¶¶ 56-57. Among other fatal defects, they arbitrarily and punitively target speech by some companies with larger platforms, but not other companies that the Legislature favors.

102. Additionally, Section 4 of the Act regulates the speech of covered online businesses without the necessary scienter protections required by the First Amendment. For example, while the Act broadly prohibits covered businesses from “deplatforming,” “censoring,” or “shadow banning” a “journalistic enterprise,” there is no requirement that the business know (or have reason to know) that the content at issue was posted by such an enterprise. Thus, a covered business that removes or posts an addendum to a video (even one posted by a propaganda outlet) could be held strictly liable and subject to severe penalties if it turns out that, unbeknownst to the provider, the video was posted by an entity deemed to be a “journalistic enterprise.” The chilling effect of the lack of a scienter requirement is exacerbated by the breadth and vagueness of the Act’s terms.

103. The same is true of the Act’s notice provisions, which apply only where actions are taken with respect to a poster or content provider “who

resides in or is domiciled in Florida.” There is no requirement that the covered online business know, or have reason to know, where that person actually lives. Nor is this residency information something that many covered online businesses should be expected to have. As a result, a covered business that takes moderation actions concerning an account could face strict liability if it turns out that, unbeknownst to the business, the person happens to live in Florida. The First Amendment forbids such strict-liability speech regulations.

104. Unless they are enjoined, Sections 2, 3, and 4 will operate to unlawfully deprive Plaintiffs’ members of their fundamental First Amendment rights, including the chilling of Plaintiffs’, their members’, and their affiliates’ exercise of associational freedoms.

COUNT II

(42 U.S.C. § 1983)

**Violation of Due Process Rights Under the
Fifth and Fourteenth Amendments to the
Constitution of the United States**

(Challenge to Sections 2 and 4 of the Act)

**(As to the Commissioners of the
Florida Elections Commission and the
Florida Attorney General)**

105. Plaintiffs incorporate by reference paragraphs 1 to 75 above as if fully and separately set forth herein.

106. The U.S. Constitution guarantees all persons the right to due process. U.S. Const. amend. V. The Fifth Amendment’s guarantee of due process applies

to state governments through the Fourteenth Amendment. U.S. Const. amend. XIV.

107. The Act violates due process because it fails to provide fair warning of what conduct is being regulated. *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012). A law is unconstitutionally vague when people “of common intelligence must necessarily guess at its meaning,” *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926), or where the law lacks definite and explicit standards thereby encouraging “arbitrary and discriminatory” application, *Kolender v. Lawson*, 461 U.S. 352 (1983).

108. These concerns are especially acute where, as here, the Act both regulates the content of speech and permits state enforcement actions. *See Reno*, 521 U.S. at 871.

109. Various provisions of the Act, including Sections 2 and 4, regulate speech in vague terms that do not give businesses subject to the Act reasonable and fair notice of the conduct that is expected of them and the conduct that may be subject to penalties. The Act is also riddled with such vague terms that it invites arbitrary and discriminatory enforcement, including the arbitrary imposition of draconian civil penalties. These infirmities include, but are not limited to, the following:

a. The Act establishes an undefined requirement that a social media platform engage in content moderation “in a consistent manner among its users on the platform.” Act § 4 (adding § 501.2041(2)(b)). In addition to facing “civil or administrative action” by the Florida Attorney General for an alleged violation of this provision, the Act provides a private cause of

action for violations of this requirement, with statutory damages of \$100,000 per claim and potential punitive damages. *Id.* (adding § 501.2041(6)(a)).

b. The Act prohibits “censoring,” “deplatforming,” or “shadow banning” of “a journalistic enterprise,” but employs a vague and amorphous definition to describe what entities qualify as a “journalistic enterprise.” *Id.* (adding § 501.2041(2)(j), (1)(d)). This vagueness places covered online businesses in the impossible position of having to conduct extensive and costly investigations to determine whether the State might consider a poster to be a “journalistic enterprise”—all without any clear understanding of what that definition actually covers.

c. The Act requires covered online businesses to “inform” a candidate if they have “willfully provide[d] free advertising for” the candidate, in which case the Act treats this “free advertising” as an “in-kind contribution” for purposes of Florida’s election laws. Act § 2 (adding § 106.072(4)). But, other than a confusing definition of what does not count as “free advertising,” *id.*, the Act provides no guidance as to what will fall within that vague category triggering election-law compliance requirements.⁴⁰

⁴⁰ If the Florida Elections Commission construed the Act to govern candidates for *federal* office, *see* Act § 2 (adding § 106.072(6), adopting the definition of “candidate” in F.S. § 106.011(3)(e)), that would raise additional federal preemption concerns given the comprehensive regulation of in-kind contributions involving such candidates under the Federal Election Campaign Act. *See* 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a); *see also* *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992).

d. The Act prohibits applying or using any “post-prioritization or shadow banning algorithms for content and material posted by or about a user who is known by the social media platform to be a candidate.” *Id.* (adding § 501.2041(2)(h)). The definition of “post-prioritization” covers any “action by a social media platform to place, feature, or prioritize certain content or material ahead of, below, or in a more or less prominent position than others in a newsfeed, a feed, a view, or in search results.” It is impossible to understand what this provision allows and does not allow. Read according to its terms, the provision would suggest that a search engine is forbidden from placing content “by or about” a political candidate (whether or not it is defamatory or otherwise illegal or objectionable) ahead of—or below—any other content. It forbids placing such content in a more prominent position—or a less prominent position—than other content. Due process does not allow the State to enforce such a paradoxical, self-defeating, and incomprehensible prohibition.

110. Because covered businesses lack fair notice about what conduct is allowed and what is prohibited—subject to exposure to potentially massive penalties, including fines of \$250,000 per day—these provisions of the Act violate basic principles of due process. *Id.* (adding § 106.072(3)).

111. Vagueness is also rife in other aspects of the Act, including its key definitions of concepts such as “shadow banning,” “deplatforming,” and “censoring.” Because these are the operative provisions under Sections 2 and 4, they render the entirety of those

Sections void for vagueness under due process protections.

112. Unless it is enjoined, the Act will operate to unlawfully deprive Plaintiffs' members of their fundamental due process rights.

COUNT III

(42 U.S.C. § 1983)

**Violation of Equal Protection Rights Under
the Fourteenth Amendment to the Constitution
of the United States**

(Challenge to Sections 2, 3, and 4 of the Act)

(As to All Defendants)

113. Plaintiffs incorporate by reference paragraphs 1 to 75 above as if fully and separately set forth herein.

114. The Fourteenth Amendment to the United States Constitution guarantees to all citizens "equal protection of the laws," and it forbids any state government from denying that protection "to any person within its jurisdiction[.]" U.S. Const. amend. XIV. At a minimum, it forbids state governments from engaging in arbitrary discrimination against its citizens. The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

115. Distinctions "affecting fundamental rights," including the exercise of First Amendment rights, trigger strict scrutiny under the Equal Protection Clause, even if the distinctions do not themselves constitute suspect or invidious classifications. *Clark v.*

Jeter, 486 U.S. 456, 461 (1988). “The Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives.” *Police Dep’t of Chicago v. Mosley*, 408 U.S. 92, 101 (1972).

116. Sections 2, 3, and 4 of the Act all purport to regulate the conduct of “social media platforms.” The Act’s definition of that term is arbitrary and discriminatory, thereby rendering Sections 2, 3, and 4 in violation of basic equal protection principles.

117. First, the Act’s carveout for companies that own large theme parks violates equal protection. Whether or not a company owns a theme park has no conceivable bearing on whether that company’s social media platform presents the purported risks against which the Act was designed to protect. The Act would not apply to a targeted company that, for example, bought a zoo or other “theme park or entertainment complex” that met the following statutorily defined criteria: “a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.” F.S. § 509.013(9); *see* Act § 4 (adding § 501.2041(1)(g)). These specific thresholds have nothing to do with any government interest in free speech or online policy. Nor is there any reason to believe that the State’s purported interest in protecting against “unfair” conduct from social media platforms is furthered by protecting theme park operators (specifically including Disney and Universal Studios).

118. Second, the definition of businesses that are subject to the Act further irrationally discriminates against larger and more popular websites and social media companies by targeting them for restrictions and disfavored governmental treatment. It targets only select companies that have either (i) at least \$100 million in annual gross revenues, or (ii) over 100 million monthly participants, while irrationally excluding other companies. *See supra* ¶¶ 8, 56-57. Such arbitrary distinctions demonstrate that the Act unconstitutionally discriminates against the speech of certain speakers, that it is gravely under- and over-inclusive, and that it is not justified by any legitimate (much less compelling) governmental interest.

119. Because the definition of “social media platforms” is both arbitrary and discriminatory, Sections 2, 3, and 4 will operate to unlawfully deprive Plaintiffs’ members of their fundamental equal protection rights.

120. Additionally, Section 4 establishes multiple new affirmative and onerous obligations that would impact Plaintiffs’ members, but irrationally exclude other, favored entities. *See supra* ¶¶ 56-57, 65-71. This separately violates equal protection.

121. Similarly, the antitrust provisions in Section 3 suffer from the same flaws by irrationally targeting the covered online businesses, but not other companies. *See supra* ¶¶ 72-74.

122. The State cannot show any rational basis for crafting this statutory scheme—much less satisfy strict scrutiny—and, accordingly, the statutory provisions discussed above violate the equal protection rights of Plaintiffs’ members.

COUNT IV

(42 U.S.C. § 1983)

**Violation of the Commerce Clause of the
Constitution of the United States and the Due
Process Clause of the Fourteenth Amendment
to the Constitution of the United States**

(Challenge to Sections 2, 3, and 4 of the Act)

(As to All Defendants)

123. Plaintiffs incorporate by reference paragraphs 1 to 75 above as if fully and separately set forth herein.

124. The U.S. Constitution entrusts the regulation of commerce “among the several States” to the federal government. U.S. Const. art. I., § 8, cl. 3. Thus, an individual State may not usurp this authority by regulating interstate commerce unilaterally. *See, e.g., C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383 (1994).

125. “[T]he Commerce Clause by its own force restricts state protectionism.” *Tennessee Wine & Spirits Retailers Assoc. v. Thomas*, 139 S. Ct. 2449, 2460 (2019). “[I]f a state law discriminates against ... nonresident economic actors, the law can be sustained only on a showing that it is narrowly tailored to ‘advance a legitimate local purpose.’” *Id.* at 2461 (cleaned up).

126. The Commerce Clause also prohibits any “state regulation that ‘discriminates against or *unduly burdens* interstate commerce and thereby imped[es] free private trade in the national marketplace.” *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 287 (1997) (citation omitted) (emphasis added).

127. Courts have long recognized that state laws that attempt to regulate the inherently global communications medium that is the Internet must respect the constitutional limits on state authority under the Commerce Clause. *Am. Libraries Ass'n v. Pataki*, 969 F. Supp. 160, 169, 173-74 (S.D.N.Y. 1997); *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 103-104 (2d Cir. 2003).

128. The Act violates the Commerce Clause by imposing uniquely burdensome operational requirements on businesses headquartered (and with substantial business operations) outside of Florida, while expressly exempting favored in-state businesses through a status-based “theme park” ownership exemption that is based on economic protectionism. *Cf. Tennessee Wine & Spirits*, 139 S. Ct. at 2472-74. Both on its face and in its practical effects, the Act impermissibly discriminates against out-of-state businesses, and favors in-state businesses. The Act also imposes onerous and undue burdens on interstate commerce by predominantly targeting online businesses headquartered outside the State. Florida has no legitimate reason for discriminating against interstate commerce—and in favor of companies with in-state theme parks—and the burden on interstate commerce is clearly excessive in relation to any of the purported benefits that the State claims will result from the Act. The State cannot show that its stated goals could not be served by other available nondiscriminatory means.

129. In addition, the Act regulates wholly out-of-state conduct because there is no requirement that the moderation take place in Florida or that the content

being moderated is posted in Florida. Such extraterritorial regulation is forbidden by the Commerce Clause and Due Process Clause of the Fourteenth Amendment.

130. Unless enjoined, Sections 2, 3, and 4 of the Act will operate to unconstitutionally burden interstate commerce and effect extraterritorial regulation in violation of the Commerce Clause and Due Process Clause.

COUNT V
(DECLARATORY JUDGMENT ACT)
(42 U.S.C. § 1983)

**Preemption under the Supremacy Clause of
the Constitution of the United States and
47 U.S.C. 230(e)(3)**

(Challenge to Sections 2 and 4 of the Act)
**(As to the Commissioners of the
Florida Elections Commission and the
Florida Attorney General)**

131. Plaintiffs incorporate by reference paragraphs 1 to 75 above as if fully and separately set forth herein.

132. Section 2 of the Act permits the Florida Elections Commission to impose fines of up to \$250,000 per day against any “social media platform” that chooses to “permanently delete or ban a user or to temporarily delete or ban a user from the social media platform for more than 14 days,” if that user is a candidate for statewide public office. Act § 2 (adding § 106.072(2)). The Commission may impose fines of up

to \$25,000 per day against a platform that bans the account of a candidate for a local public office. *Id.*

133. Section 4 of the Act permits any private individual to bring a cause of action against a platform that has applied its “censorship” standards inconsistently, and/or against a platform that has “censor[ed]” or “shadow ban[ned]” a user without providing adequate notification. Act § 4 (adding § 501.2041(2)(b), (d)(1)). Such a civil action could, for instance, be brought against a platform that removed content posted by one user, but not similar content posted by another user.

134. Section 4 also permits the Department of Legal Affairs to bring “a civil or administrative action” against any platform suspected of violating any provision of Section 4. *Id.* (adding § 501.2041(5)). Such violations include the decision to “censor, deplatform or shadow ban a journalistic enterprise,” or to “shadow ban[]” a candidate for elected office. *Id.* (adding § 501.2041(2)(h), (2)(j)). They also include violations of the other Moderation Restrictions and affirmative obligations contained in Section 4.

135. Under 47 U.S.C. § 230, it is federal policy “to promote the continued development of the Internet and other interactive computer services and other interactive media” and “preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.” 47 U.S.C. § 230(b)(1), (2). Among the important purposes advanced by Section 230, Congress sought “to encourage service providers to self-regulate the dissemination of offensive material over their

services.” *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1163 (9th Cir. 2008) (en banc). This is its principal purpose. *Id.* at n.12.

136. Under Section 230, “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1). Section 230 “establish[es] broad ‘federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.’” *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)). Under Section 230, laws or claims that “seek[] to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred.” *Zeran*, 129 F.3d at 330.

137. Moreover, under Section 230, “[n]o provider or user of an interactive computer service shall be held liable on account of ... any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.” 47 U.S.C. § 230(c)(2).

138. Section 230 similarly prohibits liability for “any action taken to enable or make available to information content providers or others the technical means to restrict access to material” that falls within

the Section 230(c)(2) category above. *Id.* § 230(c)(2)(B). This provision applies to tools that online service providers make available to users to help them avoid or limit their exposure to potentially objectionable content.

139. For purposes of Section 230, an “interactive computer service” is “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server.” *Id.* § 230(f)(2). The “provider” of such a service includes those who own or operate websites, such as social media platforms, and therefore covers Plaintiffs’ members who are subject to the Florida Act.

140. Section 230 expressly provides that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” *Id.* § 230(e)(3). This provision expressly preempts inconsistent state laws that seek to hold online service providers liable for engaging in content moderation covered by Section 230(c). Preemption applies equally to private causes of action and public enforcement actions.

141. Sections 2 and 4 of the Act are inconsistent with Section 230 and therefore are expressly preempted because they (i) purport to impose liability on “social media platforms” covered by Section 230 for taking actions protected by Sections 230(c)(1) and (c)(2), and (ii) would impermissibly treat the platforms as publishers of third-party content. *Id.* § 230(c)(1) & (2)(A).

142. Sections 2 and 4 are also preempted under the principles of implied preemption and “obstacle preemption.” Sections 2 and 4 frustrate and

undermine the basic purposes and policy goals of Section 230. *See Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873 (2000).

143. The Court should issue a declaration confirming that preemption applies to the Act.

PRAYER FOR RELIEF

Plaintiffs request the following relief:

(1) An order declaring the Act unconstitutional on its face for violating Plaintiffs' members' rights under the First and Fourteenth Amendments to the Constitution of the United States (including the Fourteenth Amendment's due process and equal protection requirements) and for violating the Commerce Clause and the Fourteenth Amendment's Due Process Clause;

(2) An order declaring Sections 2 and 4 of the Act preempted by federal law, including 47 U.S.C. § 230(e)(3) and principles of implied preemption;

(3) An order preliminarily and permanently enjoining the defendants from enforcing Sections 2, 3, and 4 of the Act;

(4) An order for costs incurred in bringing this action;

(5) An order for reasonable attorneys' fees under 42 U.S.C. § 1988(b); and

(6) Such other relief as the Court deems appropriate.

* * *

**Declaration of Matthew Schruers for CCIA
(June 3, 2021)**

I, Matthew Schruers, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am President of the Computer & Communications Industry Association (CCIA). I have worked at the organization for nearly sixteen years. Upon joining the Association, I focused on legal, legislative, and policy matters, before taking on the roles of Chief Operating Officer and President. In each of these capacities, I have worked closely and communicated often with CCIA members regarding how public policy proposals affect their businesses, operations, and relationships with their users.

2. Trust and safety operations, and online content moderation specifically, is an important area of CCIA's work and a constant focus for many of our members. As a result, I spend significant time understanding the content moderation policies and practices of CCIA's members, as well as monitoring and analyzing the legislative or policy proposals that affect this critical business function. I also interact regularly with trust and safety experts throughout the industry, and have an understanding of the challenges faced by trust and safety professionals. I have been tracking and evaluating Florida Senate Bill 7072 since before its passage so as to advise CCIA members on its provisions and impact on their businesses.

3. The statements contained in this declaration are made upon my personal knowledge. I am over 18 years of age, and am competent to make the statements set forth herein.

CCIA and Its Work on Content Moderation

4. CCIA is an international, not-for-profit membership association representing a broad cross-section of companies in the computer, Internet, information technology, and telecommunications industries. For nearly fifty years, CCIA has promoted open markets, open systems, and open networks, and advocated for the interests of the world's leading providers of technology products and services before governments and the courts.

5. CCIA's membership includes computer and communications companies, equipment manufacturers, software developers, service providers, re-sellers, integrators, and financial service companies. Currently, CCIA's members include: Amazon, BT Group (British Telecommunications), Cloudflare, Dish Network, eBay, Eventbrite, Facebook, Google, Intel, Intuit, McAfee, Mozilla, Newfold Digital, Pinterest, Rakuten, Red Hat, Samsung, Shopify, Stripe, Twitter, Uber, Verizon Media, Waymo, Walt, and Zebra.

6. Because of the broad definition of "social media platform" within S.B. 7072, a number of these members would qualify even though their services would not be considered as such by the general public. Such members span various sectors and products, and enable billions of users around the world to create and share content on their services, whether to facilitate work, study, prayer, socialization, commerce, or communications. These companies moderate and curate content as a vital part of operating their services, and some must manage a massive and

constantly expanding amount of content in order to provide valuable products and tools for their users.

7. Because content moderation is central to the operations of these members, issues surrounding content moderation constitute a significant part of CCIA's policy and advocacy work. To that end, among our other endeavors and programs in this area, CCIA is currently incubating a new non-profit organization called the Digital Trust & Safety Partnership.¹ The members of this new partnership include CCIA members and others dedicated to identifying and preventing harmful content online.²

8. This new organization aims to develop and iterate upon industry best practices for, among other things, the moderation of third-party content and behavior, with the goal of ensuring a safer and more trustworthy Internet. The Partnership's objectives include the facilitation of internal assessments, and subsequently independent third-party assessments, of participants' implementation of identified best practices for promoting the safety of their users and the online communities that they maintain. The organization balances these collective goals with the recognition that each of its member companies has its own values, product aims, digital tools, and human-led processes for moderating the extremely broad range of human expression they facilitate.

¹ Digital Trust & Safety Partnership, <https://dtspartnership.org/>

² *Tech giants list principles for handling harmful content*, Axios, <https://www.axios.com/tech-giants-list-principle.sfor-handling-harmful-content-5c9cfba9-05bc-49ad-846a-baf01abf05976.html>

Content Moderation: How It Works and Why It Matters

9. The online services provided by many CCIA members host or support a wide variety of user-created content in myriad forms-including text, videos, audio clips, and photographs. The scale of users and activity on these services is significant. Facebook³ and YouTube⁴ each has over two billion users. Every day, users watch over a billion hours of video on YouTube.⁵ Over 100 billion messages are shared every day on Facebook.⁶ Billions of searches are run on Google every day.⁷ More than 500 hours of content are uploaded to YouTube every *minute*.⁸ Pinterest's visual discovery engine draws more than 440 million visitors per month.⁹ Uber, a ride-sharing platform, connects 3.9 million drivers with 91 million active consumers to serve their transportation needs, which translates into 14 million trips completed each

³ *Hearing Before The United States Senate Judiciary Committee Subcommittee on Privacy, Technology, and the Law*, <https://www.judiciary.senate.gov/imo/media/doc/Bickert%20Testimony.pdf>

⁴ *YouTube has over 2 billion monthly logged-in users*, YouTube, <https://blog.youtube/press/>

⁵ *Id.*

⁶ *Company Info*, Facebook, <https://about.facebook.com/company-info/>

⁷ *Zeitgeist 2012*, Google, <https://www.internetlivestats.com/google-search-statistics/>

⁸ *YouTube has over 2 billion monthly logged-in users*, YouTube, <https://blog.youtube/press/>

⁹ *Transparency report*, Pinterest, <https://policy.pinterest.com/en/transparency-report>

day.¹⁰ Amazon has more than 1.9 million small- and medium-sized businesses selling on its online store,¹¹ and millions of user-generated reviews are posted on the listings for the products of those businesses and others.¹²

10. The material uploaded to these services comes from all over the world and is incredibly diverse. The services enable and provide a forum for the height of human thought and creativity: material that is culturally significant, highly informative, brilliantly funny or satirical, and politically engaging. To raise just a few examples of notable uses of members' services during the ongoing public health crisis:

a. When the COVID-19 pandemic struck, and communities implemented stay-at-home orders, many small businesses turned to social media services and online tools to continue operations, engage current and prospective customers, and cultivate loyalty in a socially distant context.¹³ After using Facebook Live "weekly" through the pandemic, the Tampa mayor encouraged small businesses to do the same to reach

¹⁰ *Company Info*, Uber, <https://www.uber.com/newsroom/company-info/>

¹¹ *2020 Letter to Shareholders*, Amazon, <https://www.aboutamazon.com/news/company-news/2020-letter-to-shareholders>

¹² *Update on customer reviews*, Amazon, <https://www.aboutamazon.com/news/innovation-at-amazon/update-on-customer-reviews>

¹³ *5 Small Business Owners Reveal How They Are Marketing On Social Media During COVID-19*, US Chamber, <https://www.uschamber.com/co/good-company/growth-studio/promoting-business-on-social-media-during-pandemic>

and grow their customer base.¹⁴ Many small businesses who succeeded in the “shut-in economy”¹⁵ did so by embracing social media services and digital tools, including those offered by Florida providers.¹⁶

b. Amid a quarantine of indeterminate length, schools and public services both turned to social media tools to meet the needs of distance-education students and citizens with special needs, such as by offering live captions at local government press conferences on public health via Facebook Live,¹⁷ and live captions for remote learning via Google Meet and Zoom.¹⁸ These virtual tools helped make life during social distancing more accessible and inclusive for people who are deaf

¹⁴ *‘Boost with Facebook’ to host virtual event in Tampa Thursday to help small businesses*, Florida Politics, <https://floridapolitics.com/archives/419768-boost-with-facebook-to-host-virtual-event-in-tampa-thursday-to-hep-small-businesses/>

¹⁵ *As COVID-19 Continues, Online Commerce Rises*, Project Disco, <https://www.projectdisco.org/competition/121420-as-covid-19-continues-online-commerce-rises/>

¹⁶ *Small Businesses in Florida, Georgia and New York Ready for Post-Covid Economy*, Small Business Trends, <https://smallbiztrends.com/2021/04/small-business-reopening-plan.html>

¹⁷ <https://tech.fb.com/powered-by-ai-new-automated-captions-are-helping-people-receive-news-and-critical-updates/>

