



federal court issues preliminary injunction against california's recently enacted internet child-protection law

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As MSK reported last year, there was a distinct possibility of legal, including constitutional, challenges to the new California Age-Appropriate Design Code Act (the "CAADCA"), a law aimed at protecting children online. Such predictions proved accurate and have now culminated in a ruling. On September 18, 2023, Judge Beth Labson Freeman of the U.S. District Court for the Northern District of California issued a preliminary injunction halting implementation or enforcement of the law, which was originally scheduled to go into effect on July 1, 2024.

In December 2022, the industry group NetChoice—whose members include Google, Amazon, Meta, and TikTok—filed its complaint against California's Attorney General in the district court to stop implementation of the CAADCA. In its request for a preliminary injunction, NetChoice argued that the CAADCA infringed upon several constitutional provisions, including the First and Fourth Amendments, as well as the Due Process and Commerce Clauses of the U.S. Constitution. Furthermore, the group contended that the Act was preempted by both the federal Children's Online Privacy Protection Act ("COPPA") and Section 230 of the Communications Decency Act.

As enacted, the CAADCA would require any business offering online services, products, or features "likely to be accessed by children" to comply with age verification requirements and to prepare so-called Data Protection Impact Assessment reports ("DPIA Reports") aimed at identifying risks of harm to children arising from a business's data management practices. The DPIA Report requirement is substantial, as these reports must assess whether the design of an online service, product, or feature could potentially harm children and must establish plans to mitigate or eliminate identified risks prior to release. Moreover, DPIA Reports were to be provided to the state attorney general upon written request.

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practice areas

intellectual property



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In her ruling granting the preliminary injunction, Judge Freeman primarily cited First Amendment concerns, characterizing the Act as a content-based restriction on speech. The court concluded that NetChoice was likely to prevail on the merits and the entire law should be enjoined from enforcement pending further proceedings. Analyzing the legislation in light of NetChoice's complaint, the court agreed that the stated purpose of the CAADCA was an important one. At the same time, the court credited NetChoice's "position that the State has no right to enforce obligations that would essentially press private companies into service as government censors," and was "troubled by the CAADCA's clear targeting of certain speakers—*i.e.*, a segment of for-profit entities, but not governmental or non-profit entities." The court also agreed with NetChoice that "the steps a business would need to take to sufficiently estimate the age of child users would likely prevent both children and adults from accessing certain content."

Finding the First Amendment arguments compelling, and also finding a likelihood of irreparable harm due to a threatened abridgment of constitutional rights, the court granted NetChoice's requested injunctive relief without delving deeply into NetChoice's argument that the CAADCA was preempted by federal law. Furthermore, the court refrained from addressing potential conflicts with Section 230 of the Communications Decency Act and the U.S. Constitution's Commerce Clause.

For now, the court's preliminary injunction prevents all enforcement of the CAADCA by California or its officers. However, the case continues, and California's Attorney General may appeal the preliminary injunction to the Ninth Circuit. MSK will provide updates on further developments.