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DATE: March 1, 2023

TO: Chair Stephenson and Members of the House Commerce Finance and Policy Committee

FROM: Andrew O'Connor

RE: HF 1503 – Oppose

The Entertainment Software Association (ESA), the trade association representing video game publishers and console makers, **respectfully opposes House File 1503**. The video game industry has long supported efforts and complied with laws that keep children safe online. Though this bill aims to address a perceived online harm, this bill contemplates regulating foundational technologies that power the internet and is so imprecisely drafted that is regulations would cause more harm than good. Additionally, HF 1503 attempts to establish a new legal standard for circumstances under which parental consent is required, a stance that is at odds with existing requirements in the federal Children’s Online Privacy Protection Act (COPPA) and various state privacy laws.

First, this bill is overbroad in scope and captures any operator online, irrespective of their status as a traditional social media platform. Though the intent is to regulate “social media platforms,” the term is defined so broadly and captures any online platform that allows a user to “create, share, and view user-generated content.” Additionally, “user-generated content” means ***any*** content created by a user – from a written post that can be viewed on a person’s “timeline” to a screen capture of video game play (powered by software) that does not contain a person’s thoughts, speech, or likeness. With these broad definitions, many video game publishers and console makers would be considered operators of a “social media platform” under this bill (even if unintended) simply because their products or services contain interactive features that allow players to memorialize their game accomplishments.

Second, because this bill captures such a broad section of online activity, including gaming, this bill’s ban on the use of a “social media algorithm to target user generated content” any online recommendation feature would likely be prohibited under this bill. In some instances, algorithmic technologies are used to provide game recommendations based on a user’s interests. For example, instead of displaying user-created gameplay clips from one of the thousands of games that exist, an algorithm might narrow the field and only display gameplay from games a user is interested in or has played in the past. This use of algorithms helps players find games they are most likely to enjoy and aids in community-building that is essential to gaming. Video game players share gameplay content to highlight their gaming achievements and build camaraderie. Seventy-seven percent of gamers play with others online or in person, while 74% of parents play games with their children on a weekly basis. Prohibiting the use of algorithms that aid in aligning content with a user’s interests frustrates the community-building aspect of games that unites gamers in an increasingly disconnected virtual world.

Finally, House File 1503 goes beyond established legal norms regarding verifiable parental consent. This bill would require a social media platform to obtain parental consent for any user under 18 upon registering for an account, and the bill would require the social media platform to verify such adult’s identity. Since account registration is the collection of an individual’s information, existing data privacy laws are instructive. COPPA, the federal children’s privacy law, requires operators to obtain verifiable parental consent prior to collecting the personal information of a child under 13. There is no need for a parental consent requirement, as contemplated by this bill, because federal law already requires operators to obtain parental consent for users under 13. Various state and federal laws provide data protections specific to teenagers do not require parental consent and instead give the teenager the ability to make decisions about how their data is used. Specifically, no state law requires a teenager to obtain parental consent for the collection or use of their data. Additionally, this bill establishes an unclear identity verification requirement for adults that will require additional data collection on every person registering a new account in the state of Minnesota.

Given the overbreadth of the bill and key ambiguities in some places, it is likely that companies will adopt different interpretations of the bill. This bill is silent on enforcement and does not establish a government oversight function where industry can seek guidance on compliance or provide the opportunity to fix good-faith mistakes. Even more problematic is the private right of action. This overbroad and vague bill coupled with a private right of action would create unnecessary liability for all online platforms that use algorithms. The goal is to keep children safe online, but this bill invites more questions on how to do so than answers.

We appreciate the opportunity to provide testimony and would be happy to follow-up with any additional information as needed.

Sincerely,

Andrew O’Connor  
Director, State Government Affairs

Entertainment Software Association