¹⁸ *Google Meet expands live captions to 4 more languages, extends unlimited meetings*, ZDNet, <https://www.zdnet.com/article/google-meet-expands-live-captions-to-4-more-languages-extends-unlimited-meetings/>

or English-language learners,¹⁹ as well as generally helping families communicate when they are apart.²⁰

c. Social media and digital services are also a critical tool as learning returns to the classroom. Volunteers in Leon County, Florida, including educators and parents, “through the power of social media” created a “Stock our Schools: Leon County” Facebook group with more than 4000 members²¹ to help get teachers school and cleaning supplies for their classrooms through public online wish lists and contactless delivery from community volunteers.²² The group has extended to Florida “teachers all across the Big Bend and South Georgia.”²³

d. While Twitter has long been used by Florida sports franchises like the Jacksonville Jaguars, Tampa Bay Rays, and Miami Heat to share game highlights and scores, and connect with and inform fans,²⁴ Florida municipalities took to using Twitter last year at the height of the pandemic to inform

¹⁹ *Live captions come to Meet in four new languages*, Google, <https://blog.google/products/meet/live-captions-new-languages/>

²⁰ *A CODA story: Why accessible technology matters*, Google, <https://blog.google/outreach-initiatives/accessibility/tonys-story-accessibility-features/>

²¹ *Stock our Schools: Leon County*, Facebook, <https://www.facebook.com/groups/leoncountystockourschools/>

²² *Leon County moms help ‘Stock our Schools’*, WCTV, <https://www.wctv.tv/2020/07/26/leon-county-moms-help-stock-our-schools/>

²³ *Id.*

²⁴ Jaguars, Twitter, <https://twitter.com/Jaguars>; Tampa Bay Rays, Twitter, <https://twitter.com/RaysBaseball>; Miami HEAT, Twitter, <https://twitter.com/MiamiHEAT>.

residents about safety and social distancing measures. For example, Miami Beach partnered with Twitter to encourage mask use,²⁵ and Leon County memorably tweeted that residents should “keep at least 1 large alligator between you and everyone else.”²⁶ Other localities also reached out via other social media, like the City of Tallahassee, whose YouTube video in April, ‘Stay at home, Tallahassee’, received over 25,000 views.²⁷ Nor were such efforts limited to Florida; New York and many other states used services like Instagram and Snapchat to provide critical messages to young people and LinkedIn and NextDoor to keep residents informed with updates.²⁸

11. By contrast, some of the material posted on online services is the polar opposite. Because almost anyone can create an account and post content on certain social media services, users can attempt to submit content ranging from dangerous, illegal, and

²⁵ *Amid ‘caution fatigue,’ a new social media-inspired mask campaign is heading to South Florida*, South Florida Sun Sentinel, <https://www.sun-sentinel.com/coronavirus/fl-ne-twitter-billboard-mask-miami-20200924-zgtwh3wiafbw7mb4jlmvj7qaai-story.html>

²⁶ Leon County, FL, Twitter, <https://twitter.com/LeonCounty/status/1245796313658163201>

²⁷ *Stay at home, Tallahassee*, YouTube, <https://www.youtube.com/watch?v=Kp2AfBH7eDA>

²⁸ *Amid Ongoing COVID-19 Pandemic, Governor Cuomo Launches Multi-Platform, Multi-Language Education and Awareness Campaign to Reach All New Yorkers Across the State in All Zip Codes and Communities*, New York State, <https://www.governor.ny.gov/news/amid-ongoing-covid-19-pandemic-governor-cuomo-launches-multi-platform-multi-language-education>

abusive, to things that are just undesirable or annoying. A few examples of content shared on the darker side of the Internet, which trust and safety teams work around the clock to address, include:

- a. Video footage of the mass shootings targeting two mosques in Christchurch, New Zealand that was recorded by the gunman and broadcast online, which despite being removed within minutes, resurfaced on various other services, leading to extensive efforts across the industry to remove the videos.²⁹
- b. Videos and propaganda posted by ISIS to recruit American teenagers or otherwise persuade them to adopt its extremist ideology.³⁰
- c. Fraud schemes that specifically target older adults online; for instance, by contacting a senior through social media, building a relationship, and then asking for money.³¹
- d. Sexual, graphic, or otherwise disturbing content that is lawful but may be inappropriate

²⁹ *Update on New Zealand*, Facebook, <https://about.fb.com/news/2019/03/update-on-new-zealand/>; *Six months after Christchurch shootings, videos of attack are still on Facebook*, NBC News, <https://www.nbcnews.com/tech/tech-news/six-months-after-christchurch-shootings-videos-attack-are-still-facebook-n1056691>.

³⁰ *This Is How ISIS Uses Social Media to Recruit American Teens*, Teen Vogue, <https://www.teenvogue.com/story/isis-recruits-american-teens>

³¹ *Common Scams That Target the Elderly*, Senior Living, <https://www.seniorliving.org/research/common-elderly-scams/>

for certain audiences or contexts, such as on gaming platforms used by children.³²

e. Content that promotes or glorifies self-harm, including suicide, or that encourages young people to engage in dangerous conduct, such as consuming detergent pods or other bizarre behavior.³³

12. The companies my association represents, and many others like them, therefore have an obvious business need to address certain kinds of content and behavior, as well as to take action against abusive users who repeatedly or flagrantly violate their rules or post illegal, dangerous, or offensive material. Without the ability to respond to that content per the company's stated policies and terms of service (along with limiting the ability of repeat offenders to continue abusing the company's services), many services would be flooded with abusive, objectionable, and in some cases unlawful material, drowning out the good content and making their services far less enjoyable, useful, and safe.

13. For that reason, CCIA members have rules governing what kinds of material and uses are, and

³² *Roblox tries to deal with adult content on a platform used by many kids (2020)*, Trust & Safety Foundation, <https://www.tsf.foundation/blog/roblox-tries-to-deal-with-adult-content-on-a-platform-used-by-many-kids-2020>

³³ *YouTube is taking down Tide Pod Challenge videos and oh my god don't eat laundry pods*, The Verge, <https://www.theverge.com/2018/1/17/16902990/youtube-tide-pod-challenge-video-take-down-community-guidelines-removal>

are not, permitted.³⁴ That is also why these services put significant amounts of time, resources, personnel, and effort into developing sophisticated trust and safety operations to protect users and the public. The scope of these editorial efforts reflects the sheer scale and volume of user-generated content posted on popular online services.

14. Content moderation takes many forms, including both human review and the use of digital tools that rely in part on algorithms (or other automated sorting). Moderation sometimes requires removing objectionable or illegal content or terminating the accounts of users who post it. But far more frequently, it involves context-specific decisions about how to arrange and display content, how best to recommend content to users based on their interests, and how easy it should be to access certain kinds of content. Instagram, for example-an image- and video-sharing service popular with younger users (which is owned by CCA member Facebook)-has made it harder to search for graphic images involving suicide

³⁴ *E.g.*, *Amazon Community Guidelines*, Amazon, <https://www.amazon.com/gp/help/customer/display.html?nodeId=GLHXEX85MENEUE4XF>; *eBay Member Behavior Policies*, eBay <https://www.ebay.com/help/policies/member-behaviour-policies/member-behaviour-policies?id=4209>; *Pinterest Community Guidelines*, Pinterest, <https://policy.pinterest.com/en/community-guidelines/>; *Facebook Community Standards*, Facebook, <https://www.facebook.com/communitystandards/>; *The Twitter Rules*, Twitter, <https://help.twitter.com/en/rules-and-policies/twitter-rules>; *YouTube Community Guidelines*, YouTube, <https://www.youtube.com/howyoutubeworks/policies/community-guidelines/>.

attempts and self-harm, and taken steps to stop recommending such content to users.³⁵

15. Another example of moderation is “age-gating,” whereby certain content is made accessible only to adults or teenagers but not to younger children. YouTube, for example, does this extensively.³⁶ Content that may be age-restricted includes: videos about a cannabis dispensary; material featuring people in sexually provocative poses; material using vulgar language; or videos that show violent or gory imagery.³⁷

16. In other circumstances, moderation includes giving users tools to decide for themselves what content they wish to avoid, such as by obscuring potentially upsetting but clearly newsworthy information, blocking or muting other users (meaning that they no longer see that user’s content), making certain content inaccessible to their children, or shielding themselves from material that is likely to offend sensitive users. For instance, YouTube provides a Restricted Mode that users (or institutions such as libraries and schools) can choose to activate in order to

³⁵ *Tightening Our Policies and Expanding Resources to Prevent Suicide and Self-Harm*, Facebook, <https://about.fb.com/news/2019/09/tightening-our-policies-and-expanding-resources-to-prevent-suicide-and-self-harm/>

³⁶ *Age-restricted content*, YouTube, <https://support.google.com/youtube/answer/2802167?hl=en> (“Sometimes content doesn’t violate our policies, but it may not be appropriate for viewers under 18. In these cases, we may place an age-restriction on the video.”).

³⁷ *See id.*

avoid such material.³⁸ Likewise, on Instagram, users have a variety of tools for controlling how they interact with other users' content, including blocking accounts or commenters, muting an account (which stops content from that user from showing up in a feed), and creating lists of words or emojis that the user does not wish to see in the comments on his or her posts.³⁹

17. Moderation can also include direct speech by service providers. Sometimes the services engage in direct speech when they have made a considered determination that particular material conveyed via their service is questionable. For example, services may decide to attach warning labels, disclaimers, or general commentary informing users that certain user-submitted content has either not been verified by official sources or may contain upsetting imagery:

a. Facebook adds “warning screens” over potentially sensitive content such as violent or graphic imagery, nudity, and posts related to suicide or suicide attempts.⁴⁰ Similarly, Twitter requires users who may legitimately intend to share violent or abusive but newsworthy content (such as news media, bloggers, or citizen journalists) to mark their accounts as sensitive, so that media can be placed behind interstitial

³⁸ *Disable or enable Restricted Mode*, YouTube, <https://support.google.com/youtube/answer/174084?co=GENIE.Platform%3DAndroid&bl=en>.

³⁹ *Keeping Instagram a safe and supportive place*, Instagram, <https://about.instagram.com/community/safety>.

⁴⁰ *Providing context on sensitive or misleading content*, Facebook, <https://transparency.fb.com/enforcement/taking-action/context-on-sensitive-misleading-content/>

warnings. This ensures unsuspecting users are not suddenly confronted with sensitive media, such as violent news coverage from war zones or mass shootings.⁴¹

b. YouTube adds labels to content by state-supported media channels, including flagging sources of funding—such as for videos sponsored by the Russian government.⁴²

c. During the 2020 election, Twitter added warning labels to Tweets making claims about election results that had not been verified by official sources.⁴³

18. Other times, however, moderation is necessary so that even the most basic online functions, like shopping or searching for local businesses or having material arranged by topic or geography, work as intended. Without prioritizing, classifying, and ordering the never-ending volume of online content, online services would have no way to deliver the content users want—or even critically need—to see.

⁴¹ *Sensitive media policy*, Twitter, <https://help.twitter.com/en/rules-and-policies/media-policy>

⁴² *Greater transparency for users around new broadcasters*, YouTube, <https://blog.youtube/news-and-events/greater-transparency-for-users-around>; *State media warning can counteract the effects of foreign misinformation*, Harvard Kennedy School Misinformation Review, <https://misinforeview.hks.harvard.edu/article/state-media-warning-labels-can-counteract-the-effects-of-foreign-misinformation/>

⁴³ *Additional steps we're taking ahead of the 2020 US Election*, Twitter, https://blog.twitter.com/en_us/topics/company/2020/2020-election-changes.html (“Tweets which include premature claims will be labeled and direct people to our official US election page.”).

This, for example, is the essential function of Internet search engines like Google.⁴⁴ The ability to search is also an essential function of many other online services. Customers rely on services like eBay and Amazon to search for products they want to buy, and to provide helpful information and reviews about those products; users on Facebook want and expect to be able to search for people they might know; users on Pinterest want and expect to be able to search for recipes and design inspiration according to their taste and preferences.

19. These content moderation efforts serve at least three distinct vital functions. *First*, moderation is an important way that some online services express themselves and effectuate their community standards, thereby delivering on commitments that they have made to their communities. Content moderation rules and enforcement actions reflect normative judgments about what will best foster the kind of environment that companies have promised to their users. Choices about whether to allow pornography, depictions of violence, or certain kinds of offensive language, for example, are all expressions of the service's own preferences—important statements about the kind of online community it wishes to foster and what speech and speakers the company wishes to associate with or avoid.

20. *Second*, moderating content is often a matter of ensuring online safety. Some content posted online unfortunately can be highly dangerous, whether to

⁴⁴ *How Google Search works*, Google, <https://www.google.com/search/howsearchworks/>.

specific individuals or to the public at large. Social media companies regularly engage in content moderation to remove material such as illegal non-consensual intimate imagery (sometimes referred to as “revenge pornography”), depictions of child sexual abuse, calls for genocide, efforts to steal people’s personal information, attempts to encourage teens to commit suicide, attempts to sell illegal weapons and drugs, content that aids counterfeiting, and efforts by foreign adversaries to manipulate the American public. Any effort that hamstringing how online services respond to these egregious communications threatens the safety of those services, their users, and the public.

21. *Third*, moderation facilitates the organization of content, rendering an online service more useful. Imagine if a search engine presented results in a random or purely chronological order-instead of prioritizing what is most relevant. Or if an online store presented a random assortment of products or listings-instead of those products the user actively sought out. For many digital services, the main utility they offer to users is the organizing, sorting, and presenting of the vast amount of information available online.

The Importance of Curatorial Discretion

22. A daily challenge facing many CCIA members is pursuing these goals—expressing the service’s curatorial judgment, protecting users, and offering value—while addressing a massive and ever-changing body of content that users generate. Each piece of content involves different circumstances and different potential risks, which often requires an individualized

judgment by the service regarding whether it calls for moderation.

23. Normative judgments about how content is moderated within the bounds of a service's policies frequently involve matters of opinion and values about which people could very well disagree. The choice of whether a violent but newsworthy video should be removed, left up, or obscured behind an interstitial warning pursuant to a service's policy on sensitive media is equally as expressive as a newspaper's calls about which stories make the front page, which editorials appear in the opinion column, and what is newsworthy, as a general matter. The difference is that online service providers are called upon to make moderation decisions on a vast scale for immense volumes of content:

- a. Facebook is a community of over three billion people, and over one billion "stories" (audio or video clips) are shared on its service every day.⁴⁵ As one would expect, that means that Facebook has to remove millions of pieces of content each year to ensure that its service is safe and enjoyable for users. In the first quarter of 2021, Facebook removed 8.8 million pieces of "bullying and harassment content," 9.8 million pieces of "organized hate content," and 25.2 million pieces of "hate speech content."⁴⁶

⁴⁵ *Company Info*, Facebook, <https://about.facebook.com/company-info/>

⁴⁶ *Id.*; *Community Standards Enforcement Report, First Quarter 2021*, Facebook, <https://about.fb.com/news/2021/05/community-standards-enforcement-report-q1-2021/>

b. Over 500 million accounts are active daily on Instagram, where they view and/or post photos, stories, and “reels.” To keep the service safe and usable, Instagram removed 5.5 million pieces of “bullying and harassment content,” 324,500 pieces of “organized hate content,” and 6.3 million pieces of “hate speech content” in the first quarter of 2021.⁴⁷

c. There are more than 300 billion “pins” or pieces of posted content on Pinterest. Because the Pinterest community is not welcoming to pornography,⁴⁸ between October and December 2020, the service took down over 2.1 million distinct images containing adult content, which amounted to nearly 50 million pins (meaning that some images were pinned by users multiple times). In addition, Pinterest removed over 1.3 million discrete images or 3.4 million pins containing spam.⁴⁹

d. In the first six months of 2020, Twitter took action against 1.9 million accounts, suspended over 900,000 accounts, and removed 1.9 million pieces of content. With respect to the removed content, the top three categories were (1) “hateful

⁴⁷ *Tell your brand story your way with Instagram*, Facebook, <https://www.facebook.com/business/marketing/instagram>; *Community Standards Enforcement Report, First Quarter 2021*, Facebook, <https://about.fb.com/news/2021/05/community-standards-enforcement-report-q1-2021/>

⁴⁸ *Community guidelines*, Pinterest, <https://policy.pinterest.com/en/community-guidelines>

⁴⁹ *Transparency report*, Pinterest, <https://policy.pinterest.com/en/transparency-report>

conduct,” which includes the promotion of violence against people on the basis of race, gender, age, and other protected characteristics (approx. 955,000 instances); (2) “abuse/harassment” (approx. 609,000 instances); and (3) “sensitive media,” including graphic violence and adult content (approx. 171,000 instances).⁵⁰

e. YouTube sees 500 hours of content uploaded to its platform every minute and has a community of over 2 billion users.⁵¹ In the last three months of 2020 alone, YouTube removed just over 2 million channels and over 9 million videos for violations of its policies, the majority of which had fewer than ten views each at the time of removal due to the use of automated processes for reviewing and removing violative content.⁵²

24. The sheer number of decisions that online services are forced to make is often matched by the degree of difficulty and nuance involved in the hardest judgment calls. For certain pieces of content, there is simply no right answer as to whether and how to moderate, and any decision holds significant consequences for the service’s online environment, its user community, and the public at large. To raise a few examples of such cases:

⁵⁰ Twitter Transparency Report, *Rules for Enforcement*, Twitter, <https://transparency.twitter.com/en/reports/rules-enforcement.html#2020-jan-jun>.

⁵¹ *YouTube for Press*, YouTube, <https://www.youtube.com/intl/en-GB/about/press/>.

⁵² YouTube Transparency Report, *YouTube Community Guidelines enforcement*, YouTube, <https://transparencyreport.google.com/youtube-policy/removals?hl=en>.

a. Facebook generally aims to remove content that advertises marijuana. But for some pieces of content, it can be difficult to determine whether the material in question actually is advertising marijuana-such as when the product is obscured by packaging or resembles other products.⁵³

b. YouTube generally attempts to remove content that supports Nazi ideology or white supremacism. However, its policies on restricting such content are tested by material where it is not obvious whether the content is actually supporting Nazism or, instead, historical or informative in nature. For those videos, YouTube must determine whether ambiguous discussions regarding Nazism or interviews with white supremacists serve an educational function or, instead, glorify those ideologies.⁵⁴

c. Given my role within the industry, I am aware that companies beyond CCIA's membership frequently face similar problems. For example, Spotify previously announced that it would try to harmonize its values with the artists that it promoted. In practice, this included moderating or removing the portfolios of artists

⁵³ *F8 2019 Day 2 keynote and session videos*, Facebook, <https://engineering.fb.com/2019/05/01/ai-research/f8-2019-day-2/>

⁵⁴ *YouTube's new policy on Nazi content results in removal of historical and education videos (2019)*, Trust & Safety Foundation, <https://www.tsf.foundation/blog/youtube-s-new-policy-on-nazi-content-results-in-removal-of-historical-and-educational-documentary-scientific-and-artistic-content-youtube/>

that engaged in reprehensible conduct, such as sexual assault. These judgment calls, however, are sensitive in nature, and prompt comparisons to other artists that are also accused of or found responsible for misconduct.⁵⁵

25. To make reasonable decisions about such content, a service needs flexibility to craft policies and rules that reflect their commitment to users and to adapt those policies to the ever-changing circumstances presented by user content. It goes without saying that no service is able to anticipate unexpected forms of content *and* decide how to moderate each instance *in advance*. It is for that very reason that these services develop policies and rules that act as guidelines for their future moderation decisions-and within which each service has the ability to exercise discretion in specific instances.

26. The content that many of CCIA's members moderate does not exist in a vacuum; it is also affected by societal circumstances and/or the service's own attitudes. Because those circumstances and attitudes also evolve over time, adapting to changed circumstances, services may view their content moderation policies differently as they gain experience and encounter new material:

- a. Facebook, for example, has placed a greater emphasis in its content moderation on identifying and proactively suppressing racist content (such

⁵⁵ *Spotify enforces hateful conduct policy, removing artists from its platform for off-platform behavior (2018)*, Trust & Safety Foundation, <https://www.tsf.foundation/blog/spotify-enforces-hateful-conduct-policy-removing-artists-from-its-platform>

as depictions of blackface) and antisemitic content (such as content that denies the Holocaust or encourages the idea that Jews control the world), as it encounters more and more examples of that kind of content.⁵⁶

b. Similarly, content moderation policies on Facebook, Instagram, Twitter, and YouTube have increasingly attempted to limit material that would encourage eating disorders or other forms of destructive self-harm.⁵⁷

c. As yet another example, YouTube recently took action to limit the influence of the military in Myanmar after the military launched a coup that captured control of the government. As a result of the changing circumstances and the military's violence, YouTube prevented five television channels run by the military from conveying content via its service.⁵⁸

⁵⁶ *Measuring Our Progress Combating Hate Speech*, Facebook, <https://about.fb.com/news/2020/11/measuring-progress-combating-hate-speech/>

⁵⁷ *Tightening Our Policies and Expanding Resources to Prevent Suicide and Self-Harm*, Facebook, <https://about.fb.com/news/2019/09/tightening-our-policies-and-expanding-resources-to-prevent-suicide-and-self-harm/>; *Taking More Steps To Keep The People Who Use Instagram Safe*, Instagram, <https://about.instagram.com/blog/announcements/more-steps-to-keep-instagram-users-safe>; *Suicide and Self-harm Policy*, Twitter, <https://help.twitter.com/en/rules-and-policies/glorifying-self-harm>; *Suicide & self-injury policy*, YouTube, <https://support.google.com/youtube/answer/2802245>

⁵⁸ *YouTube Bans Myanmar Military Channel as Violence Rises*, New York Times, <https://www.nytimes.com/2021/03/05/business/youtube-myanmar.html>; <https://www.reuters.com/article/us>

d. Twitter’s “hateful conduct policy” was updated to include “targeted misgendering or deadnaming of trans gender individuals.” Twitter made that change as part of a broader change to its policy on “dehumanizing language,” which was expanded “to include content that dehumanizes others based on their membership in an identifiable group, even when the material does not include a direct target.”⁵⁹

27. Furthermore, many digital services are “multi-sided markets,” meaning that their business model unites distinct constituencies in transactions. Users, therefore, are not the only community whose interests these services must seek to safeguard. For ad-supported, free-to-the-user services, advertisers constitute another critical constituency. These advertisers are wary of what some refer to as “brand damage” should their products be advertised in proximity to problematic content. As a result, advertisers work closely with social media companies and other digital services to reduce the chance that their advertising dollars are perceived to support potentially harmful content or behavior.⁶⁰

myanmar-politics-youtube/youtube-removes-five-myanmar-tv-channels-from-platform-id USK.BN2AX0BO

⁵⁹ *Hateful conduct policy*, Twitter, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>; see *How Twitter’s Ban on ‘Deadnaming’ Promotes Free Speech*, New York Times, <https://www.nytimes.com/2018/11/29/opinion/twitter-deadnaming-ban-free-speech.html>; *Creating new policies together*, Twitter, https://blog.twitter.com/official/en_us/topics/company/2018/Creating-new-policies-together.html.

⁶⁰ *Advertisers agree deal with social media on steps to curb harmful content*, Reuters, <https://www.reuters.com/article/tech->

28. Content moderation is therefore far from static. Instead, it is a dynamic process in which the service has to account for its own values and opinions, user preferences, and what is happening in the world. Succeeding at that delicate balancing act requires companies to have the freedom to change how they moderate content over time, both to best serve the needs of their users and to protect the online environment that they are curating. Limiting changes to content moderation policies to, at most, once a month is wholly impractical. Both the online and real world change from second to second, and each company must be able to respond to those changes in real time to protect its service and users.

The Burdens Posed by S.B. 7072

29. Compliance with the content moderation provisions of S.B. 7072 would be unduly burdensome at a minimum, and may not be technically feasible at all. Due to the scale at which the covered online services operate, much of their moderation work must be done algorithmically—or at least with the assistance of algorithms or automated processes—in order to function. Complying with the statute’s restrictions on algorithmic content moderation would require CCIA members to cease or limit the operation of automated tools used to block and remove harmful, dangerous, and unlawful material. At the least, this

advertising/advertisers-agree-deal-with-social-media-on-steps-to-curb-harmful-content-idUSKCN26E101; *Facebook to develop tools for advertisers to tackle harmful content*, Reuters, <https://www.reuters.com/article/us-facebook-advertising/facebook-to-develop-tools-for-advertisers-to-tackleharmful-content-idUSKBN29Y1UJ>

would substantially degrade the users' experience, but it may also place users or others at risk from dangerous, illegal, or abusive content.

