



November 5, 2025

Attorney General's Office
California Department of Justice
Sacramento, CA 94244-2550

Re: EFF Comments in Response to Preliminary Rulemaking on S.B. 976

Dear Attorney General Bonta,

I write today on behalf of the Electronic Frontier Foundation (EFF) to respond to the California Department of Justice's (CADOJ) request for comment to inform upcoming rulemaking on S.B. 976.^{1 2} S.B. 976 requires the Attorney General (AG) to adopt regulations regarding age assurance and parental consent and consider the impacts of any such regulations on existing anti-discrimination law. As EFF has argued in court, S.B. 976 is an unconstitutional restraint on all internet users' First Amendment rights to speak and access information online. EFF does not believe that this rulemaking can address SB 976's constitutional failings, particularly because any age-assurance system required by the rules will burden the First Amendment and privacy rights of both adults and young people.

In addition to violating adults and young people's First Amendment rights, S.B. 976's age-assurance mandates cannot be practically implemented without directly harming Californians across protected characteristics. Parental consent mandates are similarly harmful. As explained below, these systems, and the technologies used to implement them, will block many adults from accessing lawful speech on social media, either because they will be wrongly identified as minors or restricted from using these services because they lack the required "proof" needed to verify that they are adults.

The internet plays a dominant role in the exercise of First Amendment rights today, and social media services are "perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard." *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017). The internet furthers the "fundamental principle of the First Amendment" that "all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more." *Id.* at 104.

No amount of careful rulemaking can overcome the fundamental reality that technology based age-assurance methods are both inaccurate and discriminate on the basis of race. A 2025 Guardian analysis of age assurance technology trial data—generated to underpin the UK's teen social media ban—showed that the introduction of age checks most significantly burdened already-marginalized communities.³ Age-estimation software was both less accurate for people

¹ The Electronic Frontier Foundation is a San Francisco-based, non-profit organization that works to protect civil liberties in the digital age. EFF represents more than 30,000 active individual donors and members, including thousands of supporters in California.

² S.B. 976, the "Protecting Our Kids from Social Media Act," found here: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB976

³ Nick Evershed and Josh Nicholas, *Social Media Ban Trial Data Reveals Racial Bias in Age Checking Software: Just How Inaccurate Is It?*, The Guardian (Sept 18, 2025), <https://www.theguardian.com/news/2025/sep/19/how->

with an Indigenous or South-East Asian background, mis-categorizing people as over or age the age limit respectively, and also took longer to generate results for those communities.

The National Institute of Standards and Technology's ongoing review of age estimation technology confirms these concerns.⁴ For those near the age of eighteen, NIST's review indicated that the algorithms are simply not very accurate. False positive rates exceed 40% for seventeen-year-olds, while error rates for eighteen to twenty-one-year-olds generally span three or more years. An algorithm providing an age range of 15-19 cannot meaningfully enforce an eighteen-year cutoff. Critically, NIST's review demonstrates that these tools consistently fail at estimating the ages of Black and Asian people, compounding existing harms from facial recognition technologies.

In addition to these systems being discriminatory, their inherent inaccuracy means that they are not fit for purpose of determining who is an adult or child as required by S.B. 976. These errors flow in both directions: the inaccuracy will block some adults from accessing social media and correspondingly allow some minors to access social media because they have been wrongly estimated to be adults. The technology is thus woefully over- and under-inclusive in restricting access to lawful speech, meaning it necessarily fails First Amendment scrutiny. *See Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786, 802.

Document-based age-verification requirements also raise concerns across protected classes because the systems can block access to adults who lack the requisite proof of age. To start, about 15 million adult U.S. citizens do not have a driver's license, while about 2.6 million do not have any form of government-issued photo ID.⁵ Estimates show another 21 million adult U.S. citizens do not have a non-expired driver's license, and over 34.5 million adult citizens have neither a driver's license nor a state ID card with their current name or address.⁶ It is often unclear whether a given document-based age-verification system will accept expired licenses or permit adults to rely on other forms of identification should they lack driver's licenses.

