



April 10, 2023

Dear Chair Kaufmann, Vice Chair Kniff McCulla, Ranking Member Jacoby, and Members of the House Ways and Means Committee,

Entertainment Software Association (ESA), the trade association representing video game publishers and console makers, respectfully submits this letter in opposition to Iowa House File 526 (HF 526). This bill would implement a requirement for social media platforms to obtain parental consent before collecting personal information from individuals known to be younger than 18 years old.

Video games are not social media platforms. They are platforms that have a primary purpose of gameplay. Nonetheless, given the broad definition of “social media platform,” some video game services might meet this definition. Among other things, game platforms allow users to create an account and communicate with each other, functions that are captured by the present definition. Importantly, however, these functions are in service to the overall gameplay experience, which is the principal draw. Given that video games do not raise the same concerns as social media platforms, the definition of “social media platform” should be revised to exclude video games:

4. “Social media platform” means . . . . The term does not include any of the following:
  - (a) an internet service provider
  - (b) electronic mail
  - (c) an online service, application, or internet site that consists primarily of news, sports, entertainment or other content preselected by the provider that is not user-generated and where interactive functionality is incidental to, directly related to, or dependent upon the provision of content.
  - (d) a platform that has the primary purpose of providing access to an interactive gaming, virtual gaming, or online service, that allows the creation and uploading of content for the purpose of interactive gaming, entertainment, or associated entertainment, and the communications related to that content.**

This amended definition will preserve the intended focus on social media platforms while avoiding adverse impacts on video games, where the considerations are different.

There are other problems with the bill. HF 526 would require parental consent for collecting personal information from U18 children. Federal law already requires parental consent to collect PI from known U13 children, under the Children’s Online Privacy Protection Act (COPPA) framework. Historically, U13 has served as a good age threshold because after that age, kids are more likely to evade age restrictions and sneak around parental oversight of their online activities.

Our industry has extensive experience complying with the well-established federal framework on children's privacy, which specifies procedures for obtaining parental consent and determining age. The Federal Trade Commission (FTC) has devoted substantial thought to parental consent and, under its rule implementing COPPA, identified a set of specific procedures that companies can rely upon to obtain parental consent for collecting personal information from minors under 13 years old. No consumer privacy law requires a company to obtain parental consent for children 13-17. We urge this committee to develop regulations that do not conflict with existing legal standards, specifically do not pass legislation requiring businesses to obtain parental consent from teens to access game platforms.

To meet the requirements of the bill, and to avoid substantial liability, social media platforms would need to age verify all of their users so that they could be certain to seek parental consent when collecting personal information from U18 users. Age verification raises several constitutional issues.

Age verification may involve collecting and confirming identification information from each user, which creates a financial penalty on sites that make speech available while deterring adults from accessing material they have a First Amendment right to read and view. The effect would be analogous to asking every bookseller to ask each customer for proof of age before permitting them to browse in the store because the store carries some material that is not suitable for minors. Age-verification systems also deprive internet browsers of their anonymity. Many browsers will decide not to view material rather than reveal their identity. This deprives those readers of access to First Amendment-protected material such as the video games they seek to play. In turn, this reduces traffic on websites. The loss of traffic can reduce the income of websites and limit the ability to communicate with a wider audience.

Age verification mandates, whether express or implied, also violate the Commerce Clause of the U.S. Constitution, which reserves to Congress the power to regulate interstate commerce. Since the Internet goes beyond the borders of Iowa, all websites would be required to determine who is a resident of Iowa to comply with this bill. Websites would have to demand proof of geographic location and require proof of age from every user, which means the legislation would apply to every website on the Internet. Courts across the country have repeatedly struck down state laws that seek to regulate online content as unconstitutional burdens on interstate commerce.

Due to constitutionality and scoping concerns as well as the interplay with the federal COPPA framework, we respectfully request that this committee not pass HF 526.

Sincerely,

Andrew O'Connor  
Director, State Government Affairs  
Entertainment Software Association