30. The capacity to make moderation decisions algorithmically in the first instance is vitally important to many services offered by CCIA members. Not only do these tools facilitate the moderation of the incalculable volume of content online, but for some of the content that requires moderation or removal—such as graphically violent, sexual, or criminal content—time is of the essence. An important aspect of the goodwill that many members have built up with their users over time is the ability of moderators to respond quickly to halt the spread of dangerous, illegal, or otherwise inappropriate content before it becomes widespread. Making certain moderation decisions algorithmically in the first instance allows the services to respond to objectionable content in a way that preserves the user experience, promotes online safety, and helps ensure that the communications that our members' services disseminate reflect their community values.

31. Millions of Floridians, and billions of people worldwide, use CCIA members' services. And even if CCIA members could comply with S.B. 7072's content moderation requirements (which they cannot), members generally have no way to determine whether a user either resides in Florida or claims a Florida domicile,⁶¹ as they would need to, to ensure they are

⁶¹ While some services may be able to form inferences about a user's location based on information like IP addresses, such information may be unreliable, and does not substitute for knowing a user's state of residence or state of domicile. While

complying with the onerous procedures required with respect to such users. And it would be effectively impossible to comply with these procedures solely as to Floridians, while maintaining sufficiently economical and effective moderation and content prioritization for the services' many users outside Florida.

32. Decisions to remove a particular item of content uploaded by a user, or to temporarily or permanently remove a user's ability to upload content to the service, serve different purposes within our members' businesses. These decisions often need to strike a balance between limiting the detrimental effects of objectionable content on the services and preserving open access. Having a full panoply of moderation tools available enables CCIA member companies to strike an appropriate balance in each situation. S.B. 7072's requirements would remove the services' ability to use some of these moderation tools in certain circumstances and would upset the delicate balance between openness and responsibility that makes many members' services usable and enjoyable by a wide variety of users.

33. The vague requirement of consistency would make moderation by CCIA's members impossible at the scale required. At \$100,000 in statutory damages per violation, the risk that any two moderation decisions will be deemed subjectively "inconsistent", along any one of multiple possible lines of comparison,

some services may have physical addresses for users, many do not. And even those services that do possess such data cannot be certain whether the *user resides or is domiciled* at the provided address for purposes of Florida law.

by an observer with the benefit of hindsight, will make it very difficult to justify removing or moderating any content at all. Moreover, S.B. 7072 makes no distinction between moderation decisions in terms of the application of the consistency requirement—whether temporary and permanent, whether a removal or a decision to make content less visible, or less readily searchable, or simply to append the service’s own commentary to a given piece of content—all of these decisions must be “consistent” under S.B. 7072. Once any decision to moderate is made, every other decision to moderate or not moderate might be challenged for inconsistency with the first decision—even when failures to moderate are based on the limited capacity of the service’s human moderators, and even where capacity may be reduced due to a public health emergency that prevents individual moderators from accessing the machines that they use to review and moderate content.

34. The notice requirement that applies whenever a Florida user is “censored” or “shadow banned” would likely result in the services sending millions of such notices per day. The breadth of the statutory definitions of these terms would cause them to apply to moderation decisions that remove clearly unacceptable material, as notice is required as to every kind of content that is not considered “obscene” under state law. Each notice must also include a “thorough rationale” of why the content was moderated and a “precise and thorough explanation” of how the content came to the service’s attention—again with the threat of massive statutory damages if any of these explanations is ruled deficient in hindsight by a court. Since the penalty for not sending

such a notice is so significant, the services will have to err on the side of preparing and sending a notice whenever content potentially could have been submitted by a Florida resident, creating significant waste and inefficiencies. Even beyond not knowing what users reside in Florida, services will also face the risk of significant penalties whenever a user disputes the level of precision or thoroughness of a given explanation.

35. The opt-out requirements would also require many member companies to create new metrics for sorting content on their services that do not currently exist and are not congruent with the way users actually use online services. Few if any search engines allow sorting by “most recently crawled” or “most recently changed.” Furthermore, allowing users to opt out of “post-prioritization” to produce chronological posts and content would greatly increase the moderation burden for the vast majority of online services that enable their users to search for content relevant to their interests, and that strive to deliver content that users want or need to see. The services’ reputations, and their ability to ensure that the content they are conveying to their users is not inconsistent with their values, would inevitably suffer as a result.

36. The requirement not to “deplatform” political candidates, nor to apply various standard operations (which S.B. 7072 implausibly defines as “shadow banning”), nor perform “post-prioritization” to content by or about candidates, would similarly undermine the services’ ability to do a wide swath of moderation activity. Taken together, due to the sweeping

definition of “shadow ban” in the statute, these requirements make content supplied by broadly defined political “candidates” virtually immune to moderation except by unaided human review. The requirement that content “about” candidates similarly not be subject to algorithmic moderation or “post-prioritization” creates an additional vagueness problem, as it will not always be apparent whether a given piece of content is “about” a political candidate. Moreover, requiring that “post-prioritization” not be applied to such content creates nonsensical obligations for some services, such as search engines, and search features within certain member services, which must apply some method of organizing search results by relevance (rather than chronology), and that will necessarily fall within the definition of “post-prioritization” (in order for the search results to be usable).

37. It hardly requires stating that the requirement not to moderate “journalistic enterprises” based on content (aside from obscenity) would likewise create serious problems for many members’ ability to maintain their community standards for content. Moreover, member services have no way to determine with confidence whether a user is a ‘Journalistic enterprise’ within the meaning of the statute. The threat of liability under this requirement with respect to users that might or might not qualify as ‘Journalistic enterprises’ would only exacerbate the problem of requiring the covered services to host content that violates their community standards, by adding to the number of users who might be virtually immune to moderation.

38. If these provisions were to go into effect, they would seriously undermine the safety and utility of the members' services. The risk of liability on the basis of various provisions of S.B. 7072 would require many member services to substantially cut back on their moderation efforts, with the foreseeable results of (1) leaving offensive and dangerous content accessible to the public via the services; (2) making maintenance of family-friendly, curated collections of user-uploaded content nigh impossible; and (3) making the services less useful for their intended purposes.

39. For many services, a substantial proportion of the value provided to users is the service's arrangement of relevant, useful, or entertaining information in a way that provides the sort of content and experience that the user is seeking. These ways of organizing information on a service can fall afoul of the statute's definitions despite being wholly conventional and benign. The statute's broad and vague descriptions of what practices are prohibited leave a number of questions unanswered, and the provisions that are comprehensible impose practices that would severely undermine the services' value to their users.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 3rd, 2021 in Washington D.C.

[handwritten: signature]

Matthew Schruers

**Declaration of Carl Szabo for NetChoice, LLC
(June 3, 2021)**

I, **Carl Szabo**, declare as follows:

1. I am the Vice President and General Counsel of NetChoice, LLC (“NetChoice”). I submit this declaration in support of Plaintiffs’ Motion for a Preliminary Injunction. I have personal knowledge of the facts set forth in this declaration and, if called and sworn as a witness, could and would competently testify to them.

2. In addition to providing legal counsel to NetChoice, I coordinate NetChoice’s advocacy before legislative bodies, courts, and government agencies to promote NetChoice’s mission of advancing free enterprise and free expression on the Internet.

3. Plaintiff NetChoice is a national trade association of online businesses that share the goal of promoting free speech and free enterprise on the Internet. NetChoice is a 501 (c)(6) nonprofit organization. As our website explains, NetChoice “works to make the Internet safe for free enterprise and free expression” and “engages at the local, state, national, and international levels to ensure a bright digital future.”¹ In particular, we are dedicated to preserving the Internet as a vibrant marketplace for communication, commerce, and the exchange of ideas. When online businesses are free to make their own moderation decisions, they create choices for users and advertisers alike—for example, Floridians looking for an unmoderated experience can use social media platforms like Parler; those looking for more family-

¹ *Home*, NetChoice, <https://perma.cc/3N PH-KH2T>.

friendly services can find options from several NetChoice members. All in all, we strongly believe in giving users and advertisers choices in how they use the Internet.

4. For over two decades, NetChoice has worked to promote online speech and commerce and to increase consumer access and options through the Internet, while minimizing burdens on businesses to help make the Internet more accessible and useful for both businesses and consumers. Our members include a broad array of popular online services and platforms, including: Airbnb, Alibaba.com, Amazon.com, AOL, Dil, DRN, eBay, Etsy, Expedia, Facebook, Fluidtruck, Google, HomeAway, Hotels.com, Lime, Nextdoor, Lyft, Oath, OfferUp, Orbitz, PayPal, Pinterest, StubHub, TikTok, Travelocity, TravelTech, Trivago, Turo, Twitter, Verisign, VRBO, Vigilant Solutions, VSBLTY, Waymo, Wing, and Yahoo!.²

5. As described in our Complaint,³ several of NetChoice's members are subject to Florida's new law, S.B. 7072, 2021 Leg. (Fla. 2021) (the "Act"), because they meet the statutory definition of a covered "social media platform" under the Act: they (i) allow users to post or upload content onto their platforms; (ii) are incorporated legal business entities; (iii) do business in the State of Florida; (iv) meet the Act's revenue or user-based thresholds; and (v) are not exempted under the exception for certain operators of theme parks. *See*

² *About Us*, NetChoice, <https://perma.cc/4NPV-PLU7>.

³ Complaint, *NetChoice v. Moody*, No. 4:21-cv-00220-RH-MAF (N. D. Fla. Tallahassee Div.).

Act § 4 (adding § 501.2041(1)(g)). Several of these NetChoice members have submitted declarations attesting to the irreparable harms they will suffer if the Act is allowed to go into effect.⁴

6. NetChoice has over two decades of experience advocating for online businesses and the principles of free speech and free enterprise on the Internet, so we are intimately familiar with the business models our members use and rely on to provide services to users and advertisers alike. That experience, combined with the practical applications of the law and declarations submitted by our members, leads us to conclude that this Act, should it take effect, would irreparably harm our members and their business models by repelling users and advertisers and creating long-term, adverse impacts when it comes to our members' reputations. This is attested to by similarly situated technology-focused trade associations.⁵

7. These negative effects of the Act are associative and enduring, and thus irreparable. Once the public associates an online business with harmful or offensive content, it is nearly impossible to undo that association. Indeed, what common sense suggests and evidence confirms is that users and advertisers prefer not to see harmful or objectionable content online and

⁴ Potts Decl. (June 3, 2021); Veitch Decl. (June 3, 2021); Pavlovic Decl. (June 3, 2021).

⁵ Schruers Decl. ¶ 29-39 (June 3, 2021); Esparza Decl. ¶ 4-8 (June 3, 2021).

will strongly associate that content with the platform on which they saw it.⁶

8. That is because online services, like most businesses, rely on their reputations—which they have often spent many years diligently cultivating and protecting—to gain and maintain users and advertisers.⁷ By hosting harmful or objectionable content, as the Act would force them to do, online services would suffer enduring reputational harm. Many long-time users and advertisers will likely quit or reduce use of these online services should their websites become polluted with offensive content. This content is also likely to repel potential users and turn off potential advertisers by greatly deteriorating the value and usability of these services.⁸ And, as experience has shown, these deleterious effects would likely lead advertisers—the main source of revenue for many online services—to reduce or curtail their spending on advertisements on these websites.

9. In fact, the World Federation of Advertisers—a leading global trade association for advertisers—is adamant that online services must moderate user-generated content to prevent exposure to objectionable or offensive content.⁹ “The issue of harmful content

⁶ See, e.g., Tiffany Hsu & Eleanor Lutz, *More Than 1,000 Companies Boycotted Facebook. Did it Work?*, N.Y. Times (last updated Nov. 17, 2020), <https://perma.cc/EL62-NCDP>.

⁷ Veitch Decl. ¶¶ 8, 21-35 (June 3, 2021); Potts Decl. ¶ 30 (June 3, 2021).

⁸ Veitch Decl. ¶ 8 (June 3, 2021)

⁹ See, e.g., *WFA and Platforms Make Major Progress to Address Harmful Content*, World Federation of Advertisers (Sept. 23, 2020), <https://perma.cc/YC3N-738F>.

online,” WFA’s CEO Stephan Loerke explains, “has become one of the challenges of our generation. As the primary monetization mechanism of the online ecosystem, advertisers have a critical role to play in driving positive change [...]. A safer social media environment will provide huge benefits not just for advertisers and society but also to the platforms themselves.”¹⁰ Not only does this risk immediate financial harm to online businesses if the Act takes effect, it risks permanent, irreparable harm should any of those users or advertisers decide never to return to our members’ sites based on their past experience or the detrimental feedback they have heard from others.

10. Because many online businesses (not just social media platforms, but also online exchanges and websites that allow users to post reviews) rely on advertising as a necessary mechanism to remain in business, the decisions of advertisers to take their business elsewhere have very serious consequences for these businesses, including lost revenue and long-term reputational damage. Not only will advertisers pull their ads and funding immediately after the Act takes effect and force our members to host objectionable content, advertisers will be hesitant to return to these businesses in the future. Consider that WFA’s call for advertisers to “driv[e] positive change” reveals an implicit truth about online services and digital platforms: their advertising space is valuable only if it is not displayed next to harmful and offensive content that users do not want to see and advertisers do not want to be associated with. This Act, as

¹⁰ *Id.*

discussed, makes our members more vulnerable to advertiser boycotts, which directly hurts their revenue and reputation. In the long run, this loss of a quintessential monetization mechanism could jeopardize the very business model on which so many of these digital services rely.

11. Being able to moderate, organize, curate, and otherwise prioritize content is critical to our members—especially search engines, social media platforms, and other digital services that retrieve and present information responsive to user requests—so that they can deliver users and advertisers the high-quality services they demand.¹¹ As noted above, it is essential for our members to be able to develop a brand and customer experience that allows them to avoid exposing their users to objectionable, offensive, harmful, or unlawful content. It is also essential that our members be able to organize and curate content in a way that is useful to users. For example, an online marketplace that displayed items in purely chronological order (rather than categorizing them by product type) would be far less helpful in connecting users with the products they are looking for. Similarly, a social media platform that is forced to deliver content in purely chronological order may cause its users to miss out on more relevant content. This Act would deny our members the ability to organize and display content in ways that best serve the needs of their users.

¹¹ Potts Decl. ¶¶ 20-30 (June 3, 2021); Veitch Decl. ¶ 21-27 (June 3, 2021); Pavlovic Decl. ¶ 10-14 (June 3, 2021).

12. If the Act takes effect on July 1, 2021, NetChoice's mission to protect free speech and free enterprise online would be directly and substantially hurt. NetChoice members would also be harmed by the Act's severe restrictions on their ability to moderate content (action that is protected under the First Amendment) and its provisions exposing our members to potential draconian fines and a new private right of action if they do not comply with these onerous restrictions.

13. The Act will also limit user choice and would pollute family-friendly websites with highly offensive and objectionable content and products, greatly reducing the value of the services for both users and advertisers. Most users do not want to see harmful content such as advocacy of white supremacy, advocacy of extremism and terrorism, medical disinformation like so-called miracle cures for Covid-19, bullying and harassment, and other highly objectionable content. Advertisers likewise do not want their names and products displayed alongside such content. Users and advertisers would likely abandon online businesses that are no longer permitted to moderate offensive and harmful content.

14. Such an outcome would greatly harm our members by directly and durably undermining their business models. Perhaps more concerning, advertisers and users would associate this content with our members themselves, creating irreparable damage to our members' reputations and harming them well into the future. We have already seen this loss of revenue happen when advertisers removed millions of dollars' worth of ads due to the presence of

“extremist content.”¹² NetChoice members moved quickly to rectify the situation, but even in this short instance, NetChoice members lost millions.¹³

15. For example, in 2017 Google’s wholly owned subsidiary YouTube lost millions of dollars in advertising revenue after a number of major corporations including Walmart, Verizon, Johnson & Johnson, and Pepsi took down their ads after seeing them distributed next to videos containing extremist content and hate speech.¹⁴ Similarly, in 2020 Facebook saw a nearly identical response as some of the largest businesses in the world including Coca-Cola, Microsoft, Starbucks, Target, Hershey, Honda, and Unilever all pulled their ads and boycotted Facebook citing concerns of third parties’ use of the website to spread hate speech and misinformation.¹⁵ While the short-term loss of revenue resulting from these examples was already substantial, it pales in comparison to the long-term reputational loss this Act will inflict on YouTube and Facebook’s overall brand—not to mention the fact that such third-party content

¹² See, e.g., Olivia Solon, *Google’s Bad Week: YouTube Loses Millions as Advertising Row Reaches US*, *The Guardian* (Mar. 25, 2017), <https://perma.cc/YWO5-BXGB>; Kim Lyons, *Coca-Cola, Microsoft, Starbucks, Target, Unilever, Verizon: All the Companies Pulling Ads from Facebook*, *The Verge* (Jul. 2, 2020), <https://perma.cc/LTC2-HKFW>.

¹³ *Id.*

¹⁴ Olivia Solon, *Google’s Bad Week: YouTube Loses Millions as Advertising Row Reaches US*, *The Guardian* (Mar. 25, 2017), <https://perma.cc/NWO5-BXOB>.

¹⁵ Kim Lyons, *Coca-Cola, Microsoft, Starbucks, Target, Unilever, Verizon: All the Companies Pulling Ads from Facebook*, *The Verge* (Jul. 2, 2020), <https://perma.cc/LTC2-HKFW>.

runs counter to these companies' policies and standards. Once harmful or offensive content is associated with a business, it is nearly impossible to undo the harm. The content will forever be intertwined with a user or advertiser's perception of the underlying business.

16. Under the Act, NetChoice members will have to host content that they would otherwise remove or restrict because it violates their terms of service and moderation policies, including the harmful and objectionable forms of content referenced above. Under the Act, these online services would be significantly constrained in their ability to remove harmful content that offends their users and advertisers. For example, these online services would be prohibited from removing almost all forms of content originating from any "journalistic enterprise"¹⁶ as defined in the Act. As a result, NetChoice members would be forced to host harmful and offensive content including but not limited to:

- Racial epithets;¹⁷
- Nazi antisemitism;¹⁸

¹⁶ Fl. Stat. § 501.2041(l)(d) (defining "journalistic enterprise" to include entities doing business in Florida that "[p]ublishes in excess of 100,000 words available online with at least 50,000 paid subscribers or 100,000 monthly active users" or "[p]ublishes 100 hours of audio or video available on line with at least 100 million viewers annually").

¹⁷ See Cheyenne MacDonald, *These Abhorrent Images From Parler Show Why Apple Upheld its Ban*, Input (Mar. 10, 2021), <https://perma.cc/H7GV-ZFZO>.

¹⁸ See Nathan Grayson, *Valve Removes Nazi Steam Profiles After German Complaints*, Kotaku (Dec. 11, 2019), <https://penna.cc/6L8E-E7NB>; Brianna Sacks, *Reddit Is*

- Pornographic images and videos;¹⁹
- Aggressive homophobia and transphobia;²⁰
- Harassment and revenge porn;²¹
- Medical misinformation and harmful at-home “remedies”;²²
- Dangerous conspiracy theories;²³ and
- Cyberbullying.²⁴

17. The Act would also leave children vulnerable to predators and would tie NetChoice members’ hands in trying to protect children and stop predators from

Removing Nazi And Alt-Right Groups As Part Of A New Policy And Some Users Are Confused, BuzzFeed News (Oct. 25, 2017), <https://perma.cc/W7NL-CKGN>.

¹⁹ See Craig Timberg, Drew Harwell & Rachel Lennan, *Parler’s Got a Porn Problem: Adult Businesses Target Pro-Trump Social Network*, The Washington Post (Dec. 2, 2020), <https://perma.cc/2ATC-Z8SQ>.

²⁰ See *Removing Harassing Subreddits*, Reddit (Jun. 10, 2015), <https://perma.cc/65FF-TPVC>.

²¹ See *Removing Harassing Subreddits*, Reddit (Jun. 10, 2015), <https://perma.cc/63AH-S3LP>; Olivia Solon, *Inside Facebook’s Efforts to Stop Revenge Porn Before it Spreads*, NBC News (Nov. 18, 2019), <https://perma.cc/L44B-3PB3>.

²² See Beth Mole, *Facebook Bans Health and Conspiracy Site Natural News [Updated]*, ARS Technica (Jun. 10, 2019), <https://perma.cc/2875-RCYS>.

²³ See Marianna Spring, *The Casualties of This Year’s Viral Conspiracy Theories*, BBC News (Dec. 26, 2020), <https://perma.cc/XAD2-3528>.

²⁴ See Alexandria Ingham, *7 Real Life Cyberbullying Horror Stories*, Family Orbit Blog (Nov. 11, 2018), <https://perma.cc/52DW-B3JN>.

using their services to harm children.²⁵ As Stop Child Predators points out in its declaration, the Act would:

- “[R]equire online platforms to host content-legal or not-from ‘journalistic enterprises’”;
- “[P]rohibit[] them from using algorithms in ways that could flag, remove, restrict, or demote harmful content, including [Child Sexual Abuse Material]”;
- “[A]ll but guarantee[] that the online platforms will be [hamstrung] in responding to new threats to children’s online safety and to new methods of distributing or soliciting photos and videos of child sexual abuse”;
- “[H]inder their ability to adapt to predators’ schemes”; and
- “[G]ive child predators a roadmap to escape detection” by forcing platforms to disclose “how algorithms and content moderation work in detail.”²⁶

18. The Act’s harmful effects on online platforms’ efforts to combat child predation and CSAM are particularly concerning given the magnitude of harm involved. With few exceptions, no business wants to be associated with material harmful to children, let alone material of child sexual abuse. And certainly no NetChoice member wants child predators to use its service or product to prey on children. That is why, for example, NetChoice members take seriously their responsibility to police their platforms in ways that protect children. And, as Stop Child Predators notes,

²⁵ Rumenap Decl. ¶¶ 7-11 (June 3, 2021).

²⁶ Rumenap Decl. ¶¶ 8-11 (June 3, 2021).

those efforts resulted in over 45 million referrals to law enforcement of suspected child abuse and child exploitation in 2018 alone.²⁷ But under this Act, online businesses will have a far more challenging time in policing their services (i) to detect, remove, and report CSAM, (ii) to suspend or block accounts from child predators who meet the criteria for the Act’s “journalistic enterprise” or “political candidate” definitions, and (iii) to use algorithms to help protect children from predation and to remove CSAM.

19. As common sense suggests, NetChoice members do not want to host such content. Nor do they want to aid child predators. But under this Act, they would unfortunately have to do just that. The potential for reputational harm is staggering. And the potential to repel users and advertisers is even worse: Trust between NetChoice members and their users and advertisers would evaporate and be difficult to regain—and understandably so. Society, online and off, has an obligation to protect the most vulnerable among us. And to prevent or at least mitigate harm to children, which is often recurring—each time an image or video is shared, the child suffers again-and often permanent.²⁸

²⁷ Rumenap Decl. ¶ 5 (June 3, 2021) (citing Katie Benner & Mike Isaac, *Child-Welfare Activists Attack Facebook Over Encryption Plans*, N.Y. Times (Feb. 5, 2020), <https://perma.cc/E6DD-M562>).

²⁸ See *Paroline v. United States*, 572 U.S. 434, 457 (2014); *id.* at 468-69 (Roberts, J., dissenting); *id.* at 474-75 (Sotomayor, J., dissenting) (citation omitted) (“Congress found, for example, that the ‘continued existence’ and circulation of child pornography images ‘causes the child victims of sexual abuse continuing harm by haunting those children in future years.’”).

20. Further, given the sweepingly broad and vague definition of “journalistic enterprise,” this moderation restriction would also elevate and protect, for example, foreign propaganda posted by RT, a cable and satellite TV channel that transmits Russian government propaganda.²⁹ It would also include the Info Wars website, which has more than 100,000 monthly active users and carries miracle cure ads for products such as “Super Male Vitality,” which it touts with the following disclaimer:

** These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease. If you are pregnant, nursing, taking medication, or have a medical condition, consult your physician before using this product.*³⁰

21. Some Neo-Nazi websites like Stormfront would also likely meet the definition of a “journalistic enterprise” as they have surpassed the required number of average monthly users consistently in the

²⁹ See *Where to Watch, USA*, Russia Today, <https://web.archive.org/web/20201127200231/https://www.rt.com/where-to-watch/USA/> (listing carriage on, among others, Buckeye CableSystem, DISH Network, and DirecTV); see also Russell Goldman, *Russia’s RT: The Network Implicated in U.S. Election Meddling*, N.Y. Times (Jan. 9, 2017), <https://perma.cc/9BR6-VDF7>.

³⁰ Super Male Vitality, Info Wars, <https://web.archive.org/web/20210419191038/https://www.infowarsstore.com/super-malevitality>.

past.³¹ As such, social media sites would have to host virtually all of the content published by these types of sites, regardless of how patently offensive or even dangerous the content may be for certain groups and the general public.