These numbers do not include non-U.S. citizens who do not have current government-issued identification, including undocumented immigrants who cannot obtain a state ID or driver's license. Black Americans and Hispanic Americans are disproportionately less likely to have

[accurate-are-age-checks-for-australias-under-16s-social-media-ban-what-trial-data-reveals](#); *Age Assurance Technology Trial Report*, Australian Department of Infrastructure, Transport, Regional Development Communications and Arts, (Aug. 2025), <https://ageassurance.com.au/report/>

⁴ *Face Analysis Technology Evaluation (FATE) age estimation & verification*. (n.d.), National Institute Standards and Technology, https://pages.nist.gov/frvt/html/frvt_age_estimation.html

⁵ Jillian Andres Rothschild *et al.*, *Who Lacks ID in America Today? An Exploration of Voter ID Access, Barriers, and Knowledge 2*, Univ. Md. Ctr. for Democracy & Civic Engagement (Jan. 2024), <https://cdce.umd.edu/sites/cdce.umd.edu/files/pubs/Voter%20ID%202023%20survey%20Key%20Results%20Jan%202024%20%281%29.pdf>

⁶ *Id.* at 2, 5; Michael J. Hammer & Samuel B. Novey, *Who Lacked Photo ID in 2020?: An Exploration of the American National Election Studies 3*, Univ. Md. Ctr. for Democracy & Civic Engagement (Mar. 2023), https://www.voteriders.org/wp-content/uploads/2023/04/CDCE_VoteRiders_ANES2020Report_Spring2023.pdf

current driver's licenses.⁷ And 18% of Black adult Americans do not have a driver's license at all.⁸ Americans with disabilities and Americans with lower annual incomes are also less likely to have a current driver's license.⁹

Many age assurance or age estimation methods may also ask for bank, home mortgage, or other forms of documentation in conjunction with or instead of government-issued IDs. Relying on financial and credit records to verify identities can exclude a large number of adults. Nearly 35% of U.S. adults do not own a home and close to 20% of U.S. households do not have a credit card.¹⁰ ¹¹ Immigrants, regardless of their legal status, may not even be able to obtain a credit card, let alone other forms of financial documentation.¹² Americans with disabilities are also less likely to possess current driver's licenses, making document-based verification equally exclusionary.

Other age assurance methods also pose significant barriers for people with disabilities. Facial recognition and age estimation technologies routinely fail to recognize faces with physical differences—affecting an estimated 100 million people worldwide who live with facial differences. As WIRED reported in October 2025, these individuals are increasingly blocked from accessing essential systems and services because algorithms cannot properly detect their faces.¹³ The fact that these systems fail people with disabilities shows once more that they are not fit for purpose.

Moreover, age estimation technologies perform consistently worse on transgender individuals and are universally unable to classify non-binary genders.¹⁴ For the 43% of transgender Americans who lack identity documents correctly reflecting their name or gender, age verification requirements create additional barriers to accessing online platforms, potentially forcing disclosure of deadnames and misgendered documentation, compounding existing harms and potentially outing individuals in unsafe situations.¹⁵

⁷ *Supra* Note 6, at 2

⁸ *Id.*

⁹ *Id.*

¹⁰ U.S. Census Bureau, CB24-62, *Quarterly Residential Vacancies and Homeownership, First Quarter 2024*, at 5 (Apr. 30, 2024), <https://www.census.gov/housing/hvs/files/currenthvspress.pdf>

¹¹ Board of Governors, U.S. Fed. Reserve, *Economic Well-Being of U.S. Households in 2022*, at 44 (May 2023), <https://www.federalreserve.gov/publications/files/2022-report-economic-well-being-us-households-202305.pdf> (in 2022, 82% of American households had a credit card).

¹² Sonia Lin, *Identifying and Addressing the Financial Needs of Immigrants*, Consumer Fin. Prot. Bureau (June 27, 2022), <https://www.consumerfinance.gov/about-us/blog/identifying-and-addressing-the-financial-needs-of-immigrants/> (describing how “many financial institutions have policies and practices in place that effectively exclude immigrants from access to bank services and to credit due to immigration status”).