22. The Act would also prohibit many NetChoice members from suspending the account of any “candidate”—a qualification that can be satisfied just by paying a candidate filing fee (for some offices, a fee as low as \$25)³²—regardless of the justification for the suspension decision.

23. The Act would also harm NetChoice members by prohibiting them from changing their content-moderation standards or policies more than once every 30 days.³³ This would stop them from quickly and effectively responding to dangerous or harmful trends as they emerge and before they spread virally, such as:

- The “Tide Pod challenge” (teens recording themselves eating Tide laundry detergent

³¹ See Josh Harkinson, *White Supremacist Sites Claim Their Traffic Is Booming. Actually, No.*, Mother Jones (Nov. 23, 2016), <https://perma.cc/URY6-5AZ9>.

³² Fl. Stat. § 106.011 (3)(e) (defining “candidate” as a person who “seeks to qualify for nomination or election by means of the petitioning process,” or “seeks to qualify for election as a write-in candidate,” or “receives contributions or makes expenditures, or consents for any other person to receive contributions or make expenditures, with a view to bring about his or her nomination or election to, or retention in, public office,” or “appoints a treasurer and designates a primary depository,” or “files qualification papers and subscribes to a candidate’s oath as required by law.”).

³³ *Id.* at § 501.2041(2)(c); Veitch Decl. ¶ 21-24 (June 3, 2021).

Pods on video and then challenging friends to do the same);³⁴

- The “Knockout game” (people recording themselves attempting to “knock out” an unsuspecting victim with a single strike to the head);³⁵
- “Swatting” instigation;³⁶
- “Deep fakes” (edited and misleading photos and videos that appear real);³⁷
- Election disinformation; and
- Medical disinformation.

24. As stated in other sworn declarations,³⁸ NetChoice members would incur substantial, unrecoverable costs in complying with the Act’s overly burdensome requirements. These costs could not be

³⁴ Lindsey Bever, *Teens are Daring Each Other to Eat Tide Pods. We Don’t Need to Tell you That’s a Bad Idea*, The Washington Post (Jan. 17, 2018), <https://perma.cc/65X3-V44L>.

³⁵ Gene Demby, *The Knockout Game: An Old Phenomenon With Fresh Branding*, NPR (Nov. 27, 2013), <https://perma.cc/5H35-F6XS>.

³⁶ See Nichole Manna, *Call of Duty Gaming Community Points to ‘Swatting’ in Deadly Wichita Police shooting*, The Wichita Eagle (Dec. 29, 2017), <https://web.archive.org/web/20210513003321/https://www.kansas.com/news/local/crime/article192111974.html>; Michael Kunzelman, *Man has Plea Deal over Neo-Nazi Group’s ‘Swatting’ Calls*, ABC News (Apr. 13, 2020), <https://perma.cc/8B6P-ZZHO>.

³⁷ Ian Sample, *What are Deepfakes - and How Can You Spot Them?*, The Guardian (Jan. 13 2020), <https://perma.cc/B2CR-HUTS>.

³⁸ Potts Decl. (June 3, 2021); Veitch Decl. (June 3, 2021); Pavlovic Decl. (June 3, 2021).

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recouped if Plaintiffs' challenge to the Act is ultimately successful on the merits.

* * *

I, **Carl Szabo**, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 3rd day of June, 2021 in Washington, D.C.

[handwritten: signature]

Carl Szabo

Vice President and General
Counsel

NetChoice, LLC d/b/a
NetChoice

**Declaration of Alexandra Veitch for YouTube
(June 3, 2021)**

I, Alexandra Veitch, declare as follows:

1. I am the Director of Public Policy for the Americas at YouTube. As part of my role, I lead a team that advises the company on public policy issues around online, user-generated content. My team advises on YouTube's content moderation policies and practices, identifies when changes to our policies or their application are required in response to new challenges, and assesses policy proposals and legislation, such as Florida's Senate Bill 7072, that would affect YouTube's ability to moderate content.

2. The statements contained in this declaration are based on my personal knowledge. I am over 18 years of age and competent to make the statements set forth herein.

Content Moderation at YouTube

3. YouTube is an online platform that allows users to create, upload, and share videos with others around the world. YouTube strives to be a community that fosters self-expression on an array of topics as diverse as its user base, and to nurture a thriving creative and informational ecosystem. Over two billion logged-in users visit each month, and over 500 hours of content are uploaded every minute by an extraordinarily diverse community of creators, who span over 100 countries and 80 languages. On a daily basis, users watch over a billion hours of video on YouTube. YouTube LLC does business in Florida.

4. With this volume of users comes a significant responsibility to protect those users. Since the

beginning, YouTube has always had policies that govern how people may use the service, including restrictions on the types of content that they may post. These policies are designed and regularly updated to make YouTube a safer and more enjoyable place for users and creators. For many years, YouTube's number one priority has been the responsibility to maintain its community as a positive, open, and useful space on the Internet. The health of our community and the success of our business depends on it.

5. YouTube makes content moderation decisions seeking to strike the right balance between fostering freedom of expression and lessening the likelihood that users will encounter harmful content on our platform. YouTube's approach generally is to remove content that violates our policies (developed with outside experts to prevent real-world harms), reduce the spread of harmful misinformation and content that brushes up against our policy lines, and raise authoritative and trusted content. These moderation efforts, described below, are critical to cultivating a vibrant and healthy YouTube community by identifying and removing any material that violates our policies and harms our users.

6. The company has hired over 10,000 people who are responsible for moderating content on YouTube. Those reviewers work with technology—machine learning (using algorithms)—that YouTube has developed with significant investment. In Q4 2020 alone, YouTube removed over 2 million channels and over 9 million videos for violations of YouTube's

policies.¹ Further statistics (including others discussed in this declaration) may be found in the YouTube Community Guidelines enforcement report, updated quarterly. <https://transparencyreport.google.com/youtube-policy/removals>.

7. We estimate that 0.16-0.18% of the views on YouTube in Q4 2020 came from violative videos.²

8. Yet even this small amount of content can have a huge impact, both in potential harm to our users, as well as a loss of faith in the open model that has enabled YouTube's creative community to thrive. Failure to consistently address harmful content uploaded to the site not only threatens the safety of our users and creators, but also threatens the safety and reputation of our advertising partners' brands. Harmful content on our platform makes YouTube less open, not more, by creating a space where creators and users may not feel safe or comfortable to share. YouTube's business depends on the trust of our users and our advertisers. S.B. 7072 significantly limits our ability to make content moderation choices and would

¹ Of those videos, more than 30,000 contained misinformation about the Covid-19 vaccine, part of YouTube's larger effort to remove medical misinformation about the virus resulting in the removal of 1,000,000 videos related to dangerous or misleading Covid-19 information since February 2020.

² In other words, out of every 10,000 views on YouTube in Q4 2020, 16-18 came from videos that violate our content policies. This metric, "Violative View Rate" (VVR), is an estimate of the proportion of video views that violate our Community Guidelines in a given quarter (excluding spam). Jennifer O'Connor, *Building greater transparency and accountability with the Violative View Rate*, YouTube Blog (Apr. 6, 2021), <https://blog.youtube/inside-youtube/building-greatertransparency-and-accountability/>

subject YouTube to harm by frustrating our ongoing efforts to make YouTube a far more accessible and welcoming place.

YouTube's Community Guidelines

9. Our Community Guidelines provide clear, public-facing guidance on types of content not allowed on the platform.³ The Community Guidelines prohibit a variety of harmful, offensive, and/or unlawful material, such as pornography, terrorist incitement, false propaganda spread by hostile foreign governments, promotion of fraudulent schemes, spam, egregious violations of personal privacy like revenge pornography, violations of intellectual property rights, bullying and harassment, conspiracy theories, and dangerous computer viruses. A full list of YouTube's Community Guidelines is available at: <https://www.youtube.com/howyoutubeworks/policies/community-guidelines/>

10. YouTube has never allowed pornography, incitement to violence, or content that would harm children. Still, YouTube revises the Community Guidelines from time to time to account for new and different content or behavior that YouTube deems unacceptable, unsafe, or unwelcome on its service.

How YouTube Approaches Content Moderation

11. YouTube takes a multi-faceted and nuanced approach to moderating content, working to distinguish those posts that are truly problematic,

³ We communicate our practices to all users through YouTube's Community Guidelines, which are incorporated into our Terms of Service. A user must agree to both in order to create an account and upload materials to YouTube.

those that are borderline, and those which contribute positively to the YouTube community. We have developed a diverse set of moderation tools for use in different circumstances including: age-gating, limiting access to borderline content, appending warnings, posting restrictions, showing information panels, removing video and comments, and suspending and/or terminating an account.

12. Given YouTube's scale, it is not surprising that some users do not always abide by the Community Guidelines—so YouTube enforces them using a variety of methods, including human review and machine learning. We employ an array of remedial actions when enforcing our policies, ranging from required education and warnings, to service-usage penalties such as temporary suspensions of uploading rights and permanent termination of accounts.

13. Moderation can also include affirmatively providing users with information to help them make choices about whether or not to interact with certain kinds of content. There are occasions when it is helpful to provide viewers with additional context about the content they are watching, and we display a variety of information panels that provide users with context on content relating to topics and news prone to misinformation, as well as the publishers of the content themselves. One example is an information panel displayed on videos from a channel owned by a news publisher.⁴ YouTube's information panels have

⁴ *Information panel providing publisher context*, <https://support.google.com/youtube/answer/7630512?hl=en>

been shown billions of times; COVID-19 information panels alone have been shown over 400 billion times.

Algorithms and Machine Learning

14. YouTube uses machine learning—a type of algorithm—to moderate content in two key ways: to proactively identify and flag potentially harmful content uploaded to the site, and to automatically remove content that is identical or substantially similar to violative content that was previously removed. Data inputs are used to train these machine learning systems to identify patterns in content—both the rich media content in videos, as well as textual content like metadata and comments—so our systems can make predictions about new examples to match. Machine learning is well-suited to detecting patterns, which helps us to identify content similar to other content we have already removed, even before it is ever viewed. We also use hashes (or “digital fingerprints”) to automatically identify copies of known violative content before they are ever made available for viewing.⁵ These systems automatically remove content only where there is high confidence of a policy violation—e.g., spam—and flag the rest for human review. Algorithmic detection identifies the vast majority of content deemed to violate the Community Guidelines.

⁵ In Q1 2021, 27.8% of removed videos were taken down before a single view. A further 39% of removed videos had between 1 and 10 views. Transparency Report, YouTube Community Guidelines enforcement, https://transparencyreport.google.com/youtube-policy/removals?hl=en&lu=videos_by_views&videos_by_views=detection_sources:ALL

15. Machine learning is critical for content moderation and keeping our users safe. YouTube relies heavily on technology and algorithms to moderate content and cannot feasibly do otherwise, since over 500 hours of video are uploaded to YouTube every single minute of every day. At this massive scale, it would be virtually impossible to remove content that violates our Community Guidelines without the use of algorithmic tools, even with tens of thousands of reviewers watching newly uploaded videos 24 hours a day, 7 days a week. By contrast, improvements in our machine learning algorithms have resulted in a 70% decrease in the amount of views of videos violating our policies, *see* fn.2.

16. In the first quarter of 2021, YouTube removed 9,569,641 videos that violated the Community Guidelines. The vast majority—9,091,315, or 95% of the total removals—were automatically flagged for moderation by YouTube’s algorithms and removed based on human confirmation of a violation. Less than 5%—478,326 videos—were removed based on initial flags by a user or other human flagger. This removal system is highly efficient: the majority of removed videos were removed before accumulating more than 10 views. In Q1 2021, 53% of the videos removed were due to child safety issues.

17. YouTube also removed over 1 billion comments in the first quarter of 2021, 99.4% of which were flagged for moderation by YouTube’s automated

systems. In Q1 2021, 55.4% of those removed comments were due to spam.⁶

18. Our machine learning and human reviewers work hand in hand: machines are effective for scale and volume, whereas human reviewers can evaluate context for more nuanced enforcement of our policies. Once our machine learning systems flag a potentially violative video, human reviewers then remove videos that are violative while non-violative videos remain live. These decisions are in turn used as inputs to improve the accuracy of our automated detection systems so that we are constantly updating and improving the system's ability to identify potentially violative content. In addition, when we introduce a new policy or alter an existing one, it takes our systems time to improve detection rates and begin accurately detecting violative content at scale. Our enforcement of new policies improves quarter over quarter.

19. Given YouTube's scale, we sometimes make mistakes, which is why creators can appeal removal decisions. YouTube generally notifies creators when their video is removed, and we provide a link with instructions on how to appeal the removal decision. If a creator chooses to submit an appeal, the video goes to human review, and the decision is either upheld or reversed. We are transparent about our appeals process. As reported in our most recent Transparency Report, in Q1 2021, creators appealed approximately

⁶ YouTube uses automated systems to identify comments that are likely spam and allows video creators to permit these comments to be left on their videos or reject them.

216,000 videos, or 2% of all videos removed. Of those, more than 66,000 were reinstated.

The Burdens Posed by S.B. 7072

20. The restrictions of S.B. 7072 would fundamentally burden and undermine YouTube’s ability to operate responsibly and enforce its Community Guidelines. The statute has broad definitions of content moderation activities—in categories called “censor,” “deplatform,” “shadow-ban,” and “post-prioritization”—that would, in many cases, directly prevent YouTube from enforcing critical standards designed to prevent the degradation of users’ experiences on that platform and to ensure their safety, including for children. The text allows users to “opt out of post-prioritization and shadow-banning algorithms” and bans the use of those algorithms for posts by or about a political candidate. In other cases, YouTube would face an impossible choice between (1) risking significant liability by moderating content identified to violate its standards or (2) subjecting YouTube’s community to harm by allowing violative content to remain on the site.

The Need for Evolving Content Moderation Policies

21. S.B. 7072’s prohibition on changing rules more than once every 30 days would significantly limit YouTube’s ability to respond in real-time to new and unforeseen trends in dangerous material being uploaded by users, or new legal or regulatory developments. The harms of user-generated content are ever-evolving, and YouTube’s content moderation policies have necessarily had to evolve to address the same. YouTube must be able to react quickly to

promote the safety of its users in changing and emerging contexts. In 2020, YouTube updated its policies related to medical misinformation alone more than ten times, which is in line with historical trends. In 2019, YouTube made over 30 updates to its content moderation policies generally—on average, once every 12 days. The same was true in 2018. Limiting YouTube’s ability to update policies, as S.B. 7072 mandates, means that YouTube would be forced to host unanticipated, dangerous, or objectionable content during those windows where the law prohibits YouTube from making any changes to its content policies.

22. Because of the demonstrated need to prevent emerging harm, YouTube has invested significantly in being able to respond quickly. YouTube’s Intelligence Desk monitors news, social media, and user reports to detect new trends—such as the Tide Pod challenge—so as to address them before they become a larger issue. YouTube has over 100 people working to develop new policies and improve existing ones.

23. YouTube’s judgments evolve over time as social and cultural conditions change or unforeseen threats and challenges arise. For example, after a recent violent military coup in Myanmar, YouTube took action against five existing YouTube channels run by the Myanmar military, terminating the channels to prevent the military from promoting political propaganda.⁷

⁷ Paul Mozur, *YouTube Bans Myanmar Military Channels as Violence Rises*, New York Times (Mar. 11, 2021),

The Importance of Editorial Discretion for YouTube

24. YouTube needs discretion and flexibility when moderating content because it encounters such a high volume and diversity of content. YouTube’s Terms of Service, Community Guidelines and other content-moderation rules include flexible terms that allow YouTube to exercise its judgment about specific uses or pieces of content. Yet S.B. 7072 requires that content moderation must be applied “in a consistent manner” with risk of liability. This requirement would limit and burden YouTube’s discretion to find the right balance between free expression on YouTube and responsibility for fostering a safe community for its users.

25. **EDSA.** Our content policies have an exception for videos that would otherwise be in violation if there is a compelling educational, documentary, scientific, or artistic reason, with visible context, for viewers. YouTube refers to this exception as “EDSA,” which is a critical way to make sure that important speech remains on YouTube, while simultaneously protecting the wider YouTube ecosystem from harmful content.⁸ These decisions depend on a variety of factors impacted by context and requiring nuance, and the

<https://www.nytimes.com/2021/03/05/business/youtube-myanmar.html>

⁸ Michael Grosack, *A look at how we treat educational, documentary, scientific, and artistic content on YouTube* (Sept. 17, 2020), <https://blog.youtube/inside-youtube/look-how-we-treat-educational-documentary-scientific-and-artistic-content-youtube/>

bar varies by video and policy category.⁹ For example, hate speech and encouragement of violence violate our policies, but a documentary about WWII that features speeches from Nazi leaders may be allowed if the documentary provides historical context and does not aim to support the despicable views promoted by the Third Reich.

26. ***Borderline Content.*** Some problematic content, such as certain kinds of misinformation, comes close to violating our Community Guidelines but may not cross the line-what YouTube calls “Borderline Content.” Borderline content is just a fraction of 1% of what is watched on YouTube in the United States. Because such borderline content may be disturbing or otherwise inappropriate for some viewers, YouTube uses algorithms to reduce its availability including disabling features like sharing, commenting, liking, and placing in YouTube’s suggested videos module. After we announced changes in 2019 to our recommendation systems to reduce the spread of borderline content, there was a 70% drop in watchtime on non-subscribed, recommended borderline content in the U.S. that year. Since algorithms help identify and prevent these borderline videos from being suggested to others, S.B. 7072’s restrictions on content moderation algorithms would impair YouTube’s ability to effectively reduce the availability of borderline content on our site.

⁹ Some sensitive or egregiously harmful categories are ineligible, such as child endangerment, footage of deadly violence filmed by the perpetrator, or illegal content.

Consistency and Algorithms

27. The “consistency” requirement would also undermine YouTube’s ability to act quickly to terminate accounts that are clearly seeking to violate our Community Guidelines. When an account uploads content that violates the Community Guidelines, the content is removed and the account generally receives a warning. Subsequent violative content results in a “strike,” which temporarily suspends the account’s ability to upload content. Three strikes within 90 days leads to the account’s termination and deletion of all content uploaded from the account. And in the case of severe abuse (such as predatory behavior, spam, or pornography), YouTube will immediately terminate accounts to protect the YouTube community.

28. The “consistency” requirement would burden YouTube’s decisions to protect its communities from harm by removing violative videos quickly. Attempting to comply would result in a significantly higher proportion of content being available on YouTube that violates the Community Guidelines. As noted above, (*id.* ¶ 19), no content policy enforcement system is perfect, especially at YouTube’s scale. Recent examples illustrate the tension that can arise between accuracy when enforcing content policies and the need to limit potentially harmful content accessible on the site. In response to Covid-19, YouTube took steps to protect the health and safety of our extended workforce and reduced in-office staffing. As a result of reduced human review capacity, YouTube had to choose between limiting enforcement while maintaining a high degree of accuracy, or using automated systems to cast a wider net to remove

potentially harmful content quickly but with less accuracy. YouTube chose the latter, despite the risks that automation would lead to over—enforcement-in other words, removing more content that may not violate our policies for the sake of removing more violative content overall. For certain sensitive policy areas, such as violent extremism and child safety, we accepted a lower level of accuracy to ensure the removal of as many pieces of violative content as possible. This also meant that, in these areas specifically, a higher amount of non-violative content was removed. The decision to over-enforce in these policy areas—out of an abundance of caution—led to a more than 3x increase in removals of content that our systems suspected was tied to violent extremism or potentially harmful to children. These included dares, challenges, or other posted content that may endanger minors.

29. For similar reasons, S.B. 7072’s provisions banning the use of certain algorithms (categories named “post-prioritization” and “shadow ban”) as to political candidates, and allowing all users to opt out of those algorithms, would greatly limit YouTube’s ability to utilize machine learning for content moderation purposes. Such limitations on algorithmic enforcement would necessarily result in more views of violative and harmful content on the site while awaiting human review. Over 95% of violative content is currently flagged by algorithms. It would be impracticable for human review to keep pace with 500 hours of video uploaded every single minute of every day.

Other Impact

30. **Age Gating, Restricted Mode, and YouTube Kids.** YouTube provides features, tools, and content-gated offerings to content-sensitive users and organizations (such as libraries and families with young children). For example, YouTube uses age-gating, a process whereby certain content—such as material featuring sexual situations or graphic depictions of violence—is made inaccessible to users under age 18. YouTube also has a feature called Restricted Mode, an optional setting that sensitive users can choose to use to limit the content they see on YouTube. It is also used by libraries, schools, and public institutions. Videos containing potentially adult content like drugs or alcohol use, sexual situations, or violence are not shown to users in Restricted Mode.¹⁰ YouTube also produces an app called YouTube Kids, which includes only videos that are determined to be suitable for children through a combination of human and algorithmic review, and which blocks access to comments more suitable for adults. Over 35 million weekly viewers in more than 100 countries use YouTube Kids. S.B. 7072 would force Restricted Mode and YouTube Kids to display all content posted by any Florida political candidate, and all content (short of legal obscenity) posted by a “journalistic enterprise,” even if that content would otherwise be violative of YouTube’s policies, or is content that YouTube believes in its judgment to be

¹⁰ *Your content & Restricted Mode*, <https://support.google.com/youtube/answer/7354993/your-content-and-restricted-mode#guidelines&zippy=%2Cwill-my-content-show-if-my-viewers-have-restricted-mode-turned-on>

inappropriate for those audiences. Similarly, YouTube would have to stop age-gating such content. These changes would contradict the purpose of these features and products to give parents options for increased safety, forcing YouTube to make age-inappropriate content available to minors and other users in Restricted Mode.

31. **Unclear User Scope.** YouTube would be unable to determine with confidence whether an account holder is subject to the Act as either (1) a Florida resident or (2) someone claiming Florida domicile (collectively, “Floridian”). A user can create a YouTube account without providing a physical address. While IP geolocation offers clues as to a user’s location, those signals can be obscured by known measures, such as Virtual Private Networks (“VPNs”). And, a user’s location does not identify users who are located out of state but claim domicile in Florida. To prevent liability, YouTube would have to lower its moderation standards broadly for any video and comment that might have been posted by a Floridian subject to the Act, even if the content was neither uploaded nor posted by a Floridian.

32. **Notices.** While YouTube already alerts users when their videos or comments are removed for violating the Community Guidelines or generally when their account is suspended, YouTube does not currently provide notice in every instance where required by S.B. 7072, e.g., Section 4(1)(b).¹¹ One

¹¹ “(b) ‘censor’ includes any action taken by a social media platform to delete, regulate, restrict, edit, alter, inhibit the publication or republication of, suspend a right to post, remove, or post an addendum to any content or material posted by a user.

example is showing information panels, and just one panel, YouTube’s COVID-19 information panel, has been shown over 400 billion times. The complexity of complying at this scale has a further component, since S.B. 7072 mandates that notices provide several “thorough” explanations.

33. **“Political Candidates.”** S.B. 7072’s requirement not to “deplatform” political candidates, nor to apply algorithms for “post-prioritization” and “shadow banning” to content by or about candidates, would preclude YouTube from using Community Guidelines or content moderation efforts to remove harmful content posted by such candidates. It would create a special category of users who, unlike every other YouTube user, could post violative materials harming the YouTube community without consequence. Such a category would contradict YouTube’s curatorial judgment to enforce our content policies regardless of the speaker, political viewpoint, their background, their position, or their affiliations. There is also no clear way for YouTube’s search results to comply with S.B. 7072’s requirement not to apply “post-prioritization” algorithms to content about political candidates. Simply put, returning any search results requires the use of “algorithms” whose actions would fall into the broad statutory definition of “post-prioritization.”

34. **“Journalistic Enterprises.”** The prohibition against using any moderation action—including those purely by human reviewer without the assistance of

The term also includes actions to inhibit the ability of a user to be viewable by or to interact with another user of the social media platform.”

algorithms—regarding content posted by “journalistic enterprises” would preclude any enforcement of the Community Guidelines as to those entities. As noted above, objectionable content uploaded by a “journalistic enterprise” would have to be shown in Restricted Mode browsing and in YouTube Kids, greatly diminishing the value of these offerings for users. The prohibition would also require YouTube to create another new category of speakers on YouTube that are immune to the same Community Guidelines applicable to everyone else. And YouTube currently discloses government or public funding for news publishers for over a thousand channels via information panels alongside their videos. YouTube would not know which entities might qualify as a covered “journalistic enterprise” under S.B. 7072, so YouTube would risk significant liability when enforcing its Community Guidelines against entities that may so qualify.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge. Executed on this 2nd day of June, 2021 in Washington, D.C.

[handwritten: signature]

Alexandra Veitch

**Declaration of Neil Potts for Facebook, Inc.
(June 3, 2021)**

I, Neil Potts, declare as follows:

1. I am currently a Vice President, Trust & Safety Policy, at Facebook, Inc. (“Facebook”), and have been employed there since April 2016. I am over the age of 18 years and maintain an office at 1601 Willow Road, in Menlo Park, California. I make this Declaration in support of Plaintiffs’ Motion for Preliminary Injunction in the above-captioned matter. I have personal knowledge of the matters set forth in this Declaration and if called as a witness, I could and would testify under oath as follows.

2. In my role at Facebook, I am familiar with Facebook’s content policies and practices, including Facebook’s Terms of Service and Community Standards.

Background

3. Facebook was founded in 2004. Its products enable more than 3 billion people around the world to share ideas, offer support, and discuss important issues, including politics, public health, and social issues. Users of Facebook’s products share over a billion stories and over 100 billion messages, every day.

4. On Facebook, people can share status updates, photos, videos, and links (among other types of content) with family and friends. People can also follow Pages managed by businesses, organizations, and public figures (such as politicians or celebrities) that share content, as well as join Groups or attend Events that relate to topics of interest to them. These

are some of the many ways in which people can share and interact with others on Facebook.

5. The average person could be flooded with millions of posts each day from people all over the world, but most people do not have time (or interest) to look at all of their available content. As a result, Facebook has invested significant resources to develop systems to “rank” content that users are most likely to find relevant and meaningful. The rankings are unique to each user and are informed by their individual choices and actions (both historical and real-time).

6. Facebook displays ranked content in News Feed, a feature it launched in 2006. News Feed uses algorithms to show a constantly updated and personalized list of stories—for example, vacation pictures from friends, videos from family gatherings, articles from local or national news outlets, and much more.

Content Moderation

7. Facebook’s mission is to empower people to build community and bring the world closer together.

8. Facebook has invested substantial resources to maintain a safe experience for its community. People will not use Facebook if they do not feel safe. Similarly, advertisers will not advertise on Facebook if they believe it is not effective at removing harmful or offensive content. Users and advertisers have stopped using Facebook for this very reason.

9. Facebook has long recognized the importance of giving its users a voice and allowing debate on topics about which people may disagree. But content that

harasses, threatens, seeks to defraud, or violates the rights of other users makes the community less safe and/or puts people at risk of harm.

10. Facebook has over many years developed robust policies and practices relating to content moderation. Facebook continues to refine these policies and practices based on its experience, evolving societal norms, extraordinary current events, and input from external stakeholders and experts (among others). Moderating speech often involves difficult judgment calls—a task further complicated by the sheer volume of content appearing online, global reach of Facebook’s products, and absence of vital context typically accompanying speech in the offline world.

11. Facebook’s publicly available Terms of Service¹ (to which people must agree to use the service) and Community Standards² (which people agree not to violate) describe what content is acceptable. Facebook has had terms and policies like these in place for many years, though the specific requirements have evolved.

12. The Terms of Service prohibit users from doing or sharing anything that is “unlawful, misleading, discriminatory or fraudulent” or that “infringes or violates someone else’s rights, including their intellectual property rights.”

13. The Community Standards provide details about what content is not allowed on Facebook. The

¹ Facebook’s Terms of Service is available at: <https://www.facebook.com/terms.php>.

² Facebook’s Terms of Service is available at: <https://www.facebook.com/communitystandards/>.

Community Standards are organized into five categories: (i) violence and criminal behavior, (ii) safety, (iii) objectionable content, (iv) integrity and authenticity, and (v) respecting intellectual property. Within each of those five categories, the Community Standards identify additional subcategories, such as “adult nudity and sexual activity” or “hate speech.” Users can see Facebook’s policy rationale for prohibiting each category of content and examples. For example, the Community Standards explain that “hate speech” is not allowed on Facebook. Notwithstanding, Facebook recognizes that people sometimes share content that includes someone else’s hate speech to condemn it or raise awareness. In other cases, speech that might otherwise violate our standards can be used self-referentially or in an empowering way. Facebook’s policies are designed to allow room for these types of speech. The Community Standards also include information about when content may be accompanied by a sensitivity warning.

14. Facebook relies on both automated and human review to enforce its terms and policies at scale. For many categories, Facebook’s artificial intelligence systems find more than 90% of the content it removes before anyone reports it. Facebook also has over 35,000 people working on safety and security. Teams across the company work together to, for example, prevent millions of attempts to create fake Facebook accounts and remove million pieces of content containing adult nudity, sexual activity, bullying and harassment, child nudity and sexual exploitation of children, and hate speech, content shared by terrorist and organized hate groups, and content that violates intellectual property rights. Facebook publicly shares

information about its enforcement efforts in its Transparency Center.³

15. Facebook regularly publishes updates about its efforts to remove harmful content and protect its community. For example, in September 2018, Facebook published an article on how it uses artificial intelligence on Facebook to help suicide prevention efforts.⁴ In October 2019, Facebook published an article about the substantial efforts it had undertaken to protect against efforts to interfere with the 2020 U.S. election.⁵ In June 2020, Facebook published an article related to labels it would add to content and ads from entities believed to be state-controlled media; in February 2021, Facebook announced it would add informational labels to some posts related to climate change.⁶ In May 2021, Facebook published a threat report on efforts it is taking to protect against influence operations aimed at manipulating or corrupting public debate on Facebook by governments, commercial entities, politicians, and conspiracy and fringe political groups.⁷

³ Facebook's Transparency Center is available at: <https://transparency.fb.com/data/>.

⁴ <https://about.fb.com/news/2018/09/inside-feed-suicide-prevention-and-ai/>.

⁵ <https://about.fb.com/news/2019/10/update-on-election-integrity-efforts/>.

⁶ <https://about.fb.com/news/2020/06/labeling-state-controlled-media/>; <https://about.fb.com/news/2021/02/connecting-people-with-credible-climate-change-information/>.

⁷ <https://about.fb.com/news/2021/05/influence-operations-threat-report/>.

16. Facebook has had to implement changes to its policies and practices in response to extraordinary situations. For example, following Myanmar’s military coup in February 2021, Facebook reduced the distribution of misinformation shared by the Myanmar military but also protected content, including political speech, that allowed “the people of Myanmar to express themselves.”⁸ Facebook also revised its policies as information emerged during the COVID-19 pandemic.⁹

17. Facebook has an appeals process for users to request review of most of its enforcement decisions. If Facebook determines it made an incorrect judgment, it will restore the content. In May 2020, Facebook established an external Oversight Board to review some of the most difficult enforcement decisions; the Oversight Board’s decisions are binding on Facebook. Facebook also relies on independent, third-party fact-checkers to help identify and review certain types of content. If a fact-checker determines a particular post contains false information, Facebook will label the content and reduce its distribution.

18. Facebook also has tools that enable users to curate their own News Feeds—for example, choosing a list of “Favorite” friends and pages to feature, and blocking content from certain users or Pages or reporting content they believe is inappropriate. Facebook has rolled out other features in response to feedback, such as the ability to turn off a counter

⁸ <https://about.fb.com/news/2021/02/an-update-on-myanmar/>.

⁹ <https://about.fb.com/news/2020/04/covid-19-misinfo-update/>.

displaying how many people have “liked” a post or photo.

19. Facebook has implemented a number of changes over the years to the way it ranks and prioritizes content in News Feed. For example, in January 2018, Facebook announced changes to prioritize content from friends, family, and Groups in News Feed. Facebook recognized this change would likely decrease the amount of time users spent on Facebook, which it did, but believed it would be good for the community and its business over the long term. Facebook also announced recently that users were requesting to see less political content in their News Feeds and so it was studying ways to reduce the prominence of such posts.¹⁰

S.B. 7072’s Impact on Facebook

20. I understand that on or around May 25, 2021, the State of Florida enacted S.B. 7072, 2021 Leg. (Fla. 2021) (the “Act”), which is set to go into effect on July 1, 2021. I understand Facebook’s products will be subject to the Act.

21. The Act will significantly undermine, if not outright prevent, Facebook from enforcing its content policies and will require substantial and burdensome changes to the design and operation of its products. I will describe some examples below.

22. I understand the Act will severely restrict Facebook’s ability to enforce its policies against people or entities that qualify as “journalistic enterprises.” To the extent Facebook can know who even qualifies, this

¹⁰ <https://about.fb.com/news/2021/02/reducing-political-content-in-news-feed/>.

requirement apparently will force Facebook to carry content posted by any entity meeting this definition, regardless of whether they post hate speech, or sexually explicit or graphic content. Nor apparently could Facebook remove content from a “journalistic enterprise” engaged in U.S. election interference. This provision also seemingly prevents Facebook from adding labels to content from media companies Facebook believes are controlled by foreign governments.

23. I understand the Act will prohibit services like Face book from terminating or suspending the accounts of “political candidates,” no matter how egregious or illegal the candidate’s conduct. Likewise, Facebook apparently could not remove a candidate’s account even if she or he were believed to be a foreign operative interfering in U.S. elections.

24. Further, I understand the Act will prevent Facebook from enforcing its policies against content anyone might post “about” such candidates. This provision apparently would prevent Facebook from removing hate speech or violent threats directed at a candidate and labelling content believed to be an AI-modified video, or a “deep fake.”

25. I understand the Act mandates enforcement of content policies in an undefined “consistent manner.” I understand Facebook could face liability if, for example, it removed or reduced the distribution of content posted by one user, but not similar content posted by another user, regardless of where such users resided and/or shared the content and regardless of vital context. Because Facebook users reside throughout the world and can share content with

anyone, and Facebook enforces its policies globally, the Act effectively will impact more than 2 billion Facebook users around the world.

26. Furthermore, given the sheer volume of content posted on Facebook every day, and because the service is personalized based on what individual users want to see, it will be near impossible for Facebook to treat similar content “consistently” in every instance (even though it endeavors to do so). Facebook will face the impossible choice of ceasing enforcement of its policies and no longer personalizing the product experience, or incurring potentially significant liability from treating allegedly similar content differently, even if inadvertently. Facebook apparently will be precluded from shielding teens from content containing violence or nudity. And Facebook will be forced to consider extraordinary changes to its algorithms and other ranking systems, to mitigate the risk that it is charged with treating similar content “inconsistently.”

27. I understand the Act will restrict Facebook’s ability to label content, given the potential charge that labels are applied “inconsistently.” Facebook effectively will be precluded from warning users, including teens, before viewing graphically-violent content or about content independent fact-checkers have determined is false.

28. I understand the Act will impose disclosure obligations every time Facebook removes content that violates its policies or, potentially, when Facebook prioritizes content (which happens every time a user loads her or his News Feed since our product experiences are personalized). Given the

extraordinary scale of Facebook's systems and enforcement efforts, as described above and in Facebook's transparency reports, this provision would impose an enormous burden on Facebook, to the extent compliance is even feasible. The Act would also give bad actors a roadmap for evading Facebook's enforcement efforts and make it harder to keep harmful content off Facebook.

29. I understand the Act requires Facebook to "categorize algorithms used for post-prioritization and shadow banning." Though the Act does not explain what information is sufficient to satisfy these requirements, it seemingly requires Facebook to disclose non-public, sensitive information regarding how its algorithms and internal processes operate, which would cause substantial competitive harm to Facebook.

30. In short, if the Act's restrictions go into effect, it will, among other things, force Facebook to display, arrange, and prioritize content it would otherwise remove, restrict, or arrange differently; it will chill Facebook's own speech; it will lead some users and advertisers to use Facebook less or stop use entirely; it will force Facebook to substantially modify the design and operation of its products; it will force Facebook to disclose highly sensitive, business confidential information; and it will impose excessive burdens on Facebook to notify users every time their content is removed, restricted, or labeled.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

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Executed on this 3rd day of June, 2021, in Fall
Church, Virginia.

[handwritten: signature]

Neil Potts

**Declaration of Stacie D. Rumenap for Stop
Child Predators (June 2, 2021)**

I, Stacie D. Rumenap, declare as follows:

1. I am President at Stop Child Predators (SCP), an organization founded in 2005, to combat the sexual exploitation of children and protect the rights of crime victims nationwide. I have led SCP since 2006, having worked in all 50 states—including spearheading the passage in 46 states of Jessica’s Law, which originated in Florida—on laws and educational efforts to bring together a team of policy experts, law enforcement officers, community leaders, and parents to launch state and federal campaigns to inform lawmakers and the public about policy changes that will protect America’s children from sexual predators both online and in the real world.

2. We work with parents, lawmakers, and technology companies to better educate families, schools, and lawmakers about the potential risks children face online, including grooming, luring, bullying, child pornography, and other harms to children.

3. We also launched the Stop Internet Predators (SIP) initiative in 2008 because sex offender management and child safety must be addressed both in the real world and online. SIP recognizes that child predators often use online social-networking platforms to recruit child sex-trafficking victims, to groom children for sexual exploitation, and to sexually victimize children in general. Because previously convicted and registered sex offenders are the most identifiable and likely class of predators to target children online, we focus our policy efforts on keeping

social media and the Internet more broadly safe for children.

4. To do this, we work with leading online platforms, including Plaintiffs' members, to develop and enforce content-moderation and safety policies that prioritize children's safety while still promoting free speech. Our goal is to help these businesses develop tools and mechanisms to identify illegal content—Child Sexual Abuse Material—as soon as possible so that children are not exposed to abuse.

5. Unfortunately, CSAM is prolific on the Internet. In 2018 alone, leading social media platforms reported over 45 million photos and videos of children being sexually abused.¹ In fact, there are so many reports of child exploitation that FBI and Department of Justice officials said it would require assigning cases to every FBI agent. The government does not presently have the resources to do that.²

6. The government's limited resources underscore the critical importance of private moderation and filtering technologies. In order to detect CSAM, as well as to report it to authorities, online companies must develop and use advanced algorithms and other screening tools.

7. If Florida's S.B. 7072, 2021 Leg. (Fla. 2021) (the "Act") is allowed to go into effect on July 1, 2021, we

¹ Katie Benner & Mike Isaac, *Child-Welfare Activists Attack Facebook Over Encryption Plans*, N.Y. Times (Feb. 5, 2020), <https://www.nytimes.com/2020/02/05/technology/facebook-encryption-child-exploitation.html>.

² *Id.*

are concerned that it would be harder to remove objectionable content online.

8. The online platforms we work with remove millions of pieces of content that would enable child predation and harm children. We have grave concerns that the Act will impede their ability to remove such content and undermine my group's efforts to stop child predation. Not only does the Act require online platforms to host content—legal or not—from ‘journalistic enterprises,’ it also prohibits them from using algorithms in ways that could flag, remove, restrict, or demote harmful content, including CSAM.

9. Equally concerning is the Act's limit on the number of changes online platforms can make to their algorithms each month. Under the Act, platforms may not change their algorithms more than once every 30 days. This restriction all but guarantees that the online platforms will be hamstrung in responding to new threats to children's online safety and to new methods of distributing or soliciting photos and videos of child sexual abuse. It will also hinder their ability to adapt to predators' schemes. As history and experience have shown, predators continue to find a way around existing safeguards, requiring us, the platforms, and the public to remain ever vigilant.

10. Similarly, the Act's disclosure requirements give child predators a roadmap to escape detection. If they know how algorithms and content moderation work in detail, they will have an even easier time preying on vulnerable children.

11. Likewise, the Act's onerous obligations for account and content removal will likely cause online platforms to moderate less aggressively. That is

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particularly concerning at a time when we need even more moderation and even more filtering.

12. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 2nd day of June, 2021 at 3 :00 pm.

[handwritten: signature]

Stacie D. Rumenap

**Declaration of Servando Esparza for
Technology Network (June 3, 2021)**

I, Servando Esparza, declare as follows:

1. I am the Executive Director of Texas and the Southeast at TechNet. As TechNet's executive director for Texas and the Southeast, I develop and manage TechNet operations in the Southeast region of the United States, coordinating with TechNet members, TechNet's vice president of state policy and government relations, and other TechNet staff. I work closely, in a bipartisan fashion, with state legislators and their senior staff, policymakers in the executive branch of state governments and at state regulatory bodies, and TechNet members to lobby and advocate on behalf of TechNet's agenda before state legislatures.

2. Technology Network (dba 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 more than three and a half 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 is a 501(C)(6) trade association based in Washington, DC. TechNet represents its members at the state and federal levels of government by advocating for or against legislation that affects its members.

3. TechNet’s work is guided by our federal and state policy principles, which cover a broad set of policy issues. At the state level, these include privacy and security, energy, education and workforce development, financial technology, diversity, and inclusion, new technologies and the future of work, automated vehicles, procurement, smart infrastructure, and taxation. TechNet’s policy principles are decided by TechNet members on an annual basis and outlined on TechNet’s website¹. TechNet represents more than 80 companies including Facebook, Google, Amazon, eBay, Apple, AT&T, DoorDash, Dell, HP, Lyft, Uber, and many others. Social media platforms as defined in S.B. 7072, 2021 Leg. (Fla. 2021) (“the Act”) would include several TechNet members including Facebook, Google, and Amazon (“affected TechNet members”).

4. Social media platforms understand that they have an obligation to remove objectionable content, otherwise their users will be subjected to dangers like images of child endangerment, financial scams, spam, and other harmful links. Companies take this responsibility seriously, removing harmful content in an unbiased manner while keeping their services open to a broad range of ideas. In the overwhelming number of cases, removal of offensive content is accomplished as intended. However, the sheer volume of content—hundreds of millions of posts per day—ensures that both artificial intelligence and human reviewers at companies cannot get it right 100 percent of the time. Billions of transactions, after all, will inevitably lead to errors. The Act will allow users to sue social media

¹ See www.technet.org.

platforms merely for enforcing their content policies—standards that are laid out in detail on the platforms’ websites.

5. The Act perversely creates an incentive for affected TechNet members to not prohibit and remove any objectionable content on their social media platforms in order to avoid being accused of violating F.S. § 501.2041(h)(2)(d) and being sued by a user. Florida Statutes § 501.2041(h)(2)(d) would prohibit affected TechNet members from taking any moderation action (which the Act includes in broadly defined categories named “censor” or “shadow ban”) against a user’s content or material or “deplatforming” a user from the social media platform except if the material is “obscene” as defined by F.S. §847.001. Content including threatening or intimidating messages, conspiracy theories, anti-vaccine misinformation, Holocaust denial content and content promoting white supremacy do not fall under the definition of obscene and thus could not be without violating the Act. This would cause real-world, irreversible harm in Florida’s communities and beyond.

6. Florida Statutes §106.072(d)(2) prohibits affected TechNet members from deplatforming a candidate for state office, therefore providing preferential treatment only for candidates for office even if a candidate blatantly violates the platform’s terms of service or posting guidelines. The Act would prevent social media companies from removing content by candidates even if that content was obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable. For instance, a

candidate for office in Florida could post conspiracy theories and promote racist content that blatantly violate affected TechNet member's content guidelines, however the Act prevents an affected TechNet member from either removing content from that candidate or removing the candidate from the platform.

7. Content moderation is at the core of the business models for social media platforms because it is critical for their business that the platforms are safe and family- and workplace-friendly. If affected TechNet members are unable to maintain a family- and workplace-friendly platform, it will affect their ability to attract advertisers who will not want to be associated with objectionable content. Additionally, users may decide to leave the platform if objectionable content that they report is not removed. Losing users and advertisers will have a negative financial impact on affected TechNet members.

8. The Act runs counter to the American free speech law governing content liability on the internet, Section 230 of the federal Communications Decency Act ("Section 230"). Since its enactment in 1996, Section 230's two key provisions have empowered online intermediaries to remove harmful content while providing them with the immunity that commonly exists in other real world offline contexts—for example, not holding a bookseller liable for libelous books, but rather the individual who committed the libel. Due to Section 230, American companies have the right to curate information on their service to meet the needs and expectations of their customers. Section 230 has supported innovation across the internet

while also encouraging companies to be “Good Samaritans” by allowing them to “to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”

9. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 3rd day of June, 2021 in Austin, Texas.

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Servando Esparza

Executive Director, Texas &
Southeast

TechNet

**Declaration of Corinne Pavlovic for Etsy, Inc.
(June 3, 2021)**

I, Corinne Pavlovic, declare as follows:

1. I am Corinne Pavlovic and serve as Vice President for Trust & Safety at Etsy, Inc. (“Etsy”). I have worked at Etsy for over ten years, and I have served in several roles focusing on leading our Trust & Safety programs. As VP for Trust & Safety, I oversee Etsy’s team that protects the integrity of Etsy’s platform. The team guards our community from risks, such as fraud, prohibited and unlawful items, and taking appropriate action when someone fails to comply with our policies and applicable law.

2. Etsy, Inc. (“Etsy”) operates www.etsy.com and the Etsy app, a global marketplace where independent sellers of unique and creative goods and buyers around the world connect. Etsy is an online forum that enables users to buy and sell a wide variety of “special, extraordinary items, from unique handcrafted pieces to vintage treasures”¹ Many goods sold on Etsy are one-of-a-kind items created by individuals. According to Etsy’s 2019 Global Seller Census that surveyed almost 7,000 Etsy sellers from six core geographies, 80% of Etsy sellers are small businesses of one and 97% operate out of their homes, and 54% consider themselves part of the independent workforce.² In addition, per Etsy’s 2020 10-K filed with the Securities and Exchange Commission, 87% identify as women, 97% operate out of their homes, and 65% started their

¹ <https://www.etsy.com/about?ref=ftr> (“About Etsy”).

² https://extfiles.etsy.com/advocacv/Etsy_GlobalSellerCensus_4.2019.pdf (“2019 Global Census.”)

Etsy shop as a way to supplement income.³ Etsy sellers range from those who rely on Etsy as their principal income and those who use it to engage their creative talents and supplement their income.

3. Our website explains our “mission to keep human connection at the heart of commerce” by empowering a large community of sellers (many of them individuals) to “turn their ideas into successful businesses.”⁴ Our platform connects these small businesses with “millions of buyers looking for an alternative” to mass-produced items—“something special with a human touch.”⁵ Our sellers include designers and “makers” who “are literally making their items with their own hands (or tools).”⁶

4. Individuals who seek to sell an item may post it in the Etsy online marketplace for a flat 20 cent fee.⁷ Etsy also offers additional optional services, such as on-site advertising services, which enable Etsy sellers to bid for prominent placement of their listings alongside search results.⁸

5. Etsy (1) is an incorporated business entity, (2) doing business in Florida, (3) that permits users to post or upload content, and (4) it had revenues in

³ <https://investors.etsy.com/financial/sec-filings/default.aspx> (“Etsy 2020 10-K”).

⁴ See About Etsy.

⁵ *Id.*

⁶ <https://www.etsy.com/legal/handmade/?ref=list> (“Handmade Policy”).

⁷ <https://www.etsy.com/legal/fees/> (“Fees and Payments Policy”).

⁸ <https://www.etsy.com/legal/advertising/> (“Advertising and Marketing Policy”).

excess of \$100 million in 2020 and anticipates revenues in excess of that amount in 2021.

6. Generally, for a seller to list an item on Etsy, it must meet Etsy's Handmade Policy, Vintage Policy or be a craft supply.⁹ In addition, via Etsy's Prohibited Items Policy, Etsy prohibits certain types of items from our platform because they are inconsistent with Etsy's values and "the spirit of Etsy," including items that are high risk, potentially harmful to our members, or unlawful.¹⁰ At Etsy, we have a "zero tolerance policy for prohibited items, particularly those that promote, support or glorify hatred, those that promote, support or glorify violence, or are unlawful." Any sellers deemed by Etsy to have violated this policy are subject to Etsy's Terms of Use and Seller Policy, and may receive a warning, item takedowns, immediate account suspension or termination.¹¹

7. Etsy's Prohibited Items Policy provides rules and guidance for sellers, explaining, for example, the types of items that are not permitted in the following categories:

- a. "Alcohol, Tobacco, Drugs, Drug Paraphernalia, and Medical Drugs;"
- b. "Animal Products and Human Remains;"

⁹ See Handmade Policy, <https://www.etsv.com/legal/policy/vintage-items-on-etsy/242665563649> ("Vintage Policy"), and <https://www.etsy.com/legal/policy/craft-supplies/239327031264> ("Craft Supplies Policy.")

¹⁰ <https://www.etsy.com/legal/prohibited> ("Prohibited Items Policy.")

¹¹ <https://www.etsy.com/legal/terms-of-use> ("Terms of Use.")