¹³ Matt Burgess, *When Face Recognition Doesn't Know Your Face Is a Face*, WIRED (October 15, 2025), <https://www.wired.com/story/when-face-recognition-doesnt-know-your-face-is-a-face/>

¹⁴ Morgan Klaus Scheuer et al, *How Computers See Gender: An Evaluation of Gender Classification in Commercial Facial Analysis and Image Labeling Services*, Proceedings of the ACM on Human-Computer Interface, Volume 3 (Nov. 2019), <https://dl.acm.org/doi/pdf/10.1145/3359246>

¹⁵ Jody L. Herman et al, *The Potential Impact of Voter Identification Laws on Transgender Voters in the 2024 General Election*, UCLA School of Law Williams Institute (Sept. 2024), <https://williamsinstitute.law.ucla.edu/publications/trans-voter-id-impact/>

More generally, regardless of the methods or technology used, age-assurance systems required by S.B. 976 will result in blocking disempowered young people from accessing the digital spaces and communities they often rely on for their own development and support. For LGBTQ+ youth, particularly those lacking family support or facing threats of violence at home due to their sexuality or gender identity, social media platforms can be a crucial lifeline.¹⁶ Parental consent requirements—a common form of age assurance—are especially dangerous for LGBTQ+ youth whose families may be unsupportive or abusive.¹⁷ If parents must consent to or monitor their children's social media accounts, LGBTQ+ youth lose access to vital support networks, mental health resources, and communities that affirm their identities. LGBTQ+ youth are also disproportionately likely to be unhoused and lack access to identification or parental consent, further marginalizing them compared to peers with supportive families.¹⁸

Parental consent requirements also fail to account for children in foster care, particularly those in group homes without a legal guardian who can provide consent, or with temporary foster parents who cannot prove guardianship. These requirements effectively exclude some of California's most vulnerable youth from accessing online platforms and resources.

Lastly, age assurance mandates threaten children's rights to express themselves freely and access information online—rights recognized by the United Nations and UNICEF, in addition to being protected by the First Amendment.¹⁹ Privacy concerns aside, these systems restrict minors' ability to seek information about health, education, current events, and their own identities. These harms are amplified for LGBTQ+ youth, for whom the internet can be a lifeline for self-expression and access to crucial resources unavailable in their immediate physical environments.

The Attorney General's consideration of anti-discrimination impacts in this rulemaking shows a commendable commitment to protecting all Californians. However, the evidence makes clear that truly non-discriminatory age assurance regulations are not achievable under S.B. 976's mandate.

The question is not whether these regulations will discriminate, but how extensively. Every available age assurance method—whether facial estimation, document verification, credit checks, or parental consent—systematically excludes or harms marginalized communities along lines of race, disability, gender identity, sexual orientation, immigration status, and socioeconomic class. Age verification mandates pose a fundamental danger to everyone, but their burdens fall heaviest on those Californians already facing systemic barriers to full participation in civic and social life.

¹⁶ *Online Safety for LGBTQ+ Young People*, The Trevor Project (October 16, 2023),

<https://www.thetrevorproject.org/resources/guide/online-safety-for-lgbtq-young-people/>

¹⁷ Carlos Gutierrez, *The Dangers of Legislative Consent Requirements*, LGBT Tech (December 6, 2023),

<https://www.lgbttech.org/post/legislative-parental-consent-requirement>

¹⁸ Policy Brief: LGBTQ+ Youth Homelessness, National Network for Youth (2023), <https://nn4youth.org/wp-content/uploads/23-LGBTQ-Policy-Brief.pdf>

¹⁹ Conventions on the Rights of the Child, UNICEF, <https://www.unicef.org/child-rights-convention>

When compliance with a statute necessarily requires discrimination against protected classes, the appropriate regulatory response is to identify that impossibility clearly, rather than to adopt regulations that codify harm. That result is all the more required here given that S.B. 976 also violates all Californians' First Amendment rights to speak and access information online. We urge the Attorney General to recommend the Legislature reconsider the approach S.B. 976, and like legislation, takes entirely. Thank you for your consideration of these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rindala" followed by a stylized flourish.

Rindala "Rin" Alajaji
Legislative Activist
Electronic Frontier Foundation