- c. “Dangerous Items: Hazardous Materials, Recalled Items, and Weapons;”
- d. “Hate Items: Items that Promote, Support, or Glorify Hatred;”
- e. “Illegal Items, Items Promoting Illegal Activity, and Highly Regulated Items;”
- f. “Internationally Regulated Items;”
- g. “Pornography and Mature Content;” and
- h. “Violent Items: Items that Promote, Support, or Glorify Violence.”¹²

8. Per Etsy’s 2020 Transparency Report, Etsy received more than 4 million flags on content that potentially violated our policies, including the Prohibited Items Policy.¹³ We will not post content such as, for example: (1) items that promote, support or glorify hatred toward people or otherwise demean people based upon: race, ethnicity, national origin, religion, gender, gender identity, disability, or sexual orientation; (2) imitation firearms that look real, or are prohibited by law; (3) “items that support or commemorate current or historical hate groups” such as “Nazi or Neo-Nazi groups, Ku Klux Klan (KKK) groups, white supremacist groups, misogynist groups, or groups that advocate anti-gay, antiimmigrant, or Holocaust denial agendas”; (4) pornography; and (5) “[i]tems that glorify human suffering or tragedies, including items that commemorate or honor serial killers ... exploit natural disasters or human tragedies

¹² See Prohibited Items Policy.

¹³ See https://storage.googleapis.com/etsy-extfiles-prod/Etsy_2020_Transparency_Report.pdf (“2020 Transparency Report.”)

... encourage, glorify, or celebrate acts of violence against individual groups ... encourage self-mutilation, starvation, or other self-harm.”¹⁴ Some rules are based on applicable laws and regulations in the US and worldwide. In many cases they are editorial judgments based on our policies, standards, and values. As our Prohibited Items Policy notes:

Policy decisions are complex. We consider many different and often divergent factors before coming to a decision about what is best for our community. Because we are a creative community, we err on the side of freedom of expression. We also tend to allow items that have educational, historical, or artistic value, but we know that even those items are subject to a variety of valid and sometimes conflicting interpretations and emotional responses.¹⁵

9. If enacted, the Act would force Etsy to host content that would violate these policies, standards, and values, including potentially unlawful content. As a simple example, if Etsy were required to allow listings that were not within our generally applicable Handmade, Vintage or Craft Supplies Policies, just because they were from certain individuals (like a selected subset of politicians and journalists), it would interfere with the core mission of the platform, let alone Etsy’s editorial judgement and ability to moderate its marketplace. More crucially, it would be anathema to our policies and values if Etsy was forced to allow an individual to post, for example, an entire

¹⁴ See Prohibited Items Policy.

¹⁵ *Id.*

storefront of neo-Nazi memorabilia because they fell into a statutory exception under the Act.

10. The Act would delay, or prohibit outright, Esty from taking a wide range of moderation actions to further our policies, standards, and values and decline to open our private platform to prohibited items such as those “that support or commemorate current or historical hate groups” including “Nazi or Neo-Nazi groups, Ku Klux Klan ... groups, [and] white supremacist” and anti-Semitic groups.

11. For example, the Act would flatly prohibit us from “tak[ing] any action” that involves (among other things) “restrict[ing], edit[ing], alter[ing], [or] inhibit[ing] the publication of ... any content or material posted by a user” who meets the definition of a “journalistic enterprise.” Act § 4 (adding F.S. § 501.2041(2)(j)); *see also id.* (adding F.S. § 501.2041(1)(b) (defining “censor”). Given the sweepingly broad and vague definition of “journalistic enterprise,”¹⁶ this moderation restriction could require us to open our private service to offer for sale items from any group that meets the minimum size or audience requirements of the law, and even if well outside our platform’s mission, such as even racist and white supremacist organizations seeking to disseminate Nazi memorabilia; or terrorist groups seeking to peddle propaganda. Moreover, it is unclear

¹⁶ Fl. Stat. § 501.2041(1)(d) (defining “journalistic enterprise” to include entities doing business in Florida that “[p]ublishes in excess of 100,000 words available online with at least 50,000 paid subscribers or 100,000 monthly active users” or “[p]ublishes 100 hours of audio or video available online with at least 100 million viewers annually”).

under the Act whether Etsy could take action against those enterprises if they are, for example, attempting fraud schemes against our community.

12. Further, the Act could not only compel Etsy to host hateful and highly offensive content and limit its ability to protect its community from misconduct, but also give such content and potential misconduct preferential treatment (depending on the poster), thereby compelling us to effectively advertise this content. This would run counter to our mission and values, undermine our editorial decision making and could interfere with our ability to police and protect our community.

13. The Act would also limit our ability to curate and organize items in a manner that is most helpful to prospective buyers. This could drastically alter the nature of our service, severely harming our users' experience. For example, beyond being forced to include content not relevant to the Etsy community, the Act could force Etsy to allow sellers to "opt out" of content moderation in a way that deprives us of our ability to use modern tools (algorithms) to sort and curate content, so users can quickly and easily find what they're looking for. Act, § 4 (adding § 501.2041(2)(f)(2)). Under the Act's mandate, by contrast, a prospective seller could insist that Etsy "allow sequential or chronological posts and content," *id.*, which makes little sense for a marketplace of more than ninety million diverse items. It would make our service less useable for our community and interfere with Etsy's mission to keep commerce human, all for little or no cognizable benefit. The harms to Etsy, its buyers and its sellers could be irreparable.

14. The Act could also inflict serious harms in other ways. We would be hamstrung in our ability to change our standards and policies regarding objectionable, offensive, dangerous, or unlawful material more than once every thirty days. Act, § 4 (*Id.* (adding § 501.2041(2)(c)). This would prevent us from swiftly responding to new trends in the marketplace, a new law or judicial ruling, or regulatory requests from Federal and state agencies (such as attempted sales of counterfeit good, responding to bad actors taking advantage of a fast-moving news story, or sales of contraband).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 3rd day of June, 2021 at [handwritten: Hudson, NY].

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Corinne Pavlovic
VP, Trust & Safety
Etsy, Inc.

Facebook Terms of Service (Oct. 22, 2020)

Welcome to Facebook!

Facebook builds technologies and services that enable people to connect with each other, build communities, and grow businesses. These Terms govern your use of Facebook, Messenger, and the other products, features, apps, services, technologies, and software we offer (the [Facebook Products](#) or [Products](#)), except where we expressly state that separate terms (and not these) apply. These Products are provided to you by Facebook, Inc.

We don't charge you to use Facebook or the other products and services covered by these Terms. Instead, businesses and organizations pay us to show you ads for their products and services. By using our Products, you agree that we can show you ads that we think will be relevant to you and your interests. We use your personal data to help determine which ads to show you.

We don't sell your personal data to advertisers, and we don't share information that directly identifies you (such as your name, email address or other contact information) with advertisers unless you give us specific permission. Instead, advertisers can tell us things like the kind of audience they want to see their ads, and we show those ads to people who may be interested. We provide advertisers with reports about the performance of their ads that help them understand how people are interacting with their content. See Section 2 below to learn more.

Our [Data Policy](#) explains how we collect and use your personal data to determine some of the ads you see and provide all of the other services described

below. You can also go to your [settings](#) at any time to review the privacy choices you have about how we use your data.

1. The services we provide

Our mission is to give people the power to build community and bring the world closer together. To help advance this mission, we provide the Products and services described below to you:

Provide a personalized experience for you:

Your experience on Facebook is unlike anyone else's: from the posts, stories, events, ads, and other content you see in News Feed or our video platform to the Pages you follow and other features you might use, such as Trending, Marketplace, and search. We use the data we have - for example, about the connections you make, the choices and settings you select, and what you share and do on and off our Products - to personalize your experience.

Connect you with people and organizations you care about:

We help you find and connect with people, groups, businesses, organizations, and others that matter to you across the Facebook Products you use. We use the data we have to make suggestions for you and others—for example, groups to join, events to attend, Pages to follow or send a message to, shows to watch, and people you may want to become friends with. Stronger ties make for better

communities, and we believe our services are most useful when people are connected to people, groups, and organizations they care about.

Empower you to express yourself and communicate about what matters to you:

There are many ways to express yourself on Facebook and to communicate with friends, family, and others about what matters to you—for example, sharing status updates, photos, videos, and stories across the Facebook Products you use, sending messages to a friend or several people, creating events or groups, or adding content to your profile. We have also developed, and continue to explore, new ways for people to use technology, such as augmented reality and 360 video to create and share more expressive and engaging content on Facebook.

Help you discover content, products, and services that may interest you:

We show you ads, offers, and other sponsored content to help you discover content, products, and services that are offered by the many businesses and organizations that use Facebook and other Facebook Products. Section 2 below explains this in more detail.

Combat harmful conduct and protect and support our community:

People will only build community on Facebook if they feel safe. We employ dedicated teams around the world and develop advanced technical systems to detect misuse of our Products, harmful conduct towards others, and situations where we may be able to help support or protect our community. If we learn of content or conduct like this, we will take appropriate action—for example, offering help, removing content, removing or restricting access to certain features, disabling an account, or contacting law enforcement. We share data with other Facebook Companies when we detect misuse or harmful conduct by someone using one of our Products.

Use and develop advanced technologies to provide safe and functional services for everyone:

We use and develop advanced technologies—such as artificial intelligence, machine learning systems, and augmented reality—so that people can use our Products safely regardless of physical ability or geographic location. For example, technology like this helps people who have visual impairments understand what or who is in photos or videos shared on Facebook or Instagram. We also build sophisticated network and communication technology to help more people connect to the internet in areas with

limited access. And we develop automated systems to improve our ability to detect and remove abusive and dangerous activity that may harm our community and the integrity of our Products.

Research ways to make our services better:

We engage in research to develop, test, and improve our Products. This includes analyzing the data we have about our users and understanding how people use our Products, for example by conducting surveys and testing and troubleshooting new features. Our Data Policy explains how we use data to support this research for the purposes of developing and improving our services.

Provide consistent and seamless experiences across the Facebook Company Products:

Our Products help you find and connect with people, groups, businesses, organizations, and others that are important to you. We design our systems so that your experience is consistent and seamless across the different Facebook Company Products that you use. For example, we use data about the people you engage with on Facebook to make it easier for you to connect with them on Instagram or Messenger, and we enable you to communicate with a business you follow on Facebook through Messenger.

Enable global access to our services:

To operate our global service, we need to store and distribute content and data in our data centers and systems around the world, including outside your country of residence. This infrastructure may be operated or controlled by Facebook, Inc., Facebook Ireland Limited, or its affiliates.

2. How our services are funded

Instead of paying to use Facebook and the other products and services we offer, by using the Facebook Products covered by these Terms, you agree that we can show you ads that businesses and organizations pay us to promote on and off the Facebook Company Products. We use your personal data, such as information about your activity and interests, to show you ads that are more relevant to you. Protecting people's privacy is central to how we've designed our ad system. This means that we can show you relevant and useful ads without telling advertisers who you are. We don't sell your personal data. We allow advertisers to tell us things like their business goal, and the kind of audience they want to see their ads (for example, people between the age of 18-35 who like cycling). We then show their ad to people who might be interested.

We also provide advertisers with reports about the performance of their ads to help them understand how people are interacting with their content on and off Facebook. For example, we provide general demographic and interest information to advertisers (for example, that an ad was seen by a woman between the ages of 25 and 34 who lives in Madrid and likes

software engineering) to help them better understand their audience. We don't share information that directly identifies you (information such as your name or email address that by itself can be used to contact you or identifies who you are) unless you give us specific permission. Learn more about how Facebook ads work here.

We collect and use your personal data in order to provide the services described above to you. You can learn about how we collect and use your data in our Data Policy. You have controls over the types of ads and advertisers you see, and the types of information we use to determine which ads we show you. Learn more.

3. Your commitments to Facebook and our community

We provide these services to you and others to help advance our mission. In exchange, we need you to make the following commitments:

1. Who can use Facebook

When people stand behind their opinions and actions, our community is safer and more accountable. For this reason, you must:

- Use the same name that you use in everyday life.
- Provide accurate information about yourself.
- Create only one account (your own) and use your timeline for personal purposes.
- Not share your password, give access to your Facebook account to others, or transfer your

account to anyone else (without our permission).

We try to make Facebook broadly available to everyone, but you cannot use Facebook if:

- You are under 13 years old.
- You are a convicted sex offender.
- We've previously disabled your account for violations of our Terms or Policies.
- You are prohibited from receiving our products, services, or software under applicable laws.

2. What you can share and do on Facebook

We want people to use Facebook to express themselves and to share content that is important to them, but not at the expense of the safety and well-being of others or the integrity of our community. You therefore agree not to engage in the conduct described below (or to facilitate or support others in doing so):

1. You may not use our Products to do or share anything:
 - That violates these Terms, our Community Standards, and other terms and policies that apply to your use of Facebook.
 - That is unlawful, misleading, discriminatory or fraudulent.
 - That infringes or violates someone else's rights, including their intellectual property rights.

2. You may not upload viruses or malicious code or do anything that could disable, overburden, or impair the proper working or appearance of our Products.
3. You may not access or collect data from our Products using automated means (without our prior permission) or attempt to access data you do not have permission to access.

We can remove or restrict access to content that is in violation of these provisions.

If we remove content that you have shared in violation of our Community Standards, we'll let you know and explain any options you have to request another review, unless you seriously or repeatedly violate these Terms or if doing so may expose us or others to legal liability; harm our community of users; compromise or interfere with the integrity or operation of any of our services, systems or Products; where we are restricted due to technical limitations; or where we are prohibited from doing so for legal reasons.

To help support our community, we encourage you to report content or conduct that you believe violates your rights (including intellectual property rights) or our terms and policies.

We also can remove or restrict access to your content, services or information if we determine that doing so is reasonably necessary to avoid or mitigate adverse legal or regulatory impacts to Facebook.

3. The permissions you give us

We need certain permissions from you to provide our services:

1. Permission to use content you create and share: Some content that you share or upload, such as photos or videos, may be protected by intellectual property laws.

You own the intellectual property rights (things like copyright or trademarks) in any such content that you create and share on Facebook and the other Facebook Company Products you use. Nothing in these Terms takes away the rights you have to your own content. You are free to share your content with anyone else, wherever you want.

However, to provide our services we need you to give us some legal permissions (known as a 'license') to use this content. This is solely for the purposes of providing and improving our Products and services as described in Section 1 above.

Specifically, when you share, post, or upload content that is covered by intellectual property rights on or in connection with our Products, you grant us a non-exclusive, transferable, sub-licensable, royalty-free, and worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your content (consistent with your privacy and application settings). This means, for example, that if you share a photo on Facebook, you give us permission to store, copy, and share it with others (again, consistent with your settings) such as service providers that

support our service or other Facebook Products you use. This license will end when your content is deleted from our systems.

You can delete content individually or all at once by deleting your account. Learn more about how to delete your account. You can download a copy of your data at any time before deleting your account.

When you delete content, it's no longer visible to other users, however it may continue to exist elsewhere on our systems where:

- immediate deletion is not possible due to technical limitations (in which case, your content will be deleted within a maximum of 90 days from when you delete it);
- your content has been used by others in accordance with this license and they have not deleted it (in which case this license will continue to apply until that content is deleted);
or
- where immediate deletion would restrict our ability to:
 - investigate or identify illegal activity or violations of our terms and policies (for example, to identify or investigate misuse of our Products or systems);
 - comply with a legal obligation, such as the preservation of evidence; or
 - comply with a request of a judicial or administrative authority, law enforcement or a government agency;

in which case, the content will be retained for no longer than is necessary for the purposes for which it has been retained (the exact duration will vary on a case-by-case basis).

In each of the above cases, this license will continue until the content has been fully deleted.

2. **Permission to use your name, profile picture, and information about your actions with ads and sponsored content:** You give us permission to use your name and profile picture and information about actions you have taken on Facebook next to or in connection with ads, offers, and other sponsored content that we display across our Products, without any compensation to you. For example, we may show your friends that you are interested in an advertised event or have liked a Page created by a brand that has paid us to display its ads on Facebook. Ads like this can be seen only by people who have your permission to see the actions you've taken on Facebook. You can learn more about your ad settings and preferences.
3. **Permission to update software you use or download:** If you download or use our software, you give us permission to download and install updates to the software where available.

4. Limits on using our intellectual property

If you use content covered by intellectual property rights that we have and make available in our Products (for example, images, designs, videos, or sounds we provide that you add to content you create

or share on Facebook), we retain all rights to that content (but not yours). You can only use our copyrights or trademarks (or any similar marks) as expressly permitted by our Brand Usage Guidelines or with our prior written permission. You must obtain our written permission (or permission under an open source license) to modify, create derivative works of, decompile, or otherwise attempt to extract source code from us.

5. Additional provisions

1. Updating our Terms

We work constantly to improve our services and develop new features to make our Products better for you and our community. As a result, we may need to update these Terms from time to time to accurately reflect our services and practices. Unless otherwise required by law, we will notify you before we make changes to these Terms and give you an opportunity to review them before they go into effect. Once any updated Terms are in effect, you will be bound by them if you continue to use our Products.

We hope that you will continue using our Products, but if you do not agree to our updated Terms and no longer want to be a part of the Facebook community, you can delete your account at any time.

2. Account suspension or termination

We want Facebook to be a place where people feel welcome and safe to express themselves and share their thoughts and ideas.

If we determine that you have clearly, seriously or repeatedly breached our Terms or Policies, including in particular our Community Standards, we may suspend or permanently disable access to your account. We may also suspend or disable your account if you repeatedly infringe other people's intellectual property rights or where we are required to do so for legal reasons.

Where we take such action we'll let you know and explain any options you have to request a review, unless doing so may expose us or others to legal liability; harm our community of users; compromise or interfere with the integrity or operation of any of our services, systems or Products; or where we are restricted due to technical limitations; or where we are prohibited from doing so for legal reasons.

You can learn more about what you can do if your account has been disabled and how to contact us if you think we have disabled your account by mistake.

If you delete or we disable your account, these Terms shall terminate as an agreement between you and us, but the following provisions will remain in place: 3, 4.2-4.5.

3. Limits on liability

We work hard to provide the best Products we can and to specify clear guidelines for everyone who uses them. Our Products, however, are provided "as is," and we make no guarantees that they always will be safe, secure, or error-free, or that they will function without disruptions, delays, or imperfections. To the extent permitted by law, we

also DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. We do not control or direct what people and others do or say, and we are not responsible for their actions or conduct (whether online or offline) or any content they share (including offensive, inappropriate, obscene, unlawful, and other objectionable content).

We cannot predict when issues might arise with our Products. Accordingly, our liability shall be limited to the fullest extent permitted by applicable law, and under no circumstance will we be liable to you for any lost profits, revenues, information, or data, or consequential, special, indirect, exemplary, punitive, or incidental damages arising out of or related to these Terms or the Facebook Products, even if we have been advised of the possibility of such damages. Our aggregate liability arising out of or relating to these Terms or the Facebook Products will not exceed the greater of \$100 or the amount you have paid us in the past twelve months.

4. Disputes

We try to provide clear rules so that we can limit or hopefully avoid disputes between you and us. If a dispute does arise, however, it's useful to know up front where it can be resolved and what laws will apply.

For any claim, cause of action, or dispute you have against us that arises out of or relates to these Terms or the Facebook Products (“claim”), you agree that it will be resolved exclusively in the U.S. District Court for the Northern District of California or a state court located in San Mateo County. You also agree to submit to the personal jurisdiction of either of these courts for the purpose of litigating any such claim, and that the laws of the State of California will govern these Terms and any claim, without regard to conflict of law provisions.

5. Other

1. These Terms (formerly known as the Statement of Rights and Responsibilities) make up the entire agreement between you and Facebook, Inc. regarding your use of our Products. They supersede any prior agreements.
2. Some of the Products we offer are also governed by supplemental terms. If you use any of those Products, supplemental terms will be made available and will become part of our agreement with you. For instance, if you access or use our Products for commercial or business purposes, such as buying ads, selling products, developing apps, managing a group or Page for your business, or using our measurement services, you must agree to our Commercial Terms. If you post or share content containing music, you must comply with our Music Guidelines. To the extent any supplemental terms conflict with these Terms, the

supplemental terms shall govern to the extent of the conflict.

3. If any portion of these Terms is found to be unenforceable, the remaining portion will remain in full force and effect. If we fail to enforce any of these Terms, it will not be considered a waiver. Any amendment to or waiver of these Terms must be made in writing and signed by us.
4. You will not transfer any of your rights or obligations under these Terms to anyone else without our consent.
5. You may designate a person (called a legacy contact) to manage your account if it is memorialized. Only your legacy contact or a person who you have identified in a valid will or similar document expressing clear consent to disclose your content upon death or incapacity will be able to seek disclosure from your account after it is memorialized.
6. These Terms do not confer any third-party beneficiary rights. All of our rights and obligations under these Terms are freely assignable by us in connection with a merger, acquisition, or sale of assets, or by operation of law or otherwise.
7. You should know that we may need to change the username for your account in certain circumstances (for example, if someone else claims the username and it appears unrelated to the name you use in everyday life).

8. We always appreciate your feedback and other suggestions about our products and services. But you should know that we may use them without any restriction or obligation to compensate you, and we are under no obligation to keep them confidential.
9. We reserve all rights not expressly granted to you.

6. Other terms and policies that may apply to you

- **Community Standards:** These guidelines outline our standards regarding the content you post to Facebook and your activity on Facebook and other Facebook Products.
- **Commercial Terms:** These terms apply if you also access or use our Products for any commercial or business purpose, including advertising, operating an app on our Platform, using our measurement services, managing a group or a Page for a business, or selling goods or services.
- **Advertising Policies:** These policies specify what types of ad content are allowed by partners who advertise across the Facebook Products.
- **Self-Serve Ad Terms:** These terms apply when you use self-serve advertising interfaces to create, submit, or deliver advertising or other commercial or sponsored activity or content.
- **Pages, Groups and Events Policy:** These guidelines apply if you create or administer a Facebook Page, group, or event, or if you use

Facebook to communicate or administer a promotion.

- Facebook Platform Policy: These guidelines outline the policies that apply to your use of our Platform (for example, for developers or operators of a Platform application or website or if you use social plugins).
- Developer Payment Terms: These terms apply to developers of applications that use Facebook Payments.
- Community Payment Terms: These terms apply to payments made on or through Facebook.
- Commerce Policies: These guidelines outline the policies that apply when you offer products and services for sale on Facebook.
- Facebook Brand Resources: These guidelines outline the policies that apply to use of Facebook trademarks, logos, and screenshots.
- Music Guidelines: These guidelines outline the policies that apply if you post or share content containing music on Facebook.
- Live Policies: These policies apply to all content broadcast to Facebook Live.

Etsy Terms of Use (Jan. 19, 2021)

Welcome to Etsy. We're so glad you're here. Make yourself comfortable and have a good time, but please follow our house rules.

* * *

1. Accepting These Terms

This document and the other documents that we reference below make up our house rules, or what we officially call our Terms of Use (the "Terms" for short).

The Terms are a legally binding contract between you and Etsy. If you live in North America or South America, the contract is between you and Etsy, Inc.; if you live elsewhere, the contract is between you and Etsy Ireland UC, a subsidiary of Etsy, Inc. We'll just refer to Etsy, Inc. and all of its subsidiaries collectively as "Etsy."

Please note that Section 11. Disputes with Etsy, contains an arbitration clause and class action waiver. By agreeing to the Terms, you agree to resolve all disputes through binding individual arbitration, which means that you waive any right to have those disputes decided by a judge or jury, and that you waive your right to participate in class actions, class arbitrations, or representative actions.*

This contract sets out your rights and responsibilities when you use Etsy.com, Pattern by Etsy, our mobile apps, and the other services provided by Etsy (we'll refer to all of these collectively as our "Services"), so please read it carefully. By using any of our Services (even just browsing one of our websites),

you're agreeing to the Terms. If you don't agree with the Terms, you may not use our Services. Agree with us? Great, read on!

2. Those Other Documents We Mentioned

Etsy's Services connect people around the world, both online and offline, to make, sell, and buy unique goods. Here's a handy guide to help you understand the specific rules that are relevant for you, depending on how you use the Services:

Our House Rules for Everyone. If you use any of our Services, you agree to these Terms, our Privacy Policy, and our Anti-Discrimination Policy.

Our House Rules for Sellers. If you list any items for sale through our Services, these policies apply to you. You can read them here.

Our House Rules for Buyers. If you use our Services to browse or shop, these policies apply to you. You can read them here.

Our House Rules for Third Parties. These policies apply to intellectual property owners, Etsy API users, affiliates, and anyone requesting information from Etsy.

Search and Advertising Ranking Disclosures. This is a concise summary of how Etsy organizes search results and advertising results that could include Your Content.

All of these policies are a part of our Terms, so be sure to read the ones that are relevant for you. Of course, you'll still want to read the rest of this document because it applies to everyone!

3. Your Privacy

We know your personal information is important to you, so it's important to us. Our Privacy Policy details how your information is used when you use our Services. By using our Services, you're also agreeing that we can process your information in the ways set out in the Privacy Policy, so please read it here.

Both Etsy and sellers process members' personal information (for example, buyer name, email address, and shipping address) and are therefore considered separate and independent data controllers of buyers' personal information under EU law. That means that each party is responsible for the personal information it processes in providing the Services. For example, if a seller accidentally discloses a buyer's name and email address when fulfilling another buyer's order, the seller, not Etsy, will be responsible for that unauthorized disclosure.

If, however, Etsy and sellers are found to be joint data controllers of buyers' personal information, and if Etsy is sued, fined, or otherwise incurs expenses because of something that you did as a joint data controller of buyer personal information, you agree to indemnify Etsy for the expenses it occurs in connection with your processing of buyer personal information. See Section 9. Indemnification (or What Happens If You Get Us Sued) below for more information about your indemnification obligations to Etsy.

4. Your Account with Etsy

You'll need to create an account with Etsy to use some of our Services. Here are a few rules about accounts with Etsy:

A. You must be 18 years or older to use our Services. Minors under 18 and at least 13 years of age are only permitted to use our Services through an account owned by a parent or legal guardian with their appropriate permission and under their direct supervision. Children under 13 years are not permitted to use Etsy or the Services. You are responsible for any and all account activity conducted by a minor on your account, and there may be commercial products or services available that you may want to consider to limit a minor's access to material online. For more information, see Etsy's Minors Policy.

B. Be honest with us. Provide accurate information about yourself. It's prohibited to use false information or impersonate another person or company through your account.

C. Choose an appropriate name. If you decide to not have your full name serve as the name associated with your account, you may not use language that is offensive, vulgar, infringes someone's intellectual property rights, or otherwise violates the Terms.

D. You're responsible for your account. You're solely responsible for any activity on your account. If you're sharing an account with other people, then the person whose financial information is on the account will ultimately be responsible for all activity. If you're registering as a business entity, you personally guarantee that you have the authority to agree to the Terms on behalf of the business. Also, your accounts are not transferable.

E. Protect your password. As we mentioned above, you're solely responsible for any activity on your account, so it's important to keep your account password secure. Here's a Help article on how to make your account more secure.

F. Let's be clear about our relationship. These Terms don't create any agency, partnership, joint venture, employment, or franchisee relationship between you and Etsy.

This detailed Help article should answer any questions you may have about registering an account with Etsy.

5. Your Content

Content that you post using our Services is your content (so let's refer to it as "Your Content"). We don't make any claim to it, which includes anything you post using our Services (like shop names, profile pictures, listing photos, listing descriptions, reviews, comments, videos, usernames, etc.).

A. Responsibility for Your Content. You understand that you are solely responsible for Your Content. You represent that you have all necessary rights to Your Content and that you're not infringing or violating any third party's rights by posting it.

B. Permission to Use Your Content. By posting Your Content through our Services, you grant Etsy a license to use it. We don't claim any ownership to Your Content, but we have your permission to use it to help Etsy function and grow. That way, we won't infringe any rights you have in Your Content and we can help promote it. For example, you acknowledge and agree Etsy may offer you or Etsy buyers

promotions on the Site, from time to time, that may relate to your listings

C. Rights You Grant Etsy. (Here's the legalese version of the last section). By posting Your Content, you grant Etsy a non-exclusive, worldwide, royalty-free, irrevocable, sub-licensable, perpetual license to use, display, edit, modify, reproduce, distribute, store, and prepare derivative works of Your Content. This allows us to provide the Services and to promote Etsy, your Etsy shop, or the Services in general, in any formats and through any channels, including across any Etsy Services, our partners, or third-party website or advertising medium. You agree not to assert any moral rights or rights of publicity against us for using Your Content. You also recognize our legitimate interest in using it, in accordance with the scope of this license, to the extent Your Content contains any personal information.

That sounds like a lot, but it's necessary for us to keep Etsy going. Consider these examples: if you upload a photo or video of a listing on your Etsy shop, we have permission to display it to buyers, and we can resize or enhance it so it looks good to a buyer using our mobile app; if you post a description in English, we can translate it into French so a buyer in Paris can learn the story behind your item; and if you post a beautiful photo or video of your latest handmade necklace, we can feature it—often along with your shop name and shop picture—on our homepage, in one of our blogs or even on a billboard to help promote your business and Etsy's.

D. Reporting Unauthorized Content. Etsy has great respect for intellectual property rights, and

is committed to following appropriate legal procedures to remove infringing content from the Services. If content that you own or have rights to has been posted to the Services without your permission and you want it removed, please follow the steps listed in our Intellectual Property Policy. If Your Content is alleged to infringe another person's intellectual property, we will take appropriate action, such as disabling it if we receive proper notice or terminating your account if you are found to be a repeat infringer. We'll notify you if any of that happens.

E. Inappropriate, False, or Misleading Content. This should be common sense, but there are certain types of content we don't want posted on Etsy's Services (for legal reasons or otherwise). You agree that you will not post any content that is abusive, threatening, defamatory, obscene, vulgar, or otherwise offensive or in violation of our Prohibited Items Policy, Community Policy, or any part of our Terms. You also agree not to post any content that is false and misleading or uses the Services in a manner that is fraudulent or deceptive.

6. Your Use of Our Services

License to Use Our Services. We grant you a limited, non-exclusive, non-transferable, and revocable license to use our Services—subject to the Terms and the following restrictions in particular:

A. Don't Use Our Services to Break the Law. You agree that you will not violate any laws in connection with your use of the Services. This includes any local, state, federal, and international laws that may apply to you. For example, it's your responsibility to obtain any permits or licenses that your shop

requires, and to meet applicable legal requirements in applicable jurisdiction(s). This includes the sale and delivery of your items, such as age verification upon delivery, where required by law. You may not sell anything that violates any laws; you must comply with our Sanctions Policy, and you may not engage in fraud (including false claims or infringement notices), theft, anti-competitive conduct, threatening conduct, or any other unlawful acts or crimes against Etsy, another Etsy user, or a third party.

B. Pay Your Bills. You are responsible for paying all fees that you owe to Etsy. Except as set forth below, you are also solely responsible for collecting and/or paying any applicable taxes for any purchases or sales you make through our Services. For digital items sold to buyers in Australia, Belarus, Chile, the EU, Iceland, India, Indonesia, Japan, Malaysia, Mexico, Moldova, New Zealand, Norway, Quebec (Canada), Russia, Saudi Arabia, Serbia, Singapore, South Africa, South Korea, Switzerland, Taiwan, Turkey, United Arab Emirates or the United Kingdom. Etsy will help collect and remit the correct amount of value-added tax or VAT. Some countries may refer to VAT using other terms, e.g. Goods and Services Tax (GST), but we'll just refer to VAT, GST, and any local sales taxes collectively as "VAT." In addition, Etsy will calculate, collect, and remit sales tax where applicable. Please see this [FAQ](#) for more information. Your fees, bills, taxes, and how you can pay them are fully explained in our [Fees & Payments Policy](#).

C. Don't Steal Our Stuff. You agree not to crawl, scrape, or spider any page of the Services or to reverse engineer or attempt to obtain the source code of the

Services. If you want to use our API, please follow our API Terms of Use.

D. Don't Try to Harm Our Systems. You agree not to interfere with or try to disrupt our Services, for example by distributing a virus or other harmful computer code.

E. Follow Our Trademark Policy. The name "Etsy" and the other Etsy marks, phrases, logos, and designs that we use in connection with our Services (the Etsy Trademarks), are trademarks, service marks, or trade dress of Etsy in the US and other countries. If you'd like to use our trademarks, please follow our Trademark Policy.

F. Share Your Ideas. We love your suggestions and ideas! They can help us improve your experience and our Services. Any unsolicited ideas or other materials you submit to Etsy (not including Your Content or items you sell through our Services) are considered non-confidential and nonproprietary to you. You grant us a non-exclusive, worldwide, royalty-free, irrevocable, sub-licensable, perpetual license to use and publish those ideas and materials for any purpose, without compensation to you.

G. Talk to Us Online. From time to time, Etsy will provide you with certain legal information in writing. By using our Services, you're agreeing to our Electronic Communications Policy, which describes how we provide that information to you. It says that we can send you information electronically (such as by email) instead of mailing you paper copies (it's better for the environment), and that your electronic agreement is the same as your signature on paper.

7. Termination

Termination By You. We'd hate to see you go, but you may terminate your account with Etsy at any time from your account settings. You can find more information in this Help article. Terminating your account will not affect the availability of some of Your Content that you posted through the Services prior to termination. Oh, and you'll still have to pay any outstanding bills.

Termination By Etsy. We may terminate or suspend your account (and any accounts Etsy determines are related to your account) and your access to the Services should we have reason to believe you, your Content, or your use of the Services violate our Terms. If we do so, it's important to understand that you don't have a contractual or legal right to continue to use our Services, for example, to sell or buy on our websites or mobile apps. Generally, Etsy will notify you that your account has been terminated or suspended, unless you've repeatedly violated our Terms or we have legal or regulatory reasons preventing us from notifying you.

If you or Etsy terminate your account, you may lose any information associated with your account, including Your Content.

We May Discontinue the Services Etsy reserves the right to change, suspend, or discontinue any of the Services for you, any or all users, at any time, for any reason, including those laid out in Etsy's policies under these Terms of Use. We will not be liable to you for the effect that any changes to the Services may have on you, including your income or your ability to generate revenue through the Services.

Survival. The Terms will remain in effect even after your access to the Service is terminated, or your use of the Service ends.

8. Warranties and Limitation of Liability (or the Things You Can't Sue Us For)

Items You Purchase. You understand that Etsy does not manufacture, store, or inspect any of the items sold through our Services. We provide the venue; the items in our marketplaces are produced, listed, and sold directly by independent sellers, so Etsy cannot and does not make any warranties about their quality, safety, or even their legality. Any legal claim related to an item you purchase must be brought directly against the seller of the item. You release Etsy from any claims related to items sold through our Services, including for defective items, misrepresentations by sellers, or items that caused physical injury (like product liability claims).

Content You Access. You may come across materials that you find offensive or inappropriate while using our Services. We make no representations concerning any content posted by users through the Services. Etsy is not responsible for the accuracy, copyright compliance, legality, or decency of content posted by users that you accessed through the Services. You release us from all liability relating to that content.

People You Interact With. You can use the Services to interact with other individuals, either online or in person. However, you understand that we do not screen users of our Services, and you release us from all liability relating to your interactions with other users. Please be careful and exercise caution and

good judgment in all interactions with others, especially if you are meeting someone in person. This Help article has some good advice about handling in person meetings.

Third-Party Services. Our Services may contain links to third-party websites or services that we don't own or control (for example, links to Facebook, Twitter, and Pinterest). You may also need to use a third party's product or service in order to use some of our Services (like a compatible mobile device to use our mobile apps). When you access these third-party services, you do so at your own risk. The third parties may require you to accept their own terms of use. Etsy is not a party to those agreements; they are solely between you and the third party.

Gift Cards and Promotions. You acknowledge that Etsy does not make any warranties with respect to your Gift Card balance and is not responsible for any unauthorized access to, or alteration, theft, or destruction of a Gift Card or Gift Card code that results from any action by you or a third party. You also acknowledge that we may suspend or prohibit use of your Gift Card if your Gift Card or Gift Card code has been reported lost or stolen, or if we believe your Gift Card balance is being used suspiciously, fraudulently, or in an otherwise unauthorized manner. If your Gift Card code stops working, your only remedy is for us to issue you a replacement Gift Card code. By participating in a special offer or promotion, you agree that you may not later claim that the rules of that special offer or promotion were ambiguous.

WARRANTIES. ETSY IS DEDICATED TO MAKING OUR SERVICES THE BEST THEY CAN BE, BUT WE'RE NOT PERFECT AND SOMETIMES THINGS CAN GO WRONG. YOU UNDERSTAND THAT OUR SERVICES ARE PROVIDED "AS IS" AND WITHOUT ANY KIND OF WARRANTY (EXPRESS OR IMPLIED). WE ARE EXPRESSLY DISCLAIMING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY WARRANTIES IMPLIED BY A COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

WE DO NOT GUARANTEE THAT: (I) THE SERVICES WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (II) ANY DEFECTS OR ERRORS WILL BE CORRECTED; (III) THE SERVICES WILL BE FREE OF VIRUSES OR OTHER HARMFUL MATERIALS; OR (IV) THE RESULTS OF USING THE SERVICES WILL MEET YOUR EXPECTATIONS. YOU USE THE SERVICES SOLELY AT YOUR OWN RISK. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

LIABILITY LIMITS. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER ETSY, NOR OUR EMPLOYEES OR DIRECTORS SHALL BE LIABLE TO YOU FOR ANY LOST PROFITS OR REVENUES, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES OR THESE

TERMS. IN NO EVENT SHALL ETSY'S AGGREGATE LIABILITY FOR ANY DAMAGES EXCEED THE GREATER OF ONE HUNDRED (\$100) US DOLLARS (USD) OR THE AMOUNT YOU PAID ETSY IN THE PAST TWELVE MONTHS. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

9. Indemnification (or What Happens If You Get Us Sued)

We hope this never happens, but if Etsy gets sued because of something that you did, you agree to defend and indemnify us. That means you'll defend Etsy (including any of our employees) and hold us harmless from any legal claim or demand (including reasonable attorney's fees) that arises from your actions, your use (or misuse) of our Services, your breach of the Terms, or you or your account's infringement of someone else's rights.

We reserve the right to handle our legal defense however we see fit, even if you are indemnifying us, in which case you agree to cooperate with us so we can execute our strategy.

10. Disputes with Other Users

If you find yourself in a dispute with another user of Etsy's Services or a third party, we encourage you to contact the other party and try to resolve the dispute amicably.

Case System. Buyers and sellers who are unable to resolve a dispute related to a transaction on our websites or mobile apps may participate in our case

system. You can find details about the case system in this Help article. Etsy will attempt to help you resolve disputes in good faith and based solely on our interpretation of our policies, in our sole discretion; we will not make judgments regarding legal issues or claims. Etsy has no obligation to resolve any disputes.

Release of Etsy. You release Etsy from any claims, demands, and damages arising out of disputes with other users or parties.

11. Disputes with Etsy

If you're upset with us, let us know, and hopefully we can resolve your issue. But if we can't, then these rules will govern any legal dispute involving our Services:

A. Governing Law. The Terms are governed by the laws of the State of New York, without regard to its conflict of laws rules, and the laws of the United States of America. These laws will apply no matter where in the world you live, but if you live outside of the United States, you may be entitled to the protection of the mandatory consumer protection provisions of your local consumer protection law.

B. Arbitration. You and Etsy agree that any dispute or claim arising from or relating to the Terms shall be finally settled by final and binding arbitration, using the English language, administered by the American Arbitration Association (the "AAA") under its Consumer Arbitration Rules (the "AAA Rules") then in effect (those rules are deemed to be incorporated by reference into this section, and as of the date of these Terms you can find the AAA Rules here), unless otherwise required by law.
**Arbitration, including threshold questions of

arbitrability of the dispute, will be handled by a sole arbitrator in accordance with those rules. Judgment on the arbitration award may be entered in any court that has jurisdiction.

For EU sellers, if any dispute arises in connection with the Terms, the parties should first try to resolve the dispute through the complaints procedure published here. In addition, the dispute may be referred by either party to the Centre for Effective Dispute Resolution (“CEDR”) for mediation. The Parties agree to enter into mediation to settle a good faith dispute and will do so in accordance with the CEDR’s mediation procedures. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing to the other party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.

Any arbitration or mediation under the Terms will take place on an individual basis. You understand that by agreeing to the Terms, you and Etsy are each waiving the right to trial by jury or to participate in a class action lawsuit. Class arbitrations shall only be available if requested by either party under its Class Action Arbitration Rules and approved by the arbitration entity. Notwithstanding the foregoing, each party shall have the right to bring an action in a court of proper jurisdiction for injunctive or other equitable or conservatory relief, pending a final decision by the arbitrator or mediator. You may instead assert your claim in “small claims” court, but only if your claim qualifies, your claim remains in such

court, and your claim remains on an individual, non-representative, and non-class basis.

C. Costs of Arbitration. Payment for any and all reasonable AAA filing, administrative, and arbitrator fees will be in accordance with the Consumer Arbitration Rules, and in the case of CEDR, its rules. If the value of your claim does not exceed \$10,000 USD, Etsy will pay for the reasonable filing, administrative, and arbitrator fees associated with the arbitration, unless the arbitrator finds that either the substance of your claim or the relief sought was frivolous or brought for an improper purpose. For mediation through CEDR, the parties will pay their share of mediation costs, and under certain conditions such fees may be refundable to you, depending on the outcome of the mediation.

D. Forum. We're based in New York, so any legal action against Etsy related to our Services must be filed and take place in New York County, New York. For all actions under the AAA Rules, the proceedings may be filed where your residence is, or in New York, New York, and any in-person hearings will be conducted at a location which is reasonably convenient to both parties taking into account their ability to travel and other pertinent circumstances. For any actions not subject to arbitration or mediation, you and Etsy agree to submit to the personal jurisdiction of a state or federal court located in New York County, New York if your contract is with Etsy, Inc.; if your contract is with Etsy Ireland UC, you and Etsy agree to submit to the personal jurisdiction of the courts of Ireland.

E. Government Exception. If you are a government agent or entity in the United States using the Services in your official capacity, and you are legally unable to agree to the clauses in this section, then those clauses do not apply to you. In that case, the Terms and any action related to the Terms will be governed by the laws of the United States (without reference to conflict of laws) and, in the absence of federal law and to the extent permitted under federal law, the laws of the State of New York.

F. Modifications. If we make any changes to this “Disputes with Etsy” section after the date you last accepted the Terms, those changes will not apply to any claims filed in a legal proceeding against Etsy prior to the date the changes became effective. Etsy will notify you of substantive changes to the “Disputes with Etsy” section at least 30 days prior to the date the change will become effective. If you do not agree to the modified terms, you may send Etsy a written notification (including email) or close your account within those 30 days. By rejecting a modified term or permanently closing your account, you agree to arbitrate any disputes between you and Etsy in accordance with the provisions of this “Disputes with Etsy” section as of the date you last accepted the Terms, including any changes made prior to your rejection. If you reopen your closed account or create a new account, you agree to be bound by the current version of the Terms.

12. Changes to the Terms

We may update these Terms from time to time. If we believe that the changes are material, we’ll definitely let you know by posting the changes through

the Services and/or sending you an email or message about the changes. That way you can decide whether you want to continue using the Services. Changes will be effective upon the posting of the changes unless otherwise specified. You are responsible for reviewing and becoming familiar with any changes. Your use of the Services following the changes constitutes your acceptance of the updated Terms.

13. Some Finer Legal Points

The Terms, including all of the policies that make up the Terms, supersede any other agreement between you and Etsy regarding the Services. If any part of the Terms is found to be unenforceable, that part will be limited to the minimum extent necessary so that the Terms will otherwise remain in full force and effect. Our failure to enforce any part of the Terms is not a waiver of our right to later enforce that or any other part of the Terms. We may assign any of our rights and obligations under the Terms.

14. Contact Information

If you have any questions about the Terms, please email us at legal@etsy.com.

*In some countries you may have additional rights and/or the preceding may not apply to you.

Twitter Terms of Service (June 18, 2020)

If you live outside the European Union, EFTA States, or the United Kingdom, including if you live in the United States

These Terms of Service (“Terms”) govern your access to and use of our services, including our various websites, SMS, APIs, email notifications, applications, buttons, widgets, ads, commerce services, and our other covered services (<https://help.twitter.com/en/rules-and-policies/twitter-services-and-corporate-affiliates>) (<https://help.twitter.com/en/rules-and-policies/twitter-services-and-corporate-affiliates>) (<https://help.twitter.com/en/rules-and-policies/twitter-services-and-corporate-affiliates>)) that link to these Terms (collectively, the “Services”), and any information, text, links, graphics, photos, audio, videos, or other materials or arrangements of materials uploaded, downloaded or appearing on the Services (collectively referred to as “Content”). By using the Services you agree to be bound by these Terms.

1. Who May Use the Services

You may use the Services only if you agree to form a binding contract with Twitter and are not a person barred from receiving services under the laws of the applicable jurisdiction. In any case, you must be at least 13 years old, or in the case of Periscope 16 years old, to use the Services. If you are accepting these Terms and using the Services on behalf of a company, organization, government, or other legal entity, you represent and warrant that you are authorized to do so and have the authority to bind such entity to these

Terms, in which case the words “you” and “your” as used in these Terms shall refer to such entity.

2. Privacy

Our Privacy Policy (<https://twitter.com/privacy>) (<https://www.twitter.com/privacy> (<https://www.twitter.com/privacy>)) describes how we handle the information you provide to us when you use our Services. You understand that through your use of the Services you consent to the collection and use (as set forth in the Privacy Policy) of this information, including the transfer of this information to the United States, Ireland, and/or other countries for storage, processing and use by Twitter and its affiliates.

3. Content on the Services

You are responsible for your use of the Services and for any Content you provide, including compliance with applicable laws, rules, and regulations. You should only provide Content that you are comfortable sharing with others.

Any use or reliance on any Content or materials posted via the Services or obtained by you through the Services is at your own risk. We do not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any Content or communications posted via the Services or endorse any opinions expressed via the Services. You understand that by using the Services, you may be exposed to Content that might be offensive, harmful, inaccurate or otherwise inappropriate, or in some cases, postings that have been mislabeled or are otherwise deceptive. All Content is the sole responsibility of the person who originated such

Content. We may not monitor or control the Content posted via the Services and, we cannot take responsibility for such Content.

We reserve the right to remove Content that violates the User Agreement, including for example, copyright or trademark violations or other intellectual property misappropriation, impersonation, unlawful conduct, or harassment. Information regarding specific policies and the process for reporting or appealing violations can be found in our Help Center (<https://help.twitter.com/en/rules-and-policies/twitter-report-violation#specific-violations> (<https://help.twitter.com/en/rules-and-policies/twitter-report-violation#specific-violations>) and <https://help.twitter.com/en/managing-your-account/suspended-twitter-accounts> (<https://help.twitter.com/en/managing-your-account/suspended-twitter-accounts>)).

If you believe that your Content has been copied in a way that constitutes copyright infringement, please report this by visiting our Copyright reporting form (<https://help.twitter.com/forms/dmca> (<https://help.twitter.com/forms/dmca>)) or contacting our designated copyright agent at:

Twitter, Inc.
Attn: Copyright Agent
1355 Market Street, Suite 900
San Francisco, CA 94103
Reports: <https://help.twitter.com/forms/dmca>
(<https://help.twitter.com/forms/dmca>)
Email: copyright@twitter.com
(for content on Twitter)

Twitter, Inc.
Attn: Copyright Agent - Periscope
1355 Market Street, Suite 900
San Francisco, CA 94103
Reports: <https://help.twitter.com/forms/dmca>
(<https://help.twitter.com/forms/dmca>)
Email: copyright@psc.pv
(for content on Periscope)

Your Rights and Grant of Rights in the Content

You retain your rights to any Content you submit, post or display on or through the Services. What's yours is yours—you own your Content (and your incorporated audio, photos and videos are considered part of the Content).

By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods now known or later developed (for clarity, these rights include, for example, curating, transforming, and translating). This license authorizes us to make your Content available to the rest of the world and to let others do the same. You agree that this license includes the right for Twitter to provide, promote, and improve the Services and to make Content submitted to or through the Services available to other companies, organizations or individuals for the syndication, broadcast, distribution, Retweet, promotion or publication of such Content on other media and services, subject to our terms and conditions for such Content use. Such additional uses

by Twitter, or other companies, organizations or individuals, is made with no compensation paid to you with respect to the Content that you submit, post, transmit or otherwise make available through the Services as the use of the Services by you is hereby agreed as being sufficient compensation for the Content and grant of rights herein.

Twitter has an evolving set of rules for how ecosystem partners can interact with your Content on the Services. These rules exist to enable an open ecosystem with your rights in mind. You understand that we may modify or adapt your Content as it is distributed, syndicated, published, or broadcast by us and our partners and/or make changes to your Content in order to adapt the Content to different media.

You represent and warrant that you have, or have obtained, all rights, licenses, consents, permissions, power and/or authority necessary to grant the rights granted herein for any Content that you submit, post or display on or through the Services. You agree that such Content will not contain material subject to copyright or other proprietary rights, unless you have necessary permission or are otherwise legally entitled to post the material and to grant Twitter the license described above.

4. Using the Services

Please review the Twitter Rules and Policies (<https://help.twitter.com/en/rules-andpolicies#twitter-rules>) (and, for Periscope, the Periscope Community Guidelines (<https://www.pscp.tv/content>) at [https://www.pscp.tv/content\(https://www.pscp.tv/content\)](https://www.pscp.tv/content(https://www.pscp.tv/content))), which are part of the User Agreement and

outline what is prohibited on the Services. You may use the Services only in compliance with these Terms and all applicable laws, rules and regulations.

Our Services evolve constantly. As such, the Services may change from time to time, at our discretion. We may stop (permanently or temporarily) providing the Services or any features within the Services to you or to users generally. We also retain the right to create limits on use and storage at our sole discretion at any time. We may also remove or refuse to distribute any Content on the Services, limit distribution or visibility of any Content on the service, suspend or terminate users, and reclaim usernames without liability to you.

In consideration for Twitter granting you access to and use of the Services, you agree that Twitter and its third-party providers and partners may place advertising on the Services or in connection with the display of Content or information from the Services whether submitted by you or others. You also agree not to misuse our Services, for example, by interfering with them or accessing them using a method other than the interface and the instructions that we provide. You may not do any of the following while accessing or using the Services: (i) access, tamper with, or use non-public areas of the Services, Twitter's computer systems, or the technical delivery systems of Twitter's providers; (ii) probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures; (iii) access or search or attempt to access or search the Services by any means (automated or otherwise) other than through our currently available, published

interfaces that are provided by Twitter (and only pursuant to the applicable terms and conditions), unless you have been specifically allowed to do so in a separate agreement with Twitter (NOTE: crawling the Services is permissible if done in accordance with the provisions of the robots.txt file, however, scraping the Services without the prior consent of Twitter is expressly prohibited); (iv) forge any TCP/IP packet header or any part of the header information in any email or posting, or in any way use the Services to send altered, deceptive or false source-identifying information; or (v) interfere with, or disrupt, (or attempt to do so), the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, mail-bombing the Services, or by scripting the creation of Content in such a manner as to interfere with or create an undue burden on the Services. We also reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce the Terms, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of Twitter, its users and the public. Twitter does not disclose personally-identifying information to third parties except in accordance with our Privacy Policy (<https://twitter.com/privacy>).

If you use developer features of the Services, including but not limited to Twitter for Websites (<https://developer.twitter.com/docs/twitter-for-websites/overview>) (<https://developer.twitter.com/docs>)

[/twitter-for-websites/overview](https://developer.twitter.com/docs/twitter-for-websites/overview) (<https://developer.twitter.com/docs/twitter-for-websites/overview>)), [Twitter Cards](https://developer.twitter.com/docs/tweets/optimize-with-cards/guides/getting-started) (<https://developer.twitter.com/docs/tweets/optimize-with-cards/guides/getting-started>) (<https://developer.twitter.com/docs/tweets/optimize-with-cards/guides/getting-started>) (<https://developer.twitter.com/docs/tweets/optimize-with-cards/guides/getting-started>)), [Public API](https://developer.twitter.com/en/docs) (<https://developer.twitter.com/en/docs>) (<https://developer.twitter.com/en/docs>), or [Sign in with Twitter](https://developer.twitter.com/en/docs) (<https://developer.twitter.com/docs/basics/authentication/guides/log-in-with-twitter>) (<https://developer.twitter.com/docs/basics/authentication/guides/log-in-with-twitter>) (<https://developer.twitter.com/docs/basics/authentication/guides/log-in-with-twitter>)), you agree to our [Developer Agreement](https://developer.twitter.com/en/developer-terms/agreement) (<https://developer.twitter.com/en/developer-terms/agreement>) (<https://developer.twitter.com/en/developer-terms/agreement>) (<https://developer.twitter.com/en/developer-terms/agreement>)) and [Developer Policy](https://developer.twitter.com/en/developer-terms/policy) (<https://developer.twitter.com/en/developer-terms/policy>) (<https://developer.twitter.com/en/developer-terms/policy>) (<https://developer.twitter.com/en/developer-terms/policy>)). If you want to reproduce, modify, create derivative works, distribute, sell, transfer, publicly display, publicly perform, transmit, or otherwise use the Services or Content on the Services, you must use the interfaces and instructions we provide, except as permitted through the Twitter Services, these Terms, or the terms provided on <https://developer.twitter.com/en/developer-terms> (<https://developer.twitter.com/en/developer-terms>). If you are a security researcher, you are required to comply with the rules of the Twitter

Vulnerability Reporting Program
(<https://hackerone.com/twitter>) (<https://hackerone.com/twitter>). The requirements set out in the preceding paragraph may not apply to those participating in Twitter's Vulnerability Reporting Program.

If you use advertising features of the Services, you must agree to our Twitter Master Services Agreement (<https://ads.twitter.com/terms>) (<https://ads.twitter.com/terms>).

If you use Super Hearts, Coins, or Stars on Periscope, you must agree to our Super Hearts Terms (<https://legal.twitter.com/en/periscope/super/terms.html>) (<https://legal.twitter.com/en/periscope/super/terms.html>).

Your Account

You may need to create an account to use some of our Services. You are responsible for safeguarding your account, so use a strong password and limit its use to this account. We cannot and will not be liable for any loss or damage arising from your failure to comply with the above. You can control most communications from the Services. We may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Services and your account, and you may not be able to opt-out from receiving them. If you added your phone number to your account and you later change or deactivate that phone number, you must update your account information to help prevent us from

communicating with anyone who acquires your old number.

Your License to Use the Services

Twitter gives you a personal, worldwide, royalty-free, non-assignable and nonexclusive license to use the software provided to you as part of the Services. This license has the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by Twitter, in the manner permitted by these Terms.

The Services are protected by copyright, trademark, and other laws of both the United States and other countries. Nothing in the Terms gives you a right to use the Twitter name or any of the Twitter trademarks, logos, domain names, other distinctive brand features, and other proprietary rights. All right, title, and interest in and to the Services (excluding Content provided by users) are and will remain the exclusive property of Twitter and its licensors. Any feedback, comments, or suggestions you may provide regarding Twitter, or the Services is entirely voluntary and we will be free to use such feedback, comments or suggestions as we see fit and without any obligation to you.

Ending These Terms

You may end your legal agreement with Twitter at any time by deactivating your accounts and discontinuing your use of the Services. See <https://help.twitter.com/en/managing-your-account/how-to-deactivate-twitter-account> (<https://help.twitter.com/en/managing-your-account/how-to-deactivate-twitter-account>) (and for Periscope, <https://help.pscp.tv/customer/portal/articles/2460220> (<https://help.pscp.tv/customer/portal/articles/2460220>))

for instructions on how to deactivate your account and the Privacy Policy for more information on what happens to your information.

We may suspend or terminate your account or cease providing you with all or part of the Services at any time for any or no reason, including, but not limited to, if we reasonably believe: (i) you have violated these Terms or the Twitter Rules and Policies (<https://help.twitter.com/en/rules-and-policies#twitter-rules>) or Periscope Community Guidelines (<https://www.pscp.tv/content>), (ii) you create risk or possible legal exposure for us; (iii) your account should be removed due to unlawful conduct, (iv) your account should be removed due to prolonged inactivity; or (v) our provision of the Services to you is no longer commercially viable. We will make reasonable efforts to notify you by the email address associated with your account or the next time you attempt to access your account, depending on the circumstances. In all such cases, the Terms shall terminate, including, without limitation, your license to use the Services, except that the following sections shall continue to apply: II, III, V, and VI. If you believe your account was terminated in error you can file an appeal following the steps found in our Help Center (<https://help.twitter.com/forms/general?subtopic=suspended>) (<https://help.twitter.com/forms/general?subtopic=suspended>) (<https://help.twitter.com/forms/general?subtopic=suspended>)). For the avoidance of doubt, these Terms survive the deactivation or termination of your account.

5. Disclaimers and Limitations of Liability The Services are Available “AS-IS”

Your access to and use of the Services or any Content are at your own risk. You understand and agree that the Services are provided to you on an “AS IS” and “AS AVAILABLE” basis. The “Twitter Entities” refers to Twitter, its parents, affiliates, related companies, officers, directors, employees, agents, representatives, partners, and licensors. Without limiting the foregoing, to the maximum extent permitted under applicable law, THE TWITTER ENTITIES DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. The Twitter Entities make no warranty or representation and disclaim all responsibility and liability for: (i) the completeness, accuracy, availability, timeliness, security or reliability of the Services or any Content; (ii) any harm to your computer system, loss of data, or other harm that results from your access to or use of the Services or any Content; (iii) the deletion of, or the failure to store or to transmit, any Content and other communications maintained by the Services; and (iv) whether the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. No advice or information, whether oral or written, obtained from the Twitter Entities or through the Services, will create any warranty or representation not expressly made herein.

Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TWITTER ENTITIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY, OR ANY LOSS OF DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM (i) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SERVICES; (ii) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES; (iii) ANY CONTENT OBTAINED FROM THE SERVICES; OR (iv) UNAUTHORIZED ACCESS, USE OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE TWITTER ENTITIES EXCEED THE GREATER OF ONE HUNDRED U.S. DOLLARS (U.S. \$100.00) OR THE AMOUNT YOU PAID TWITTER, IF ANY, IN THE PAST SIX MONTHS FOR THE SERVICES GIVING RISE TO THE CLAIM. THE LIMITATIONS OF THIS SUBSECTION SHALL APPLY TO ANY THEORY OF LIABILITY, WHETHER BASED ON WARRANTY, CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND WHETHER OR NOT THE TWITTER ENTITIES HAVE BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS

FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

6. General

We may revise these Terms from time to time. The changes will not be retroactive, and the most current version of the Terms, which will always be at twitter.com/tos (<https://twitter.com/en/tos>), will govern our relationship with you. We will try to notify you of material revisions, for example via a service notification or an email to the email associated with your account. By continuing to access or use the Services after those revisions become effective, you agree to be bound by the revised Terms.

The laws of the State of California, excluding its choice of law provisions, will govern these Terms and any dispute that arises between you and Twitter. All disputes related to these Terms or the Services will be brought solely in the federal or state courts located in San Francisco County, California, United States, and you consent to personal jurisdiction and waive any objection as to inconvenient forum. If you are a federal, state, or local government entity in the United States using the Services in your official capacity and legally unable to accept the controlling law, jurisdiction or venue clauses above, then those clauses do not apply to you. For such U.S. federal government entities, these Terms and any action related thereto will be governed by the laws of the United States of America (without reference to conflict of laws) and, in the absence of federal law and to the extent permitted under federal law, the laws of the State of California (excluding choice of law).

In the event that any provision of these Terms is held to be invalid or unenforceable, then that provision will be limited or eliminated to the minimum extent necessary, and the remaining provisions of these Terms will remain in full force and effect. Twitter's failure to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision.

These Terms are an agreement between you and Twitter, Inc., 1355 Market Street, Suite 900, San Francisco, CA 94103 U.S.A. If you have any questions about these Terms, please contact us (<https://help.twitter.com/forms>).

* * *

TWITTER TERMS OF SERVICE

If you live in the European Union, EFTA States, or the United Kingdom

These Terms of Service (“Terms”) govern your access to and use of our services, including our various websites, SMS, APIs, email notifications, applications, buttons, widgets, ads, commerce services, and our other covered services (<https://help.twitter.com/en/rules-and-policies/twitter-services-and-corporate-affiliates> (<https://help.twitter.com/en/rules-and-policies/twitter-services-and-corporate-affiliates>)) that link to these Terms (collectively, the “Services”), and any information, text, links, graphics, photos, audio, videos, or other materials or arrangements of materials uploaded, downloaded or appearing on the Services (collectively referred to as “Content”). By using the Services you agree to be bound by these Terms.

1. Who May Use the Services

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2. Privacy

Our Privacy Policy (<https://twitter.com/privacy>) (<https://www.twitter.com/privacy> (<https://www.twitter.com/privacy>)) describes how we handle the information you provide to us when you use our Services. You understand that through your use of the Services you consent to the collection and use (as set forth in the Privacy Policy) of this information, including the transfer of this information to the United States, Ireland, and/or other countries for storage, processing and use by Twitter and its affiliates.

3. Content on the Services

You are responsible for your use of the Services and for any Content you provide, including compliance with applicable laws, rules, and regulations. You should only provide Content that you are comfortable sharing with others.

Any use or reliance on any Content or materials posted via the Services or obtained by you through the Services is at your own risk. We do not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any Content or communications posted via the Services or endorse any opinions expressed via the Services. You understand that by using the Services, you may be exposed to Content that might be offensive, harmful, inaccurate or otherwise inappropriate, or in some cases, postings that have been mislabeled or are otherwise deceptive. All Content is the sole responsibility of the person who originated such Content. We may not monitor or control the Content posted via the Services and, we cannot take responsibility for such Content.

We reserve the right to remove Content that violates the User Agreement, including for example, copyright or trademark violations or other intellectual property misappropriation, impersonation, unlawful conduct, or harassment. Information regarding specific policies and the process for reporting or appealing violations can be found in our Help Center (<https://help.twitter.com/en/rules-and-policies/twitter-report-violation#specific-violations> (<https://help.twitter.com/en/rules-and-policies/twitter-report-violation#specific-violations>) and <https://help.twitter.com/en/managing-youraccount/suspended-twitter-accounts> (<https://help.twitter.com/en/managing-your-account/suspended-twitter-accounts>)).

If you believe that your Content has been copied in a way that constitutes copyright infringement, please report this by visiting our Copyright reporting

form (<https://help.twitter.com/forms/dmca> (<https://help.twitter.com/forms/dmca>)) or contacting our designated copyright agent at: Twitter, Inc.

Attn: Copyright Agent
1355 Market Street, Suite 900
San Francisco, CA 94103
Reports: <https://help.twitter.com/forms/dmca>
(<https://help.twitter.com/forms/dmca>)
Email: copyright@twitter.com
(for content on Twitter)

Twitter, Inc.
Attn: Copyright Agent - Periscope
1355 Market Street, Suite 900
San Francisco, CA 94103
Reports: <https://help.twitter.com/forms/dmca>
(<https://help.twitter.com/forms/dmca>)
Email: copyright@pscp.tv
(for content on Periscope)

Your Rights and Grant of Rights in the Content

You retain your rights to any Content you submit, post or display on or through the Services. What's yours is yours—you own your Content (and your incorporated audio, photos and videos are considered part of the Content). By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods now known or later developed (for clarity, these rights include, for example, curating, transforming, and translating).

This license authorizes us to make your Content available to the rest of the world and to let others do the same. You agree that this license includes the right for Twitter to provide, promote, and improve the Services and to make Content submitted to or through the Services available to other companies, organizations or individuals for the syndication, broadcast, distribution, Retweet, promotion or publication of such Content on other media and services, subject to our terms and conditions for such Content use. Such additional uses by Twitter, or other companies, organizations or individuals, is made with no compensation paid to you with respect to the Content that you submit, post, transmit or otherwise make available through the Services as the use of the Services by you is hereby agreed as being sufficient compensation for the Content and grant of rights herein.

Twitter has an evolving set of rules for how ecosystem partners can interact with your Content on the Services. These rules exist to enable an open ecosystem with your rights in mind. You understand that we may modify or adapt your Content as it is distributed, syndicated, published, or broadcast by us and our partners and/or make changes to your Content in order to adapt the Content to different media.

You represent and warrant that you have, or have obtained, all rights, licenses, consents, permissions, power and/or authority necessary to grant the rights granted herein for any Content that you submit, post or display on or through the Services. You agree that such Content will not contain material subject to

copyright or other proprietary rights, unless you have necessary permission or are otherwise legally entitled to post the material and to grant Twitter the license described above.

4. Using the Services

Please review the Twitter Rules and Policies (<https://help.twitter.com/en/rules-andpolicies#twitter-rules>) (and, for Periscope, the Periscope Community Guidelines (<https://www.pscp.tv/content>) at <https://pscp.tv/content> (<https://www.pscp.tv/content>)), which are part of the User Agreement and outline what is prohibited on the Services. You may use the Services only in compliance with these Terms and all applicable laws, rules and regulations.

Our Services evolve constantly. As such, the Services may change from time to time, at our discretion. We may stop (permanently or temporarily) providing the Services or any features within the Services to you or to users generally. We also retain the right to create limits on use and storage at our sole discretion at any time. We may also remove or refuse to distribute any Content on the Services, limit distribution or visibility of any Content on the service, suspend or terminate users, and reclaim usernames without liability to you.

In consideration for Twitter granting you access to and use of the Services, you agree that Twitter and its third-party providers and partners may place advertising on the Services or in connection with the display of Content or information from the Services whether submitted by you or others. You also agree not to misuse our Services, for example, by interfering with them or accessing them using a method other

than the interface and the instructions that we provide. You may not do any of the following while accessing or using the Services: (i) access, tamper with, or use non-public areas of the Services, Twitter's computer systems, or the technical delivery systems of Twitter's providers; (ii) probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures; (iii) access or search or attempt to access or search the Services by any means (automated or otherwise) other than through our currently available, published interfaces that are provided by Twitter (and only pursuant to the applicable terms and conditions), unless you have been specifically allowed to do so in a separate agreement with Twitter (NOTE: crawling the Services is permissible if done in accordance with the provisions of the robots.txt file, however, scraping the Services without the prior consent of Twitter is expressly prohibited); (iv) forge any TCP/IP packet header or any part of the header information in any email or posting, or in any way use the Services to send altered, deceptive or false source-identifying information; or (v) interfere with, or disrupt, (or attempt to do so), the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, mail-bombing the Services, or by scripting the creation of Content in such a manner as to interfere with or create an undue burden on the Services. We also reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce the Terms, including investigation of potential violations hereof,

(iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of Twitter, its users and the public. Twitter does not disclose personally-identifying information to third parties except in accordance with our Privacy Policy (<https://twitter.com/privacy>).

If you use developer features of the Services, including but not limited to Twitter for Websites (<https://developer.twitter.com/docs/twitter-for-websites/overview>) (<https://developer.twitter.com/docs/twitter-for-websites/overview>), Twitter Cards (<https://developer.twitter.com/docs/tweets/optimize-with-cards/guides/getting-started>) (<https://developer.twitter.com/docs/tweets/optimize-with-cards/guides/getting-started>), Public API (<https://developer.twitter.com/en/docs>) (<https://developer.twitter.com/en/docs>), or Sign in with Twitter (<https://developer.twitter.com/docs/basics/authentication/guides/log-in-with-twitter>) (<https://developer.twitter.com/docs/basics/authentication/guides/log-in-with-twitter>), you agree to our Developer Agreement (<https://developer.twitter.com/en/developer-terms/agreement>) (<https://developer.twitter.com/en/developer-terms/agreement>) and Developer Policy (<https://developer.twitter.com/en/developer-terms/policy>) (<https://developer.twitter.com/en/developer-terms/policy>).

developer-terms/policy (<https://developer.twitter.com/en/developer-terms/policy>)). If you want to reproduce, modify, create derivative works, distribute, sell, transfer, publicly display, publicly perform, transmit, or otherwise use the Services or Content on the Services, you must use the interfaces and instructions we provide, except as permitted through the Twitter Services, these Terms, or the terms provided on <https://developer.twitter.com/en/developer-terms> (<https://developer.twitter.com/en/developerterms>). If you are a security researcher, you are required to comply with the rules of the Twitter Vulnerability Reporting Program (<https://hackerone.com/twitter>) (<https://hackerone.com/twitter> (<https://hackerone.com/twitter>)). The requirements set out in the preceding paragraph may not apply to those participating in Twitter's Vulnerability Reporting Program.

If you use advertising features of the Services, you must agree to our Twitter Master Services Agreement (<https://ads.twitter.com/terms>) (<https://ads.twitter.com/terms> (<https://ads.twitter.com/terms>)).

If you use Super Hearts, Coins, or Stars on Periscope, you agree to our Super Hearts Terms (<https://legal.twitter.com/en/periscope/super/terms.html>) (<https://legal.twitter.com/en/periscope/super/terms.html> (<https://legal.twitter.com/en/periscope/super/terms.html>)).

Your Account

You may need to create an account to use some of our Services. You are responsible for safeguarding your account, so use a strong password and limit its use to this account. We cannot and will not be liable

for any loss or damage arising from your failure to comply with the above.

You can control most communications from the Services. We may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Services and your account, and you may not be able to opt-out from receiving them. If you added your phone number to your account and you later change or deactivate that phone number, you must update your account information to help prevent us from communicating with anyone who acquires your old number.

Your License to Use the Services

Twitter gives you a personal, worldwide, royalty-free, non-assignable and nonexclusive license to use the software provided to you as part of the Services. This license has the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by Twitter, in the manner permitted by these Terms.

The Services are protected by copyright, trademark, and other laws of both the United States and other countries. Nothing in the Terms gives you a right to use the Twitter name or any of the Twitter trademarks, logos, domain names, other distinctive brand features, and other proprietary rights. All right, title, and interest in and to the Services (excluding Content provided by users) are and will remain the exclusive property of Twitter and its licensors. Any feedback, comments, or suggestions you may provide regarding Twitter, or the Services is entirely voluntary and we will be free to use such feedback,

comments or suggestions as we see fit and without any obligation to you.

Ending These Terms

You may end your legal agreement with Twitter at any time by deactivating your accounts and discontinuing your use of the Services. See <https://help.twitter.com/en/managing-your-account/how-to-deactivate-twitter-account> (<https://help.twitter.com/en/managing-your-account/how-to-deactivate-twitter-account>) (and for Periscope, <https://help.pscp.tv/customer/portal/articles/2460220> (<https://help.pscp.tv/customer/portal/articles/2460220>)) for instructions on how to deactivate your account and the Privacy Policy for more information on what happens to your information.

We may suspend or terminate your account or cease providing you with all or part of the Services at any time for any or no reason, including, but not limited to, if we reasonably believe: (i) you have violated these Terms or the Twitter Rules and Policies (<https://help.twitter.com/en/rules-and-policies#twitter-rules>) or Periscope Community Guidelines (<https://www.pscp.tv/content>), (ii) you create risk or possible legal exposure for us; (iii) your account should be removed due to unlawful conduct, (iv) your account should be removed due to prolonged inactivity; or (v) our provision of the Services to you is no longer commercially viable. We will make reasonable efforts to notify you by the email address associated with your account or the next time you attempt to access your account, depending on the circumstances. In all such cases, the Terms shall terminate, including, without limitation, your license to use the Services, except that

the following sections shall continue to apply: II, III, V, and VI. If you believe your account was terminated in error you can file an appeal following the steps found in our Help Center (<https://help.twitter.com/forms/general?subtopic=suspended>) (<https://help.twitter.com/forms/general?subtopic=suspended>) (<https://help.twitter.com/forms/general?subtopic=suspended>) (https://help.twitter.com/forms/general?subtopic=suspended)). For the avoidance of doubt, these Terms survive the deactivation or termination of your account.

5. Limitations of Liability

By using the Services you agree that Twitter, its parents, affiliates, related companies, officers, directors, employees, agents representatives, partners and licensors, liability is limited to the maximum extent permissible in your country of residence.

6. General

We may revise these Terms from time to time. The changes will not be retroactive, and the most current version of the Terms, which will always be at [twitter.com/tos](https://twitter.com/en/tos) (<https://twitter.com/en/tos>), will govern our relationship with you. Other than for changes addressing new functions or made for legal reasons, we will notify you 30 days in advance of making effective changes to these Terms that impact the rights or obligations of any party to these Terms, for example via a service notification or an email to the email associated with your account. By continuing to access or use the Services after those revisions become effective, you agree to be bound by the revised Terms.

In the event that any provision of these Terms is held to be invalid or unenforceable, then that provision will be limited or eliminated to the minimum

extent necessary, and the remaining provisions of these Terms will remain in full force and effect. Twitter's failure to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision.

These Terms are an agreement between you and Twitter International Company (Co. number 503351, VAT number IE9803175Q), an Irish company with its registered office at One Cumberland Place, Fenian Street Dublin 2, D02 AX07 Ireland. If you have any questions about these Terms, please contact us (<https://help.twitter.com/forms>).